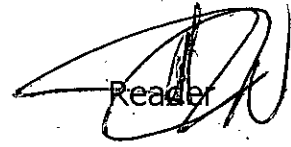


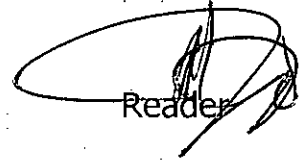
22/3/2020

Due to COVID-19 the case is adjourned. To come up for the same 22/4/2020 at Camp Court, D.I Khan

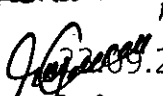

Reader

22/4/2020

Due to COVID-19 the case is adjourned. To come up for the same 23/9/2020 at Camp Court, D.I Khan


Reader

As order dt 8.11.18 the grievance of the appellant redressed hence appellant want to withdraw the instant appeal. So please do the needful in this situation.


23/9/2020

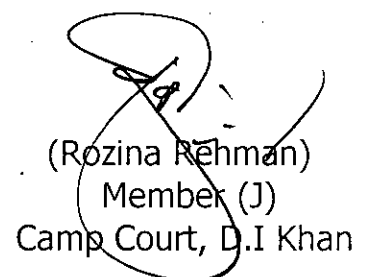
Counsel for appellant present.

Mr. Usman Ghani, learned District Attorney along with Khawar Nadim SDO for respondents present.

Learned counsel for appellant requested for withdrawal as the grievance of the appellant has been redressed. In this respect, signature of learned counsel was obtained on the margin of the order sheet.


In view of above, the present service appeal is hereby dismissed as withdrawn. No order as to costs. File be consigned to the record room.

Announced.
23.09.2020


(Rozina Rehman)
Member (J)
Camp Court, D.I Khan


29.01.2020

Appellant in person and Mr. Usman Ghani, District Attorney alongwith M/S Muhammad Ramzan, Senior Clerk and Javed Iqbal, SDA for the respondents present. Written reply on behalf of respondents not submitted. Representatives of the department requested for further adjournment. Adjourned to 26.02.2020 for written reply/comments before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan.

26.02.2020

Clerk to counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Zulqurnain, SDO for the respondents present. Written reply on behalf of respondents not submitted. Representatives of the department requested for further time to furnish written reply/comments. Adjourned to 26.03.2020 for written reply/comments before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan.

24.09.2019

Learned counsel for the appellant present. Written reply not submitted. No one present on behalf of respondents. Notice be issued to the respondents for written reply/comments. Adjourn. To come up for written reply/comments on 23.10.2019 before S.B at Camp Court D.I.Khan.



Member
Camp Court, D.I.Khan

23/10/2019

Since tour to D.I.Khan has been cancelled .To come for the same on 27/11/2019.



Reader

27.11.2019

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Neither written reply on behalf of respondents submitted nor representative of the department is present, therefore, notices be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Case to come up for written reply/comments on 29.01.2020 before S.B at Camp Court D.I.Khan.



(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

26.06.2019

Counsel for the appellant Hidayatullah present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving as Assistant Engineer in Irrigation Department. He was imposed major penalty of reduction to lower pay scale for three years vide order dated 30.05.2018 on the allegation that he voluntarily returned the embezzled public money amounting to Rs. 150,000/- to NAB. The appellant filed departmental appeal on 22.06.2018 but the same was not responded hence, the present service appeal on 23.10.2018. Learned counsel for the appellant further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor opportunity of personal hearing, cross-examination and defence was provided to the appellant nor any show-cause notice alongwith copy of inquiry report was handed over to the appellant before passing the impugned order therefore, the impugned order is illegal and liable to be set-aside.

The contentions raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 24.09.2019 before S.B at Camp Court D.I.Khan.

