

(2) (12)

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

Service Appeal No. 14051/2020

Inayat Hussain Shah

V/S

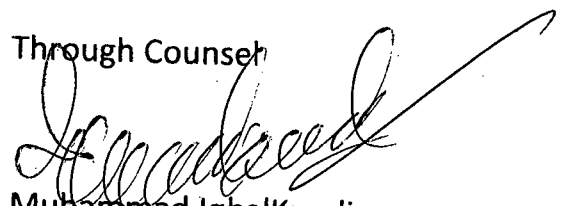
Government of Khyber Pakhtunkhwa through Chief secretary etc.

INDEX

| <u>S.No.</u> | <u>Description</u> | <u>Annexure</u> | <u>Page No.</u> |
|--------------|------------------------------|-----------------|-----------------|
| 1. | Contents of Rejoinder | | 1-4 |
| 2. | Copy of letter dt 24/11/2015 | I | 5 |
| 3. | Copy of letter dt 15/2/2016 | II | 6 |
| 4. | Copy of letter dt 1/2/2016 | III | 7 |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |
| 9. | | | |
| 10. | | | |


Petitioner

Through Counsel


Muhammad Iqbal Kundi
Advocate High Court
D.I.khan

(19) (1)

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

Service Appeal No. 14051/2020

Inayat Hussain Shah

V/S

Government of Khyber Pakhtunkhwa through Chief secretary etc.

Rejoinder to the Reply of Respondents

Reply to the Preliminary Objections

That the Preliminary Objection raised by Respondent are wrong, void and incorrect hence not admitted. However reply of each objection is being furnished as under.

1. That objection No. 1 is incorrect and denied. Cause of action was initially accrued to the appellant when alleged show cause notice and statement of allegations were served upon him and then accrued on 12/06/2020, when minor punishment to the extent of stoppage of 1 annual increment and fine of Rs. 220069.35/- was imposed upon him by respondents vide order No. SOE(AD)6.52/2016 dated 12/06/2020 which was acknowledged by him on 25/06/2020.
2. That Objection No. 2 is incorrect and hence not admitted. Appellant has a good prima facie case as the plenty imposed upon him is illegal, unlawful and without lawful authority and he is quite hopeful for it's success.
3. That Objection No. 3 is incorrect, hence not admitted. As, review petition was filed on 10/07/2020 against order dated 12/06/2020, acknowledged on 25/06/2020), within stipulated period and there after instant appeal was filed on 28/10/2020. Thus neither review petition /departmental appeal nor instant service appeal filed by applicant are time barred.
4. That Objection No. 4 is incorrect, hence not admitted.
5. That Objection No. 5 is incorrect, hence not admitted. The appellant has come to this tribunal with clean hands, while filing instant service appeal.
6. That Objection No. 6 is incorrect, hence not admitted. Instant appeal is maintainable as the matter pertains to the services of the appellant.
7. That Objection No. 7 is incorrect, hence not admitted. Appellant has locus standi to file instant appeal.
8. That Objection No. 8 is incorrect, hence not admitted. Appellant has brought all the facts before the Honorable Tribunal, while filing instant appeal and has not concealed any matter from this tribunal.

Rejoinder on the comments of facts of Appeal

1. That comments on Para 1 of the appeal are incorrect and do not commensurate with contents of Para 1 of the Appeal. Version of appellant in respect of non receiving and non acknowledging alleged letter of supervision dated 19-05-2015 is absolutely correct. His efficiency and dedication to his duty cannot be questioned in any manner what so ever. Hence comments on para 1 of fact of appeal is vehemently not denied thus not admitted.
2. That contents of comments on Para 2 of the facts of appeal are incorrect, baseless, and are not in accordance with the available record. The respondents are mixing up the auction committee comprising on five members according to minutes of the meeting held on 25-02-2015 with so called supervisory committee stating it's constitution vide letter dated 19-05-2015, The auction proceeding was properly and smoothly processed and completed with entire satisfaction of competent authority but as long as alleged supervisory committee is concerned it was neither constituted nor appellant was consulted in this regard even he remained un-aware in respect of

starting of soil excavation/ removal of soil surface made by Salim Khan Sub-Contractor on the direction of Director of ARI D.I.Khan (Respondents No. 4) and he was not consulted by him at any stage in any manner what so ever Appellant has never concealed any facts from this honorable tribunal. Appellant had not recommended the proposal dated 06-05-2014. So how he can be involved in the matter in question. Hence comments on the Para 2 of the facts of the appeal are not admitted. Appellant reiterates on the Para 2 of facts of Appeal.

