

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST

Case Title: Sajid Mumtaz v/s DC

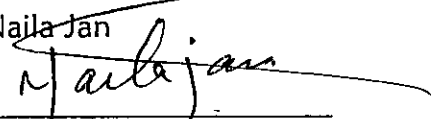
S#	CONTENTS	YES	NO
1	This Appeal has been presented by: Naila Jan	<input checked="" type="checkbox"/>	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	<input checked="" type="checkbox"/>	
3	Whether appeal is within time?	<input checked="" type="checkbox"/>	
4	Whether the enactment under which the appeal is filed mentioned?	<input checked="" type="checkbox"/>	
5	Whether the enactment under which the appeal is filed is correct?	<input checked="" type="checkbox"/>	
6	Whether affidavit is appended?	<input checked="" type="checkbox"/>	
7	Whether affidavit is duly attested by competent Oath Commissioner?	<input checked="" type="checkbox"/>	
8	Whether appeal/annexures are properly paged?	<input checked="" type="checkbox"/>	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
10	Whether annexures are legible?	<input checked="" type="checkbox"/>	
11	Whether annexures are attested?	<input checked="" type="checkbox"/>	
12	Whether copies of annexures are readable/clear?	<input checked="" type="checkbox"/>	
13	Whether copy of appeal is delivered to AG/DAG?	<input checked="" type="checkbox"/>	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	<input checked="" type="checkbox"/>	
15	Whether numbers of referred cases given are correct?	<input checked="" type="checkbox"/>	
16	Whether appeal contains cutting/overwriting?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
17	Whether list of books has been provided at the end of the appeal?	<input checked="" type="checkbox"/>	
18	Whether case relate to this court?	<input checked="" type="checkbox"/>	
19	Whether requisite number of spare copies attached?	<input checked="" type="checkbox"/>	
20	Whether complete spare copy is filed in separate file cover?	<input checked="" type="checkbox"/>	
21	Whether addresses of parties given are complete?	<input checked="" type="checkbox"/>	
22	Whether index filed?	<input checked="" type="checkbox"/>	
23	Whether index is correct?	<input checked="" type="checkbox"/>	
24	Whether Security and Process Fee deposited? On _____	<input checked="" type="checkbox"/>	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	<input checked="" type="checkbox"/>	
26	Whether copies of comments/reply/rejoinder submitted? On _____	<input checked="" type="checkbox"/>	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On _____	<input checked="" type="checkbox"/>	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Naila Jan

Signature:



Dated:

29.09.2021

D

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Khyber Pakhtunkhwa Service Tribunal

APPEAL NO. 7482/2021

Diary No. 7648

Sajid Mumtaz Ex-Patwari Division Sheikh Muhammadi, District Peshawar

Dated 28/9/2021

.....Appellant

VERSUS

1. The Commissioner Peshawar Division Peshawar.

2. Deputy Commissioner Peshawar

.....Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 11/06/2021 OF RESPONDENT NO 02 WHEREBY THE APPELLANT WAS REMOVED FROM HIS SERVICES WITHOUT ANY JUSTIFICATION AND NON-DECIDING DEPARTMENTAL APPEAL OF THE APPELLANT BY RESPONDENT NO 01, AFTER EXPIRING THE STATUTORY PERIOD OF 90 DAYS WHICH IS UTTER VIOLATION OF LAW, RULES AND PRINCIPLES OF NATURAL JUSTICE.

Filed to-day
Registrar
28/9/21

4

Prayer:

On Acceptance of this Service Appeal the Impugned Order of Removal dated 11/06/2021 may kindly be set aside and the appellant may kindly be reinstated into

2

Service with all back benefits. Any other remedy specifically not prayed for may kindly be awarded in favour of the appellant.

Respectfully sheweth,

The appellant submits as under:

1. That the appellant was appointed as patwari and after his appointment the appellant performed his duty with great zeal, zest, honesty and to the entire satisfaction of his high ups.
2. That while serving as patwari Halqa Sheikh Muhammadi , a concocted and frivolous complaint containing some baseless allegations was filed by one namely Aziz Ahmad S/o Abdul Wali with mala fide motives, and the DC Peshawar, without issuing charge sheet along with statement of allegation ,a one sided fact finding inquiry was conducted in utter disregards to law and rules, in which the appellant was not provided any opportunity of self defence or cross examination ,nor did statement of any witness was recorded .it is worth mentioning that copy f the fact finding inquiry was not provided to the appellant till date.
3. That the appellant was issued a show cause notice containing some baseless concocted and frivolous allegations which was replied by the appellant, denying all the allegations. even the complainant himself withdrawn the complaint and declared the appellant

innocent on a stamp paper and (copy of the Show cause Notice, Reply and statement of the complainant and one other are annexure A to C)

4. That the competent authority did not bother to go through the reply of the appellant and statement of the complainant and without providing opportunity of personal hearing straight away removed the appellant vide impugned order dated 11/06/2021 .(Copy of the impugned order Dated 11/06/2021 is annexure D)
5. That feeling aggrieved from the impugned order dated 11/06/2021, the appellant approached to the department via filling the departmental appeal, but no response from the respondent department till yet. (Copy of departmental appeal is attached as annexure E)
6. That feeling aggrieved from the act of the respondents, the appellant having no other adequate remedy, but to approach this Hon'ble tribunal by filling the instant service appeal, on the following grounds inter alia ;

GROUND

- A. That the impugned order dated 11/06/2021 is against the law, facts, Constitution, Principles of Natural justice, based on mala fide, void ab initio hence not sustainable in the eyes of Law.

- B. That no charge sheet along with statement of allegation issued to the appellant which is mandatory under Khyber Pakhtunkhwa Efficiency & Disciplinary Rules 2011.
- C. That the appellant was condemned unheard as no opportunity of personal hearing or defence has been provided to the appellant by the inquiry Officer or the competent authority which is fundamental right of the appellant.
- D. That neither statement of any witness has been recorded nor did the appellant was confronted with anything.
- E. That the appellant has not been confronted with any documentary or oral evidence and the appellant was treated under the law of jungle.
- F. That the right of Fair Trial , which is a fundamental right as guaranteed by Art 10 A of the Constitution of Islamic Republic of Pakistan 1973,has not been provided hence the whole proceedings are liable to be set aside .The Dictum has been laid down by Supreme Court in the judgment reported as "2016 SCMR 943".

In a recent judgment reported as"2020 PLC(CS) sindh 67" High Court declared that even contract employee is entitled for Right of Fair trail but despite the fact that appellant is a regular civil servant the same has been denied to the appellant.

5

- G. That the charges leveled against the appellants in show cause Notice are totally false and the enquiry officer failed to prove the allegations.
- H. That the appellant has not violated any rules regulations or instruction of the provincial government nor did abuse his official authority.
- I. That all the allegations both contained in the show cause notice or in the impugned order are consist on allegations which involved factual controversy hence regular inquiry was required to prove the allegations however no regular inquiry was conducted.
- J. That neither regular inquiry was conducted nor did the regular inquiry was dispensed with in accordance with R 5 read with R 7 of Khyber Pakhtunkhwa Efficiency & Disciplinary Rules 2011.
- K. That not only the complainant but one other namely Khalil Khan S/o Ulas Khan submitted their statements on judicial stamp paper and declared the appellant innocent however the competent authority didn't pay attention to the statement and passed the impugned order.
- L. That it is consistent view of the superior court that major penalty cannot be imposed merely on issuing a show cause notice.


✓

- M. That the appellant has been condemned unheard as no opportunity of personal hearing or defence has been provided to the appellant.
- N. That the appellant has been subjected to discrimination as the appellant has been guaranteed equal protection of law and entitled for due course of law however the same has been refused to the appellant thus Article 25 of the Constitution of Islamic Republic of Pakistan 1973 has been violated.
- O. That since the illegal impugned order the appellant is jobless and the family of the appellant is facing miseries and starvations.
- P. That the appellant seeks permission to adduce other grounds during course of final hearings.