Appellant Deposited
Security & Process Fee



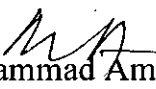
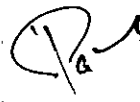
28/6/18

MA'

(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 1330/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/10/2018	<p>The appeal of Mr. Hidayat Ullah received today by post through Muhammad Waqar Alam Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR → 3/10/19</p>
2-	27.02.2019	<p>This case is entrusted to touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>27.2.2019</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for the appellant present and requested for adjournment. Adjourned to 24.04.2019 for preliminary hearing before S.B at Camp Court D.I.Khan.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member Camp Court D.I.Khan</p>
	24.04.2019	<p>Appellant absent. Learned counsel for the appellant present and again sought adjournment. Adjourn. To come up for preliminary hearing on 26.06.2019 before S.B at Camp Court, D.I.Khan.</p> <p style="text-align: right;"> Member Camp Court, D.I.Khan.</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT D.I.KHAN

SERVICE APPEAL NO.1330/2018 and 1331/2018

✓
Khushal Khan & Hidayat Ullah
Assistant Engineers (BS-17)
Irrigation Department

(Appellants)

VERSUS

Govt. of Khyber Pakhtunkhwa
Through Secretary Irrigation & others

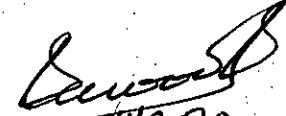
(Respondents)

IMPLEMENTATION REPORT ON BEHALF OF OFFICIAL RESPONDENTS.

Respectfully sheweth:-

The appellants Engr: Khushal Khan and Engr: Hidayat Ullah, Assistant Engineers (BS-17) Irrigation Department were proceeded under Efficiency and Discipline Rules 2011 and were awarded the major penalty of "Reduction to a lower pay scale for three years" on the basis of voluntarily return of the embezzled public money amounting to Rs. 872,786/- and 440,986/- respectively to NAB Authorities vide notifications dated 30-05-2018. **(Annex-I & II)**

Aggrieved by the said notifications Engr: Khushal Khan & Hidayat Ullah filed writ petition No. 2793-P/2018 and COC No.747-D/2018 with CM No.748-D/2018. In pursuance of these writ petitions and advice of Law, Department, the Competent Authority withdrew the said penalties imposed upon the appellants vide notifications dated 08-11-2018 **(Annex- III & IV).**



Secretary/Irrigation

Govt. of Khyber Pakhtunkhwa
(Respondents No. 03)

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Amex: V

Dated Peshawar the 30th May, 2018

NOTIFICATION

No. SO(E)/IRRI/9-3/99/NAB/Vol-II: WHEREAS, Engr. Khushal Khan, Assistant Engineer (BS-17)/Executive Engineer (OPS), Kohat Irrigation Division, Kohat was proceeded against under the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011 in the voluntarily returned the embezzled public money amounting to Rs. 872,786/- to NAB.

2. AND WHEREAS, for the said act/omission specified in rule-3 of the rules ibid, he was served Show Cause notice to which he replied.

3. AND WHEREAS, he was provided opportunity of personal hearing as required under Rule- 15 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 so as to fulfill the legal requirements.

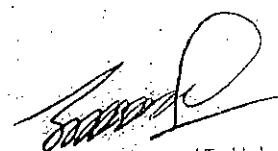
NOW THEREFORE, the Competent Authority, after having considered the charges, material on record and explanation of the officer concerned, in exercise of the Powers under Rule- 4 (b) (i) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the major penalty of "Reduction to a lower pay scale for three years" upon the aforementioned officer.

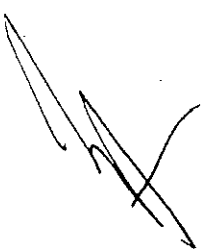
Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy of the above is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South) Irrigation Department, Peshawar.
3. The Chief Engineer (North) Irrigation Department, Peshawar.
4. The Director General, Small Dams, Peshawar.
5. All Superintending Engineers of Irrigation Department.
6. PS to Minister for Irrigation, Khyber Pakhtunkhwa.
7. PSO to Chief Secretary, Khyber Pakhtunkhwa.
8. The Section Officer (Dev.) Irrigation Department.
9. The Section Officer (General), Irrigation Department.
10. The officer concerned.
11. The District Accounts Officer, Kohat.
12. PS to Secretary Irrigation Department.
13. PS to Secretary Establishment Department.
14. PA to Additional Secretary, Irrigation Department.
15. Personal file of the officer.


