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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION NO _____

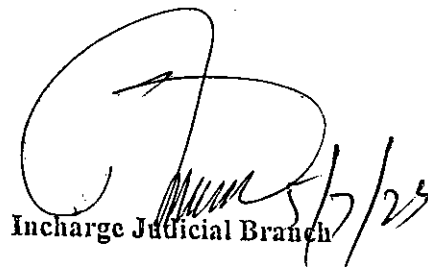
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Nouman Khan vs District Judge and others

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 Muharir
 31/7/24


 Incharge Judicial Branch
 5/7/24

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1321/2019

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Noman Khan Ex-Process Server District Judiciary, Swabi.

... (Appellant)

VERSUS

1. District & Sessions Judge, Swabi.
2. Senior Civil Judge, Swabi.
3. Registrar, Peshawar High Court, Peshawar.

... (Respondents)

Fazal Shah Mohmand
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

.... For respondents

Date of Institution.....10.10.2019
Date of Hearing.....26.03.2024
Date of Decision.....26.03.2024

SCANNED
KPST
Peshawar

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

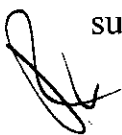
“On acceptance of this appeal, the impugned orders dated 12.09.2019 of respondent No.1, order dated 24.01.2018 of respondent No.2 may kindly be set aside and the appellant may

kindly be ordered to be reinstated in service with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Process Server in the year 2012. On 19.10.2017, he transferred from process serving agency Tehsil Headquarter to Process Serving Agency, District Headquarter and in the meanwhile, the appellant was fell ill and was unable to perform his duty. After recovery, he submitted arrival report on 02.11.2017, upon which he was suspended from service. Departmental proceedings were initiated which culminated into removal from service vide impugned order dated 24.01.2018. Feeling aggrieved, he preferred departmental appeal on 14.02.2018 which was rejected on 12.09.2019, hence the instant service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that he has not been treated in accordance with law and rules and the mandatory provisions of law have been badly violated. He further argued that the impugned orders are illegal, unlawful and void ab-initio, hence liable to be set aside; that no charge sheet was issued to the appellant, thus no charge was framed and the proceeding were issued in total disregard of law on the subject; that no proper inquiry was conducted and nor opportunity of cross examination was provided to the appellant. He submitted that no chance of personal hearing was afforded to him and he was



condemned unheard; that appellant was awarded major penalty upon absence of 13 days which does not commensurate with his guilt, therefore, he requested that instant appeal might be accepted as prayed for.

5. Conversely learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant, owing to his absence during his posting at Tehsil Lahore at District Swabi, was transferred vide order dated 19.10.2017. He was required to assume the charge and commence performing his duty there but he failed, on the basis of which he was suspended from service. He further contended that plea of the appellant regarding his ailment is a concocted story because medical prescriptions presented by the appellant when sent for verification from concerned quarter and they were found bogus, which act of the appellant exposed him to another action, including criminal proceeding for forgery.

6. Perusal of record reveals that the appellant was appointed process server in respondent department in the year 2012. He was transferred from Tehsil Headquarter Process Serving Agency to District Process Serving Agency on 19/10/2017 by respondent No.2. Appellant fell ill during those days due to which he was unable to perform his duties and to assume his charge at District Headquarter Process Serving Agency Swabi. Doctor prescribed him rest. Appellant was suspended vide order dated 2.11.2017. On 2.11.2017 after recovery, appellant reported his arrival at District Headquarter Swabi. Inquiry was initiated against him for willful absence from 19.10.2017 to 1.11.2017. He was issued show cause notice, which was duly replied but without considering

the same, he was awarded major penalty of removal from service vide order dated 24.1.2018.

7. Perusal of inquiry report dated 15.1.2018 reveals that no charge sheet or statement of allegation was issued to the appellant by the authority and inquiry was initiated without complying with the formalities and requirements of rules on the subject. Inquiry officer also in her report categorically mentioned that appellant was proceeded against ex-parte, which means all the proceedings were conducted at the back of the appellant, despite the fact that appellant assumed his duties on 2.11.2017 at District Headquarter. When appellant was on duty, an inquiry officer proceeded against him ex-parte, which is injustice. Statement of Mr. Faziullah (balif) and Sardar Ali were recorded by the inquiry officer as CW1 and CW2 respectively, but no chance of cross examination was provided to the appellant. Appellant was awarded major penalty of removal from service without providing him opportunity of defense and cross examination upon both of them.


8. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure,

resulting in manifest injustice. In the absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of audi alteram partem was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

9. It is also pertinent to mention here that appellant was awarded major penalty of removal from service only upon absence of 12 days despite knowing the fact that absence of the appellant was due to his illness and not willful. In the case neither law, rules nor instructions of law have been complied with by the respondent. Moreover, if absence of the appellant was willful then respondents had to follow procedure laid down in Rule 9 of (E&D) Rules, 2011 i.e issuing notice upon home address of the appellant and then to publish notice of absence in two leading newspaper. No such procedure was adopted by respondents which was violation of law and rules on the subject.

10. For what has been discussed above, we are unison to set aside the impugned orders and reinstate the appellant into service with all back benefits.

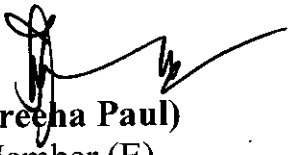
11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26th day of March, 2024.*


(Farzeha Paul)
Member (E)


(Rashida Bano)
Member (J)

ORDER
26.03.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to set aside the impugned orders and reinstate the appellant into service with all back benefits.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

4th Oct. 2023

1. Junior to counsel for the appellant and Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Former made a request for adjournment as senior counsel for the appellant is not available today. Adjourned by way of last chance. To come up for arguments on 25.01.2024 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar

Mutazem Shah

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman

25.01.2024

Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney for the respondents present.

The appeal pertains to the year 2019, however when learned counsel for the appellant started arguments, it was found that complete inquiry record has neither been submitted by the appellant nor by the respondents. The availability of complete inquiry record before the Tribunal is necessary for just and right decision of the appeal in hand, therefore, learned District Attorney shall intimate the respondents to positively produce complete inquiry record and to come up for arguments on 26.03.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar

Naeem Amin

(Fareeha Paul)
Member (E)

(Salah-ud-Din)
Member (J)

8

28.04.2023

Junior to counsel for the appellant present.

Fazal Shah Mohmand, Additional Advocate General for respondents present.

Learned Member Executive (Mr. Muhammad Akbar Khan) is on leave, therefore, case is adjourned. To come up for arguments on 15.06.2023 before D.B. Parcha Peshi given to the parties.

SCANNED
PESHAWAR

(Rozina Rehman)
Member (J)

Mutazem Shah

15th June, 2023

1. Clerk of learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.

2. Lawyers are on strike. Therefore, case is adjourned to 04.10.2023 for arguments before the D.B. P.P given to the parties.

SCANNED
PESHAWAR

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

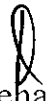
*Mutazem Shah *

9

21st Nov, 2022

Lawyers on general strike today.

To come up for Arguments on 17.01.2023 before D.B. Office is directed to notify the next date on the notice board as well as the website of the Tribunal.



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

SCANNED
KPST
Peshawar

17th Jan. 2023

Lawyers are on strike today.

To come up for arguments on 28.04.2023 before the D.B. Office is directed to notify the next date on the notice board as well as website of the Tribunal.



(FAREEHA PAUL)
Member(E)



(ROZINA REHMAN)
Member(J)

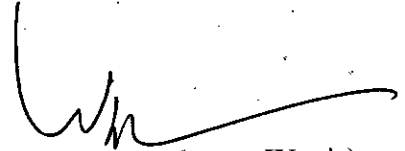
SCANNED
KPST
Peshawar

10

14.01.2022

Junior to counsel for the appellant present. Mr. Asif Masood Ali Shah, DDA for respondents present.