It is therefore requested that appeal of the appellant may graciously be accepted as prayed for in the headings of appeal.

Through


Appellant


Naila Jan
Advocate High Court
Peshawar.

2

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO...../2021

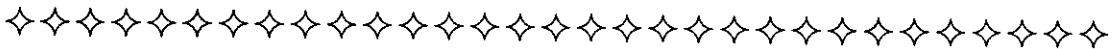
Sajid Mumtaz Ex-Patwari

.....Appellant

VERSUS

The Commissioner Peshawar & another

.....Respondents



AFFIDAVIT

I, Sajid Mumtaz Ex-Patwari Division Sheikh Muhammadi, District Peshawar, do hereby solemnly affirm and declare on oath that the contents of this accompanying service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Identified by

Sajid Mumtaz
Deponent

CNIC No:-

Naila Jan
Naila Jan
Advocate, High court
Peshawar.



BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO...../2021

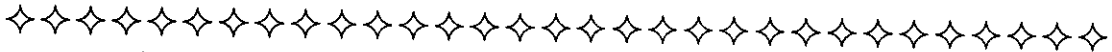
Sajid Mumtaz Ex-Patwari

.....Appellant

VERSUS

The Commissioner Peshawar & another

.....Respondents



ADDRESSES OF PARTIES

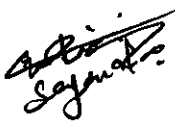
APPELLANT

Sajid Mumtaz Ex-Patwari Division Sheikh Muhammadi, District Peshawar


RESPONDENTS

1. The Commissioner Peshawar Division Peshawar.
2. Deputy Commissioner Peshawar

Through



Appellant


Naila Jan
Advocate High Court
Peshawar.

9

Aftab A

SHOW CAUSE NOTICE

1. Capt (R) Khalid Mehmood, Deputy Commissioner Peshawar, as competent authority, under the Khyber Pakhtunkhwa Govt. Servants Efficiency and Discipline Rules 2011, do hereby Charge you, Mr. Sajid Mumtaz, Patwari Halqa Sheikh Muhammadi (under suspension) as follows:

2. That you were posted as Patwari Halqa Sheikh Muhammadi committed the following irregularities:

- (a) That Mr. Aziz Ahmad S/o Abdul Wali r/o Sheikh Muhammadi filed a complaint against you stating that you have kept a Munshi illegally namely Aftab and taken Rs.94000/- in excess of taxes as bribe which may be returned to him and action may be taken against you.
- (b) That a fact finding inquiry was ordered in the matter conducted by Assistant Commissioner Mattani Peshawar, wherein he reported that you have taken the said amount from the complainant and returned the same to the complainant before him and that you have kept Mr. Aftab as Munshi illegally. The enquiry officer recommended disciplinary action against you.
- (c) That you were suspended vide order No.1368/DC(P)/DK dated 22-04-2020.

2. By reasons of the above, you appear to be guilty of mis-conduct under rule-3 of the Khyber Pakhtunkhwa Govt. Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.

3. You are, therefore, required to submit your written defense within three (03) days of the receipt of this Show Cause to the undersigned.

4. Your written defense, if any, should reach the undersigned, within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.

ATTESTED

(Signature)

(Signature)
(CAPT.(R) KHALID MEHMOOD)
DEPUTY COMMISSIONER
(Competent Authority)

10

"B"
Amir

جواب درخواست بسلسلہ شوکاز نوٹس نمبری 1369 مورخہ 22/04/2020

از آمدہ جناب ڈپٹی کمشنر صاحب پشاور

بلسلسلہ شوکاز نوٹس جناب ڈپٹی کمشنر صاحب من سائل سے درج ذیل وضاحت کی گئی ہے۔

(1) یہ کہ عزیز احمد ولد عبدالولی نے من پٹواری کے خلاف درخواست دائر کی ہے کہ آپ کے فٹھی مسی آفتاب نے -/94000 ٹیکس کے زمرے سے رشوت وصول کی ہے جو کہ بعد میں آپ نے درخواست دہندہ کو واپس کی ہے۔

(2) یہ کہ جناب اسٹینٹ کمشنر متنی صاحب نے ایک مفصل انکوائری میرے خلاف کی اور اس میں آپ نے سائل سے رشوت کے ذریعے رقم بدست فٹھی آفتاب وصول کی۔ جو کہ واپس آپ نے درخواست دہندہ کو واپس کی۔

جناب عالی!

من سائل / پٹواری بحیثیت پٹواری تحصیل پشاور سال 08/07/2020 سے حلقہ شیخ محمدی میں اپنی خدمات سرانجام دے رہا ہوں۔ اور نہایت ایمانداری اور محنت کے ساتھ اپنی ڈیوٹی سرانجام دے رہا ہوں۔ اپنی مدت تعیناتی سے تاحال کسی بھی شخص نے میرے خلاف افسران بالا کو شکایت نہیں کی ہے اور نہ ہی میں نے اپنی تعیناتی کے دوران کسی سے غیر قانونی رقم کا مطالبہ کیا ہے۔

مسی عزیز احمد ولد عبدالولی سکندہ شیخ محمدی نے من پٹواری کے پاس بغرض اندراج انتقال حاضر ہوا۔ میں نے انتقال نمبری 14584 تعدادی 12-ک 3 مالیت -/26,64,000 مورخہ 24/12/2020 کو درج رجسٹر کیا گیا اور ٹیکس رسید مبلغ -/1,06,610 مرتب کر کے حوالہ سائل کیا گیا۔ مورخہ 29/12/2020 کو بدوران دورہ تحصیلدار صاحب مکمل رسیدات پیش کر کے انتقال بغرض تصدیق پیش کیا۔

(۱۱)

جہاں تک درخواست دہندہ کا موقف تھا کہ میں نے پٹواری حلقہ کو -/94,000 روپے پیش کئے تھے۔ تو درخواست دہندہ کا یہ موقف غلط فہمی اور دروغ گوئی پر مبنی ہے۔ نہ میں کسی سے ٹیکس کے مد میں رقم وصول کرتا ہوں اور نہ میں نے درخواست دہندہ سے ٹیکس وصول کی ہے۔ میں نے بحیثیت پٹواری حلقہ انتقال مذکورہ بالا انتقال درج رجسٹر کر کے تحصیلدار صاحب کو بغرض تصدیق پیش کیا اور سائل نے خود ٹیکس داخل خزانہ کر کے تحصیلدار صاحب کو رسیدات پیش کیں۔

نیز انتقال نمبری 14584 مذکورہ بالا بابت رقبہ / ٹیکس وغیرہ مفصل بیان بائعہ / مشتریان حسب الحکم اسسٹنٹ کمشنر قنی پشاور کی خدمت میں پیش کی گئی ہے۔

بیان درخواست کنندہ لف ہے۔ اور جس نے رقم واپس ادا کر دی اس کا بیان بھی لف ہے۔

میرے خلاف جاری شدہ شوکار نوٹس محض غلط فہمی پر مبنی ہے۔ شوکار نوٹس کو داخل دفتر کرنے کا حکم صادر فرمایا جاوے۔

