

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1279/2014

Date of Institution ... 27.10.2014

Date of Decision ... 29.11.2018

Hameedullah Khan, Design Engineer (Tech), O/O The Chief Engineer (Centre),
C&W Department, Peshawar. ... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and
2 others. ... (Respondents)

MR. NOOR MUHAMMAD KHATTAK,
Advocate. ... For appellant

MR. ZIAULLAH,
Deputy District Attorney ... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. HUSSAIN SHAH, ... CHAIRMAN
... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

At the outset, learned counsel for the appellant referred to the impugned order dated 02.06.2014 and stated that a minor penalty of stoppage of two annual increments for two years was imposed upon the appellant. Where-against, the appeal was brought before this tribunal after exhausting the remedy by way of departmental appeal which though remained un-responded. Learned counsel for appellant stated that he was under instructions from appellant not to press the grounds agitated in the memorandum of appeal in case the respondents were willing to implement the contents of findings in the impugned order, in letter and spirit, and resultantly release the increments upon lapse of two (2) years immediately after passing of impugned order i.e. 2016 & 2017. It was also stated that the appellant stood superannuated and retired on 20.03.2018.

2. On the other hand, learned Deputy District Attorney stated that he was under instructions by respondents on the point that the impugned order had already been implemented in stricto sensu.

3. We dispose of instant appeal in the manner that the contents of the impugned order, more particularly as appearing in Para 4 thereof, shall be implemented in letter and spirit and the increments available to the appellant immediately after completion of two years subsequent to the passing of impugned order shall be released to him, if already not done so. File be consigned to the record room.



(HUSSAIN SHAH)
MEMBER(E)



(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
29.11.2018

1279/2014

29.11.2018

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present.

Arguments heard and record perused.

Vide our detailed judgment of today, this appeal is disposed of. Parties are left to bear their respective costs. File be consigned to the record room.



Member




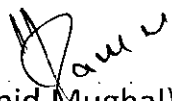
Chairman

Announced:
29.11.2018

30.03.2018


Learned counsel for the appellant and Mr. Usman Ghani, learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 30.05.2018 before D.B.



(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

30.05.2018

Learned counsel for the appellant and Mr. Zia Ullah learned DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 25.07.2018 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

25.07.2018

Since 25.07.2018 has been declared as public holiday on account of General Election. Therefore, case is adjourned on 28.08.2018 before D.B.


READER

28.08.2018

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 16.10.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

16.10.2018

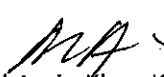
Neither the appellant nor his counsel present. Mr. Muhammad Jan learned Deputy District Attorney present. Adjourned. To come up for arguments on 29.11.2018 before D.B.

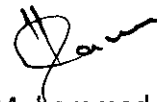

MEMBER


MEMBER

09.08.2017

Clerk of the counsel for appellant present. Mr. Shakoour-ur-Rehman, Superintendent (litigation) alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents present. Clerk of the counsel for appellant seeks adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 24.11.2017 before D.B.


(Muhammad Amin Khan Kundi)
Member (J)


(Muhammad Hamid Mughal)
Member (J)

24.11.2017

Clerk to counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Clerk to counsel for the appellant requested for adjournment as his counsel is not available. Adjourned. To come up for arguments on 02.02.2018 before D.B.



(Gul Zeb Khan)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

02.02.2018

Agent to counsel for the appellant and Mr. Usman Ghani, Learned District Attorney for the respondents present. Agent to counsel for the appellant seeks adjournment as counsel is not available. Adjourned. To come up for arguments on 30.03.2018 Before D.B


(Muhammad Amin Kundi)
MEMBER


(Muhammad Hamid Mughal)
MEMBER

30.08.2016

Counsel for the appellant and Mr. Salim Shah, Supdt. alongwith Usman Ghani Sr. GP for respondents present. To come up for rejoinder and arguments on 14.12.2016 before D.B.


Chairman

14.12.2016

25.04.2017

Clerk to counsel for the appellant and Addl: AG for respondents present. Rejoinder submitted by Abbas Khan for Junior arguments on 25.04.2017. Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant seeks adjournment. To come up for final hearing before the D.B. on 09.08.2017.


(ASHFAQUL TAJ)
MEMBER

MEMBER

(MUHAMMAD AAMIR NAZIR)

25.04.2017

Junior to counsel for the appellant and Abbas Khan, Junior Clerk alongwith Mr. Muhammad Jan, GP for the respondents present. Counsel for the appellant seeks adjournment. To come up for final hearing before the D.B. on 09.08.2017.


Member


Chairman

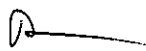
22.09.2015

Counsel for the appellant, M/S Saleem Shah, Supdt. and Irshad Muhammad, SO alongwith Addl. A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 22.12.2015.


Chairman

22.12.2015

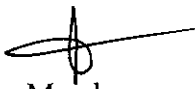
Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for rejoinder on 24.5.2016.



Member


Member

24.5.2016

Agent to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Rejoinder not submitted requested for time to file rejoinder to come up for rejoinder/arguments on 30.8.2016.


Member


Member

3

21.01.2015

Clerk of counsel for the appellant present, and requested for adjournment. Request accepted. To come up for preliminary hearing on 27.02.2015.



Member

27.02.2015

Counsel for the appellant present. Learned counsel for the appellant argued that vide impugned order dated 02.06.2014 two annual increments for indefinite period were withheld against which departmental appeal was preferred on 17.07.2014 which was not responded within the statutory period and hence the present service appeal on 27.10.2014.

That no proper enquiry was conducted.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 12.06.2015 before S.B.

Appellant Deposited Security & Process Fee



Chairman

5



12.06.2015

Counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 22.9.2015 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 1279/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	27/10/2014	<p>The appeal of Mr. Hameedullah Khan presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	29-10-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>21-1-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO 1279 /2014

HAMEEDULLAH KHAN VS C & W DEPARTMENT

INDEX

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APPELLANT

THROUGH:



NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 1279 /2014

S.W.F. Peshawar
No. 315
27-10-2014

Mr. Hameedullah Khan, Design Engineer (Tech),
O/O the Chief Engineer (Centre), C&W Department Peshawar

..... **Appellant**

VERSUS

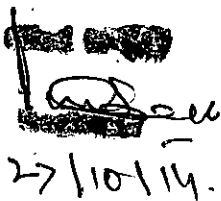
- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Communication & Works Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.