Former made a request for adjournment as senior counsel for the appellant is not available today. Adjourned. To come up for arguments before the D.B on 14.03.2022.



(Atiq-Ur-Rehman Wazir)
Member (E)


Chairman

14.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 09.06.2022 for the same as before.


Reader.

9.6.22



Proper D.B is an issue, therefore the case is adjourned to 29.8.22 for same as before.



29.08.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

The Lawyers are on strike and Learned Member (Judicial) Ms. Rozina Rehman is also on leave, therefore, arguments could not be heard. Adjourned. To come up arguments on 21.11.2022 before the D.B.


(Salah-Ud-Din)
Member (Judicial)

19.07.2021

Appellant alongwith his counsel Mr. Fazal Shah Mohmand, Advocate, present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant sought adjournment on the ground that he has not gone through the record. Adjourned. To come up for arguments before the D.B on 25.08.2021.

(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

25.08.2021

Appellant alongwith his counsel Mr. Fazal Shah Mohmand, Advocate, present. Mr. Usman Ghani, District Attorney for respondents present.

Learned Counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments before the D.B

on 18.10.2021

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

18.10.2021

Junior to counsel for appellant present.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 14.01.2022 for arguments before D.B.

(Atiq-Ur-Rehman Wazir)
Member (E)

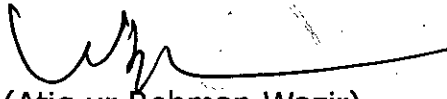
(Rozina Rehman)
Member (J)

05.04.2021


Junior to counsel for appellant present.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Lawyers are on general strike, therefore, case is adjourned. To come up for arguments on 6/7/2021 before D.B.



(Atiq ur Rehman Wazir)
Member (E)




(Rozina Rehman)
Member (J)

06.07.2021

Appellant alongwith Miss. Rabia Muzaffar, junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before the august Supreme Court of Pakistan. Adjourned. To come up for arguments before the D.B on 19.07.2021.



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

11.11.2020

Appellant in person present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Zoalfiqar Nazir for respondents present.

7 d

Representative of respondents submitted written reply. Lawyers are on general strike, therefore, case is adjourned to 19.01.2021 for arguments, before D.B.

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

19.01.2021

Appellant is present alongwith his counsel Miss. Rabi Muzaffar, Advocate. Mr. Zulfiqar, Nazir on behalf of respondents No. 1 & 2 and Mr. Asif Ali Shah, Deputy District Attorney, are also present.

Learned counsel for appellant submitted rejoinder, the same is made part of the record. Request for adjournment was also made by learned counsel for appellant. The appeal is adjourned to 05.04.2021 on which date file to come up for arguments before D.B.

(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

08.09.2020

Appellant in person and Addl. AG alongwith Zulfiqar Ahmad Nazar for the respondents present.

Respondents have not submitted requisite reply/comments despite last chance. The matter is, therefore, posted to D.B for arguments on 11.11.2020.

Chairman

~~11.11.2020~~

~~Appellant in person present.~~

~~Respondents have not submitted requisite reply/comments despite last chance.~~

~~The matter is, therefore, posted to D.B for arguments on 11.11.2020.~~

~~Lawyers are on general strike, therefore, case is adjourned to 19.01.2021 before D.B.~~

~~(Zulfiqar Ahmad)
Member (A)~~

~~(Nazim Rehman)
Member (B)~~

29.01.2020 Appellant in person present. Written reply not submitted. Muhammad Tasfeeq Assistant (representative of respondent No.3) absent. Respondents as well as absent representative of the respondent No.3 be put to notice for reply. Adjourn. To come up for written reply/comments on 05.03.2020 before S.B.

Member

05.03.2020 Appellant in person present. Addl. AG alongwith Zulfiqar Ahmad, Assistant for respondents No. 1 & 2 present and seeks further time. Fresh notice be issued to respondent No. 3.

To come up for written reply/comments on 14.04.2020 by way of last chance.

Member

14.04.2020 Due to public holiday on account of COVID-19, the case is adjourned to 09.07.2020 for the same. To come up for the same as before S.B.

Reader

09.07.2020 Counsel for the appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General, present.

Nemo for the respondents.

Last chance had been given to the respondents but today no one present. Another last chance is given because previous date was adjourned on a Reader's note. Notice be issued to respondents for written reply, for 08.09.2020 before S.B:

Member (J)

05.11.2019

Counsel for the appellant present.

Contends that in the final show cause notice as well as the impugned order dated 24.01.2018 nature of allegation against the appellant was not provided. There is only the order of departmental appellate authority wherein absence of 13 days has been alleged against the appellant. In the circumstances the imposition of major penalty of removal from service against the appellant was not commensurate with the allegation against him. Further contends that during the departmental enquiry proceedings against the appellant he was not provided with any opportunity to cross-examine the witnesses appearing against him. In that manner the appellant was deprived of his legal right to defend himself.

In view of available record and arguments of learned counsel, instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 17.12.2019 before the S.B.

Amount Deposited
Security & Process Fee
still

Chairman

17.12.2019

Junior to counsel for the appellant, Addl. AG for respondents present.

Learned AAG seeks time to contact the respondents and furnish the requisite reply/comments. Adjourned to 29.01.2020 on which date reply/comments shall positively be submitted.

[Signature]
Chairman

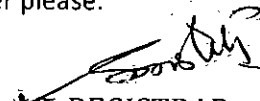
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Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1321/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/10/2019	<p>The appeal of Mr. Noman Khan presented today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>05/11/19</u>.</p> <p style="text-align: right;">CHAIRMAN</p>
2-		

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1

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 1321 /2019

SCANNED
KPSI
Peshawar

Noman KhanAppellant

V E R S U S

District Judge and others.....Respondents

I N D E X

1425
10-10-2019

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with Affidavit		1-4
2.	Copy of Order dated 19-10-2017	A	5
3.	Copy of Office Order dated 02-11-2017 & Charge Assumption Report	B & C	6-7
4.	Copy of Inquiry Report	D	8-10
5.	Copy of Show cause Notice & Reply	E & F	11-12
6.	Copy of Final Show Cause Notice & Reply	G & H	13-14
7.	Copy of Order dated 24-01-2018	I	15
8.	Copy of departmental Appeal and Order dated 12-09-2019	J & K	16-28
9.	Wakalat Nama		29

Dated:- 09-10-2019

Noman Khan
Appellant

Through

Fazal Shah Mohmand
**Fazal Shah Mohmand
Advocate, Peshawar**

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

(19) 2019

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 1321 /2019

Noman Khan Ex Process Server District Judiciary Swabi

.....Appellant

V E R S U S

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 14265

Dated 10-10-2019

- 1. District Judge Swabi.
- 2. Senior Civil Judge Swabi.
- 3. Registrar, Peshawar High Court, Peshawar.

.....Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 12-09-2019 OF RESPONDENT NO 1 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE ORDER DATED 24-01-2018 OF RESPONDENT NO 2, HAS BEEN DISMISSED/REJECTED.

PRAYER:-

On acceptance of this appeal the impugned Orders dated 12-09-2019 of respondent No 1 and Order dated 24-01-2018, of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That the appellant was appointed as Process Server by respondent No 2 in the year 2012 and since then he performed his duties with honesty and full devotion and to the entire satisfaction of his high ups.