ATTACHED

العارض

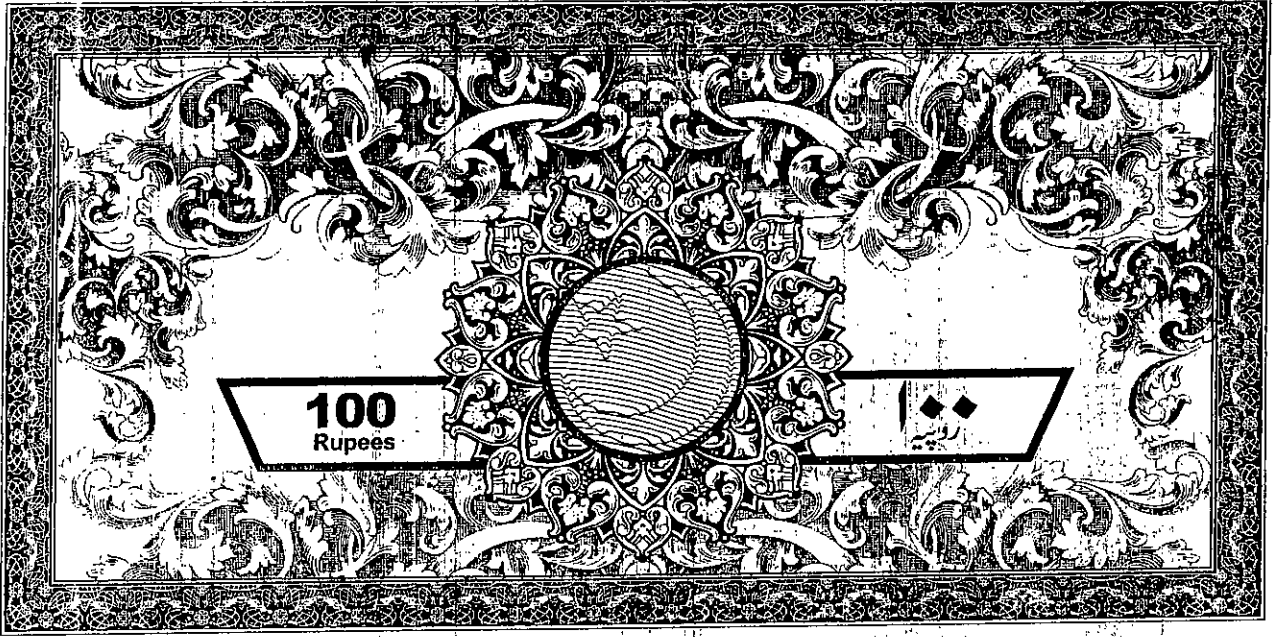
ساجد ممتاز (حلقہ پٹواری شیخ محمدی)

رابطہ نمبر: 0345-9088492

G975333

12

Amir C



بیان عزیز احمد ولد عبد الوالی ساکن شیخ محمدی پشاور

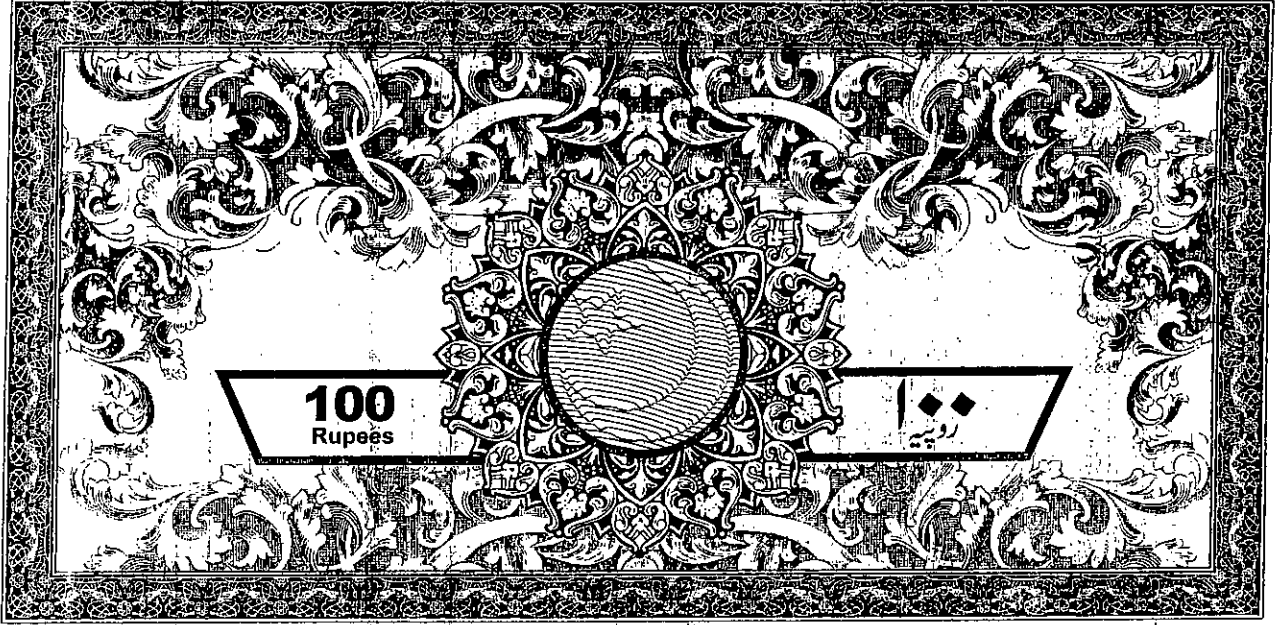
حلفاً بیان کرتا ہوں کہ من ساکن نے ایک عدد کسپینٹ بر خلاف پٹواری حلقہ موضع شیخ محمدی جمع کیا تھا جو کہ غلط نہیں کی بنیاد پر جمع کیا گیا تھا۔ دراصل مجھ سے مسی خلیل خان ولد اولس خان نامی شخص نے مبلغ -/200000 روپیہ انتقال ٹیکس وغیرہ کی مد میں وصول کئے جب میں نے خلیل خان سے مذکورہ رقم کی تفصیل طلب کی تو اس نے اس وقت جان چڑانے کیلئے پٹواری حلقہ کا نام لے کر بتایا کہ رقم اس نے وصول کی ہے اب میں نے مکمل تحقیق کی ہے کہ مذکورہ پٹواری حلقہ نے مجھ سے براہ راست کوئی رقم وصول نہیں کی۔ میرا کسپینٹ غلط نہیں میں دائر ہوا ہے۔ لہذا پٹواری حلقہ کے خلاف کوئی شکایت نہیں ہے میرا معاملہ خلیل خان کے ساتھ بھی حل ہو چکا ہے۔

ATTACHED

العبد
Amir C
28/4/2021
عزیز احمد

CNIC No. 17301-1459486-I

Mobile No. 03108686292



بیان حلفی خلیل خان ولد اوس خان ساکن شیخ محمدی پشاور

حلفاً بیان کرتا ہوں کہ عزیز احمد ولد عبد الولی سے میں نے - / 200000 روپے لیے جو کہ اس وقت میں نے صرف اندازہ لگایا تھا حالانکہ اس ٹیکس سے میں بے خبر تھا لیکن جب عزیز احمد ولد عبد الولی کو حلقہ پٹواری نے انتقال کی رسیدات دی تو اس میں ٹیکس - / 106410 درج تھی پھر عزیز احمد نے غلط فہمی کی بنیاد پر حلقہ پٹواری کے خلاف درخواست دائر کی اور پھر Assistant Commissioner متنی صاحب کے سامنے میں نے عزیز احمد کو بقایا رقم واپس کر دی ہے۔ میں نے مذکورہ رقم ہرگز بدعتی سے وصول نہیں کی تھی۔

العبد

خلیل خان ولد اوس خان

CNIC No. 17301-1493461-9

Mobile No. 0334-9146327



THE DEPUTY COMMISSIONER, PESHAWAR

Tel: 091-9212301-02, Fax: 091-9212303, DCPeshawar

No. 1976 /DC(P)/DK

Dated: 22 -June-2021

ORDER:

WHEREAS, Mr. Aziz Ahmad S/o Abdul Wali r/o Sheikh Muhammadi filed a complaint that one Mr. Sajid Mumtaz Patwari Halqa Sheikh Muhammadi Peshawar has charged an excess amount of Rs.94000/- illegally on registration of mutation and requested to recover the said amount from him and disciplinary action should be taken against him. The complaint was marked to Assistant Commissioner Mattani Peshawar to enquire into the matter.