3. In regard to comments on Para 3 of the appeal it is submitted that respondent plea of interruption in the soil excavation by appellant on the basis being chairman of auction committee is totally baseless and frivolous. It can be adjudged from the comments that respondents have twisted his position in respect of constitution of alleged supervisory committee. As alleged letter bearing No. 1546-47 dated 19-05-2015 is fake and fictitious therefore appellant, as well as other facials, who were allegedly made members of alleged supervisory committee, have rightly denied from acknowledgment of ibid letter. Thus as such appellant has not concealed any facts from this tribunal. It is evident from the record that appellant has not received the ibid letter dated 19-05-2015. Even no any progress report was called from the appellant in respect of ibid contract during removal of soil surface. Apart from that copy of letter No. 752/DAR(DK) dated 24-11-2015 addressed to Salim Khan sub contractor was not sent to the appellant by Mr. Abdul Majid Khan Officiating Director ARI D.I.Khan, Similarly Copies of letter No 354/DAR(DK) dated 15-02-2015 addressed to Mr. Kazim Shah PRO Cereal (The then Director) by Abdul Majeed officiating Director ARI D.I.Khan directing him to institute suit against the contractor as well as subcontractor was not shared with appellant and thereafter comments were obtained from Mr. Kazim Shah the then director in respect of subject contract vide letter No. 386/DAR(DK) dated 19-02-016. It thus reveals that appellant was kept in abeyance in all respect. Thus it can easily be assessed that alleged letter dated 19-05-2015 was neither acknowledged from appellant nor alleged supervisory committee was constituted. Respondents No. 4 has fabricated a concocted false and frivols story. Hence comments on Para 3 of appeal are not admitted. Copies of letter dated 24-11-2015, 15-02-2016 and 1-02-2016 are enclosed and marked as Annexures I, II & III.
4. That comments on Para 4 of the appeal are incorrect. The appellant has already emphasized in his reply of shown cause Notice as well as before inquiry committee that appellant was not assigned Job to supervise the work of contractor of soil excavation. He has already denied form the receipt of alleged letter dated 19-05-2015 thus in such situation allegation upon appellant is not according to law and thereafter keeping the alleged inquiry report in cold storage for more than 3 years also speaks itself that all the allegations against appellant are baseless. Hence contents of comments on Para 4 of appeal are not admitted.
5. That comments on Para 5 of the appeal are wrong, void and incorrect. It is submitted that impugned letter No. 1546-47/DAR(DK) dated 19-05-2015 apparently seems to be fake and fictitious because copy of the ibid letter was neither sent to Director General Research Peshawar No to the contractor about constitution of so called supervisory committee even copy of the ibid letter was not acknowledged from appellant thus in such situation how it was possible for appellant to ask about progress of the case from subcontractor. Apart from that during 19-05-2015 till Audit Para letter No. 689/PSC(M) dated 16-09-2016 neither any progress report of the ibid contract was obtained from appellant nor from other members of so-called supervisory committee. It is further submitted that no any official assignment was given to him to supervise the excavation work therefore he neither visited the sight nor any report was called from appellant by respondents No. 4. All the facts and material available on record shows that respondent's No. 4 was looking after the affairs of the subject contract himself. Respondents have admitted. That yield was obtained from Block of the land despite after cultivation in Block A. However as long as Block B is concerned it is cultivable but the matter of Block B of Land is subjudice before civil court. Therefore it is not being cultivated. Hence comments on Para 5 of appeal are vehemently denied.

Signature

6. That comments on Para 6 of appeal are incorrect, frivolous and fabricated. In this regard it is submitted that respondents No 4 was handling the ibid contract t his own and was taking decision at his own It is submitted that approval of lifting of upper soil surface was given to Mr. Muhammad Mohsin Shuja main Contractor vide letter No. 1311/DAR(DK) dated 21 04-2015 by respondents No. 4 after authorizing by Director General vide letter No. 4081/DGR dated 16-04-2015 and thereafter respondents No. 4 himself issued work order bearing No. 1503/DAR(DK) dated 15-05-205 was issued to Mr. Muhammad Salim authority of contractor Mr. Mohammad Shuja without taking approval from competent authority. The supervisory Committee was neither constituted nor he was given assignment of Chairman Ship of the ibid committee even appellat was kept in abeyance by respondents No. 4. Therefore it was not the duty of appellat to bring the matter in question before high ups. It is pertinent to mention that approval of subletting was granted by respondents No 4 after consultation with respondent No 2. Hence comments on Para 6 of Appeal are denied.
7. That Para 7 of the comments are incorrect and without lawful authority. It is submitted that report of alleged inquiry committee was neither supplied to appellat nor attached with the comments by respondents, meaning thereby the respondents have concealed the fact from this Honorable Tribunal. Respondents have not mentioned the name of the departmental representative in their comments for attending the enquiry. So in such situation how the version of respondents can be considered to be true. Hence comments on Para 7 of appeal are not admitted.
8. That contents of Para 8 of the appeal are incorrect hence denied. Appellant reiterates on the version of Para 8 of the appeal.
9. That contents of Para 9 of appeal needs no comments.
10. That contents of Para 10 of appeal are incorrect hence denied. Appellant reiterates on the Para 10 of the facts of the appeal.
11. That comments on Para 11 of appeal are incorrect. It is submitted that no any decision in respect of rejection of this departmental appeal was conveyed to the Appellant till filing of service Appeal by Appellant. Hence comments on Para 11 of appeal are not admitted.
12. That comments on Para 12 of appeal needs no comments.

