

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal: 2499/2023

Syed Israr Shah.....Appellant

VERSUS

The Government of KPK & OthersRespondents

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Dated:

Through Counsel

Respondents

Pankaj Aziz Khan

(Gold medalist)

Advocate High Court

Legal Advisor

Excise Taxation & Narcotics Control

Khyber Pakhtunkhwa

**BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 2499/2023

Syed Israr Shah (Appellant)

Versus

Govt of Khyber Pakhtunkhwa & others.....(Respondents)

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO 1 TO 3

Respectfully Sheweth:

Preliminary Objections

1. That the appeal in hand is not maintainable and incompetent in the eyes of law.
2. That the appellant has got no cause of action and locus standi to file the instant appeal.
3. That the appellant has not come to the tribunal with clean hands.
4. That the appellant has suppressed all the relevant and material facts.
5. That the appeal is mis-constructed and mistakenly drawn, hence liable to be rejected.
6. That the appellant is estopped by his own conduct to file the appeal.
7. That as stated in the objection supra, the appeal is bereft of cause of action and is liable for dismissal.
8. That the respondents have the power to change the rules any time for better running of its department and the rules mentioned in the instant appeal have been made for the whole province, not for any specific person/ individual.

On Facts

1. Para No.1 pertains to record.
2. Para No.2 needs no comments.

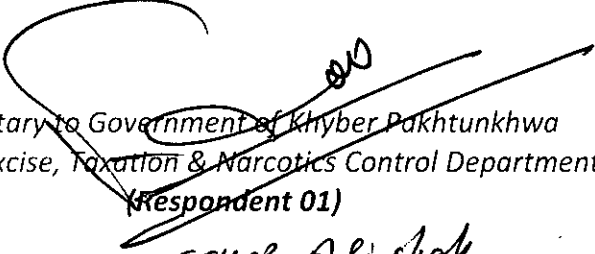
3. Para No.3 is correct to the extent of compulsory retirement from service on the ground that the appellant failed to report for duty as reported by Excise & Taxation Office D.I Khan. In this connection an inquiry was ordered, wherein Director Excise & Taxation D.I Khan was nominated as an inquiry officer. Resultantly, a show cause notice was issued to appellant, to which his reply was not found satisfactory. Despite opportunity of personal hearing he offered nothing in his defense. (**Inquiry report and show cause notice Annex A and A1**)
4. Para No.4 is correct to the extent that appellant filed departmental appeal against order dated 20-08-2020. However, to meet the grievances of appellant the major penalty of "**Compulsory Retirement from Service**" was converted into minor penalty i-e "**Censure**"
5. Para No.5 is correct to the extent of converting major penalty of compulsory retirement into minor penalty "**censure**"
6. Para No. 6 needs no comments.
7. Para No.7 pertains to record.
8. Para No.8 is correct to the extent that letter was sent to Secretary Finance Department on direction of Secretary Excise & Taxation Department for seeking advice whether the appellant entitled to leave on pay at his credit. In light of above, letter received by Finance Department "**stated that the subject case is not covered under the rules.**"
9. As replied above.
10. In response to Para No.10 the department already held lenient view of the matter and had granted relief of converting major penalty into a minor one. Despite the relief granted by the department, appellant has still resorted to litigation and seeks for "**Leave on Full Pay**". The subject case is not covered under the relevant rules of Finance Department and subsequently rejected by Excise and Taxation Department vide order dated 28-09-2023. Hence no room for further relief.
11. Para No.11 is correct to the extent that departmental appeal was rejected. In view of above, case of appellant was forwarded to finance department for seeking advice whether the appellant is entitled to conversion of extraordinary leave (leave without pay). Hence the Finance Department letter stated that the subject case is not covered under relevant rules. (**Rejection Order is annex B**)
12. That appellant has got no cause of action to approach this honorable tribunal.

Grounds

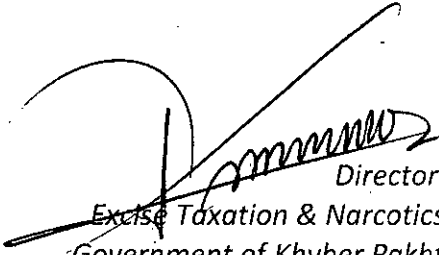
- A. Incorrect hence denied. As per 1-11.2021 order the major penalty was converted into minor penalty and in 9-11-2021 order the appellant was re-instated in service.
- B. As replied in facts.
- C. Incorrect. The appellant was treated according to law.
- D. As replied in facts.
- E. As explained above
- F. Subject to proof hence denied.
- G. Incorrect. The appellant was treated according to law and rules.