AND WHEREAS, The AAC Mattani/inquiry officer submitted his report vide No.133/AC-(Mattani) dated 20-04-2021, wherein he stated that the allegations leveled against him were proved, as the said amount of Rs.94000/- was returned to the complainant before him, while Mr. Aftab was working as Munshi with him illegally and hence recommended initiation of disciplinary action against him under E&D Rules 2011.

AND WHEREAS, after ascertaining the facts and proof of guilt through enquiry officer, Mr. Sajid Mumtaz, Patwari Halqa Sheikh Muhammadi Peshawar was proceeded under Khyber Pakhtunkhwa Govt. Servants (Efficiency and Discipline) Rules 2011 by placing him under suspension vide order No.1368/DC(P)/DK dated 22-4-2021 and serving a Show Cause Notice upon him vide No.1369/DC(P)/DK dated 22-04-2020.

AND WHEREAS, The accused official submitted his reply to the Show Cause Notice on 28-04-2021. Upon which a chance of personal hearing was afforded to him on 03-06-2021 and the accused official was heard in person, wherein he could not put any defense against the allegations except some lame and frivolous excuses.

NOW THEREFORE, considering the recommendation of the Inquiry officer, statement of the accused official on personal hearing and other circumstances, I, Capt.(R) Khalid Mehmood, Deputy Commissioner, Peshawar in the capacity as Competent Authority and in exercise of the powers conferred under Rule-14(5)(ii) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, impose major penalty of *Removal from Service* upon Mr. Sajid Mumtaz with immediate effect.

(CAPT.(R) KHALID MEHMOOD)
DEPUTY COMMISSIONER

Endst: No. and Date Even:

- (i) Addl. Deputy Commissioner, Peshawar.
- (ii) Assistant Commissioner Mattani/Inquiry officer, Peshawar.
- (iii) Accounts Officer of DC office for necessary action.
- (iv) Mr. Sajid Mumtaz, Ex-Patwari.

DEPUTY COMMISSIONER

15

Amber "E"

To

The worthy Commissioner
Peshawar Division.

D/W/22 3079
Dated 17/6/21.

Subject: DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED ORDER DATED 11/06/2021 OF THE
DEPUTY COMMISSIONER PESHAWAR
WHEREBY THE APPELLANT HAS BEEN
ILLEGALLY REMOVED FROM HIS SERVICES IN
AN ARBITRARY AND ILLEGAL MANNER IN
UTTER VIOLATION OF LAW, RULES AND
PRINCIPLES OF NATURAL JUSTICE.

Prayers:

On Acceptance of this service appeal the
impugned order dated 11/06/2021 may kindly be
set aside and the appellant may kindly be
reinstated into Service along with all back
benefits. Any other remedy specifically not prayed
for may kindly be awarded in favour of the
appellant.

Respectfully Sir,

The appellant submits as under

1. That the appellant was appointed as patwari and after his appointment the appellant performed his duty with great zeal, zest, honesty and to the entire satisfaction of his high ups.
2. That while serving as patwari Halqa Sheikh Muhammadi, a concocted and frivolous complaint containing some


A. T. K.

D

baseless allegations was filed by one complainant namely Aziz Ahmad S/o Abdul Wali R/o Sheikh Mohammadi Peshawar, with mala fide motives, and the DC Peshawar, without issuing charge sheet along with statement of allegation ,a one sided fact finding inquiry was conducted in utter disregards to law and rules, in which the appellant was not provided any opportunity of self defence or cross examination ,nor did statement of any witness was recorded .it is worth mentioning that copy f the fact finding inquiry was not provided to the appellant till date.

3.That the appellant was issued a show cause notice containing some baseless concocted and frivolous allegations which was replied by the appellant, denying all the allegations. even the complainant himself withdrawn the complaint and declared the appellant innocent on a stamp paper and **(copy of the Show cause Notice, Reply and statement of the complainant and one other are annexure A to C)**

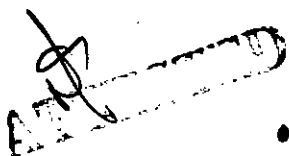
4.That the competent authority did not bother to go through the reply of the appellant and statement of the complainant and without providing opportunity of personal hearing straight away removed the appellant vide impugned order dated 11/06/2021 .**(Copy of the impugned order Dated 11/06/2021 is annexure D)**



5. That feeling aggrieved from the impugned order dated 11/06/2021, the appellant now filing this departmental appeal on the following grounds inter alia ;

GROUNDS

- A. That the impugned order dated 11/06/2021 is against the law, facts, Constitution, Principles of Natural justice, based on mala fide, void ab-initio hence not sustainable in the eyes of Law.
- B. That no charge sheet alongwith statement of allegation issued to the appellant which is mandatory under E & D Rules 2011.
- C. That the appellant was condemned unheard as no opportunity of personal hearing or defence has been provided to the appellant by the inquiry Officer or the competent authority which is fundamental right of the appellant.
- D. That neither statement of any witness has been recorded nor did the appellant was confronted with anything.
- E. That the appellant has not been confronted with any documentary or oral evidence and the appellant was treated under the law of jungle.

A handwritten signature in black ink is written over a rectangular stamp. The stamp contains some illegible text and a circular emblem.

F. That the right of Fair Trial , which is a fundamental right as guaranteed by Art 10 A of the Constitution of Islamic Republic of Pakistan 1973, has not been provided hence the whole proceedings are liable to be set aside .The Dictum has been laid down by Supreme Court in the judgment reported as "2016 SCMR 943".

In a recent judgment reported as "2020 PLCCS Sindh 67" High Court declared that even contract employee is entitled for Right of Fair trail but despite the fact that appellant is a civil servant the same has been denied to the appellant.

G. That the charges levelled against the appellants in show cause Notice are totally false detailed reply of the allegations are as under


i. That the appellant has not violated any rules regulations or instruction of the provincial government nor did abuse his official authority.

ii. That all the allegations both contained in the show cause notice or in the impugned order are consist on allegations involve factual controversy hence regular inquiry was required to prove the allegations however no regular inquiry was conducted.

ATTESTED

19

- iii. That neither regular inquiry was conducted nor did the regular inquiry was dispensed with in accordance with of R 5 read with R 7 of E & D Rules 2011.
- iv. That not only the complainant but one other namely Khalil Khan S/o Ulas Khan R/o Sheikh Mohammadi District Peshawar, submitted their statements on judicial stamp paper and declared the appellant innocent however the competent authority didn't pay attention to the statement and passed the impugned order.
- v. That it is consistent view of the superior court that major penalty cannot be imposed merely on issuing a show cause notice.
- H. That the appellant has been condemned unheard as no opportunity of personal hearing or defence has been provided to the appellant.
- I. That the appellant has been subjected to discrimination as the appellant has been guaranteed equal protection of law and entitled for due course of law however the same has been refused to the appellant thus Article 25 Of the constitution of Islamic Republic of Pakistan 1973 has been violated.

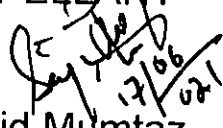

ATTEST


20

- J. That since the illegal impugned order the appellant is jobless and the family of the appellant is facing miseries and starvations.
- K. That the appellant seeks permission to adduce other grounds during course of final hearings.



It is therefore requested that appeal of the Appellant may graciously be accepted as prayed for in the headings of appeal.