Section Officer (Estt.)



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

231
Annex II

Dated Peshawar the 30th May, 2018

NOTIFICATION

No. SO(EY/IRRI/9-3/99/NAB/Vol-II) WHEREAS, ~~Hidayat Ullah~~ Assistant Engineer (BS-17)/SDO, Gomal Zam Irrigation Sub Division, D.I. Khan was proceeded against under the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011 in the voluntarily returned the embezzled public money amounting to Rs. 150,000/- to NAB.

AND WHEREAS, for the said act/omission specified in rule-3 of the Rules, he was served Show Cause notice to which he replied.

AND WHEREAS, he was provided opportunity of personal hearing as required under Rule- 15 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 so as to fulfill the legal requirements.

NOW THEREFORE, the Competent Authority, after having considered the charges, material on record and explanation of the officer concerned, in exercise of the Powers under Rule- 4 (b)(i) of Khyber Pakhtunkhwa Civil Servants, (Efficiency & Discipline) Rules, 2011, has been pleased to impose the major penalty of "Reduction to a lower pay scale for three years" upon the aforementioned officer.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy of the above is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South) Irrigation Department, Peshawar.
3. The Chief Engineer (North) Irrigation Department, Peshawar.
4. The Director General, Small Dams, Peshawar.
5. All Superintending Engineers of Irrigation Department.
6. PS to Minister for Irrigation, Khyber Pakhtunkhwa.
7. PSO to Chief Secretary, Khyber Pakhtunkhwa.
8. The Section Officer (Dev.) Irrigation Department.
9. The Section Officer (General), Irrigation Department.
10. The officer concerned.
11. The District Accounts Officer, D.I. Khan.
12. PS to Secretary Irrigation Department.
13. PS to Secretary Establishment Department.
14. PA to Additional Secretary, Irrigation Department.
15. Personal file of the officer.


Section Officer (Estt.)





GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

16/0
Annex III

Dated Peshawar the 08th November, 2018

NOTIFICATION

No. SO(E)/IRRI:/9-3/99/NAB/Vol-II: In pursuance of advice tendered by the Law, Parliamentary Affairs and Human Rights Department vide letter No. SO(OP-I)/LD/5-4/2012-Vol-II-36237-38, dated 25.10.2018, the Competent Authority has been pleased to withdraw the major penalty of "**Reduction to a lower pay scale for three years**" imposed on Mr. Khushal, Executive Engineer (BS-17)(OPS) Marwat Canal Irrigation Division Bannu under the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011 vide this Department notification dated 30.05.2018 subject to final decision by the Hon'ble Supreme Court of Pakistan in review petition in Suo:Motu case No. 17 of 2016.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy of the above is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South) Irrigation Department, Peshawar.
3. The Chief Engineer (North) Irrigation Department, Peshawar.
4. The Director General, Small Dams, Peshawar.
5. All Superintending Engineers of Irrigation Department.
6. PS to Minister for Irrigation, Khyber Pakhtunkhwa.
7. PSO to Chief Secretary, Khyber Pakhtunkhwa.
8. The Section Officer (Dev:) Irrigation Department.
9. The Section Officer (General), Irrigation Department.
10. The officer concerned.
11. The District Accounts Officer, D.I. Khan.
12. PS to Secretary Irrigation Department.
13. PS to Secretary Establishment Department.
14. PA to Additional Secretary, Irrigation Department.
15. Personal file of the officer.