..... **Respondents**

APPEAL UNDER SECTION- 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED 02-06-2014
WHEREBY PENALTY OF STOPPAGE OF TWO ANNUAL
INCREMENTS FOR TWO YEARS WAS IMPOSED ON THE
APPELLANT WITHOUT CONDUCTING REGULAR
INQUIRY AND AGAINST NO ACTION TAKEN ON THE
DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE
STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 02-06-2014 may very kindly be set aside and the respondents may very kindly be directed to release the two annual increments of the appellant with all back benefits. Any other remedy which this august Tribunal deems fit may also be awarded in favor of the appellant.


27/10/14.

R/SHEWETH:
ON FACTS:

- 1- That appellant is the employee of C&W Department and is serving the said Department for the last 27 years quite efficiently and up to the entire satisfaction of his superiors.

- 2- That appellant while working as design engineer (Tech) at the office of Chief Engineer (Centre) C&W Department a show cause notice vide dated 03.04.2014 was issued to the appellant in which it was alleged that appellant while working as XEN (OPS) C&W Division Shangla made advance payment amounting to Rs. 647 million to the contractor without enacting of work in 2006 which was completed by the contractor in 2013. Copy of the show cause Notice is attached as annexure **A.**
- 3- That in response to the said show Cause notice dated 03.4.2014 the appellant submitted his reply vide dated 10.4.2014 in which the appellant denied the allegation which was leveled against him and explained the position along with documentary proofs and justification. Copy of the reply to show Cause Notice is attached as annexure **B.**
- 4- That astonishingly vide order dated 02.06.2014 communicated to appellant on 09.07.2014 the C&W Department imposed stoppage of two annual increments on the appellant without conducting specifying any period and without conducting regular enquiry in the matter. Copy of the order is attached as annexure **C.**
- 5- That appellant feeling aggrieved from the order dated 02.06.2014 filed Departmental appeal before respondent No.1 vide dated 17-07-2014 but no reply has been received so far. Hence the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure **D.**

GROUND:

- A- That the impugned order dated 02.6.2014 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That no charge sheet and statement of allegation has been served on the appellant by the respondents before issuing the impugned order dated 2.6.2014.
- D- That no chance of personal hearing/defense has been given to the appellant before issuing the impugned order dated 02.06.2014.

- E- That no period has been specified by the respondent Department in the impugned order dated 02.06.2014, which is against the law and prevailing rules.
- F- That the impugned order dated 02.06.2014 has been issued the incompetent authority therefore the same is void ab initio in the eyes of law.
- G- That inspite of clear justification and documentary proofs provided by the appellant, the concerned authorities of the respondent Department issued the impugned order dated 02.06.2014.
- H- That no regular enquiry has been conducted in the matter before issuing the impugned order dated 02.06.2014 which is as per Supreme Court judgments is necessary in punitive actions against the civil servant.
- I- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 20.10.2014

APPELLANT


HAMEED ULLAH KHAN

THROUGH:


**NOOR MOHAMMAD KHATTAK
ADVOCATE**



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/8-25/2013
Dated Peshawar, the April 03, 2014

A - 4

TO

Engr. Hamidullah Khan Khalil ✓
the then XEN C&W Division Shangla
Now working as Design Engineer
O/O Chief Engineer (Centre)
C&W Peshawar

SUBJECT: INQUIRY

I am directed to refer to the subject noted above and to enclose herewith two copies of the show cause Notice containing tentative minor penalty of "stoppage of two annual increments for two years" alongwith inquiry report conducted by inquiry committee comprising of Engr. Ejaz Hussain Ansari (BS-19) Superintending Engineer C&W Circle Abbottabad and Engr. Abdul Sami (BS-19) Superintending Engineer PHE Department, Peshawar and to state that the 2ND copy of the show cause Notice may be returned to this Department after having signed as a token of receipt immediately.

2. You are directed to submit your reply, if any, **within 7 days of the delivery of this letter**, otherwise, it will be presumed that you have nothing to put in your defence and ex-party action will follow.

3. You are further directed to intimate whether you desire to be heard in person or otherwise.

(USMAN JAN)

SECTION OFFICER (ESTT)

Endst even No. & date

Copy forwarded to PS to Secretary C&W Department, Peshawar

ATTESTED

SECTION OFFICER (ESTT)

19

SHOW CAUSE NOTICE

5

I, Pervez Khattak Chief Minister Khyber Pakhtunkhwa as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Engr. Hamidullah Khan, Executive Engineer (BS-18) C&W Department; presently working as Design Engineer O/O Chief Engineer (Centre) C&W Peshawar as follows.

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry committee for which you were given opportunity of hearing vide dated 30.01.2014; and
- ii) On going through the findings and recommendations of the inquiry committee, the material on record and other connected papers including your defence before the inquiry committee;

I am satisfied that you while posted as XEN (OPS) C&W Division Shangla committed the following acts/omissions in the scheme "Construction of 03 Nos Union Council Offices in District Shangla SH: U/C office Dandai, specified in Rule 3 of the said rules:

You made advance payment amounting to Rs.0.647 million to the contractor without executing of work in 2006, which was completed by the contractor in 2013, thus it confirmed that you violated the Rule 2.98 of B&R Code, besides without fulfillment of codal formalities i.e. technical sanction violating Rule 2.82 B&R Code.

3. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of "Stoppage of two annual increments for two years." under Rule 4 of the said rules.

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

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

6. A copy of the findings of the inquiry committee is enclosed.

ATTESTED

[Handwritten signature]

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa

01/03/2014

B - (6)

The Honorable,
Chief Minister Khyber Pakhtunkhwa.

Subject: INQUIRY REGARDING IRREGULARITIES IN THE SCHEME TITLED "CONSTRUCTION OF 03 NOS UNION COUNCIL OFFICES IN DISTRICT SHANGLA SUB HEAD UNION COUNCIL OFFICE DANDAI".

Respected Sir

1. In response to show cause notice served upon me vide the Secretary, C&W Department memo No.SOE/C&WD/8-25/2013 dated 03 April, 2014, I hereby submit and clarify the position:-
 - (i) That I was posted Assistant Engineer (Roads) at Shangla and was assigned function of Executive Engineer, C&W Division Shangla in April, 2006 and remained there upto 23-07-2007.
 - (ii) That I had paid Rs 5,02,532/- through 3rd and final bill as the work actually executed at site, whereas my predecessors, have paid Rs 4,97,469/- in 5/2005 and 06/2005, an year prior of my posting.
 - (iii) That I had not made any advance payment Rs 0.647(M) and the reported amount is thus incorrect.
 - (iv) That the total expenditure on this sub work upto the end of June 2006 was Rs 10,00,000/- (4,97,469+5,02,532), which is also confirmed by the inquiry committee In its findings.
2. In this state, I will call your kind attention to the point that the Inquiry Committee, failed to visit the site in person. They based their findings / reports on the information orally discussed in sitting at office.
3. In their findings the inquiry committee themselves reported that the work has been found completed and since handed over to client authority (LG & RDD), then there seems no justification to penalize me for Stoppage of Two increments for Two Years as recommended by the inquiry committee.
4. I pray for the exoneration on this account. I may be given a chance of personal hearing too.

