

**BEFORE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR
OFFICE D. I. KHAN**

Service Appeal No. 13901-2020

Muhammad Usman

(Appellant)

V/S

Government of Khyber Pakhtunkhwa through Chief secretary etc.

(Respondents)

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Petitioner

Usman

Through Counsel

Muhammad Iqbal Kundi

Muhammad Iqbal Kundi

Advocate High Court

D.I.khan

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BEFORE SERVICE TRIBUNAL KHYBER PAKH TUNKHWA PESHAWAR CAMP
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(Appellant)

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(Respondents)

REJOINDER ON THE COMMENTS SUBMITTED BY RESPONDENTS

REPLY ON PRELIMINARY OBJECTION

That all the preliminary objections raised by respondents are wrong, void and incorrect and far from truth hence not admitted. However reply of every objection is reproduced as under:

1. That objection No 1 is incorrect. Cause of initially accrued to appellant when show cause notice and Statement of allegations were served upon him not by competent authority and then accrued on 12-01-2020 when minor punishment to the extent of stoppage of one Annual increment and recovery of Ra. 146719.90 on account of loss accrued to the Govt was imposed upon him vide office order No. SOE(AD)6-52/2016 dated 12/06/2020 by respondents which was acknowledge by him on 25/06/2020. Hence objection No 1 is not admitted.
2. That preliminary objection No. 2 is incorrect. Appellant has good prima facie case and he is hopeful for success of his service Appeal. Hence objection No. 2 is not admitted.
3. That preliminary objection No 3 is incorrect. Appellant Service appeal is within time and not time barred. He has filed departmental appeal and service Appeal within stipulated period available to him under service law. Hence objection No 3 is not admitted.
4. That preliminary objection No 4 is incorrect and vague. Hence not admitted.
5. That preliminary objection No 5 is incorrect. Appellant has not concealed the facts from this Honorable Tribunal but all the record available with appellant have been attached with the appeal whereas on the other hand respondents have concealed important documents such as enquiry report has not been annexed with the comments submitted by respondents. Hence objection 5 is not admitted.
6. That preliminary objection No 6 is incorrect and wrong. Hence not admitted.
7. That preliminary objection No 7 is incorrect. Appellant has got locus standi. Hence objection No 7 is not admitted.
8. That preliminary objection No 8 is incorrect. Proper reply of the said objection has already been given in supra reply of objection No 5. Hence objection No 8 is not admitted.

PARA WISE REPLY ON COMMENTS OF FACTS

1. That in regard to comments of Para 1 of facts of the appeal it is submitted that appellant was neither member of auction committee nor of so-called supervisory Committee. Even no proper assignment was given to him by competent authority. Thus allegations of non-dedication in efficiency in performance of this duty is absolutely incorrect and misconceived. Hence not

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admitted. However dedication to his duty and efficiency is evident when he was promoted on the post of Agriculture Supervisor BPS -14 on the 11-08-2017.