Filed today
10/10/19
Registrar

2. That vide Order dated 19-10-2017 the appellant was transferred from Process Serving Agency Tehsil Headquarter to Process Serving Agency District Headquarter and in the meanwhile the appellant also fell ill and was unable to have performed his duties, therefore visited the Medical Officer who advised him medicines and bed rest. **(Copy of Office Order dated 19-10-2017 is enclosed as Annexure A).**

3. That the appellant was suspended vide Office Order dated 02-11-2017, and the appellant after recovery reported arrival at Process Serving Agency District Headquarter Swabi on 02-11-

(20) (2)

2017. **(Copy of Office Order dated 02-11-2017 & Charge Assumption Report is enclosed as Annexure B & C).**

4. That upon the report of Process Serving Agency, an illegal inquiry was initiated against the appellant on the allegations of absence from duty w.e.f. 19-10-2017 to 01-11-2017. **(Copy of Inquiry Report is enclosed as Annexure D).**
5. That there after Show Cause Notice was issued to the appellant which was replied by the appellant refuting the allegations, and explaining true position. **(Copy of Show Cause Notice and Reply is enclosed as Annexure E & F).**
6. That the appellant was then issued Final Show Cause Notice which was also replied in detail explaining the true position and reasons behind his absence. **(Copy of Final Show Cause Notice & Reply is enclosed as Annexure G & H).**
7. That finally the appellant was awarded the punishment of removal from service by respondent No 2 vide Order dated 24-01-2018. **(Copy of Order dated 24-01-2018 is enclosed as Annexure I).**
8. That the appellant filed departmental appeal before respondent No 1 on 14-02-2018 before respondent No 1 which was dismissed/rejected by respondent No 1 vide Order dated 12-09-2019. **(Copy of Departmental appeal and Order dated 12-09-2019 is enclosed as Annexure J & K).**
9. That the impugned Orders dated 12-09-2019 of respondent No 1 and Order dated 24-01-2019 of respondent No 2 are against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-

- A. That the impugned Orders are illegal, unlawful and void ab-initio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules.
- C. That the appellant was proceeded on the allegations of being absence for 13 days but major penalty of removal has been awarded to him, which does not commensurate with his guilt.

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- D. That no proper inquiry has been conducted and the appellant was never provided opportunity of cross examination.
- E. That no Charge Sheet was issued to the appellant, thus no charge was framed and the proceedings are as such in total disregard of the law on the subject.
- F. That the appellant was not provided reasonable opportunity of personal hearing and as such too he has been denied fundamental right of treatment according to law.
- G. That even the appellant has sufficient leave in his leave account which could be adjusted in the alleged absence and as such too he has been punished for no fault.
- H. That the appellant has about seven years of service with unblemished service record.
- I. That the period of alleged absence could be treated as leave without pay and thus the appellant and his family could have been saved from depriving the source of livelihood.
- J. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Any other relief deemed appropriate and not specifically asked for, may also be granted in favor of the appellant.

Dated:- 09-10-2019

[Handwritten Signature]
Appellant

Through

[Handwritten Signature]
**Fazal Shah Mohmand
Advocate, Peshawar**

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BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2019

Noman KhanAppellant

V E R S U S

District Judge and others.....Respondents

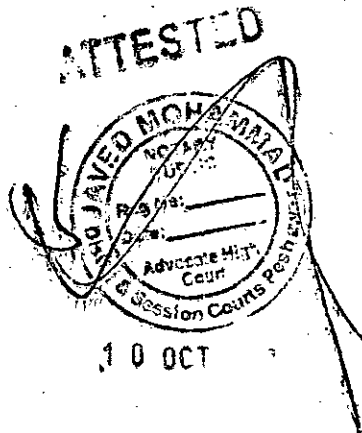
AFFIDAVIT

I, Noman Khan Ex Process Server District Judiciary Swabi, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by

Noman Khan
DEPONENT

Fazal Shah Mohmand
**Fazal Shah Mohmand
Advocate Peshawar**



77 (1) (2)

TESTED
 [Circular stamp with illegible text]
 [Handwritten scribbles]

5

23

OFFICE OF THE SENIOR CIVIL JUDGE, SWABI

ORDER

Following transfers/adjustments are hereby ordered in the public interest with immediate effect till further orders:

S#	NAME OF THE OFFICIAL	TRANSFERRED FROM OFFICE/COURT	POSTED IN THE COURT/OFFICE
01	Nauman Khan Process Server	Process Serving Agency (Tehsil Headquarter)	Process Serving Agency (District Headquarter) As Process Server
02	Fazal Malik Process Server	Process Serving Agency (District Headquarter)	Civil Judge-IV, Swabi As Naib Qasid
03	Anwar Ullah Naib Qasid	Civil Judge-IV, Swabi	Senior Civil Judge, Swabi As Naib Qasid

Note: i) All the officials are directed to immediately relinquish the charge of their present posts and to assume the charge of their new assignments.

Saima Asim
(SAIMA ASIM)
SENIOR CIVIL JUDGE, SWABI

No. 842 /SCJ

Dated Swabi the 19 / 10 / 2017.

Copy forwarded for information to:

- i. Officials concerned for information and immediate compliance.
- ii. Office copy.

(SAIMA ASIM)
SENIOR CIVIL JUDGE, SWABI

5A
ATTESTED
27/10
FOR Nauman PS Lahor

SENDING REPORT

19 Oct. 2017 12:03PM

YOUR LOGO : SCJ Swabi
YOUR FAX NO. : 280057

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	300773	19 Oct. 12:02PM	00'36	SND	01	OK

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.

ATTESTED
To Be True Copy

15-24
6
B

OFFICE OF THE SENIOR CIVIL JUDGE, SWABI

OFFICE ORDER

on the information of Naib Nazir regarding the willful absence of process server Nouman Khan from 19.10.2017, till date, without intimation and non-submitting arrival report after his transfer, his service is hereby suspended with immediate effect.

Additionally, if the official concerned fails to join his duty within 03 days, he should be proceeded against under the NWFP: Efficiency & Disciplinary Rules-1973 read with the Government of Khyber Pakhtunkhwa (E&D) Rules, 2011, NWFP.

Saima Asim
(SAIMA ASIM)
SENIOR CIVIL JUDGE,
SWABI

No. 892 /SCJ

Dated Swabi the 02 / 11 / 2017

Copy forwarded to:

- i. Hon'ble District & Sessions Judge, for information.
- ii. Naib Nazir, Swabi.
- iii. District Accounts Officer, Swabi.
- iv. Official Concerned for information and compliance.
- v. Office copy.

67

Saima Asim
(SAIMA ASIM)
SENIOR CIVIL JUDGE,
SWABI

27-11-17
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District & Sessions Judge,
Swabi

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CHARGE ASSUMPTION REPORT

In compliance with the order of the learned Senior civil Judge Swabi bearing endorsement no.842-SCJ dated 19.10.2017, I Nauman Khan do hereby assume the charge of the post of Process Server at District Headquarter Swabi today at 02.11.2017 forenoon.

ER 2/6
Swabi

Nauman Khan

Process Server

Dated: 02.11.2017

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7/11/17

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Swabi

SUPERINTENDENT
District & Sessions Judge
Swabi - CD

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IN THE COURT OF SAIMA IRFAN

Civil Judge-IV / Inquiry Officer, Swabi

Departmental inquiry against
Noman Khan (process server)

Brief history of the present inquiry is that learned Senior Civil Judge, Swabi on report of Naib Nazir dated: 01.11.2017 due to absence of respondent official namely Noman Khan (process server) from his duty since 19.10.2017 till date without any information or leave application initiated inquiry against him, while vide order dated: 06.11.2017, the undersigned court has been appointed as an inquiry officer to conduct inquiry against the said official under Rule 10 (1) of E & D Rules, 2011.