Sincerely Yours

ATTESTED

[Handwritten signature]

[Handwritten signature]
(HAMIDULLAH KHAN KHALIL)
DESIGN ENGINEER (TECH)
O/o Chief Engineer (Centre),
C&W Department, Peshawar

[Handwritten signature]
11-4-14
Sd/-



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

C-7

Dated Peshawar the June 02, 2014

ORDER:

No.SOE/C&WD//8-25/2013: WHEREAS, the following officers/official was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 for the alleged irregularities in the scheme "Construction of 03 Nos Union Council Offices in District Shangla SH: U/C office Dandai":

- i. Engr. Hamidullah Khan Khan
the then XEN C&W Division Shangla
now Design Engineer O/O CE (Centre)
C&W Peshawar
- ii. Mr. Noor Rehman
SDO (OPS) C&W Sub Division Shangla
- iii. Mr. Tariq Hussain
the then Sub Engineer C&W Division Shangla
now Sub Engineer O/O XEN Building Division No.I Peshawar

2. AND WHEREAS, for the said act of misconduct they were served charge sheets/ statement of allegations.

3. AND WHEREAS, an inquiry committee comprising of Engr. Ejaz Hussain Ansari (BS-19) Superintending Engineer C&W Circle Abbottabad and Engr. Abdul Sami (BS-19) Superintending Engineer PHE Department, Peshawar were appointed, who submitted the inquiry report.

4. NOW THEREFORE, the Competent Authority after having considered the charges, material on record, inquiry report of the inquiry committee, explanation of the officers/official concerned, in exercise of the powers under Rule-14(5)(ii) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the minor penalty of "stoppage of two annual increments for two years" upon the aforementioned officers/official.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (North) C&W Peshawar
3. Superintending Engineer C&W Circle, Swat/Peshawar
4. Executive Engineer C&W Division Shangla
5. Executive Engineer Building Division No.I, Peshawar
6. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
7. PS to Secretary Establishment Department Khyber Pakhtunkhwa, Peshawar
8. District Accounts Officer Shangla
9. PS to Secretary C&W Department Peshawar
10. Officers/Official concerned
11. Office order File/Personal File

(USMAN JAN)
SECTION OFFICER (Estb)

Received on
9-7-14
MWS

ATTESTED

To,

**THE CHIEF SECRETARY,
KHYBER PAKHTUNKHWA, PESHAWAR**

D - 8

**DEPARTMENTAL APPEAL AGAINST THE ORDER
DATED 2/6/2014 COMMUNICATED TO THE
APPELLANT ON 9/7/2014 WHEREBY PENULTY OF
STOPPAGE OF TWO ANNUAL INCREMENTS FOR
TWO YEARS WAS IMPOSED ON THE APPELLANT
WITHOUT CONDUCTING REGULAR INQUIRY**

R/SHEWETH:

ON FACTS:

- 1- That appellant is the employee of C&W Department and is serving the said Department for the last 27 years quite efficiently and up to the entire satisfaction of his superiors.
- 2- That appellant while working as design engineer at the office of Chief Engineer (Centre) C&W Department a show cause notice vide dated 01.04.2014 was issued to the appellant in which it was alleged that appellant while working as XEN (OPS) C&W Division Shangla made advance payment amounting to Rs. 647 million to the contractor without enacting of work in 2006 which was completed by the contractor in 2013.
- 3- That in response to the said show cause notice dated 01.4.2014 the appellant submitted his reply vide dated 10.4.2014 in which the appellant denied the allegation which was leveled against him and explained the position along with documentary proofs and justification.
- 4- That astonishingly vide order dated 02.06.2014 communicated to appellant on 09.07.2014 the C&W Department imposed stoppage of two annual increments on the appellant without conducting specifying ay period and without conducting regular enquiry in the matter.
- 5- That appellant feeling aggrieved from the order dated 02.06.2014 and having no other remedy preferred this Departmental appeal before your good self on the following grounds amongst the others.

GROUND:

- A- That the impugned order dated 02.6.2014 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.


ATTESTED




- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That no chance of personal hearing/defense has been given to the appellant before issuing the impugned order dated 02.06.2014.
- D- That no period has been specified by the respondent Department in the impugned order dated 02.06.2014, which is against the law and prevailing rules.
- E- That the impugned order dated 02.06.2014 has been issued the incompetent authority therefore the same is void ab initio in the eyes of law.
- F- That inspite of clear justification and documentary proofs provide by the appellant to the concerned authorities the respondent Department issued the impugned order dated 02.06.2014.
- G- That no regular enquiry has been conducted in the matter before issuing the impugned order dated 02.06.2014.

It is therefore most humbly prayed that on acceptance of this Departmental appeal the impugned order dated 02.06.2014 may very kindly be set aside and release the two annual increments of the appellant with all back benefits. Any other remedy which your good self deems fit may also be awarded in favor of the appellant.

Dated: 17.07.2014

APPELLANT

ENGR: HAMEED ULLAH KHAN KHALIL
DESIGN ENGINEER
O/O the Chief Engineer (Centre)
C&W Department Peshawar

ATTESTED


BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
SERVICE APPEAL NO. 1279 OF 2014

Hamidullah Khan, Design Engineer
O/O CE (Centre) C&W Peshawar

--- Appellant

Versus

- | | | |
|--|-----|-------------|
| 1. Govt of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar | --- | Respondents |
| 2. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar | | |
| 3. Secretary to Govt of Khyber Pakhtunkhwa
Finance Department, Peshawar | | |

Joint Parawise Comments on behalf of Respondents No. 1 to 3

Respectfully Sheweth

Preliminary Objections

1. That the appeal is not maintainable in its present form.
2. That the appeal is premature.
3. That the appellant has no cause of action and locus standi.
4. That the appeal is time barred.
5. That the appeal is liable to be rejected on ground of non-joinder of necessary and mis-joinder of unnecessary parties
6. That the appellant is estopped by his own conduct to file the instant appeal