APPELLANT



Sajid Mumtaz
Ex Patwari

197


14

قیمت 50 روپے	99460			
ایڈوکیٹ: <u>Naila Jan</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل/ ایسوسی ایشن نمبر: <u>BC-13-4172</u>				
رابطہ نمبر: <u>0312 92 1547</u>				

بعدالت جناب: Service Tribunal Perma


منجانب: <u>Appellant</u>	دعویٰ: <u>Service Tribunal</u>
	علت نمبر: _____
	مورخہ: _____
	جرم: _____
	تھانہ: _____

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کاروائی متعلقہ

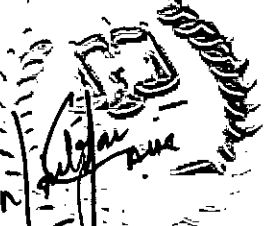
آن مقام Perma کے لیے Naila Jan کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے جو اب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل انگریزی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لے جانے کے لیے اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر ذخیرہ منظور و قبول ہوگا دوران مقدمہ میں جو چیز چاہے ہر جانہ انوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 22.09.2021



مقام Peshawar کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی نوٹو کاپی ناقابل قبول ہوگی۔

Accepted by 

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

7482

21

Appeal No. Syed Muntaz of 20

Appellant/Petitioner

The Commissioner Peshawar Division

Respondent

Respondent No.

Deputy Commissioner Peshawar

Notice to: —

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on.....at 8.00 A.M. If you wish to urge anything against the appellants/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated..... 13/11

Given under my hand and the seal of this Court, at Peshawar this..... Day of.....20

For Reply

Deputy Commissioner
Peshawar
Date 13/11/22

[Signature]
Registrar
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

5B

Appeal No. 7481 of 20 21

Sajid Muntaz Appellant/Petitioner
 Versus

The Commissioner, Peshawar Division Respondent

Respondent No. (1.1)

Notice to: — The Commissioner Peshawar Division

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal, *on 02/05/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 15/4

Day of April 20 22



[Signature]
 Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

- Note:
1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

Amended Appeal No: ____/2021

Sajid Mumtaz


VERSUS

The Commissioner, Peshawar Division, Peshawar & Other

INDEX

S#	Description of Documents	Annex	Pages
1.	Grounds of Amended Appeal		1-6
2.	Affidavit		7
3.	Address of the Parties		8
4.	Copy of the Show-Cause Notice, Reply & Statement of Complainant and one other	"A to C"	9-13
5.	Copy of the impugned order dated 11/06/2021	"D"	14
6.	Copies of Departmental Appeal and Impugned Order	"E & F"	15-16 17
7.	Wakalatnama		18

Dated : 26/11/2021

Naila Jan 
Advocate, High Court,
Peshawar.

D

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

Amended Appeal No: ____/2021

Sajid Mumtaz, Ex- Patwari Division Sheikh Muhammadi,
District Peshawar.

..... Appellant

VERSUS

1. The Commissioner, Peshawar Division, Peshawar.
2. Deputy Commissioner, Peshawar.

..... Respondents

APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT 1974, AGAINST THE IMPUGNED
ORDER DATED 11/06/2021 OF
RESPONDENT NO.2 WHEREBY THE
APPELLANT WAS REMOVED FROM HIS
SERVICES WITHOUT ANY
JUSTIFICATION AND ORDER DATED
06/10/2021 WHEREBY
DEPARTMENTAL APPEAL OF THE
APPELLANT HAS BEEN REJECTED IN A
CURSORY MANNER THROUGH NON
SPEAKING ORDER IN UTTER
VIOLATION OF TERMS, RULES AND
PRINCIPLES OF NATURAL JUSTICE.

Prayer in Appeal:

ON ACCEPTANCE OF THIS SERVICE
APPEAL, THE IMPUGNED ORDERS OF
REMOVAL DATED 11/06/2021 AND

2

APPELLATE ORDER DATED 06/10/2021 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED INTO SERVICE WITH ALL BACK BENEFITS. ANY OTHER REMEDY SPECIFICALLY NOT PRAYED FOR MAY KINDLY BE AWARDED IN FAVOR OF THE APPELLANT.

RESPECTFULLY SHEWETH:

The appellant submits as under:-

1. That the appellant was appointed as patwari and after his appointment, the appellant performed his duty with zeal, zest, honesty and to the entire satisfaction of his high-ups.
2. That while serving as Patwari Halqa Sheikh Muhammadi, a concocted and frivolous complaint containing some baseless allegations was filed by one namely Aziz Ahmad S/o Abdul Wali with malafide motives, and the DC Peshawar, without issuing charge sheet along with statement of allegation, a one sided fact finding inquiry was conducted in utter disregards to law and rules, in which the appellant was not provided any opportunity of self defense or cross examination, nor did statement of any witness was recorded, it is worth mentioning that copy of the fact finding inquiry was not provided to the appellant till date.
3. That the appellant was issued a show-cause notice containing some baseless concocted and frivolous allegations which was replied by the appellant, denying all the allegations, even the complainant himself withdrawn the complaint and declared the appellant innocent on a stamp paper. **(Copy of the show-cause**

Notice, Reply and Statement of the complainant and one other are annexure "A to C")

4. That the competent authority did not bother to go through the reply of the appellant and statement of the complainant and without providing opportunity of personal hearing straight away removed appellant vide impugned order dated 11/06/2021. **(Copy of the impugned order dated 11/06/2021 is annexure "D")**
5. That feeling aggrieved from the impugned order dated 11/06/2021, the appellant approached to the Respondent No.1 via filing the Departmental Appeal which was rejected vide order dated: 06/10/2021 without applying proper mind through a non speaking order. **(Copies of Departmental Appeal and Impugned Order are attached as Annexure "E & F")**
6. That feeling aggrieved from impugned orders dated 11/06/2021 and 6/10/2021, the appellant having no other adequate remedy, but to approach this Hon'ble Tribunal by filing the instant service appeal, on the following grounds inter-alia:-

GROUNDS

- A. That the impugned order dated 11/06/2021 and appellate order dated 06/10/2021 are against the law, facts, constitution, principles of natural justice, based on malafide, void ab-initio, hence not sustainable in the eyes of law.
- B. That no charge sheet along with statement of allegations issued to the appellant which is mandatory under Khyber Pakhtunkhwa Efficiency & Disciplinary Rules 2011.

9

C. That the appellant was condemned unheard as no opportunity of personal hearing or defense has been provided to the appellant by the Inquiry Officer or the competent authority which is fundamental right of the appellant.

D. That neither statement of any witness has been recorded nor did the appellant was confronted with anything.

E. That the appellant has not been confronted with any documentary or oral evidence and the appellant was treated under the law of jungle.

F. That the right of fair trial, which is a fundamental right as guaranteed by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, has not been provided, hence the whole proceedings are liable to be set aside. The dictum has been laid down by Supreme Court in the judgment reported as "2016 SCMR 943"

In a recent judgment reported as "2020 PLC (SC) Sindh 67", High Court declared that even contract employee is entitled for Right of Fair Trial but despite the fact that appellant is a regular civil servant, the same has been denied to the appellant.

G. That the charges leveled against the appellant in show-cause Notice are totally false and the inquiry officer failed to prove the allegations.

5

- H. That the appellant has not violated any rules regulations or instructions of the Provincial Government nor did abuse his official authority.
- I. That all the allegations both contained in the show-cause notice or in the impugned order are consists on allegations which involved factual controversy, hence regular inquiry was required to prove the allegations, however no regular inquiry was conducted.
- J. That neither regular inquiry was conducted, nor did the regular inquiry was dispensed within accordance with Rule 5 R/w Rule7 of Khyber Pakhtunkhwa Efficiency & Disciplinary Rules 2011.
- K. That not only the complainant but one other namely Khalil Khan S/o Ulas Khan submitted their statements on judicial stamp paper and declared the appellant innocent, however the competent authority didn't pay any attention to the statement and passed the impugned order.
- L. That it is consistent view of the Superior Court that major penalty cannot be imposed merely on issuing a show-cause notice.
- M. That the appellant has been condemned unheard as no opportunity of personal hearing or defense has been provided to the appellant.