On receiving the inquiry the respondent official was duly served but despite of personal service, he did not bother to appear before this court, hence, proceeded against ex-parte vide order dated: 14.11.2017.

Then statement of Fazlullah (bailiff) who served the notice on respondent official as CW-1 recorded. CW-1 by taking oath exhibited the notice as ExCW.1/1 and disclosed that he informed the said official about pendency of inquiry against him.

Statement of Sardar Ali (Naib Nazir) as CW-2 recorded in which he disclosed that he being Naib Nazir is maintaining the register of attendance of bailiffs and process servers attached with Senior Civil Judge, Swabi. CW-2 also disclosed that against the respondent two other inquiries were held while he stated that

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District & Sessions Judge
Swabi

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Sessions Court Swabi

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due to his absence during his posting at Tehsil Lahor, he transferred to District Swabi vide office order dated: 19.10.2017 but he did not bother to attend his duty till yet in sequence of which two inquiries were also conducted against him, in sequence of which he got suspended vide order of Senior Civil Judge, Swabi dated: 02.11.2017. CW-2 further stated that he vide his report dated: 01.11.2017 informed the learned Senior Civil Judge, Swabi about absence of the Noman Khan (process server). Copies of inquiries conducted against the present respondent alongwith his transfer order, copies of attendance register, suspension order, assuming charge on day of suspension by the respondent and complaint / report-produced and exhibited by CW-2 as ExCW.2/1 to ExCW.2/7 respectively.

Though the proceedings were conducted in absence of the respondent official despite of personal service but the entire record transpires that respondent official is a habitual absentee from his duties inspite of various opportunities granted to him but his failure to obliged or to perform his duty, record evident regarding his least interest in his service. The evidence on the record is sufficient to satisfy the court that the respondent without informing the office or moving any application and also in absence of any leave sanctioned order by the competent

authority, willfully absent from his duty. Hence, the undersigned inquiry officer proposed major penalty against the said official for his willful absence from his duty. The finding / report of

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inquiry is hereby submitted before the learned Senior Civil Judge, Swabi / authorized officer for further necessary action.

ANNOUNCED
15th Jan, 2018

Saima Irfan
Civil Judge-IV, Swabi/Inquiry Officer
15/1/18

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To Be True Copy

J. S.
14/1/18

ATTESTED
15/1/18
EXAMINED & FOUND TRUE
SESSIONS COURT SWABI

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SHOW CAUSE NOTICE


8)

Whereas; learned Civil Judge-III, Lahor, Swabi forwarded the complaint bearing endorsement No.1295/CJ-III, dated 15.05.2017, wherein it has been reported that you official named above are unable to perform your duties as in routine you fail to execute the summons/notices, this act of yours amounts to inefficiency therefore, you are directed to explain your position as to why not disciplinary action in accordance with the NWFP Efficiency & Disciplinary Rules-1973 read with the Government of Khyber Pakhtunkhwa (E&D) Rules, 2011 be taken against you.

9)

Your reply in writing must reach the Inquiry Officer within 05 days of the receipt of this notice, failing which it will be presumed that you have got nothing in defense to put forward.

Dated: 01-06-2017

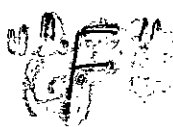
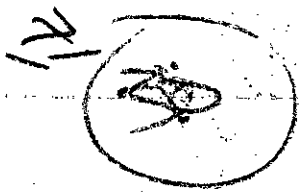

Saima Asim
Senior Civil Judge, Swabi

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کتابخانه / قسم / صدر / علامہ سید / سراج / صدر / حوالہ

عنوان : جوہ سوزگار نوحی

- a -

ضامیہ : عورتانہ آواز ہے کہ میں سائنس کو سوزگار نوحی
صاحبہ سے

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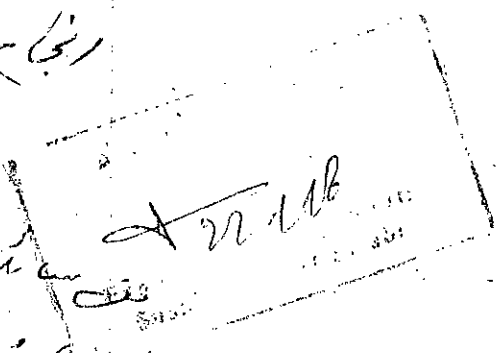
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22/1/18
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1319
27-1-10

A. No of application 1319
B. Date of presentation of application 27-1-10
C. Date on which copy prepared 27-1-10
D. Date on which copy delivered 27-1-10
E. Number of pages of 84
F. Name of Copyist *[Signature]*
27-1-10


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FINAL SHOW CAUSE NOTICE

Whereas; the inquiry report received from the learned inquiry officer, conducted in accordance with the provisions of the Government of Khyber Pakhtunkhwa Establishment and Administration Department Rules 2011 and E&D Rules the allegations leveled against you official/accused proved in the light of evidence, therefore, a *final show cause notice* is hereby sent to you, with directions to explain your position as to why not disciplinary action in accordance with the NWFP Efficiency & Disciplinary Rules-1973 read with the Government of Khyber Pakhtunkhwa (E&D) Rules, 2011 be taken against you.

Your reply in writing must reach to this office within 03 days of the receipt of this notice, failing which it will be presumed that you have got nothing in defense to put forward.


Dated: 02-12-2017



Saima Asim
Senior Civil Judge, Swabi

Copy to:-

1. Mr. Nouman Khan Process Server, Swabi.
2. Office copy for record.

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(SAIMA ASIM)
SENIOR CIVIL JUDGE/AUTHORITY,
SWABI


SUPERINTENDENT
District & Sessions Judge
Swabi

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Sessions Court Swabi



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محرم چنا ب / محترم سید سید سعید علی خان اہلبی

جواب بابت فائل شوکار نوٹس

1. گزارش مجموعہ میں سید سائل بطور بارہ فلم لکھی اور جمع میں تفصیلات ہے اور اپنے دروغی شروع سے خوبی انجام دے رہا ہے۔

2. یہ کہ سائل گزشتہ 3 ماہ سے شہر بدیمہاری میں مشغول ہے اور تھانہ ہوا فرقہ نشین رہا ہے جس کے ڈاکٹری نسخہ جاری اور دیگر تہمت ساقو لیا ہے۔

3. یہ کہ مذکورہ عذر کی وجہ سے سائل بوقت درخواست پر آئے لیکن دائرہ مذکورہ اور اسے بنایا گیا ہے سے مذکورہ بالا عنوان کی شوکار نوٹس طلب کی گئی۔

سید اہلبی ان سے گزارش ہے کہ سائل مذکورہ بالا عنوان کی بنیاد صحافہ زمانہ ہے اور سائل کی غیر جانبداری لیکن میں شہر بدیمہاری شوکار نوٹس

عین ذرا تباہی

INDEPENDENT DISTRICT & SESSIONS JUDGE

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الضمان کا ہے بھرمان

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نعمان خان P/S
محمد علی
محمد علی

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WHEREAS, Mr. Nauman Khan have been served with several notices and warnings from time to time reminding from his duties on account of report submitted by Naib Nazir of this Court, which is a proof of his negligence and inefficiency.

WHEREAS, several inquiries have been conducted against the official named above and (Minor penalty) censure has been issued to him.

WHEREAS, I have personally talked to him on several occasions and advised him to be vigilant, but in vain;

WHEREAS, Ms. Saima Irfan the learned Civil Judge-IV, Swabi was appointed as inquiry officer for conducting inquiry;

WHEREAS, Ms. Saima Irfan the learned Civil Judge-IV/Inquiry Officer submits her inquiry report and suggested major penalty.