Facts

1. As per record
2. Incorrect, on the complaint of President ANP District Shangla, an inquiry regarding "Irregularities in the scheme titled "Construction of 03 Nos Union Councils in District Shangla SH: Union Council Office Dandai" was conducted against the officers/officials of C&W Department, including the appellant. Formal inquiry was conducted through inquiry committee under Khyber Pakhtunkhwa E&D Rules, 2011. Proper charge sheets/SOAs were served upon the officers/officials including the appellant (**Annex-I**). The inquiry committee submitted his report (**Annex-II**), mentioned that the involved officers/officials including the appellant had made advance payment for the work which was shown completed on 20.06.2006 but actually got completed in between 30.08.2012 and 28.06.2013 without fulfillment of codal formalities and recommended a minor penalty of "stoppage of 02 increments for 02 years".
3. Incorrect. show cause notices containing tentative minor penalty of "stoppage of 02 increments for 02 years", after completing the codal formalities were served upon the responsible officers/ officials including the appellant on 03.04.2014 with the direction to submit their replies (**Annex-III**). In compliance the appellant submitted his reply (**Annex-IV**). The reply to the show cause notice was examined and as there was no weight-age in his reply, therefore, the minor penalty of "stoppage of 02 annual increments for 02 years" already imposed tentatively upon the involved officers/officials, including the appellant was confirmed.
4. Incorrect. The Competent Authority after having considered the charges mentioned in record, inquiry report of the inquiry committee, personal hearing of the officers/ officials, including the appellant in exercise of the power under Khyber Pakhtunkhwa E&D Rules, 2011 imposed the minor penalty of "stoppage of 02 annual increment for 02 years" upon the involved officers/officials including the appellant on 02.06.2014 (**Annex-V**).

5. Correct to the extent, that the appellant was informed to address the review petition to appellant authority (Chief Minister) instead of (Chief Secretary) in light of appeal rules, but no appeal/review petition received to the Department.

Grounds

- A. Incorrect, the charges leveled against the appellant were properly inquired and were proved against him as per inquiry report of the inquiry committee and impugned order is in accordance with law.
- B. Incorrect, there is no mala-fide, no discrimination and no violation of rights of the appellant. The instant inquiry was processed according to law under existing rules and regulations. Moreover, all the process of inquiry proceedings was conducted against the appellant according to law and rules.
- C. Incorrect, as explained in para-2 of the facts
- D. Incorrect, all the accused officers/officials including the appellant were called for personal hearing on 16.05.2014, an opportunity of personal hearing was given and none of the accused stated anything new in their defence and reiterated their earlier replies.
- E. Incorrect, the appellant is very much involved in the irregularity as per the inquiry and all the matters were carried out in accordance with relevant rules and law, and with the approval of the Competent Authority.
- F. Incorrect, as explained in Para-3 & 4 of the facts.
- G. Incorrect and mis-conceived all relevant rules have been followed and action taken are within the prescribed law as explained in para-3 of the facts.
- H. Incorrect, as explained in Para-3 & 4 of the facts.
- I. The Respondents would like to seek permission of this Hon'able Tribunal to produce more grounds during the time of arguments.

In view of the above, it is humbly prayed that the instant appeal may kindly be dismissed with cost.

Secretary to Govt of
Khyber Pakhtunkhwa
C&V Department
(Respondents No. 1 & 2)

Secretary to Govt of
Khyber Pakhtunkhwa
Finance Department
(Respondent No. 3)

Annex: I

CHARGE SHEET

Whereas, I, Pervez Khattak Chief Minister Khyber Pakhtunkhwa, as Competent Authority, charge you Engr. Hamidullah Khan, Executive Engineer (BS-18) C&W Department; presently working as Design Engineer O/O Chief Engineer (Centre) C&W Peshawar.

"That you while posted as XEN C&W Division Shangla committed the following irregularities in the scheme "Construction of 03 Nos Union Council Offices in District Shangla SH: U/C office Dandai":

You made advance payment amounting to Rs.0.647 million to the contractor without executing of work in 2006, which was completed by the contractor in 2013, thus it confirmed that you violated the Rule 2.98 of B&R Code"

2. By reason of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 ibid.
3. You are, therefore, required to submit your written defence within ten (10) days of the receipt of this charge sheet to the Inquiry Officer/Committee.
4. Your written defence, if any, should reach the Inquiry Officer/ Committee within specified period, failing which it shall be presumed that you have no defence to make and in that case exparte action shall be taken against you.
5. The Statement of Allegations is enclosed.

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa

14 /10/2013

3 Dept
PH
Dept

DISCIPLINARY ACTION

I, Pervez Khattak Chief Minister Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Engr. Hamidullah Khan, Executive Engineer (BS-18) C&W Department; presently working as Design Engineer O/O Chief Engineer (Centre) C&W Peshawar has rendered himself liable to be proceeded against, as he committed the following acts/omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011:

STATEMENT OF ALLEGATIONS

"That he while posted as XEN C&W Division Shangla committed the following irregularities in the scheme "Construction of 03 Nos Union Council Offices in District Shangla SH: U/C office Dandai":

He made advance payment amounting to Rs.0.647 million to the contractor without executing of work in 2006, which was completed by the contractor in 2013, thus it confirmed that he violated the Rule 2.98 of B&R Code"

2. For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry officer/inquiry committee, consisting of the following, is constituted under rule 10(1)(a) of the ibid rules:-

- i. Engr. Ejaz Hussain Ansari SE (BS-19) C&W Dept
- ii. Engr. Abdul Sami Director P&M (BS-19) PHE Dept.

3. The Inquiry Officer/Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the Inquiry Officer/ Inquiry Committee.

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa

INQUIRY REPORT

Subject:- INQUIRY REGARDING IRREGULARITIES IN THE SCHEME TITLED "CONSTRUCTION OF 03 NOS UNION COUNCIL OFFICES IN DISTRICT SHANGLA SUB HEAD UNION COUNCIL OFFICE DANDAI".

1. ORDER OF INQUIRY:

The Section Officer (Estt) Communication & Works Department Khyber Pakhtunkhwa vide letter No. SOE/C&WD/8-25/2013 dated 13-11-2013 intimated that the competent authority (Chief Minister) had appointed Engr. Ejaz Hussain Ansari (BS-19) Superintending Engineer C&W Circle Abbottabad and Engr. Abdus Sami Superintending Engineer PHE Circle Peshawar as members of the Inquiry Committee to conduct formal inquiry under Khyber Pakhtunkhwa Govt. servants (Efficiency & Discipline) Rules 2011 in the above mentioned case (Annex-I).