Section Officer (Estt:)



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 08th November, 2018

NOTIFICATION

No. SO(E)/IRRI:/9-3/99/NAB/Vol-II: Pursuant to Peshawar High Court (D.I.Khan Bench) judgment in C.O.C No. 747-D/2018 with CM No. 748-D/2018 dated 25.09.2018 and advice tendered by the Law, Parliamentary Affairs and Human Rights Department vide letter No. SO(OP-I)/LD/5-4/2012-Vol-II-36237-38, dated 25.10.2018, the Competent Authority has been pleased to withdraw the major penalty of "**Reduction to a lower pay scale for three years**" imposed on Mr. Hidayat Ullah, Assistant Engineer(BS-17)/SDO, Gomal Zam Irrigation Sub Division, D.I. Khan under the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011 vide this Department notification dated 30.05.2018 subject to final decision by the Hon'ble Supreme Court of Pakistan in Suo Motu case No. 17 of 2016.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy of the above is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South) Irrigation Department, Peshawar.
3. The Chief Engineer (North) Irrigation Department, Peshawar.
4. The Director General, Small Dams, Peshawar.
5. All Superintending Engineers of Irrigation Department.
6. PS to Minister for Irrigation, Khyber Pakhtunkhwa.
7. PSO to Chief Secretary, Khyber Pakhtunkhwa.
8. The Section Officer (Dev:) Irrigation Department.
9. The Section Officer (General), Irrigation Department.
10. The officer concerned.
11. The District Accounts Officer, D.I. Khan.
12. PS to Secretary Irrigation Department.
13. PS to Secretary Establishment Department.
14. PA to Additional Secretary, Irrigation Department.
15. Personal file of the officer.


Section Officer (Estt:)

①

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, CAMP COURT DERA ISMAIL KHAN**

Service Appeal No. 1330/2018

Hidayatullah **VERSUS** Govt. of KPK and others

SERVICE APPEAL

INDEX

S.No	Particulars of the Documents	Annexure	Page
1.	Grounds of Service Appeal and affidavits	--	1-7
2.	Copy of service book's 1 st page	--	8-10
3.	Copy of the order dated 28/03/2006	--	11-16
4.	Copy of notification dated 10/07/1995	--	17-18
5.	Copy of review petition with orders dated 24/10/2016, 17/11/2016 and 06/12/2016	--	19-33
6.	Copies of show cause notices and reply thereto	--	34-40
7.	Copies of writ petition along with COC petition decided on 29/05/2018 and 25/09/2018	--	41-54
8.	Copy of impugned notification dated 30/05/2018	--	55
9.	Copy of departmental appeal dated 26/06/2018.	--	56-60
10.	Copy of notification dated 25/05/2018 of Eng: Muhammad Iqbal, SE (BPS-19)	--	61
11.	Wakalatnama	--	62

Dated: ____/10/2018

Humble Appellant

Hidayatullah
Hidayatullah

Through Counsel

M. Waqar Alam
M. Waqar Alam
Advocate High Court

waqaralam1982@gmail.com
Mob#0333-995-0616

2

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, CAMP COURT DERA ISMAIL KHAN**

Service Appeal No. 1330/2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1552

Dated 23/10/2018

Hidayatullah, Assistant Engineer, CRBC Irrigation, Sub-Division-II Dera Ismail Khan.

..... **Appellant**

VERSUS

- ① Govt. of Khyber Pakhtunkhwa through Chief Minister, Khyber Pakhtunkhwa, Peshawar.
- 2. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar.
- 3. Govt. of Khyber Pakhtunkhwa through Secretary Irrigation, KPK, Peshawar.
- 4. Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.