AND WHEREAS, the undersigned being Competent Authority gives a chance for personal hearing to the accused official and issued him a final show-cause notice bearing No. 54 dated: 18-01-2018. Reply of the accused official received on 22-01-2018, which found unsatisfactory.

NOW THEREFORE, keeping in view of the findings and recommendations of the inquiry officer, facts of the case and written defense offered by the accused, during personal hearing, by the exercising powers under Rule 15(4)(ii) of the Khyber Pakhtunkhwa E&D Rules-2011 the accused is penalized under Rule 4(b)(iii) of the Khyber Pakhtunkhwa E&D Rules-2011 in shape of removal from service with immediate effect.

[Signature]
SUPERINTENDENT
District & Sessions Judge
Swabi
Endst: 115-118

/SGT

Dated Swabi the: 24/01/2018.

[Signature]
Saima Irfan
Senior Civil Judge/Swabi
Competent Authority

Copies to:

1. The worthy Registrar, Peshawar High Court, Peshawar
2. The Hon'ble District & Sessions Judge, Swabi
3. District Accounts Officer, Swabi
4. Official concerned
5. Office

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[Signature]
Senior Civil Judge/Swabi
Competent Authority

(39) (E) (16) (J)

BEFORE THE HON'BLE DISTRICT & SESSIONS JUDGE,
SWABI.

NOMAN KHAN VS SENIOR CIVIL JUDGE SWABI.

Subject: DEPARTMENTAL APPEAL/REPRESENTATION AGAINST THE ORDER OF LEARNED SENIOR CIVIL JUDGE, SWABI VIDE ENDST; NO.115-118/SCJ DATED 24.01.2018 WHEREBY THE APPELLANT, HAS BEEN REMOVED FROM SERVICE.

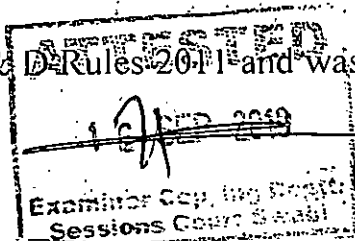
Respected Sir,

FACTUAL BACKGROUND

As a matter of fact, the appellant Noman Khan prays as under;

1. that the appellant was serving under the administrative control of learned Senior Civil Judge, Swabi and working as Process Server in BPS-05 since 2012.
2. that vide order bearing endst; No.115-118/SCJ dated 24.01.2018 the appellant has been removed from service on the strength of an inquiry bearing No.15/6 dated 24.01.2018 whereby the learned inquiry officer has proposed major penalty against the appellant for his willful absence from his duty.
3. that on the basis of said proposed penalty, the appellant was removed from service by exercising powers under Rule-15(4)(ii) of the Khyber Pakhtunkhwa E & D Rules 2011 and was penalized under

SUPERINTENDENT
District & Sessions Judge
Swabi



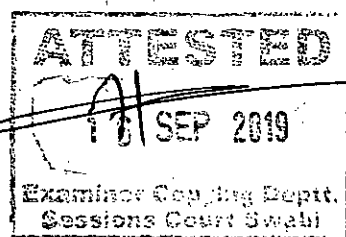
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Rule-4(b)(iii) of the Khyber Pakhtoonkhwa E & D Rules 2011 by the learned Senior Civil Judge, Swabi.

4. The appellant is a permanent illing person and who has also submitted his all medical prescriptions/documents to the learned inquiry officer but without keeping in mind the said medical plea of the appellant, the learned inquiry officer has suggested major penalty and ultimately the learned Senior Civil Judge has also ignored the said plea of the appellant and has illegally removed the appellant from service which is liable to be cancelled in the interest of natural justice.

5. I am a poor man and having responsibility of my house comprising of my whole family because I am alone an earning man in my family after the death of my father.

6. It is very humbly submitted that in future I will never give your honour's a chance of complaint or anything else in this regard.

It is therefore, requested that keeping in view my above prayers coupled with my financial position, the penalty awarded to me may kindly be turned down or may be converted to sin sure warning and I will be very careful in future in discharge of my duties assign to me.



Faithfully Yours,

Noman Khan
Noman Khan,

Process Server/Appellant.

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AFFIDAVIT:

It is certified that except the present appeal, I have never made any application/appeal against the order of learned Senior Civil Judge, Swabi dated 24.01.2018.

Handwritten signature

Mohammad Saeed Khan,
Advocate High Court and Federal Shariat
Court, Peshawar

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ATTESTED
16 SEP 2019
Examiner Copying Deptt.
Sessions Court Swabi

EXAMINED
Copying Department
Session Court Swabi

No of application 10684
Date of presentation of application 16.8.19
Date on which the copy prepared 16.8.19
Date on which the copy issued 16.8.19
Fee in words 16
Signature of Copvist *[Signature]*
16.8.19

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2019

Att. Sheet "K"

**IN THE COURT OF ROZINA REHMAN DISTRICT &
SESSIONS JUDGE, SWABI**

Departmental Appeal No. 14/13-DPA of 2018

Date of Institution.....14.02.2018

Date of Decision.....12.09.2019

Noman Khan (ex-process server) District Judiciary Swabi.
.....Petitioner

Versus

Senior Civil Judge, Swabi. Respondent

JUDGMENT:

Appellant Noman Khan (ex-process server District Judiciary Swabi), vide the instant departmental appeal has made impugned the order dated 24.01.2018, rendered by the then learned Senior Civil Judge, Swabi (hereinafter shall be referred as respondent), whereby the appellant was removed from his service by imposing major penalty upon him under Rule 4 (b) (iii) of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011.

2. As per backdrop of instant departmental appeal, the present appellant ex-member of process serving agency Swabi, was reported to be absent from his duties since 19.10.2017 till 01.11.2017. On 06.11.2017, an inquiry

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department in particular. The conduct of appellant is self-explanatory, reflecting him being not sincere to his work and there is no space for such like careless individuals in any government sector, especially in Judicial department.

10. The short & long of the aforementioned detailed scrutiny is that the impugned order dated 24.01.2018 is found being based on legal assumption of law, which requires no interference, hence, the same is maintained, while the appeal in hand stands dismissed. Costs shall follow the event.

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16 SEP 2019
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Sessions Court Swabi

Requisitioned record be returned with a copy of this order/judgment, whereas file of this court be consigned to record room after its completion and necessary compilation.

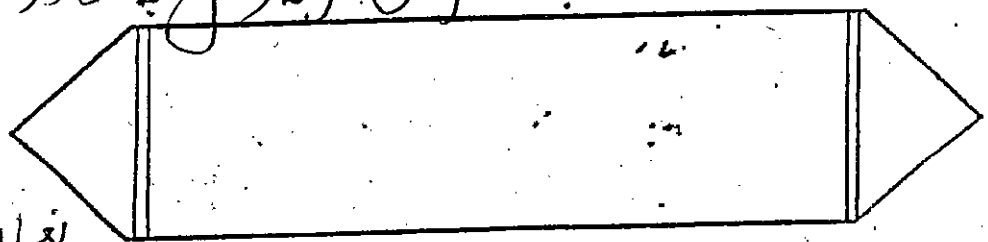
~~Certified true Copy~~
EXHIBIT
16 copies
Session Court Swabi
Announced:
12.09.2019

(Signature)
(Rozina Rehman)
District Judge, Swabi

No of application 10684
Date of presentation of application 16-8-19
Date on which the copy prepared 16-8-19
Date on which the copy filed 16-8-19
Fee on words 10
Signature of Copist *(Signature)*