- D.I. Khan,
2. That comments on Para 2 of the facts are incorrect. Appellant has categorically denied that alleged letter No. 1546-47/DAR(DK) dated 19-05-2015 was neither acknowledged by him nor according to the alleged letter dated 19-05-2015 no any proper assignment was given to the Appellant. It is pertinent to mention that during those days appellant was posted in Agronomy section, *AR/1*. His immediate officer was also not intimated in this regard. The alleged letter dated 19-05-2015 is false fabricated as its copy has not been sent to high officials for constitution of alleged supervisory committee. It is further submitted that whether it was not the duty of respondents to obtain report in respect of said excavation from time to time if any duty was assigned to him. The whole story seems to be ambiguous and frivolous hence comments on Para 2 of the facts of appeal are vehemently denied.
 3. That comments on Para 3 of the appeal is incorrect. It is submitted that appellant was neither member of the auction committee which is evident from the minutes of the meeting dated 24-05-2015 nor he was member of the so-called/alleged supervisory committee even no any proper role was given to the appellant in the impugned letter dated 19-05-2015 it was just written in the soil of ibid letter that appellant will just assist the so-called members of alleged supervisory committee. Apart from that the ibid letter was neither conveyed to him acknowledged by him. Apart from that no any progress was obtained from him during excavation of soil surface of the land situated in Block A & B. It is further submitted that auction committee was comprising on (5) members but the so-called supervisory Committee is comprised on three members, if the auction committee would have been considered to be supervisory Committee then other two members of auction committee namely Farkhanda Khan and Azmat Ali Shah were not required to be dropped. Appellant was neither member of the auction committee nor alleged supervisory committee so how neither guilty by respondents meaning thereby that so-called supervisory Committee was neither constituted nor was in existence. The whole record of the ibid case is silent about appellant except the alleged letter dated 19-05-2015. Even letter No 752/DAR(DK) dated 24-11-2015 was addressed to Salim Khan subcontractor of excavation work and similarly letter No. 354/DAR(DK) dated 15/02/2016 was addressed to Mr. Kazim Director ARI for institution of suit against the contractor. In this regard explanation was also obtained from the Director for submission of comments in respect of the contract vide Letter No. 386/DAR(DK) dated 19-02-2016. Copies Of all the above letters were sent to Director General Research Peshawar but neither any report nor any comments were obtained of the ibid letter from respondents No. 4 meaning thereby that appellant was not assigned any duty of supervision of ibid work the alleged letter dated 19/05/2015 was just been kept in the record to cover up the deficiency. The Appellant therefore vehemently deny the comments on Para 3 of the facts of appeal. Copies of minutes of the meeting dated 24-02-2015 letter dated 24-11-2015, 15-02-2016 and 19-05-2016 are enclosed and Marked as Annexure A, B, C & D.
 4. That comments on Para 4 of the facts of appeal are incorrect. It is submitted that being employee of BPS-14 alleged show cause notice and Statement of allegations dated NIL were not to be served upon him by Chief Minister whereas same to be served upon him by respondent No 2 being competent authority. The Appellant has categorically denied in respect of supervising the work of contractor. As he was neither officially directed in proper manner in written form nor he was verbally directed to supervise the excavation work Even no any progress was obtained from him Thus in the aforesaid explanation Appellant cannot be blamed of the deeds and misdeeds of others. Hence Para 4 of the appeal are not admitted.
 5. That comments on Para 5 of the appeal are incorrect. Actual facts have been mentioned in Para 5 of the appeal and he relies upon the same. Hence comments of Para 5 of the appeal are denied.
 6. That appellant reiterates on the comments of Para 6 of the facts of appeal.

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7. That comments on Para 7 of the appeal are incorrect and without lawful authority. Hence denied. Appellant reiterates on the comments of Para 7 of Appeal.
 8. That comments on Para 8 of the appeal are incorrect. Appellant reiterates on the version of Para 8 of the appeal hence not admitted.
 9. That appellant reiterates on Para 9 of the appeal.
 10. That contents of comments on Para 10 of appeal are incorrect. It is submitted that by keeping the alleged inquiry report in abeyance for about three years and promotion of appellant for BPS-9 to BPS-14 reveal that appellant seems to be exonerated from the ibid allegation. Thus imposition of minor penalty of stoppage of annual increment and recovery of Rs. 146712.90 upon Appellant is wrong void and without lawful authority. After such long delay of three years alleged inquiry report has lost it's sanctity and has become anfractuous. Hence comments of Para 10 of the appeal are not admitted.
 11. That while filling of instant service Appeal after passing of three months Appellant had not received the reply of his departmental appeal from competent authority. Hence comments on Para 11 of appeal are not admitted.
 12. That appellant reiterates on Para 12 of the appeal.