Prayer:


It is therefore humbly prayed, that on acceptance of parawise comments, the instant appeal being devoid of facts and merits may kindly be dismissed.


Secretary to Government of Khyber Pakhtunkhwa
Excise, Taxation & Narcotics Control Department
(Respondent 01)

Fayaz Ali Shah



Director General
Excise Taxation & Narcotics Control
Government of Khyber Pakhtunkhwa
(Respondent 02)

Ahmad Zeb


Government of Khyber Pakhtunkhwa
Through Chief Secretary
Civil Secretariat.
(Respondent 03)

Zubair

Through Counsel


Parkha Aziz Khan
(Goldmedalist)
Advocate High Court
Legal Advisor
Excise Taxation & Narcotics Control
Khyber Pakhtunkhwa

BEFORE The SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

SERVICE APPEAL NO. 2499/2023

Syed Israr Shah..... (Apellant)

Versus

Government of KPK (Respondents)

AFFIDAVIT

I, **SOHAIB MUHAMMAD** Govt of Khyber Pakhtunkhwa
Excise Taxation & Narcotics Control Department do hereby solemnly affirm and
verify on oath that contents of accompanying "Para-wise Comments and
annexures" on behalf of respondents are true and correct to the best of my
knowledge and belief, and nothing has been concealed from this honorable court.

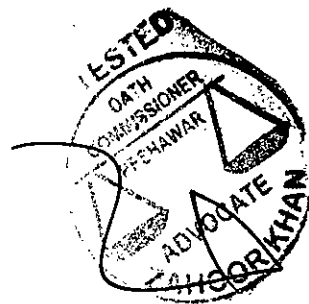
THE DEPONENT

CNIC # 17301-0886151-3

Sd/-

Identified By

Parkha Aziz Khan
Goldmedalist
Advocate High Court
Legal Advisor
Excise Taxation & Narcotics Control
Khyber Pakhtunkhwa



13-06-2024



GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE DIRECTOR, EXCISE, TAXATION &
NARCOTICS CONTROL, DI KHAN REGION,
DI KHAN

No. 243 /Dir-DI Khan Region

Dated; 10/06/2020

To

**DIRECTOR ADMINISTRATION
EXCISE, TAXATION & NARCOTICS CONTROL
KHYBER PAKHTUNKHWA PESHAWAR.**

Process on file

Subject:- **ENQUIRY REPORT REGARDING NON ARRIVAL OF MR. ISRAR ALI SHAH**

29-06-2020

Reference Dir (Admn) ET&NC KPK Peshawar order No. 11737/Estb/Complaint-2019 dated 18.05.2020 in the subject matter.

HISTORY:

Mr. Israr Ali Shah, Inspector was transferred from ETO-II, Peshawar to ETO, DIKhan vide DG, ET&NC, Peshawar order No.10153/Estb/XXXV-D-412 dated 10.03.2020 (**Annexure-A**). Subsequently, ET&NC Officer, DI Khan intimated DG, ET&NC, Khyber Pakhtunkhwa, Peshawar vide his letter No.1204 dated 30.04.2020 that the said official had not reported his arrival in DIKhan Office till date (**Annexure-B**). Consequently, above referred order dated 18.05.2020 had been issued to probe into the matter. Hence, the instant inquiry.

Israr Ali Shah

Atul

PROCEEDINGS:

Statements from ETO-II, Peshawar and accused Inspector were recorded as below.

STATEMENT OF ETO-II PESHAWAR:

ETO-II, Peshawar in his written statement explained that Mr. Israr Ali Shah, Inspector was repeatedly informed about his transfer. However, he neither appeared before him, nor relinquished the charge (**Annexure-C**).

STATEMENT OF MR. ISRAR ALI SHAH INSPECTOR:

He stated in his written statement that his transfer order was issued from ETO-II, Peshawar to ETO, DI Khan. He further stated that in compliance with the order, he set off in his car to DI Khan to report his arrival. On the way, his vehicle became out of order. That is why, the office had been closed when he reached, he explained the situation. He further stated that he was sugar patient so he came back to Peshawar due to COVID-19 Lockdown. He recovered after injecting insulin in Peshawar. Furthermore, his age was above 50 years as well as he was a sugar patient, therefore, it was not possible for him to attend the office. Otherwise, it would have violation of law in attending the office being sugar patient of 50 years old. In end, he requested that keeping his disease and age in view, he might be reinstated (**Annexure-D**).

FINDINGS:

1-Statement of the ETO-II, Peshawar reveals that he, neither appeared before him, nor relinquished the charge.