..... **Respondents.**

APPEAL UNDER SECTION 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED NOTIFICATION NO. SO(E)/IRRI;/9-3-99/NAB/VOL-II DATED 30/05/2018 ISSUED BY RESPONDENT NO. 4 WHEREBY APPELLANT WAS AWARDED MAJOR PENALTY OF "REDUCTION TO A LOWER PAY SCALE FOR 3 YEARS" AND AGAINST THE INDECISION OF DEPARTMENTA APPEAL OF THE APPELLANT BY THE RESPONDENT NO.1 WHICH IS AGAINST THE LAW AND IN VIOLATION OF SERVICES LAWS AND RULES AND THE APPELLANT WAS CONDEMNED UNHEARD WITH MALAFIDES.

Filed to-day
Registrar
23/10/18

Handwritten signature/initials

PRAYER

On acceptance of this appeal, impugned notification dated 30/05/2018 issued by respondent No.4 may please be reversed and set-aside and declare against the settled law, service laws and regulations in the best interest of justice.

Note: That the addresses of the Parties given in the heading of the Petition are true and correct for the purpose of service.

Respectfully Sheweth:-

The Appellant most respectfully submits as under:-

1. That the appellant was inducted in the Irrigation Department Dera Ismail Khan and now is serving as Assistant Engineer (PBS-17) in CRBC Irrigation Sub-Division-II Dera Ismail Khan. Copy of the 1st page of service book is enclosed herewith.
2. That, in the year 2002, the Provincial Public Accounts Committee alleged the appellant along with others for having unauthorized expenditure of Rs. 70.520 Million without budget allotment DP.638 Paharpur Irrigation Division, Dera Ismail Khan in which the Honorable Peshawar High Court Peshawar allowed the writ petition of the appellant along with others on 09/04/2002 and the appellants of that writ petition were exonerated and the findings of the Public Accounts Committee N-W.F.P was declared illegal and unjustified by the Honourable Peshawar High Court Peshawar.
3. That being aggrieved with the order dated 09/04/2002, the provincial Govt. approached the august Supreme Court of Pakistan through Civil appeals No. 444 to 476 of 2003, which was decided on 28/03/2006 in which the judgment of the Peshawar High Court Peshawar dated 09/04/2002 was upheld by the august Supreme Court of Pakistan. Copy of the order dated 28/03/2006 is enclosed herewith.

Shir

4. That the appellant and other colleagues were inquired on the same subject of alleged embezzlement and misappropriated amount by the competent authority under N-W.F.P Service E & D Rules 1973, and the appellant awarded minor penalty of "**CENSURE**". Copy of notification dated 10/07/1995 is enclosed herewith.
5. That now in the month of November 2017, the appellant once again received show cause notice by the official respondents. Copies of letter and show-cause notices are jointly enclosed herewith.
6. That the appellant after getting the show cause notices, filed a review petition before august Supreme Court of Pakistan in Suo Moto case No. 17/2016 in which the appellant is very graciously granted stay order on 17/11/2016. Copy of review petition and order dated 17/11/2016 are enclosed herewith.
7. That now the official respondents finalized the alleged inquiry against the appellant and other employees of the irrigation department and the appellant is awarded major penalty in shape of reduction to lower pay scale for three years. Copy impugned notification dated 30/05/2018 is enclosed herewith.
8. That after communication of the impugned notification, the appellant filed COC petition in Peshawar High Court Bench, Dera Ismail Khan regarding non implementation of the judgment of Peshawar High Court Bench D.I.Khan passed in WP No. 610-D/2018 which was graciously allowed by the Peshawar High Court Bench D.I.Khan vide order dated 25/09/2018, and suspended the operation of the impugned order dated 30/05/2018. Copies of COC along with order dated 25/09/2018 are annexed herewith.
9. That on 26/06/2018, the appellant made a departmental appeal against the major penalty to the respondent No.1 which is still not decided by the competent authority without assigning any reason, hence the instant appeal, inter alia on the following grounds: Copy of departmental appeal is enclosed herewith.