REJOINDER ON COMMENTS OF THE GROUNDS OF APPEAL

1. That comments on ground 1 of the appeal are incorrect. Appellant reiterates on the ground 1 of the appeal.
2. That comments on ground 2 of the appeal are incorrect. Respondents have not mentioned the name of departmental representative who attended the alleged inquiry, in the comments. Hence version of respondents in their comments are denied. Appellant reiterates on ground 3 of the appeal.
3. That comments on ground 4 of the appeal are incorrect. Appellant reiterates on the ground 4 of the appeal.
4. That comments on ground 5 of the appeal are incorrect. It is submitted that all show cause notice and Statement of allegation served upon Appellant and other officials are having stereo type allegations without taking into account authoritative capacity of the Appellant as well as other officials, even apart from that appellant being an employee of BPS-9 (at that time) show cause notice and Statement of alleged were to be served upon him by respondent No 2 and not by Chief Minister Chief Executive of the province. Thus alleged show cause notice and Statement of allegation served upon Appellant is wrong and without lawful authority. Hence comments on Para 5 of the appeal are not admitted.
5. That comments on ground 6 of appeal are incorrect. Respondents are not authorized to open shut and close enquiry after three years and after promotion of appellant in BPS-14 on 20-06-2017 (Annexure R) during pendency of the alleged report kept in abeyance. Hence comments of respondents on ground 5 of Appeal are denied. Appellant reiterates on the ground 6 of appeal.
6. That comments on ground 7 of Appeal are incorrect. Hence denied. Appellant reiterates on ground 7 of Appeal.
7. That contents of comments on ground 8 of the appeal are incorrect hence denied. Appellant reiterates on the ground 8 of the appeal.

That comments on 9 of the appeal are incorrect. A subcontractor of the subject matter has been subjudged by the subcontractor Salim Khan being authority of the main contractor, Densin Shuja. The matter in question relates with the ibid case hence comments on respondents are not admitted.

9. That comments on ground 10 of the appeal are incorrect hence denied. Appellant reiterates on ground 10 of appeal.

10. That comments on ground 11 of appeal are incorrect hence need no comments.

In view of the submissions made above it is humbly prayed that service Appeal of the appellant may be accepted as prayed for in the heading of appeal in the interest of justice.

J. Suran
Appellant

Through Counsel
Muhammad Iqbal Kundi
Muhammad Iqbal Kundi
Advocate High Court
D.I.Khan

VERIFICATION

Verified that contents of rejection are correct to best of my knowledge and belief and nothing has been concealed from this Tribunal.

J. Suran
Appellant

ANN-I

(5)

MINUTES OF THE MEETING.

A meeting of the Auction Committee was held at 02:00 PM on 24-02-2015 under the chairmanship of Director for the opening of quotations called for lifting of upper soil surface of Arid Zone area (Approximately 13 Acres).

Quotations offered by M/S Mr. Shahid Memood, Asmatullah & Mohammad Tariq were not considered as these were delivered by hand. Eleven quotations were according to conditions notified in News Papers. Comparative statement is hereby reproduced as below.

COMPARATIVE STATEMENT OF DIFFERENT QUOTATIONS RATE OFFERED BY DIFFERENT SUPPLIER ON 24-02-2015 AT 02:00 PM AT ARI, D.I.KHAN.

S.No.	Name & Address	Bid offered in Quotation
1.	Mr. Ahmad Nawaz Khan Wazir, Rose Hotel & Restaurant opposite Rescue 15 D.I.Khan, CNIC No. 21708-2933599-9.	Rs: 1155000/-
2.	Mr. Noor Mohammad, D.I.Khan, CNIC No. 12103-2468740-1	Rs: 1572000/-
3.	Mr. Mohammad Ashiq, opposite Kotli Imam Hussain, D.I.Khan, CNIC No. 12101-2771035-3.	Rs: 610000/-
4.	Mr. Mohammad Ramzan, D.I.Khan, CNIC No. 12101-6654988-1.	Rs: 580000/-
5.	Malik General Order Supplier, D.I.Khan, CNIC No. 12101-4102799-3.	Rs: 750000/-
6.	Mr. Sharif Brothers, D. I. Khan, CNIC No. 12101-4479547-3.	Rs: 1503000/-
7.	Mr. Mazhar Abbas Gishkori, CNIC No. 12101-5341325-9.	Rs: 800000/-
8.	Mr. Shafique Rehman Govt. Contractor, New Khyber Electric Store, Topanwala, D.I.Khan. CNIC No. 21708-0995207-9.	Rs: 650000/-
9.	Mr. Ghulam Khan, D.I.Khan CNIC No. 12101-0916079-1.	Rs: 1250000/-
10.	Mr. Anwar Kamal, Nai Abadi Raita Kulachi, D.I.Khan, CNIC NO. 12101-3161013-7	Rs: 600000/-
11.	Mr. Mohsin Khan, CNIC NO. 12102-1490224-3	Rs: 2228600/- ✓

Highest rate offered by Mr. Mohsin Khan, which may kindly be approval please.