9

N. That the appellant has been subjected to discrimination as the appellant has been guaranteed equal protection of law and entitled for due course of law, however the same has been refused to the appellant, thus Article 25 of the Constitution of Islamic Republic of Pakistan 1973 has been violated.


O. That since the illegal impugned orders, the appellant is jobless and the family of the appellant is facing miseries and starvations.

P. That the appellant seeks permission to adduce other grounds during course of final hearings.

It is, therefore, requested that appeal of the appellant may graciously be accepted as prayed for in the heading of Appeal.

Dated: 29/11/2021

Through Appellant


Naila Jan
Advocate, High Court,
Peshawar.

3

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

Amended Appeal No: ____/2021

Sajid Mumtaz

VERSUS

The Commissioner, Peshawar Division, Peshawar & Other

AFFIDAVIT

I, Sajid Mumtaz, Ex- Patwari Division Sheikh Muhammadi, District Peshawar, do hereby solemnly affirm and declare on oath that all contents of the instant amended petition are true and correct to the best of my knowledge & belief and nothing has been kept concealed or misstated from this Hon'ble Tribunal.

DEPONENT

Identified By



Naila Jan
Advocate, High Court,
Peshawar.

8

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

Amended Appeal No: ____/2021

Sajid Mumtaz

VERSUS

The Commissioner, Peshawar Division, Peshawar & Other

ADDRESSES OF PARTIES


ADDRESS OF PETITIONER

Sajid Mumtaz, Ex- Patwari Division Sheikh Muhammadi,
District Peshawar

ADDRESSES OF RESPONDENTS

1. The Commissioner, Peshawar Division, Peshawar.
2. Deputy Commissioner, Peshawar.

Dated : 26/11/2021


Naila Jan
Advocate, High Court,
Peshawar.



**THE ASSISTANT COMMISSIONER (MATTANI)
PESHAWAR**

Tel: 091-9239053-56 FDC Peshawar

Dated: 20/04/2021

No. 133/AC (Mattani)
To,

The Deputy Commissioner,
Peshawar.

Subject: INQUIRY REPORT AGAINST MR. SAJID MUMTAZ, PATWARI HALQA SHEIKH
MUHAMMADI, TEHSIL MATTANI, DISTRICT PESHAWAR.

An application from Mr. Aziz Ahmad s/o Abdul Wali, Resident of Sheikh Muhammadi, Tehsil Mattani District Peshawar, submitted to Deputy Commissioner Peshawar on 26/02/2021, received to this office on 02.03.2021, against Mr. Sajid Mumtaz, Patwari, Halqa Sheikh Muhammadi, Tehsil Mattani District Peshawar with the remarks to inquire and report.

The report of the inquiry is attached herewith for further necessary action as directed please.

Deputy Commissioner
Peshawar

Diary No. 7095
Date 21/4/21

Assistant Commissioner
Mattani

20.4.2021

BEFORE THE COMMISSIONER PESHAWAR DIVISION, PESHAWAR.

Departmental Appeal.

Sajid Mumtaza, Ex-Patwari, Peshawar(Appellant)

VERSUS

Deputy Commissioner, Peshawar(Respondent)

PARAWISE COMMENTS ON BEHALF OF RESPONDENT.

Respectfully Sheweth,

Preliminary Objections.

1. That the appellant in the instant case has no cause of action to institute present appeal.
2. That the appellant has not come to this honourable Court with clean hands.
3. That the appellant is estopped by his own conduct to file the instant appeal.
4. That the appellant is not maintainable.

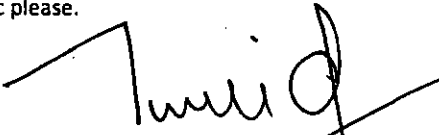
OBJECTION ON FACTS.

1. Correct to the extent that the appellant was serving as Patwari.
2. Incorrect. Upon receipt of complaint a formal enquiry was ordered. The Assistant Commissioner Mattani/enquiry officer not only witnessed the presence of munshi Mr. Aftab, but also returned the excess amount of Rs.94000/- to complainant in front of him. (enquiry report attached as Annex-A). Besides the Provincial Govt. had already instructed not to keep munshis for running the Patwar Khanas or dealing with public. The violation was very grave and proved.
3. Incorrect. In the presence of evidence, withdrawal of a complaint have no meaning. Furthermore the Show Cause Notice was issued according to the Khyber Pakhtunkhwa Govt. Servant (Efficiency & Discipline) Rules 2011.
4. Incorrect. Personal hearing was afforded to the appellant on 4-06-2021 and copy of appellant attendance is attached as Annex-B, wherein he was unable to produce anything in his defense.
5. No Comments.

GROUND

- A. Incorrect. The order was issued keeping in view the facts and evidences and following the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules 2011.
- B. Show Cause Notice was directly issued to the appellant after proving the guilt on his part.
- C. Incorrect. The appellant was issued Show Cause Notice and personal hearing was conducted as stated above.
- D. Incorrect. The Inquiry Officer was himself witness of the guilt proved against the appellant.
- E. Incorrect. All the prescribed rules & procedures have been adopted.
- F. Incorrect. As per para C above.
- G. Incorrect. All the allegations were proved against him.
- H. Incorrect. As per para C Above.
- I. Incorrect. As per para C Above.
- J. Incorrect. The appellant has no right to file instant appeal due to his misconduct by keeping munshi and charge excess fees other than the prescribed.
- K. No comments.

Keeping in view of the above it is prayed that instant appeal of the appellant may graciously be dismissed in the best interest of the Administration and Public please.


Deputy Commissioner Peshawar
(Respondent)

INQUIRY REPORT AGAINST MR. SAJID MUMTAZ, PATWARI HALQA SHEIKH MUHAMMADI, TEHSIL MATTANI, DISTRICT PESHAWAR.

Background: -

An application from Mr. Aziz Ahmad s/o Abdul Wali, Resident of Sheikh Mohammadi, Tehsil Mattani District Peshawar, submitted to Deputy Commissioner Peshawar on 26/02/2021, received to this office on 02.03.2021, against Mr. Sajid Mumtaz, Patwari, Halqa Sheikh Mohammadi, Tehsil Mattani District Peshawar with the remarks to inquire and report.

Proceedings: -

The complainant along with the Patwari was called for personal hearing on 09th March 2021. The complainant stated that he went to Patwari for the transfer of land where Mr. Aftab, Munshi to the Patwari demanded a sum of Rs.200000/- as tax and he submitted the said amount to the frontman/munshi to the patwari. Later on he demanded the receipts of money in which only Rs.106000/- was given while the other remaining amount of Rs.94000/- has no receipt which was to be deposited in the Government Exchequer. Thereafter having no receipts the complainant demanded his money back from Mr. Aftab(Munshi) & Mr. Sajid Mumtaz, Patwari.

The Patwari Halqa Sheikh Mohammadi out-rightly denied all the allegations by stating that he has no knowledge of the incident. He however stated that the complainant for the sake of avoiding Government Tax asked for a compromise. In this regard he requested to transfer 81 Marlas of land(agriculture) instead of 72 Marlas (residential) so that he will be able to avoid Government Residential Tax and the extra 09 Marlas will be returned to the original owner of land after settlement.

During proceeding Mr. Khalil Khan came as an arbitrator along with Patwari. He returned the said amount to the complainant in front of the undersigned. On further inquiry from Mr. Khalil Khan it came to fore that the money was taken from the complainant and Rs.94000/- was taken as bribe by Mr. Aftab, in implicit connivance with concerned Patwari.