2. PREAMBLE:

- i. The PC-I/cost estimate of scheme titled "Construction of 3 Nos. Union Council Offices in District Shangla Sub Head Union Council office Dandai" was approved by the Departmental Development Committee (DDC) Shangla in its meeting held on 04-09-2004 at a cost of Rs. 1.00 million. The DCO Shangla issued administrative approval vide letter No. 1549-55/DDC/DCO/Shangla dated 28-09-2004 (Annex-II). The work was advertised in newspapers for opening of tender on 18-02-2004, while February 20th, 21st as alternate dates of opening tender (Annex-III). While actually tender was processed on 22-12-2004 (Annex-IV). Thirty three contractors participated in the tendering process. The contract was awarded to lowest bidder namely M/S Haji Jabaroot & Sons Govt. contractor at a rate 17.33 % below vide Executive Engineer C&W Division Shangla letter No. 116/4-M dated 03-01-2005 (Annex-V).

ii. The Executive Engineer C&W Division Shangla vide 3rd & final bill dated 29-06-2006 paid Rs. 502532/- making the total payment against the scheme as Rs. 1000000/- (Annex-VI). On a complaint, regarding incomplete status of Union Council office Dandai, received from the Chief Minister's Secretariat (Annex-VII) the Executive Engineer C&W Division Shangla visited the site and submitted inspection report vide letter No.1337/6-R dated 30-08-2012(Annex-VIII). The report depicts that though complete payment amounting to Rs. 1.00 million has been made but building was completed only upto roof level. It was also reported that unclaimed security deposit balances of Rs. 4.229 million as pointed out by audit vide advance Para No.17/2011-12, including Rs. 0.100 million for Union Council office Dandai was paid to Govt. Revenue vide Transfer Entry order (TEO) No. 2 for the month of 3/2012 (Annex-IX).

3. PROCEEDING :

i. In order to proceed with the inquiry all the three accused officers/official i.e. Engr. Hamidullah Khan Khalil the then Executive Engineer C&W Division Shangla, (presently working as Design Engineer (BS-18) O/O CE (Centre) C&W Peshawar) Mr. Noor Rehman the then SDO (OPS) C&W Division Shangla (presently working as Assistant Engineer (OPS) O/O CE (Centre) C&W Peshawar and Mr. Tariq Hussain the then Sub Engineer C&W Division Shangla (presently working as Sub Engineer O/O Executive Engineer C&W Division No.1 Peshawar) were served with charge sheets and statement of allegations duly signed by the competent authority (Chief Minister) with the direction to furnish their written defense within ten (10) days. The Chief Engineer (North) C&W Peshawar was simultaneously requested to provide the following essential documents: (1) Brief about the project 2) PC-II/Cost estimate with Administrative Approval letter (3) News Paper cutting showing NIT/advertisement (4) Tender documents with bids/tender register (5) Contract agreement & Work order (6) Details of funds released (7) Detailed cost estimate with Technical Sanction letter (8) Measurement books containing measurements (9) Vouchers with final bill & PC-IV (10) Monthly Account of all payments (11) Handing/Taking over certificate (12) Any other relevant information like complaint, audit report etc.

- ii. The Section Officer (Estt) Communication & Works Department Khyber Pakhtunkhwa vide letter No. SOE/C&WD/8-25/2013 dated 05-12-2013 (Annex-X) endorsed Executive Engineer C&W Division Shangla letter No. 1337/6-R dated 30-08-2012 and letter No. 2692/6-R dated 28-06-2013, wherein it was informed that the scheme was re-visited on 26-06-2013 and the said building was found completed and the same will be handed over to client i.e. LG&RD District Shangla.
- iii. The Executive Engineer C&W Division Shangla, initially despite of repeated reminders and personal contacts with Chief Engineer North C&W and Section Officer (E) C&W, provided only copy of tender forms, illegible copy of work order, contract agreement, MB & vouchers vide his letter No. 628/6-R dated 26-12-2013 received on 3-1-2014. In the absence of PC-I/cost estimate it was not possible to compare the work done/paid with approved quantities. Details of reportedly advance payment of Rs. 0.647 million was also not provided. The concerned Executive Engineer was also asked to attend meeting with Inquiry Committee to present nature of complaint, his field visit and to discuss statement of accused officer/officials but he did not turned up for the same.
- iv. After issuance of reminder the Executive Engineer C&W Division Shangla, vide his letter No. 704/6-R dated 15-01-2014 submitted a report clarifying that copy of PC-I/Cost estimate and detailed cost estimate with TS letter are not traceable. As per brief provided by incumbent Executive Engineer, Mr. M. Pervez the then Executive Engineer, Mr. Noor Rehman SDO & Mr. Nasrullah Sub Engineer had paid 1st & 2nd Running Bill amounting to Rs. 253203/- & Rs. 244265/- vide Voucher No. 4-B dated 05-05-2005 and Voucher No. 43-B dated 20-06-2005 respectively. It was further informed by the present Executive Engineer that scheme has now been completed and handed over to LG&RDD District Shangla on 30-12-2013 (Annex-XI).
- v. The Executive Engineer C&W Division Shangla also provided a copy of letter No. 1719/6-R dated 02-01-2013 addressed to Deputy Secretary (Technical) C&W wherein it was reported that the building was constructed up to roof level as per item No. 1 to 6 and 13, 14 which comes to Rs. 352660/- (Annex-XII).

- vi. The charges against the Executive Engineer, SDO & Sub Engineer were identical. All the three accused officers/official submitted their replies to the charge sheet & statement of allegations. The detail is in following table:

Brief of Charges/Allegations against Executive Engineer, SDO & Sub Engineer	Accused Statement/Replies (in brief) submitted by Executive Engineer (Annex-XIII), SDO (Annex-XIV)& Sub Engineer (Annex-XV)
<p>You made advance payment amounting to Rs. 0.647 million to the contractor without executing the work in 2006, which was completed by the contractor in 2013, thus it confirmed that you violated the Rule 2.98 of the B&R Code.</p>	<p>Executive Engineer & Sub Engineer: Prior to my posting two running bills amount to Rs. 253203/- & Rs. 244265/- were paid, while I authorized payment of Rs. 502532/- thus the statement about payment of Rs. 0.647 million is incorrect. The same amount was intimated in progress report in June 2006. The Sub Engineer stated that till his posting upto Aug 2008 no complaint was received and building was intact. Furthermore due to dispute between the original contractor & petty contractor, the petty contractor dismantled the roof, joinery etc. from the building. After settlement of dispute the removed items were re-fixed which seems to be that work completed in 2013. Work completed in all respect and no loss to Govt. exchequer.</p> <p>SDO: I have completed the said work in stipulated time and deliver it to Govt. exchequer in safe manner. No complaint registered till July 2009 i.e. till posting in Shangla. No advance payment of Rs. 0.647 million was made. Rather due to dispute between the original contractor & petty contractor (the land owner), the petty contractor re-open the CG/PGI roof, doors and windows etc. from the newly constructed building. Presently scheme is fully completed handed over and functioned by District Government. Although work such as external water supply, water tank, tiles bathroom etc. has been completed by the petty contractor on his own risk and cost and no payment made to him. Therefore no loss of Govt. money involved/reported.</p>