Sl. No. 6992
Date: 25/6/20
DIRECTOR GENERAL
EXCISE, TAXATION & NARCOTICS
CONTROL, KHYBER PAKHTUNKHWA



GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE DIRECTOR, EXCISE, TAXATION &
NARCOTICS CONTROL, DI KHAN REGION,
DI KHAN

6

6


2-It is a question mark that how Mr. Israr Ali Shah, Inspector travelled to ETO, DI Khan office to report his arrival without relinquishing the charge of his post in ETO-II, Peshawar.

3-Mr. Israr Ali Shah, Inspector was transferred on 10.03.2020 and offices were put on public holidays due to spread of COVID-19 pandemic since 18.03.2020. Meaning thereby, he had ample time to report his arrival in ETO, DI Khan before the start of public holidays.

4-He still has not reported his arrival in ETO, DI Khan even after the lapse of almost 4 months **which is willful non-compliance of the transfer order issued by Directorate General Excise, Taxation and Narcotics Control Khyber Pakhtunkhwa.**

Enclosed: 04 Nos


(Dr. Eid Badshah)
DIRECTOR

AAE


No. 139 P.FileDated. 03-07-2020**SHOW CAUSE NOTICE**

(16)

I, **Syed Fayyaz Ali Shah**, Director General, Excise, Taxation & Narcotics Control, Khyber Pakhtunkhwa, Peshawar as competent authority, under the Khyber Pakhtunkhwa Government Civil Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you Mr. Israr Ali Shah, Excise & Taxation Inspector (BPS-16), Office of the Excise and Taxation Officer, D.I.Khan show cause notice as follows:-

"That, you were transferred from Excise and Taxation Office-II, Peshawar to Excise and Taxation Office, D.I.Khan vide Order No. 10153/Estb/XXXV-D-412, dated. 10.03.2020, however, as reported by the Excise and Taxation Officer, D.I.Khan vide his letter No. 12204, dated. 30.04.2020 you have not reported for duty. In this connection the Director, Excise, Taxation and Narcotics Control, D.I.Khan conducted an inquiry and established that you have not reported your arrival in ETO Office D.I.Khan even after the lapse of almost four(04) months which is willful non-compliance of the transfer order"

After
JD

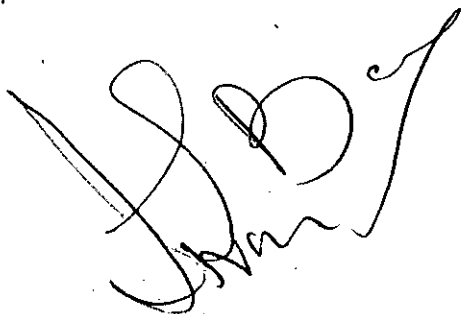
2. I am satisfied that you have committed the following acts/omissions specified in Rule 3 of the said rules:

(b) Guilty of misconduct;

3. As a result thereof, I, as the Competent Authority, have tentatively decided to impose upon you the penalty of "compulsory retirement" under the ibid Rules.

4. You are, thereof, required to show cause as to why as the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (07) days or not more than fifteen (15) days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.



MA
Competent Authority
3.7.2020



**GOVERNMENT OF KHYBER PAKHTUNKHWA
EXCISE, TAXATION AND NARCOTICS CONTROL DEPARTMENT**

No. SO(Admn)E&T/1-67/2020
Dated Peshawar, the February 15, 2023

1000-3

To

The Director General,
Excise, Taxation & Narcotics Control,
Khyber Pakhtunkhwa Peshawar

Subject:- **APPEAL IN RESPECT OF SYED ISRAR ALI SHAH EX-INSPECTOR.**

Dear Sir,

I am directed to refer to your letter No. 5571/Estb: dated 12.012023 on the subject noted above and to enclose herewith a copy of Finance Department letter No. SOSR-IV/FD/2-15/2021-22/Excise Deptt dated 21.02.2022, which is self-explanatory, with the request to re-examine the subject case under prevailing law/ rules at your end, please.

Attn
[Signature]

Yours faithfully,

(MUNIR KHAN)
SECTION OFFICER (ADMN)

Encl: As Above.

Endst: No. & Date Even.

Copy is forwarded for information to the: -

1. P.S to Secretary Excise, Taxation & Narcotics Control Department, Khyber Pakhtunkhwa, Peshawar.
2. P.S to Additional Secretary Excise, Taxation & Narcotics Control Department, Khyber Pakhtunkhwa, Peshawar.
3. Master file.

Director (Admn)	DIRECTOR GENERAL Excise, Taxation & Narcotics Control Khyber Pakhtunkhwa Peshawar	Director (Revenue)
Director (Litigation)		Director (Peshawar)
Director (Narcotics)		Director (Registration)
ETO (E&N).		Dy. Dir. (A&A).
Asst. Dir. (A&A)		Incharge Warehouse
Programmer (IT).		Superintendent-I
Superintendent (P&D)		Superintendent-II
PA to DG. Excise.		AETO (EIB).