Findings: -

- (i). Rs.94000/- was taken as bribe by Mr. Aftab(Munshi) to Mr. Sajid Mumtaz(Patwari).
- (ii). Mr. Aftab (Munshi) returned the money taken as bribe from Mr. Khalil through an arbitrator before the inquiry officer

(iii). The Munshi to the Patwari is an illegal entity and the patwari failed to perform his duties professionally and is involved in corrupt practices.

Conclusion: -

During the process of inquiry and in the light of the interrogation conducted, it is concluded that the accused Mr. Sajid Mumtaz had a front man /Munshi who had received Rs.94000 as a bribe and munshi being illegal itself, the patwari failed to perform his duties professionally & is involved in corrupt practices.

Recommendations

Mr. Sajid Mumtaz, Patwari Circle Sheikh Muhammadi committed acts of gross misconduct and failed to discharge his duties professionally be suspended and proceeded against E&D Rules.

(NOTE: THIS REPORT CONSISTS OF 02 PAGES AND EACH PAGE HAS BEEN SIGNED BY THE UNDERSIGNED).

Dated: 20/04/2021.

(Dr. Adil Ayub),
Assistant Commissioner,
Tehsil Mattani, District Peshawar.

As proposed

supdt. i

Uy



16

Aftab F

**COURT OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR**

DATE OF INSTITUTION 17.06.2021

DATE OF DISPOSAL 06.10.2021

APPEAL NO.

Sajid Mumtaz, ex- Patwari, Appellant

Versus

Deputy Commissioner Peshawar, Respondent

ORDER

This order will dispose of the departmental appeal filed by the above named appellant against the order of the Deputy Commissioner Peshawar bearing No.1976/DC(P)//DK dated 11.06.2021, whereby a minor penalty of Removal from service was imposed upon him under Rule 14(5)(ii) of Government Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.

Brief facts leading to institution of the instant departmental appeal are that Briefly, a complaint was made by Mr. Aziz Ahmed before the DC Peshawar alleging that the appellant has kept munshi namely Mr. Aftab who got Rs. 94000/- in excess to the tax from the complainant as bribe on registration of mutation. Assistant Commissioner Mattani was appointed as Inquiry Officer who submitted enquiry report. As per enquiry report, the front man/munshi of the appellant received Rs. 94000/- as extra amount from the complainant as bribe thus the appellant has failed to perform his duties un-professionally and held responsible as the retaining of munshi is illegal. Moreover, the bribed amount was recovered back from through an arbitrar namely Khalil Khan. On the basis of enquiry report, the competent authority vide above order awarded the appellant with major penalty of removal from service under Rule-14(5)(ii) of KP Government Servants (E&D) Rules-2011 after observing all codal formalities of giving show cause notice and opportunity of personal hearing.

The appellant in his appeal has categorically denied the allegations against him as baseless and termed it as malafide motive of the complainant. Further stated in his appeal that neither he has been issued Charge Sheet nor statement of allegations and that one sided inquiry has been conducted in utter dis-regard of the enquiry procedure and rules beside condemning him unheard. Appellant has further stated that he received only Rs. 1,06,610 as tax of total value of land of Rs. 26,64,000 for mutation registration and produced the same before the Inquiry Officer and no extra amount has been received from the complainant. He thus prayed for setting aside the impugned order and reinstatement in service being innocent.

47

Comments received from the Deputy Commissioner Peshawar perused which says that Provincial Government has already instructed not to keep munshi but contrary to the above the appellant kept munshi and the bribed amount was also recovered from him in presence of the Enquiry Officer. This act has been done through the connivance of the appellant, so held him guilty for the commission of offence..


Appellant present and heard. Rep of Deputy Commissioner Peshawar also present alongwith record. From perusal of record on file it is transpired that the complaint is genuine as the bribed amount was recovered and given back to the complainant in presence of the Enquiry Officer. Contrary to the instructions of the Provincial Government conveyed to the revenue officials from time to time, the appellant retained private munshi with him dealing in precious revenue record and getting bribes is clear violations of the instructions and for an illegal act of munshi, the appellant is held responsible. Proper enquiry has been conducted. All legal procedures have been notice to have been adopted. During personal hearing the defence plea of the appellant was not convincing and acknowledged the receipt of bribe by his munshi.

Keeping the above in view, the appeal in hand stands dismissed and the order passed by the Deputy Commissioner Peshawar/competent authority vide no. 1976/DC(P)//DK dated 11.06.2021 is upheld. File be consigned to GRR after necessary completion.


COMMISSIONER
PESHAWAR DIVISION PESHAWAR

Announced
06.10.2021

Attached


18/10/2021
Reader to Commissioner
Peshawar Division Peshawar

**IN THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

C.M No _____/2022

In ref S.A No: ____/____

Sajid Mumtaz

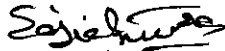

VERSUS

DC Peshawar & Others

INDEX

S#	Description of Documents	Annex	Page#
1	Application for Amendment		1
2	Affidavit		2

Dated: 31/01/2022


Appellant

Naila Jan
Advocate High Court,
Peshawar

**IN THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

C.M No _____/2022

In ref S.A No: ____/____

Sajid Mumtaz

VERSUS

DC Peshawar & Others

**APPLICATION FOR SEEKING PERMISSION
FOR SUBMISSION OF AMENDED SERVICE
APPEAL**


Respectfully Sheweth,

1. That the above titled appeal is pending adjudication before this Hon'ble Tribunal and is fixed for today ie 31/01/2022.
2. That at the time of filing of Service Appeal of the Appellant, the Departmental Appeal of the Appellant was decided, which was decided at the stage of preliminary hearing and received by the counsel for the Appellant, hence the Appellant has got a fresh cause of action.
3. That in the given circumstances of the Appeal, allowing of the instant application is indispensable.

It is, therefore, most humbly prayed that on acceptance of the instant Application, permission may very graciously be granted to the Appellant to submit the amended service appeal

Dated: 31-01-2022


Appellant


Naila Jan
Advocate High Court
Peshawar

IN THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

C.M No _____/2022

In ref S.A No: ____/____

Sajid Mumtaz

VERSUS

DC Peshawar & Others

AFFIDAVIT

I, (the Appellant), do hereby solemnly affirm & declare on oath that all contents of instant petition are true and correct to the best of my knowledge and belief, and nothing has been concealed from this August Tribunal.


Deponent





**THE ASSISTANT COMMISSIONER (MATTANI)
PESHAWAR**

Tel: 091-9239053-56 FIDC Peshawar

Dated: 20/04/2021

No. 133/AC (Mattani)

To,

The Deputy Commissioner,
Peshawar.

Subject: **INQUIRY REPORT AGAINST MR. SAJID MUMTAZ, PATWARI HALQA SHEIKH
MUHAMMADI, TEHSIL MATTANI, DISTRICT PESHAWAR.**

An application from Mr. Aziz Ahmad s/o Abdul Wali, Resident of Sheikh Muhammadi, Tehsil Mattani District Peshawar, submitted to Deputy Commissioner Peshawar on 26/02/2021, received to this office on 02.03.2021, against Mr. Sajid Mumtaz, Patwari, Halqa Sheikh Muhammadi, Tehsil Mattani District Peshawar with the remarks to inquire and report.

The report of the inquiry is attached herewith for further necessary action as directed please.

Deputy Commissioner
Peshawar

Diary No. 7095

Date 21/4/21

Assistant Commissioner
Mattani.

20.4.2021

mpil

BEFORE THE COMMISSIONER PESHAWAR DIVISION, PESHAWAR.

Departmental Appeal.