Auction committee, ARI, D.I.Khan.

Mr. Kazim Shah, Director,	Head of Committee
Mr. Inayat Hussain Shah R/O,	Chairman
Mr. Shahid Iqbal Khattak R/O	Member
Mrs. Farkhanda Khan R/O	Member
Mr. S. Azmat Ali Shah, O/Asstt.	Member

[Handwritten signatures of committee members]

Amount deposited v. challan no. 46 dt. 11.6.2015 Rs. 2228600/- provisional

752 /DAR(DK), Dated AR/DI Khan the 24-11-2015

Mr. Salim Contractor
S/O Paing Khan
R/O Wanda Balochan
DI Khan

Subject: Lifting of Soil Surface
m;

Refer to this office work order No. 1503/DAR(DK) dated 15.05.2015.
As per conditions of the said contract you were allowed to lift the soil up to 3 feet in block A and up to 4 feet in block B while the period of the lifting of this soil was only six months but it is regret-full to say that you have not followed the proper conditions of the said contract and lifted more than the specified range moreover although the period of lifting the soil surface has been completed but you are still continue to lift the said soil for more than two months after the laps of specified period. (7-10 months extra).
At this stage you are directed to immediately stop the lifting of the soil from the area. Moreover, plane the said soil and prepare the banas of the land as per conditions of the contract.

C/O NO: 2723-59

[Signature]
Director

- 1. The Director General Agric. Research System, Peshawar for information
- 2. Mr. Kazim Ghani Oil Seed Botanist to pursue the case accordingly as per directive of the worthy DG Agric. Research System, P.K. Peshawar.

[Signature]
Director
Chief in Charge

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Landline (0900) 740 000
Fax (0900) 740 415
Email: d.i.khan@yahoo.com

No. 354 /DAR(DK), Dated ARI, DIKhan the 15/02/2010
To

Mr. Kazim Shah
PRO Cereal
ARI, D.I.Khan

Subject: **LAND EXCAVATION AT ARI, DIKHAN**

Memo:

I have been directed to inform you to initiate a case against the party/contractor, who has lifted the soil surface at the institute on the bases of the following items:

1. They have lifted more soil than actually auctioned to them.
2. They have not leveled the land properly as per conditions.
3. This Deptt. Could not utilize the land for sowing purpose which resulted a huge loss to Govt.

You are therefore directed to write a letter to the said contractor as well as file a suit against him on the basis of the above mentioned facts on behalf of the Govt.

[Signature]
Director

No. 355 /DAR(DK),

Copy to

The Director General Agril; Research System KPK, Peshawar, for his kind information.

B/E
[Signature]
Director

[Circular Stamp]



Agricultural Research Institute, D.I. Khan

Phone (09960) 740 040, 740 020 Fax (09960) 740 415

ANN IV

(3)

No. 386 / DAR (DK) dated ARI, D.I.Khan the 19/02/2016

To

The Mr. Kazim Shah,
SRO Cereal
Agriculture Research Institute
D.I.Khan.

Subject: COMPLAINT REGARDING ILLEGAL EXCAVATION OF SOIL IN AGRIC. LAND AT DISTRICT D.I.KHAN.

Memo:

Enclosed please find herewith a letter No. PE/Secre/Agric/Exe/D.I.Khan/2015 dated 02-02-2016, on the subject noted above which is self explanatory in this connection you are advised to produce your comments, so that the same may be communicated to the competent authorities for further necessary action as desired by the higher up.

no 387 / DAR (DK) ARI. date 19-2-2016.

c.c.to:-

- Director General, Agric. Res. For information please.

[Signature]
Director

[Signature]
Director