16-8-19

بعدالت جنب لنرس ٹریبیونل پشاور



نعمان خان
بنام ڈسٹرکٹ جج
اور دیگر

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئنگ

راہ وسطیٰ
ایڈووکیٹ
پشاور

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی دکل کاروائی متعلقہ A.O.S + راہ وسطیٰ
آن مقام پشاور کیلئے فیصل سنہ ۲۰۱۹ مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
دکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بسورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ 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 یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو یہی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائد التوائے مقدمہ کے سبب سے وہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ مندر ہے۔

نعمان خان
ایڈووکیٹ

المرقوم 09
اکتوبر 2019

واہ العی
کے لئے منظور ہے
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1321/2019

SCANNED
KPS
Peshawar

Noman Khan Appellant

Versus

District & Sessions Judge, Swabi etc. Respondents

INDEX

S.#	Description of Documents	Date	Annexure	Pages
1.	Misc: Application with Affidavit			1-5
2.	Order whereby appellant was imposed upon minor penalty of Censure	08.12.2017	Reply/1	
3.	Medical Prescriptions		Reply/2	
4.	Letter of District & Sessions Judge, Swabi for verification Medical Prescriptions	17.10.2018	Reply/3	
5.	Leter in response to letter dated 17.10.2018 ibid,	01.10.2018	Reply/4	
6.	Statements of Statements of Mr. Yazdani, Medical Technician and Mr. Fazal Amin, CT Surgical		Reply/5	
7.	Authority letter	03.09.2020		

Respondents

Dated: 28 /09/2020

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1321/2019

Noman Khan Appellant

Versus

District & Sessions Judge, Swabi etc.....Respondents

REPLY ON BEHALF OF RESPONDENTS.

Respectfully Sheweth,

Preliminary Objections:

- I. That the instant Service Appeal has arisen out of the order dated 24.01.2018 whereby on the ground of misconduct appellant was imposed upon the major penalty of removal from service. As a matter of fact, the whole service career of the appellant is full of departmental proceedings and warnings. Appellant, earlier was departmentally proceeded and finally was imposed upon minor penalty of Censure as is evident from the order dated 08.12.2017 (*Annex:-Reply/1*) therein he was further directed to be careful in future and in case of any default on his part strict action would be taken against him.
- II. That appellant has neither cause of action nor for that matter locus standi to file the instant Service Appeal.
- III. That the appellant is estopped/ precluded by his own conduct to file the instant Service Appeal, hence equity precludes and/or bars the relief prayed for.
- IV. That the appellant has concealed material facts and has not approached the Hon'ble Tribunal with clean hands, therefore, the instant appeal merits outright dismissal.

Comments to Facts:

1. Para No.1 of the Service Appeal is correct to the extent of appellant's appointment against the post of Process Server, however, as mentioned hereinabove that the whole service career of the appellant displays his lukewarm attitude towards duties.
2. Para No.2 of the Service Appeal is incorrect hence vehemently denied. In order to explain the facts it is elaborated that earlier appellant owing to his absence during his posting at Tehsil Lahore was transferred to District Swabi vide order dated 19.10.2017. He was required to assume the charge and commence performing his duty there but he failed so resultantly appellant was proceeded for disciplinary proceedings and got suspended from service vide order dated 02.11.2017. It is further elaborated that plea taken by the appellant regarding his ailment is a concocted story. Medical Prescriptions (*Annex:-Reply/2*) presented by the appellant were thoroughly considered and were transmitted to the concerned quarter for verification vide letter dated 17.10.2018 (*Annex:-Reply/3*) which was duly replied vide letter dated 01.10.2018 (*Annex:-Reply/4*) by submitting that the Medical Prescriptions do not relate to the Hospital. Furthermore, the Statements of Mr. Yazdani, Medical Technician and Mr. Fazal Amin, CT Surgical who deposed (*Annex:-Reply/5*) that they had never examined/treated appellant. This act of the appellant exposed him to another action including criminal proceedings for cheating and forgery.
3. Para No.3 of the Service Appeal needs no reply.
4. Para No.4 of the Service Appeal is not admitted as alleged by the appellant. Appellant was treated as per the prescribed mandate of law thereon he was issued proper Notice and was afforded a proper chance of reply. It is further averred that appellant was directed by the Respondent Department to join the departmental proceedings but despite personal service, he did not appear. Moreover, the entire record of the appellant transpires that he is a habitual absentee inspite of various warnings issued to him but he failed to oblige which shows seemingly his least interest in the service. A proper inquiry was conducted by recording evidence in order to ascertain the

absence of the appellant which culminated into conclusion that appellant without informing the office or moving any application for leave absented himself from lawful duties, thereon the Inquiry Officer proposed major penalty.

5. Regarding Para No.5 of the Service Appeal it is explained that Show Cause Notice was issued to appellant on 01.06.2017 with directions to reply the same but he replied the same far beyond the prescribed period.
6. Regarding Para No.6 of the Service Appeal it is submitted that albeit appellant submitted his reply to the Final Show Cause Notice but the same was not found satisfactory.
7. Para No.7 of the Service Appeal is correct to the extent that appellant was awarded major punishment of removal from service after meeting all the mandatory requirements of law. It is added that as per Section-15 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987, a civil servant is bound to discharge his duty in accordance with law and rules otherwise he shall be proceeded against.
8. Regarding Para No.8 of the Service Appeal it is submitted that the Departmental Appeal of the appellant was thoroughly discussed and was finally dismissed on the following inter-alia in terms "*the conduct of the appellant is self-explanatory, reflecting him being not sincere to his work and there is no space for such like careless individuals in any Government Sector, especially in the Judicial Department.*"
9. Para No.9 of the Service Appeal is incorrect hence not admitted. The detailed reply has already been given in the preceding paras.



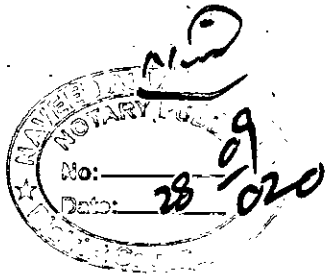
Reply to Grounds:-

- A. Ground-A of the Service Appeal is incorrect. The impugned orders have been issued in accordance with law and Rules.
- B. Ground-B of the Service Appeal is also incorrect. All the mandatory requirements have been complied with but there is a dubious service record of the appellant which constrained the high-ups to remove him from service.
- C. Ground-C of the Service Appeal is incorrect hence denied. The charge against the appellant stood proved in view of material brought on the record through inquiry proceedings.
- D. Ground-D of the Service Appeal is incorrect. Appellant was provided an ample opportunity of personal hearing.
- E. Ground-E of the Service Appeal is incorrect. As already stated that despite proper service the appellant did not appear before the Inquiry Officer/Committee.
- F. Ground-F of the Service Appeal is incorrect. Appellant was provided a reasonable opportunity to reply the Show Cause Notice which he belatedly replied.
- G. Ground-G of the Service Appeal is incorrect. Leave of a Government servant is subject to the discretionary sanction of the leave granting authority and can never be claimed as a right.
- H&I. Grounds-H & I of the Service Appeal are incorrect. The detailed reply has already been given in the preceding paras.
- J. Ground-J of the Service Appeal needs no reply.


6

It is, therefore, humbly prayed that on acceptance of this reply, the appeal of appellants may graciously be dismissed with costs.

Respondents



Respondent No.1 

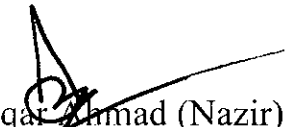
Respondent No.2 

Respondent No.3 

Dated: 08/09/2020

Verification

Verified that the contents of this Reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Zulfiqar Ahmad (Nazir)
District Courts, Swabi

Order-03

08/12/2017

Accused/official namely Noman Khan Process Server present and submitted reply to the show cause notice coupled with medical documents, placed on file.