- vii. Keeping in view the replies of accused officers the Executive Engineer C&W Division Shangla was directly asked to provide the requisite record and also appear before the Inquiry Committee to record his statement about the factual position.
- viii. All the three accused officers/official appeared before the Inquiry Committee for personnel hearing on 30-01-2014. The personnel hearing proceedings was conducted in the presence of incumbent Executive Engineer C&W Division Shangla. All the three accused officers/officials Engr. Hamidullah Khan Khalil (the then Executive Engineer C&W Division Shangla) Mr. Noor Rehman (the then SDO (OPS) C&W Division Shangla) and Mr. Tariq Hussain (the then Sub Engineer C&W Division Shangla) repeated their written defense and stated that the payment was made against the work done and the scheme stood completed on 30-06-2006 and no advance payment is involved. Furthermore, they stated that till their posting upto 2007, 2009 and 2008 respectively no complaint was received and later on due to dispute between original contractor & petty contractor the roof trusses, CGI sheets and joinery etc. were removed by the petty contractor. Presently the same have been reinstalled and work stands completed. However, they failed to clarify that if there was no short coming/complaint, till their posting in 2007, 2008 & upto 2009, then why scheme was not handed over to LG&RD Shangla during that period. They were also unable to reply that whether any legal action including FIR etc was lodged against the petty contractor for his illegal activities i.e. damaging Govt. property through dismantling roof & joinery etc. They also show their inability/non awareness regarding provision of missing documents including cost estimate, detailed cost estimate, time extension etc. The accused Executive Engineer also admitted that after initiation of inquiry he had mainly/vigorously followed the case for completion and handing over the building while SDO & Sub Engineer played no major role.

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3. FINDINGS

- i. As per record entry in MB # 63-S at P-6 of Mr. Nasrullah Sub Engineer work was commenced on 10-01-2005 (Annex-XVI). The work order revealed that the completion time was 30-06-2005 (Annex V) whereas the record entry in MB# 77-S, P-89 shows that the work completed on 20-06-2006 (Annex-XVII) and final payment passed/released vide voucher # 31-B dated 23-06-2006 (Annex-XVIII).
- ii. In light of the Executive Engineer C&W Division Shangla, report at Annex-XII the relevant vouchers were scrutinized and the analysis of reportedly actual work done at site upto roof level for eight items (i.e. 1-6 and 13, 14) upto 30-08-2012, is presented as follows:

Description of item	Paid vide Ist R/B (Annex-XIX)	Paid vide 2nd R/B (Annex-XX)	Paid vide 3rd bill (Annex-XVIII)	Total
Excavation in foundation	4684.81			4684.81
PCC 1:4:8	35088.20			35088.20
Masonry 1:8 foundation	92086.80			92086.80
Steel reinforcement	25665.00	25399.41		51064.41
RCC 1:2:4	41132.85	39340.29		80473.14
Masonry 1:6 S/Structure	107624.32	28482.92		136107.24
Earth filling			4322.76	4322.76
PCC 1:4:8 floor			23002.47	23002.47
Total	306281.98	93222.62	27325.23	426829.83
D/d 17.33%	53078.66	16155.48	4735.46	73969.61
Net Total	253203.31	77067.13	22589.76	352860.22

Analysis of reportedly Advance Paid

Description of item	Paid vide Ist R/B	Paid vide 2nd R/B	Paid vide 3rd bill	Total
Total Payment	253023.31	244265.47	502532.00	1000000.0
Advance payment	0.00	167198.34	479942.24	647140.58
Responsible officers/officials authorized payment		Mr. M. Pervez Xen Mr. Noor Rehman SDO Mr. Nasrullah Sub Engineer	Mr. Hamidullah Xen Mr. Noor Rehman SDO Mr. Tariq Hussain Sub Engineer	352860.22

- iii. As per statement of Executive Engineer & Sub Engineer till their posting in Shangla upto July 2009 & August 2008 there was no complaint about the project. The officer/official did not explained that if there was no problem then why building was not handed over to client i.e. LG&RDD.
- iv. The accused officers submitted that due to dispute between the original contractor & petty contractor (the land owner), the petty contractor re-open the CGI/PGI roof, doors and windows etc. from the newly constructed building. The petty contractor has no legal status and if he removed these items then why legal action for damaging Govt. property was not initiated against the petty contractor or any other person who removed the roof, trusses, CGI sheets & joinery etc.
- v. If the said building, as stated was completed in time, was handed over to the LG&RDD in time then this complication was not happened. The Executive Engineer C&W Division Shangla, Mr. Fazal Wahab, who submitted two reports regarding field visit has also not mentioned/indicated that there were any traces of removal of joinery or trusses etc. rather he stated that work was completed only upto roof level with stone masonry and nothing else.


4. CONCLUSIONS


- i. The complaint is true to the extent that Engr. Hamidullah Khan Khalil (the then Executive Engineer C&W Division Shangla) presently working as Design Engineer (BS-18) O/o CE (Centre) C&W Peshawar, Mr. Noor Rehman (the then SDO (OPS) C&W Division Shangla) presently working as Assistant Engineer (OPS) O/O CE (Centre) C&W Peshawar and Mr. Tariq Hussain (the then Sub Engineer C&W Division Shangla) presently working as Sub Engineer O/O Executive Engineer C&W Division No.1 Peshawar have shown negligence in performance of their duties and are found guilty for authorizing/releasing advance payment of Rs. 479942/- for the work which was not actually done at site by 30-06-2006.

- ii. On the basis of provided record, in addition to above named three accused officers/officials, Mr. Muhammad Pervez (the then Executive Engineer C&W Division Shangla and Mr. Nasrullah the then Sub Engineer C&W Shangla (their present posting to be determined) are also responsible for advance payment of Rs. 167198/- However, since these two officer/official were not nominated in the charge sheet therefore Inquiry Committee at its own cannot charged them or make any recommendations against them.
- iii. Presently the scheme has been completed and stands handed over to LG&RDD Shangla on 30-12-2013 by the efforts of accused officers/officials. Hence there is no loss to Govt. Exchequer. However, apparently if the discrepancy was not pointed out then probably scheme could not have been completed.