Sajid Mumtaza, Ex-Patwari, Peshawar(Appellant)

VERSUS

Deputy Commissioner, Peshawar(Respondent)

PARAWISE COMMENTS ON BEHALF OF RESPONDENT.

Respectfully Sheweth,

Preliminary Objections.

1. That the appellant in the instant case has no cause of action to institute present appeal.
2. That the appellant has not come to this honourable Court with clean hands.
3. That the appellant is estopped by his own conduct to file the instant appeal.
4. That the appellant is not maintainable.

OBJECTION ON FACTS.

1. Correct to the extent that the appellant was serving as Patwari.
2. Incorrect. Upon receipt of complaint a formal enquiry was ordered. The Assistant Commissioner Mattani/enquiry officer not only witnessed the presence of munshi Mr. Aftab, but also returned the excess amount of Rs.94000/- to complainant in front of him. (enquiry report attached as Annex-A). Besides the Provincial Govt. had already instructed not to keep munshis for running the Patwar Khanas or dealing with public. The violation was very grave and proved.
3. Incorrect. In the presence of evidence, withdrawal of a complaint have no meaning. Furthermore the Show Cause Notice was issued according to the Khyber Pakhtunkhwa Govt. Servant (Efficiency & Discipline) Rules 2011.
4. Incorrect. Personal hearing was afforded to the appellant on 4-06-2021 and copy of appellant attendance is attached as Annex-B, wherein he was unable to produce anything in his defense.
5. No Comments.

GROUNDS

- A. Incorrect. The order was issued keeping in view the facts and evidences and following the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules 2011.
- B. Show Cause Notice was directly issued to the appellant after proving the guilt on his part.
- C. Incorrect. The appellant was issued Show Cause Notice and personal hearing was conducted as stated above.
- D. Incorrect. The Inquiry Officer was himself witness of the guilt proved against the appellant.
- E. Incorrect. All the prescribed rules & procedures have been adopted.
- F. Incorrect. As per para C above.
- G. Incorrect. All the allegations were proved against him.
- H. Incorrect. As per para C Above.
- I. Incorrect. As per para C Above.
- J. Incorrect. The appellant has no right to file instant appeal due to his misconduct by keeping munshi and charge excess fees other than the prescribed.
- K. No comments.

Keeping in view of the above it is prayed that instant appeal of the appellant may graciously be dismissed in the best interest of the Administration and Public please.


Deputy Commissioner Peshawar
(Respondent)



INQUIRY REPORT AGAINST MR. SAJID MUMTAZ, PATWARI HALQA SHEIKH MUHAMMADI, TEHSIL MATTANI, DISTRICT PESHAWAR.

Background: -

An application from Mr. Aziz Ahmad s/o Abdul Wali, Resident of Sheikh Mohammadi, Tehsil Mattani District Peshawar, submitted to Deputy Commissioner Peshawar on 26/02/2021, received to this office on 02.03.2021, against Mr. Sajid Mumtaz, Patwari, Halqa Sheikh Mohammadi, Tehsil Mattani District Peshawar with the remarks to inquire and report.

Proceedings: -

The complainant along with the Patwari was called for personal hearing on 09th March 2021. The complainant stated that he went to Patwari for the transfer of land where Mr. Aftab, Munshi to the Patwari demanded a sum of Rs.200000/- as tax and he submitted the said amount to the frontman/munshi to the patwari. Later on he demanded the receipts of money in which only Rs.106000/- was given while the other remaining amount of Rs.94000/- has no receipt which was to be deposited in the Government Exchequer. Thereafter having no receipts the complainant demanded his money back from Mr. Aftab(Munshi) & Mr. Sajid Mumtaz, Patwari.

The Patwari Halqa Sheikh Mohammadi out-rightly denied all the allegations by stating that he has no knowledge of the incident. He however stated that the complainant for the sake of avoiding Government Tax asked for a compromise. In this regard he requested to transfer 81 Marlas of land(agriculture) instead of 72 Marlas (residential) so that he will be able to avoid Government Residential Tax and the extra 09 Marlas will be returned to the original owner of land after settlement.

During proceeding Mr. Khalil Khan came as an arbitrator along with Patwari. He returned the said amount to the complainant in front of the undersigned. On further inquiry from Mr. Khalil Khan it came to fore that the money was taken from the complainant and Rs.94000/- was taken as bribe by Mr. Aftab, in implicit connivance with concerned Patwari.

Findings: -

- (i). Rs.94000/- was taken as bribe by Mr. Aftab(Munshi) to Mr. Sajid Mumtaz(Patwari).
- (ii). Mr. Aftab (Munshi) returned the money taken as bribe from Mr. Khalil through an arbitrator before the inquiry officer

(iii). The Munshi to the Patwari is an illegal entity and the patwari failed to perform his duties professionally and is involved in corrupt practices.

Conclusion: -

During the process of inquiry and in the light of the interrogation conducted, it is concluded that the accused Mr. Sajid Mumtaz had a front man /Munshi who had received Rs.94000 as a bribe and munshi being illegal itself, the patwari failed to perform his duties professionally & is involved in corrupt practices.

Recommendations

Mr. Sajid Mumtaz, Patwari Circle Sheikh Muhammadi committed acts of gross misconduct and failed to discharge his duties professionally be suspended and proceeded against E&D Rules.

(NOTE: THIS REPORT CONSISTS OF 02 PAGES AND EACH PAGE HAS BEEN SIGNED BY THE UNDERSIGNED).

Dated: 20/04/2021.

(Dr. Adil Ayub),
Assistant Commissioner,
Tehsil Mattani, District Peshawar.

As proposed

supdt

UP



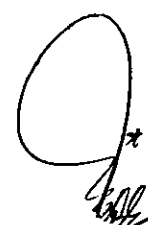
rfi

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7482/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/09/2021	<p>The appeal of Mr. Sajid Mumtaz presented today by Naila Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR.</p>
2-		<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>26/11/21</u>.</p> <p> CHAIRMAN</p>
	26.11.2021	<p>Learned counsel for the appellant present.</p> <p>Learned counsel for the appellant during the course of preliminary hearing pointed out that during pendency of the instant service appeal, appellate order on his departmental appeal dated 17.06.2021, has arrived and is ⁱⁿ possession of the appellant. The same is desired to be made part of the service appeal. Adjourned. To come up for preliminary hearing on 31.01.2022 before S.B.</p> <p> (MIAN MUHAMMAD) MEMBER (E)</p>

31.01.2022

Counsel for the appellant present.

Learned counsel for the appellant submitted an application alongwith amended service appeal which is placed on file. To come up for preliminary hearing on 02.02.2022 before S.B.


(Mian Muhammad)
Member(E)

02.02.2022

Junior of learned counsel for the appellant present. Preliminary arguments could not be heard due to learned Member (Executive) Mian Muhammad is on leave. To come up for preliminary hearing on 07.04.2022 before S.B.


Reader

S.A No. 7482/2021

(SAJID MUMTAZ)

07.04.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak Addl. AG for respondents present and submitted that vide order dated 11.06.2022, the appellant has been removed from service against which he filed departmental appeal on 17.06.2021 and waited 90 days time, whereafter this appeal was filed but during the pendency of the appeal the Commissioner Peshawar Division dismissed the appeal of the appellant constraining the appellant to file amended appeal in Tribunal on 26.11.2021. In the circumstance this appeal seems to be within time and is admitted to full hearing subject to all legal just objections. 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. To come up for reply/comments before the S.B on 02.06.2022.



Chairman

2nd June, 2022

Clerk of counsel for appellant present. Mr. Kabeerullah Khattak, Addl. AG for respondents present.

Respondents have not submitted reply/comments. Last chance is given to respondents for submission of reply/comments on 18.07.2022 before S.B.



Chairman

Rs-400/-
A. H. Hashmi
07/4/22