Perusal of file shows that, the instant inquiry proceedings under Khyber Pakhtunkhwa Act No.XVII of 1973 Government of Khyber Pakhtunkhwa, Efficiency & Disciplinary Rules 2011 were initiated against the official named above, on the basis of the order of learned Additional District & Sessions Judge-I, Swabi dated 11.10.2017 in case titled "Abdul Rahman vs Said Khan" about the failure of execution of process entrusted to the accused/official.

Consequently; following the proper procedure, a show cause notice was given to the accused/official, who submitted written reply, which was held unsatisfactory. As a result, inquiry under Rule-5 of E&D Rules, 2011 was initiated against him. Charge sheet as well statement of allegations were framed and Muhammad Irfan learned Civil Judge-II, Swabi was appointed as an Inquiry officer in the matter for conducting an inquiry under Rule-10(1) of the E&D Rules, 2011. Mr.Sardar Ali, Naib Nazir was appointed as representative on behalf of department and the record of the case/inquiry was sent to the learned inquiry officer.

On completion of inquiry, file alongwith record and report was received from the learned inquiry officer which was perused.

Report of inquiry officer states that, the inquiry proceedings were conducted in absence of the accused official

Sardar

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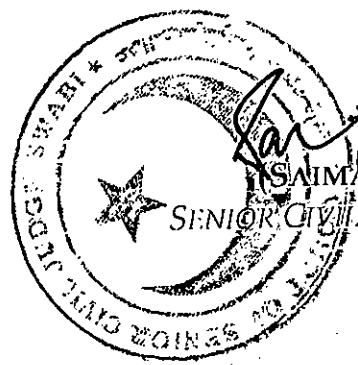
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der-03

08/12/2017 as he did not join the proceedings despite submission of his reply/defense. The learned inquiry officer summoned the accused/official to give him another opportunity for the best interest of justice, as the question of his career and *bread & butter* is involved. Due to which the accused/official appeared before the learned inquiry officer, without bothering to request for setting aside the *exparte* proceedings and his exoneration. Conclusion of the inquiry report states that, "*the accused/official is a delinquent official and has failed to execute process entrusted to him nor has properly served neither returned the same, with further observation that reportedly the official does not execute the summons/notices entrusted to him in routine*". The inquiry report though states that, the allegations leveled against the accused are proved, however, penalty has not been proposed. Meanwhile, final show cause notice was given to the accused official and he submitted reply to the same, pleading innocence on ground of his chronic ailment.

In the circumstances and in view of the findings of learned Inquiry Officer, a minor penalty of "censure" is imposed on the accused under the Rules-4, sub-rule (i) clause (a) of the Khyber Pakhtunkhwa Government Servants (I&D) Rules 2011 and notice to this effect is served upon him. Office is directed to make an entry in this respect in the service record of the official. File be consigned to record room after its completion.

Announced:
08.12.2017

Saima Asim
(SAIMA ASIM)
SENIOR CIVIL JUDGE, SWABI



Handwritten notes in Arabic script at the top left of the page.

35

OUT DOOR PATIENT TICKET

U-5
Early No: 69722

Age: _____

OPD No: _____

Date: 23/8/18

Clinical Findings / Investigation / Treatment / Referred / Test Findings

Rx
Add
U-5
~~U-5~~
Ar - 08
24/09/2018

Handwritten clinical notes and prescriptions in Arabic script, including 'oplatid ear' and 'Essor ear'.

Official stamp and signature at the bottom right of the ticket.

(65)

Handwritten notes at top left, possibly including 'P. B. ...'

(36)

TEACHING HOSPITAL SWABI

U/W

Age: _____

No: _____

OPD No: 55610

Date: 16/7/18

- U/S
- U/R
- H. Pajlani

Or - 08

24/09/2018

District & Sessions Judge
SWABI

- 4 Pledaoul
- 5 anilhi - 1
- 5 Gunt - 1
- 4 araa - 1

- to Navedat got 1/0
- 1 2 1
- to Vattel got
- 1 2 1
- to Newatand
- 1 2 1
- to Aridin gl
- re u 2

Handwritten notes at bottom left, possibly including 'S ...'

Handwritten notes at bottom left, possibly including 'Oes ...'

TEACHING HOSPITAL SWABI stamp

65
Kula
D.L.

37

TEACHING HOSPITAL SWABI

JLD

Age: _____

OPD No: 74 84

Date: 1/9/18

Fitness Certificate

Mr. Noman is physician
Fit for duty.

07-08
24/09/2018
District & Sessions Judge
SWABI

1
ey.
7
Medical Officer
D.H.Q Hospital
Swabi

67

Handwritten notes at top right, possibly "Diploma" and "M.D."

39

Handwritten notes on the left side, including "29/09/18" and "CRP".

DOOR PATIENT TICKET

Age: _____

OPD No: _____

Date: 23/8/18

Clinical Findings / Investigation / Treatment / Referred / Test Findings

Rx
Add
U-S
Ar - 08
24/09/2018

Handwritten clinical notes and prescriptions in the right section, including "oplacid ear" and "Essor ear".

Small printed text at the bottom right corner, possibly a hospital or clinic name.

(68)

(40) The overlap
signature or
writing is not mine

198

Dr. Faisal Singh
Date: 16/7/18
CP

TEACHING HOSPITAL SWABI

Age: _____

OPD No: 556/10

Date: 16/7/18

- U/S
- U/R
- H. paglani

Or - 08
24/09/2018
District & Sessions Judge
SWABI

4 Pledaoul
5 anilhi - 1
5 Gunt - 1
5 arda - 1
to Nawadat got 1/0
1-2-1
to Vattal got
1-2-1
to Nawatand
1-2-1
- Sp Aridin gl
- One (1) 5/10 8/2

73 (32) verification of prescriptions



The District Judiciary Swabi

Phone # 0938-280372
Fax # 0938-280117
dsjswabi@yahoo.com
dsjswabi1@gmail.com

ANNEXURE-II

From:

District & Sessions Judge,
Swabi

To:

The Medical Superintendent,
District Head Quarter Teaching Hospital,
Swabi

Subject:

VERIFICATION OF PRESCRIPTIONS

Dear Sir,

Find enclosed herewith copies of your letter No. 3399/R-2 DHQ Teaching Hospital, Swabi dated 01-10-2018, prescriptions vide OPD No. 55610 dated 16-07-2018, OPD No. 69722 dated 23-08-2018 and OPD No. 74943 dated 01-09-2018 and copy of affidavit submitted by the appellant /petitioner namely, Nouman that he was examined by one Mr. Yazdani and prescriptions were handed over to him by one Mr. Fazal Amin, Anesthesia Technician, with a request to enquire into the matter that whether Mr. Yazdani is a doctor or a Technician and whether he was competent to medically examine the appellant /petitioner named above and issue the alleged prescriptions regarding the petitioner/appellant.

You are requested to submit his report in this regard, positively on or before the date fixed i.e. 30-10-2018.

(Signature)
17.10.2018

(Muhammad Adil Khan)
District & Sessions Judge,
Swabi

N-600

337 8 70
Office Of The Medical Superintendent DHQ Teaching Hospital Swabi

Telephone & Fax #: 0938-221267

No. 3399/R-2 DHQ Teaching Hospital Swabi Dated: 01-10-18

To

The Honorable District & Session Judge
Swabi

Subject: VERIFICATION OF PRESCRIPTION


Sir,

Reference summon No.5790 Dated 26/09/2018 on the
subject cited above.

It is for information that the OPD chit and prescription
issued to Mr. Numan Khan does not related to this hospital.