5. RECOMMENDATIONS

Engr. Hamidullah Khan Khalil (the then Executive Engineer C&W Division Shangla) presently working as Design Engineer (BS-18) O/o CE (Centre) C&W Peshawar, Mr. Noor Rehman (the then SDO (OPS) C&W Division Shangla) presently working as Assistant Engineer (OPS) O/O CE (Centre) C&W Peshawar and Mr. Tariq Hussain (the then Sub Engineer C&W Division Shangla) presently working as Sub Engineer O/O Executive Engineer C&W Division No.1 Peshawar have made advance payment for the work which was shown completed on 20-06-2006 but actually got completed in period between 30-08-2012 and 28-06-2013 and also without fulfillment of codal formalities i.e. Technical sanction, thus violating the GFR and had committed mistake and made liable themselves to minor penalty under Khyber Pakhtunkhwa Govt. servants (Efficiency & Disciplinary) Rules 2011. The Committee, therefore, recommends that annual increments of Engr. Hamidullah Khan Khalil Executive Engineer, Mr. Noor Rehman SDO (OPS) and Mr. Tariq Hussain Sub Engineer, may be with held for two years.


(ENGR. EJAZ HUSSAIN ANSARI)
Member Inquiry Committee
SUPERINTENDING ENGINEER
C&W Circle Abbottabad


(ENGR. ABDUS SAMI)
Member Inquiry Committee
SUPERINTENDING ENGINEER
PHE Circle Peshawar.



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/8-25/2013
Dated Peshawar, the April 03, 2014

TO

Engr. Hamidullah Khan Khalil
the then XEN C&W Division Shangla
Now working as Design Engineer
O/O Chief Engineer (Centre)
C&W Peshawar

[Handwritten signature]
07/04/14

SUBJECT: INQUIRY

I am directed to refer to the subject noted above and to enclose herewith two copies of the show cause Notice containing tentative minor penalty of "stoppage of two annual increments for two years" alongwith inquiry report conducted by inquiry committee comprising of Engr. Ejaz Hussain Ansari (BS-19) Superintending Engineer C&W Circle Abbottabad and Engr. Abdul Sami (BS-19) Superintending Engineer PHE Department, Peshawar and to state that the 2ND copy of the show cause Notice may be returned to this Department after having signed as a token of receipt immediately.

2. You are directed to submit your reply, if any, within 7 days of the delivery of this letter, otherwise, it will be presumed that you have nothing to put in your defence and ex-party action will follow.

3. You are further directed to intimate whether you desire to be heard in person or otherwise.

[Handwritten signature]
(USMAN JAN)
SECTION OFFICER (ESTT)

Endst even No. & date

Copy forwarded to PS to Secretary C&W Department, Peshawar

[Handwritten signature]
SECTION OFFICER (ESTT)

Annex III

SHOW CAUSE NOTICE

I, Pervez Khattak Chief Minister Khyber Pakhtunkhwa as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Engr. Hamidullah Khan, Executive Engineer (BS-18) C&W Department; presently working as Design Engineer O/O Chief Engineer (Centre) C&W Peshawar as follows.

- 1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry committee for which you were given opportunity of hearing vide dated 30.01.2014; and
- ii) On going through the findings and recommendations of the inquiry committee, the material on record and other connected papers including your defence before the inquiry committee;

I am satisfied that you while posted as XEN (OPS) C&W Division Shangla committed the following acts/omissions in the scheme "Construction of 03 Nos Union Council Offices in District Shangla SH: U/C office Dandai, specified in Rule 3 of the said rules:

You made advance payment amounting to Rs.0.647 million to the contractor without executing of work in 2006, which was completed by the contractor in 2013, thus it confirmed that you violated the Rule 2.98 of B&R Code, besides without fulfillment of codal formalities i.e. technical sanction violating Rule 2.82 B&R Code.

3. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of "Stoppage of two annual increments for two years." under Rule 4 of the said rules.

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

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

6. A copy of the findings of the inquiry committee is enclosed.

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa

01/04/2014

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no
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No. PF 11/2014

Diary No: 7078
Date: 23/4/14
Secretary C&W Dept
Khyber Pakhtunkhwa

Dated: 10 /04/ 2014

To

The Honorable,
Chief Minister Khyber Pakhtunkhwa,Through Proper Chanel.

Subject:

INQUIRY REGARDING IRREGULARITIES IN THE SCHEME TITLED
"CONSTRUCTION OF 03 NOS UNION COUNCIL OFFICES IN DISTRICT
SHANGLA SUB HEAD UNION COUNCIL OFFICE DANDA".

Respected Sir

1. In response to show cause notice served upon me vide the Secretary, C&W Department memo No.SOE/C&WD/8-25/2013 dated 03 April, 2014, I hereby submit and clarify the position:-
 - (i) That I was posted Assistant Engineer (Roads) at Shangla and was assigned function of Executive Engineer, C&W Division Shangla in April, 2006 and remained there upto 23-07-2007.
 - (ii) That I had paid Rs 5,02,532/- through 3rd and final bill as the work actually executed at site, whereas my predecessors, have paid Rs 4,97,469/- in 5/2005 and 06/2005, an year prior of my posting.
 - (iii) That I had not made any advance payment Rs 0.647(M) and the reported amount is thus incorrect.
 - (iv) That the total expenditure on this sub work upto the end of June 2006 was Rs 10,00,000/- (4,97,469+5,02,532), which is also confirmed by the inquiry committee In its findings.
2. In this state, I will call your kind attention to the point that the Inquiry Committee, failed to visit the site in person. They based their findings / reports on the information orally discussed in sitting at office.
3. In their findings the inquiry committee themselves reported that the work has been found completed and since handed over to client authority (LG & RDD), then there seems no justification to penalize me for Stoppage of Two increments for Two Years as recommended by the inquiry committee.
4. I pray for the exoneration on this account. I may be given a chance of personal herring too.

S.O. (E).

24/4.

SA

Sincerely Yours


 (HAMIDULLAH KHAN KHALIL)
 DESIGN ENGINEER (TECH)
 O/o Chief Engineer (Centre),
 C&W Department, Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the June 02, 2014

Annex: V

ORDER:

No. SOE/C&WD//8-25/2013: WHEREAS, the following officers/official was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 for the alleged irregularities in the scheme "Construction of 03 Nos. Union Council Offices in District Shangla SH: U/C office Dandai":

- i. Engr. Hamidullah Khan Khalil
the then XEN C&W Division Shangla
now Design Engineer O/O CE (Centre)
C&W Peshawar
- ii. Mr. Noor Rehman
SDO (OPS) C&W Sub Division Shangla
- iii. Mr. Tariq Hussain
the then Sub Engineer C&W Division Shangla
now Sub Engineer O/O XEN Building Division No.1 Peshawar

2. AND WHEREAS, for the said act of misconduct they were served charge sheets/ statement of allegations.

3. AND WHEREAS, an inquiry committee comprising of Engr. Ejaz Hussain Ansari (BS-19) Superintending Engineer C&W Circle Abbottabad and Engr. Abdul Sami (BS-19) Superintending Engineer PHE Department, Peshawar were appointed, who submitted the inquiry report.