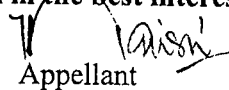
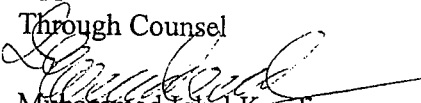
[Handwritten signature]

PARA WISE REPLY ON GROUND OF APPEAL

1. That comments an ground 1 of appeal are incorrect hence denied. Appellant reiterates on the version of ground 1 of appeal.
2. That comments on ground 2 of appeal are incorrect and void, hence denied. It is submitted that neither name of departmental representative was disclosed by respondents in their comments nor any reply in respect of non providing an opportunity of cross examination was given by respondents. Hence comments on ground 2 of appeal are worthless therefore denied.
3. That comments on ground 3 of the appeal are incorrect. It is submitted that neither copy of inquiry report was provided to the Appellant nor observation of personal hearing was disclosed by respondents. Even the same were not attached with the comments. So in situation that how respondents have acted according to law, rules and regulations. Respondents have concealed the material facts from this Tribunal thus they have not come to this court with clean hands. Hence comments on ground 3 of the appeal are vehemently denied.
4. That comments on ground 4 of appeal are incorrect. Hence not admitted.

- (3) (4)
5. That comments on ground 5 of appeal are incorrect hence not admitted. Appellant reiterates on ground 5 of appeal.
 6. That comments on ground 6 of appeal are incorrect. In this regard it is submitted that no any plausible reason in respect of keeping the inquiry report in cold storage for about three years. It is necessary to mentioned to mention that during period commence from 19-05-2015 till decision dated 12-06-2020 appellant was twice promoted in BPS- 18 and BPS-19. Therefore the alleged allegations had become infroctous and are worthless. Appellant had been enroped in false and fabricated case. Hence comments on ground 6 of appeal are vehemently denied. Appellant reiterates on version of ground 6 of appeal.
 7. The comments on grounds 7 of appeal are incorrect. No plausible explanation has been furnished by respondents in respect of alleged letter No. 1546-47 dated 19-05-2015 and concealed the actual facts from this tribunal and just wrote "**INCORRECT AND DENIED**". Incorrectness is not sufficient to absolve them-selves from their misdeeds thus as such appellant has been involved in false and fabricated case. Hence comments on ground 7 of appeal are vehemently denied and not admitted. Appellant reiterates on the ground 7 of the appeal.
 8. In regard to comments on Para 8 of the appeal it is submitted that no any comments in regard to the punishment of Nazeer Hussain Shah the then DGAR has been given by respondents whereas minor punishment in the shape of CANSURE was awarded to him. Thus in such a situation appellant was not to be treated differently. Hence comments on Para 8 of appeal are not admitted. Appellant reiterates on the ground 8 of the appeal.
 9. It is submitted that matter is dispute was subjudiced by the contractor in the competent court of law. It has direct nexus with the matter in question. Hence comments on ground 9 of appeal are vehemently denied.
 10. That comments on ground 10 of appeal are incorrect hence not admitted.
 11. Comments on ground 11 of appeal being formal. Hence needs no comments.

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


Appellant
Through Counsel

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.


Appellant

(5) (16)

Landline: (0966) 740 090
Fax: (0966) 740 415
Email: aridilichan@yahoo.com



752 /DAR(DK), Dated ARIDIKhan the 24-11-2015

Mr. Salim Contractor
S/O Paind Khan
R/O Wanda Balochan
DI Khan
Lifting of Soil Surface

ject:
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 more over 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. (2nd month 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.

Cc to

NO: 2733-59

Director

1. The Director General Agril; Research System, Peshawar for information
2. Mr. Kazim Shah Oil Seed Botanist to pursue the case accordingly as per directive of the worthy DG Agril; Research System, KPK Peshawar.

Director
Chand in case

ANN-II

(b)

(F)

Phone (9966) 740 415
Fax (9966) 740 415
Email: aridilkhan@yahoo.com

No. 354 /DAR[DK], Dated ARI, DIKhan the 15/02/2016

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.

[Signature]
Director

[Circular Stamp]



Agricultural Research Institute, D.I.Khan

Phone: (09966) 740 046, 740 096 Fax: (09966) 740 919

Ann. III

(7)

Ann. IV

Ann. (11)

No. 386 / DAR (DK) dated ARI, D.I.Khan the 19 / 10 / 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. PS/secret/Agric/Exe/D.I.Khan/2015 dated 02-

competent authorities for further necessary action as desired by the said letter.

386 / DAR (DK) dated 19/10/2016

Director

C.C. to:-

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

Director