Report is hereby submitted please.

17.10.2018


Medical Superintendent
DHQ Teaching Hospital
Swabi
11/0

(73)

(44)

Fazal Amin OT

①

مٹے کیا ہے لغمان کو جانتے ہے -

جے لغمان سپرہ گاڑوں سے تعلق رکھتا ہے گاڑوں سے
جانتا ہوں -

مٹے کیا ہے ان دونوں (18, 15, 16) (23, 8, 18) اور (18, 9) د
لغمان سے ملے تھے -

جے نہیں - میں ان دونوں میں لغمان سے نہیں ملا ہوں -

مٹے لغمان کے معلق بہ *reception* اپنے نے خود نیز دانی کو دیتے تھے

جے نہیں - میں تھم کھا کر کھتا ہوں - کہ نہ میں نے اس سرین

کو نیز دانی کے پاس بھجایا ہے - اور نہ ہی میں نے اس

سرین کی ان دونوں میںھیال میں دیکھا ہے - اور نہ

ہی کو *reception* لغمان سے معلق میں نے نیز دانی کو دیتے

تھے - اور نہ ہی اس سمجھتے تھے -

مٹے کیا ہے یہ *reception* ان دونوں کے بعد نیز دانی سے

لے لے تھے یا دیتے تھے -

جے نہیں - میں نے یہ *reception* نہ لے لے تھے - اور نہ

ان کے بارے میں کوئی علم ہے - اور نہ تھا -

7A
کلیف
ڈسٹرکٹ اسپتال اورنگی ٹیکسٹس ہیرائی ہسپتال

74

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پہاں حصی

میں مہی فضل ابن ڈی ایچ کیو ہسپتال
سٹیشن کے حثیت سے ڈیوٹی کر رہا ہوں۔

میں لغمان کو جاننا ہوں۔ ۵۶ میرے گاؤں سے
تعلق اگھتے۔ ان دنوں میں 18/7/18, 18/8/23, 18/11/19
میں لغمان سے ملا ہوں۔ اور نہ میں نے اسکو

ہسپتال میں دیکھا ہے۔
میں قسم کھا کر کہتا ہوں کہ میں نے لغمان کیے کوئی OPD
چٹ نہ بنوایا ہے۔ اور نہ ہی محمد نذر دانی سے لغمان
کیے گیا ہے۔

لغمان سر اسر جھوٹ بول رہا ہے۔ کہ میں اسکو نذر دانی
کے پاس معافہ کیے داتا تھا۔ کیونکہ 18/8/23 کو
مسد الفصی کی جھٹی تھی۔ اور OPD بند تھا۔

۱۸ امارتیں

فضل ابن اوچی سٹیشن ہوائی ہسپتال

Dr. Jamad
Pharwat
M.A.



75

The District Judiciary Swabi

Phone # 0938-280372
Fax # 0938-280117

dsjswabi@yahoo.com
dsjswabi1@gmail.com

No 2043/F/185

Dated: 03.09.2020

Authority Letter

(Ref: PHC Letter No.18707-51/Admn: dated 07.09.2019)

Mr. **Zulfiqar Ahmad** (Nazir) is hereby authorized for the following acts, on behalf of respondents No. 01 & 02 (District & Sessions Judge and Senior Civil Judge-Admn Swabi), in case bearing No. 1321/2019 "Noman Khan..Vs... District & Sessions Judge Swabi etc" pending before Hon'ble Khyber Pakhtunkhwa Service Tribunal Peshawar;

- I. To obtain copy of brief /record from the Honorable Court/Tribunal seized of the matter and also prepare a separate case history.
- II. To submit comments /reply to the office of worthy Registrar Peshawar High Court Peshawar for vetting.
- III. To obtain signatures of the respondents on the final draft of such comments /reply.
- IV. To obtain affidavit from the worthy Registrar, within requisite time, for submission of comments/reply before the Honorable Court /Tribunal.
- V. To file affidavit on behalf of the respondents, where Registrar is not party, for timely submission of comments/reply before the Honorable Court /Tribunal.
- VI. To attend on each hearing along with record for assistance of the Honorable Court /Tribunal and to record progress of the case.
- VII. To communicate next date of hearing to the Registrar and the authorized /nominated officer(s).
- VIII. To obtain attested copy of the judgment immediately after decision of the subject case and to provide the same in the office of the Registrar and to the authorized /nominated officer(s).
- IX. To inform the authorized /nominated officer(s) as to whether case has been approved for appeal /CPLA before the Apex Court.

Dated: 03.09.2020

HAFIZ NASEEM AKBAR
District & Sessions Judge,
Swabi

9/10/2020

Gmail - Reply in S.A Appeal No.1321/2019 titled "Noman Khan vs District & Sessions Judge, Swabi"



Gmail

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District Courts Swabi <dsjswabi1@gmail.com>

Reply in S.A Appeal No.1321/2019 titled "Noman Khan vs District & Sessions Judge, Swabi"

Khaled Rahman <khaledrahman.advocate@gmail.com>
To: dsjswabi@yahoo.com, dsjswabi1@gmail.com

Mon, Sep 7, 2020 at 8:57 PM

Assalam-o-Alaikum!

Attached please find herewith Reply in the subject Service Appeal for perusal and signatures. Please insure the signatures and return of the Reply for the signature of the worthy Registrar so that the reply be submitted in the Service Tribunal well within time.

Regards

Khaled Rehman
Advocate,
Supreme Court



Noman Khan vs PHC Removal Reply Tri 08.09.2020.doc
65K

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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 1321/2019

Noman Khan.....Appellant

SCANNED
KPK
Peshawar

V E R S U S

District & Sessions Judge & Others.....Respondents

REPLICATION ON BEHALF OF THE APPELLANT.

REPLY TO PRELIMINARY OBJECTIONS.

All the objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action and locus standi to bring the present appeal, is not estopped by his conduct to bring instant appeal, the appellant has approached this honorable tribunal with clean hands and the appellant has concealed nothing from this honorable Tribunal.

REPLY TO FACTS/GROUNDS:

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules. In the circumstances the appellant has been deprived of his rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land. Respondents have failed to deny that the appellant was proceeded for 13 days absence and for which major penalty has been awarded to the appellant. Respondents have also failed to show that proper proceedings as per law including proper inquiry were conducted. No charge was farmed against the appellant as no charge sheet was communicated to the appellant, thus condemned unheard and in utter violation of law and rules on the subject. Respondents have also admitted that sufficient leave is there in leave account of the appellant which could have been adjusted against. The appellant has been condemned unheard and as such the

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impugned order is liable to be struck down. The impugned order is void being passed in utter violation of law on the subject as such entire superstructure built is liable to fall automatically.

Respondents have tried to twist the facts, and tried to cover their omissions, commissions and lacunas. The valuable rights of the appellant are involved from which he cannot be deprived. The appellant could not be made to suffer for the fault of others as no one could be punished for the fault of others. In the circumstances the appellant has not been treated according to law and rules being his fundamental right.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for.

Dated:-19-01-2021

myr
Appellant

Through

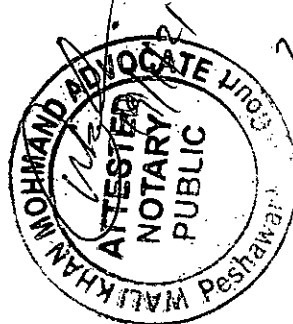
Fazal Shah Mohmand
Fazal Shah Mohmand
Advocate, Peshawar

Supreme Court of Pakistan

AFFIDAVIT

I, Noman Khan Ex Process Server, District Judiciary Swabi, (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT



1911/12

...

...