4. NOW THEREFORE, the Competent Authority after having considered the charges, material on record, inquiry report of the inquiry committee, explanation of the officers/official concerned, in exercise of the powers under Rule-14(5)(ii) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the minor penalty of "stoppage of two annual increments for two years" upon the aforementioned officers/official.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (North) C&W Peshawar
3. Superintending Engineer C&W Circle, Swat/Peshawar
4. Executive Engineer C&W Division Shangla
5. Executive Engineer Building Division No.1, Peshawar
6. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
7. PS to Secretary Establishment Department Khyber Pakhtunkhwa, Peshawar
8. District Accounts Officer Shangla
9. PS to Secretary C&W Department Peshawar
10. Officers/Official concerned
11. Office order File/Personal File


(USMAN JAN)
SECTION OFFICER (Estb)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1279/2014

HEMEED ULLAH

VS

C&W DEPARTMENT

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO THE REPLY SUBMITTED BY THE RESPONDENTS

R/SHEWETH:

PRELIMINARY OBJECTIONS:

(1 To 6):

All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the case.

ON FACT:

- 1- Admitted correct hence need no comments.
- 2- Incorrect and not replying accordingly. That appellant was working as design engineer (Tech) at the office of the Chief Engineer. (Centre) C&W Department. That during service a show cause notice vide dated 03.04.2014 was issued to the appellant in which it was alleged that appellant while working as XEN (OPS) C&W Division Shangla made advance payment amounting to Rs. 647 million to the contractor without enacting of work in 2006 which was completed by the contractor in 2013. That appellant submitted his detail reply along with documentary proofs and denied all allegations which were leveled against the appellant. That the respondent Department without conducting proper inquiry in the matter imposed minor penalty of stoppage two annual increments without specifying any period.
- 3- Incorrect and not replied accordingly. That inspite of the documentary proofs which were submitted the appellant with the reply of show cause notice but the respondent Department consider the same unsatisfactory and awarded minor penalty of stoppage of two annual increments.
- 4- Incorrect and not replied accordingly. That the respondent Department has not been given any chance of personal hearing to the appellant and straight away issued impugned order dated 02.06.2014.

5- Admitted correct by the respondents. That appellant filed his Departmental appeal against the order dated 02.06.2014.

GROUND:
(A TO I):

All the grounds of main appeal of the appellant are correct and in accordance with law and prevailing rules and that of the respondents are incorrect and baseless. That no charge sheet and statement of allegation has been served on the appellant by the respondents before issuing the impugned order dated 2.6.2014. That no chance of personal hearing/defense has been given to the appellant before issuing the impugned order dated 02.06.2014. That no period has been specified by the respondent Department in the impugned order dated 02.06.2014, which is against the law and prevailing rules. That the impugned order dated 02.06.2014 has been issued the incompetent authority therefore, the same is void ab initio in the eyes of law. That inspite of clear justification and documentary proofs provided by the appellant, the concerned authorities of the respondent Department issued the impugned order dated 02.06.2014. That no regular enquiry has been conducted in the matter before issuing the impugned order dated 02.06.2014 which is as per Supreme Court judgments is necessary in punitive actions against the civil servant.

It is therefore, most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be accepted in favor of the appellant.

APPELLANT



HAMEED ULLAH

THROUGH:



**NOOR MOHAMMAD KHATTAK
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1279/2014

HEMEED ULLAH

VS

C&W DEPARTMENT

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO THE REPLY SUBMITTED BY THE RESPONDENTS

R/SHEWETH:

PRELIMINARY OBJECTIONS:

(1 To 6):

All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the case.

ON FACT:

- 1- Admitted correct hence need no comments.
- 2- Incorrect and not replying accordingly. That appellant was working as design engineer (Tech) at the office of the Chief Engineer (Centre) C&W Department. That during service a show cause notice vide dated 03.04.2014 was issued to the appellant in which it was alleged that appellant while working as XEN (OPS) C&W Division Shangla made advance payment amounting to Rs. 647 million to the contractor without enacting of work in 2006 which was completed by the contractor in 2013. That appellant submitted his detail reply along with documentary proofs and denied all allegations which were leveled against the appellant. That the respondent Department without conducting proper inquiry in the matter imposed minor penalty of stoppage two annual increments without specifying any period.
- 3- Incorrect and not replied accordingly. That inspite of the documentary proofs which were submitted the appellant with the reply of show cause notice but the respondent Department consider the same unsatisfactory and awarded minor penalty of stoppage of two annual increments.
- 4- Incorrect and not replied accordingly. That the respondent Department has not been given any chance of personal hearing to the appellant and straight away issued impugned order dated 02.06.2014.

5- Admitted correct by the respondents. That appellant filed his Departmental appeal against the order dated 02.06.2014.

GROUND:
(A TO I):

All the grounds of main appeal of the appellant are correct and in accordance with law and prevailing rules and that of the respondents are incorrect and baseless. That no charge sheet and statement of allegation has been served on the appellant by the respondents before issuing the impugned order dated 2.6.2014. That no chance of personal hearing/defense has been given to the appellant before issuing the impugned order dated 02.06.2014. That no period has been specified by the respondent Department in the impugned order dated 02.06.2014, which is against the law and prevailing rules. That the impugned order dated 02.06.2014 has been issued the incompetent authority therefore, the same is void ab initio in the eyes of law. That inspite of clear justification and documentary proofs provided by the appellant, the concerned authorities of the respondent Department issued the impugned order dated 02.06.2014. That no regular enquiry has been conducted in the matter before issuing the impugned order dated 02.06.2014 which is as per Supreme Court judgments is necessary in punitive actions against the civil servant.

It is therefore, most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be accepted in favor of the appellant.

APPELLANT



HAMEED ULLAH

THROUGH:



NOOR MOHAMMAD KHATTAK
ADVOCATE

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

No. 2392/ST

Dated 14 /12/ 2018

To


The Secretary C&W Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 1279/2014, MR. HAMEED ULLAH KHAN

I am directed to forward herewith a certified copy of Judgement dated 29.11.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.