Handwritten signature

GROUNDS

- A. That the act of respondents is illegal, unjustified and without jurisdiction, hence, liable to be set aside by this Honourable court.
- B. That despite of clear cut order of the august Supreme Court of Pakistan for not taking any adverse action against the appellant yet the respondents issued an notification regarding major penalty against the appellant while totally ignoring the orders of the Supreme Court of Pakistan.
- C. That the appellant is also penalized under E & D Rules of 1973 on the same subject matter but the respondents are intending to award other illegal punishment which is alien to law.
- D. That the VR offer is forceful one and could not be termed as VR under the law, moreover, the august Supreme Court of Pakistan in civil Appeal No. 444 vide judgment dated 28/03/2006 upheld the verdict of Peshawar High Court Peshawar in favour of the appellant (copy enclosed) but unfortunately the inquiry officer did not peruse the whole case of the appellant and awarded major penalty in case of appellant is totally against the facts and circumstances of the case.
- E. That the competent authority discriminately punished the appellant and favoured their blue eyed cherish in awarding punishment which shows vide notification dated 25/05/2018 in which only minor penalty of withholding of one increment for one year. Copy of notification dated 25/05/2018 is enclosed herewith.
- F. That the Counsel for the Appellant may kindly be allowed to raise further legal grounds during the course of arguments.

Shu

6

In wake of submission made above, it is humbly prayed that on acceptance of the instant service appeal, the act of respondents may please be declared as illegal without lawful authority, discriminatory and coram non jure and also to set aside the notification dated 30/05/2018 vide which the appellant is awarded with major penalty of reduction to a lower pay scale for three years in the best interest of justice.

Date: ___/10/2018

Yours Humble Appellant


Hidayatullah 

Through Counsel,


Muhammad Waqar Alam
Advocate High Court

16/10

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, CAMP COURT DERA ISMAIL KHAN**

Service Appeal No. _____/2018

Hidayatullah (Appellant)

VERSUS

Govt. of KPK and others (Respondents)

SERVICE APPEAL

AFFIDAVIT

I, **Hidayatullah**, Assistant Engineer, CRBC Irrigation, Sub-Division-II Dera Ismail Khan, do hereby solemnly affirm and declare on oath that contents of above Service Appeal are true & correct to the best of my knowledge and that nothing has been concealed from this Honourable Court.

Dated: 16/10/2018

[Signature]
DEPONENT *[Signature]*

[Signature]
Oath Commissioner
District Dera Ismail Khan
16/10/18

8

QW
I

SERVICE BOOK

Sub. Engineer W/ C/ P/

Hidayatullah
Sub Engineer

Name (نام)	<u>M. Hidayatullah</u>
Father's Name (والد کا نام)	<u>Sh. M. M. Hassan</u>
Qualification (تعلیم)	<u>Diploma in Electrical Engineering</u>
Designation (مقام)	<u>Sub Engineer</u>
Department (سکس)	<u>Electrician Deptt</u>
Permanent Address (مقام)	<u>W/ C/ P/</u>

Noted
Shree

P A

9	10	11	12	13 LEAVE		14	15
Signature and designation of the Head of the office or other Attesting Officer in attestation of columns 1 to 8	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal etc.)	Signature of the Head of the office or other Attesting Officer	Nature and duration of leave taken	Allocation of periods of leave on average pay upto four months (or earned leave not exceeding 120 days) to which leave salary is debitable to another Government	Signature of the head of the office or other Attesting officer	Reference to any record of punishment, censure or yard or praise of the Government
					Govt. to which debitable		
	29/4/81 FN	Reported arrival			Appointed vide SB:SDC No. 10494/B/A/3 E (II), dt 25.4.81 and posted to B.C. Drums vide SB:SDC No. 3603/4-E (I), dt 13.5.81.	C. E. M. Pathan	
	19/9/81 FN	Reported departure on his transfer to Marwat canal Drums Bannu				Executive Engineer Bannu Canal Division BANNU.	
		Reported arrival in this Division on 24/9/81.				Executive Engineer Bannu Canal Division BANNU.	
		Granted Advance increment 1.7-81 vide Govt. of P.W.D. Dept. Notification No. FD (S.P.) 176 dt. 6/7/81				Executive Engineer Bannu Canal Division BANNU	840/2
	30/11/81 AN	A. Increment				Executive Engineer Bannu Canal Division BANNU	