SECTION OFFICER (ADMN)

7/16/2/23

SIARY NO 3519
DATED 16/2/23
DIRECTORATE GENERAL
EXCISE, TAXATION & NARCOTICS
CONTROL, KHYBER PAKHTUNKHWA



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. SOSR-IV/FD/2-15/2021-22/Excise Deptt
Dated Peshawar the 21-02-2022

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Excise, Taxation and Narcotics Control Department.

Subject: -

APPEAL REGARDING RELAXATION IN PENALTY/CONVERSION OF
EOL INTO LEAVE WITH FULL PAY.

Dear Sir,

I am directed to refer to your department's letter No. SO(Admn)E&T/1-
67/2020/1036-38 dated 03-02-2022 on the subject noted above and to state that the subject case
is not covered under the relevant rules, please.

Yours faithfully,

(MAQSOOD KHAN)
SECTION OFFICER (SR-IV)

162/c
AMR

Endst: No. & date even

Copy forwarded to the:-

1. PA to Additional Secretary (Regulation) Finance Department.
2. PA to Deputy Secretary (Regulation) Finance Department.
3. Master File.

SECTION OFFICER (SR-IV)

Diary No. 354

Dated 22-2-2022

Excise & T Deptt:

22/2/22

DSC(A)

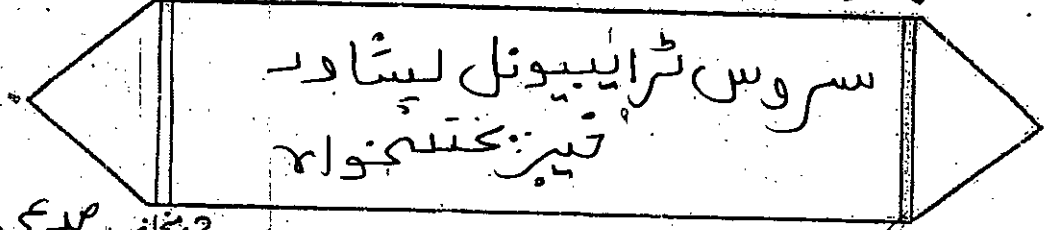
23/02

23/2/22

SO(CA)

**DIRECTORATE GENERAL EXCISE, TAXATION & NARCOTICS CONTROL
DEPARTMENT KHYBER PAKHTUNKHWA**

بعدالت



2، پنجاب صدعی علیہ
12، بیام حکومت

بیدا صراف شاہ

موزخ
مقدمہ
دعویٰ
پریم

باعث تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی رکھ کر وائی حلقہ
آلہ مقام لیساد کیلئے پیر فاخر یز خان ایڈوکیٹ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار ہوگا۔ نیز
دیکلر صاحب کو رضی نامہ کرنے کے وقت رفاہیت ہ فیصلہ برحلف دیے جواب دہی اور اقبال دعویٰ اور
بلا ورت ڈگری کرنے اجراء اور صولی چیک دور و پیدار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برادگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا سہائت
پر واضح منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانشانہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

24 جون 2024

DIRECTOR GENERAL EXCISE, TAXATION & NARCOTICS CONTROL
KHYBER PAKHTUNKHWA

Attested & Accepted By
Parkha Aziz Khan
AHC

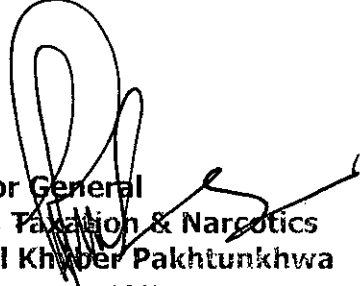
بمقام لیساد



**DIRECTORATE GENERAL, EXCISE, TAXATION &
NARCOTICS CONTROL DEPARTMENT
KHYBER PAKHTUNKHWA
Phone Nos. 091-9212260**

AUTHORITY LETTER

Parkha Aziz Khan, Legal Advisor for Excise, Taxation & Narcotics Control Department Khyber Pakhtunkhwa is hereby authorized to submit the Para wise comments/reply in the Khyber Pakhtunkhwa Services Tribunal at Peshawar in case titled (S.A No 2499/2023 Syed Israr Shah Versus Government of Khyber Pakhtunkhwa & others) on behalf of Respondents.


**Director General
Excise, Taxation & Narcotics
Control Khyber Pakhtunkhwa**
DIRECTOR GENERAL,
EXCISE, TAXATION & NARCOTICS
CONTROL, KHYBER PAKHTUNKHWA,
PESHAWAR.