Sub Divisional Officer
Drainage Sub Division
B. Khan

117

1-30

0/2

840/2

Attested

Executive Engineer
Marwat Canal Division
BANNU

917

1 Name of post درجہ ملازمت	2 Whether substantive or officiating, and whether permanent or temporary ہا قائم مقام یا عارضی مستقل	3 If officiating, state— (i) substantive appointment or (ii) whether service counts for pension under rule 3.20 of C.S.R. (Pb) volume II. اگر عارضی ہے تو کیا وہ رول کے مطابق پنشن کا مستحق ہے؟	4 Pay in substantive post تنخواہ بطور عارضی ملازمت	5 Additional pay for officiating زائد تنخواہ بطور قائم مقام	6 Other emoluments falling under the term "pay" باندوالی تنخواہ دیگر الائیں	7 Date of appointment تاریخ تعمین	8 Signature of Government servant دستخط ملازمین کامی	9 Signature Designate of the He of the Office or c Attestir Officer Attestatio of column 1 to 8 دستخط مستحق مجاز
Sub Engineer ally. 470-24-550/28-830-30-980			RS. P. 478/-	RS. P. -	-	-	470 13 7 16 4	
do -	do -		502/-	-	-	1/12 82 FH	13 7 16 4	
Sub Engineer ally. 700-35-1400			840/-	-	-	1/12 83 FH	13 7 16 4	

Attested
Sub-Divisional Officer
Drainage Sub Division
D. Khan
805/

Attested
805/

13
7
16
4

10

10

Name: Mr. Hidayatullah No. II
(نام)

Nationality and Religion: Baluch (Muslim)
(قومیت اور مذہب)

Residence: Village Alstara Jamubi
(مستقل رہائش)

Tehsil/Dist: B. Khan
Father's name and residence: Sheh Muhammad
(والد کا نام اور رہائش)

Date of birth by Christian era as nearly as can be ascertained: 22.2.61 (Tawarikh and Feb. Nineteen Hundred and Sixty One)
(تاریخ پیدائش مطابق سن عیسوی)

Exact height by measurement: 5-5
(قد و قامت)

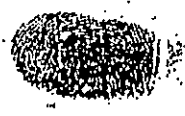
Personal mark for identification: A Scar on right arm
(لشان شناخت)

8. Left hand/right hand thumb and finger-impressions of (None-gazetted) officer.
(مردی صورت میں بائیں اور صورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)

Little Finger (چوہنگیا)

Ring Finger (چوہنگیا کے ساتھ کی انگلی)

Middle Finger (انگشت میاں)



Fore-Finger (انگشت شہادت)

Thumb (انگولہا)



9. Signature of Government servant: Hidayatullah
(حکومتی ملازم کے دستخط)

Attested

10. Signature and designation of the Head of the Office, or other Attesting Officer

Beccs

(تصدیق کنندہ افسر کے دستخط اور مہر)

Beccs
Executive Engineer
Banni Canal Division
BANNU.
20/5/61

Attested

Beccs
Sub Divisional Officer
Drainage Sub Division

Note:—The entries in this page should be renewed or re-attested at least every five years and the signatures in lines 9 and 10 should be dated. Finger prints need not be taken after every 5 years under this rule.
اس ضلع کے تدرجات کم از کم ہالچ سال بعد تصدیق ہونا ضروری ہیں اور نمبر ۹ - ۱۰ میں دستخطوں کے تاریخ ہونی چاہئے۔ انگلیوں کے نشانات کیانے ہر ہالچ سال کے بعد تصدیق کی ضرورت نہیں۔

۵-۳۰

۵/۳

۸۴۰/۲

15

2

Name of post درجہ ملازمت	Whether substantive or officiating, and whether permanent or temporary مازنی، مستعمل یا قائم مقام	If officiating, state— (i) substantive appointment or (ii) whether service counts for pension under rule 3.20 of C.S.R. (Pb.) - volume II اگر مازنی ہے تو کیا وہ رول 3.20 مطابق پینشن کے مستحق ہے؟	Pay in substantive post تصوہ بطور مازنی ملازمت	Additional pay for officiating زائد تصوہ بطور قائم مقام	Other emoluments falling under the term "pay" ماسوائے تصوہ دیگر الاصل	Date of appointment تاریخ تقرری	Signature of Government servant دستخط سرکاری ملازم
			RS. P.	RS. P.			
Sub Engineer 430-24-550/ 28-830			430/-			29/4/81 FN 29-4-81	
			430/-			24/9/81 AM	
S/Engineer 430-24-550/28-830-30-980			454/-			1/7/81 FN 1/12/81 FN	

Mestod
Director

Attested
Divisional Officer
Sub Division
Drainage Sub Division
D.I. Khan

In transit from 19/7/81 AM to 24/7/81 AM

For the respondents:

- ✓ Mr. Muhammad Shahnawaz Sikandri, ASC
(Res. 1, 2, 3, 5-7 in C.A. No. 444 of 2003)
- ✓ Syed Mir Muhammad Shah, ASC
(in C.A. Nos. 447, 455, 456, 458 and 469/03)
- Malik Manzoor Hussain, ASC
(Res. 1 in C.A. No. 474 of 2003).
- Mr. Tasleem Hussain, AOR
(in C.A. Nos. 447, 450 to 476/03).
- Mr. Fatch Muhammad Khan, AOR
(in C.A. Nos. 449, 452, 454, 465 and 466/03).
- Mr. Amatulhah, Addl. Secretary,
Provincial Assembly, NWFP.
- Misbahullah (Asstt. A.A.O.)
Office of D.G. Audit NWFP Peshawar.
- Mr. Wajid Ali Shah, SDO Irrigation, D.I. Khan

Date of hearing:

28.03.2006.

JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, CJ:- These appeals are by the leave of the Court against the judgment dated 09.04.2002. Leave granting order is reproduced hereinbelow for convenience:-

"After hearing Ms. Musarat Hilali the learned Additional Advocate General NWFP and the Caveator, we are of the view that question of public importance is involved. We grant leave to appeal in all captioned petitions to consider as to what is the status of Public Accounts Committee under the Provincial Assembly of North West Frontier Province Procedure and Conduct of Business Rules, 1938; what are its functions and what is the nature of its proceedings and orders and whether in fact recommendations made by Public Accounts Committee could be acted upon, if so, in what manner. Order accordingly."

2. Precisely stating facts of the case necessary for disposal of the appeals are that the respondents challenged the recommendations of Public Accounts Committee (hereinafter referred as PAC) made by it in pursuance of report of the Accountant General which is required to be produced before the Provincial Assembly by the Governor in terms of Article 171 of the Constitution of the Islamic Republic of Pakistan, 1973 that the recoveries of outstanding amounts be effected from the respondents which have allegedly been mis-appropriated/embezzled. Learned High Court had reproduced one of such

recommendations in the judgment, however, for further elaboration identical recommendations from DP-638 Pahaipur Irrigation Division are reproduced herein below:-

"The meeting commenced with recitation from the Holy Quran followed by translation.

UN-AUTHORISED EXPENDITURE OF RS. 70.520 MILLION WITHOUT BUDGET ALLOTMENT

D.P. 638 PAHAIPUR IRR: DIV:

The Para was discussed in detail. The Chief Engineer at the very outset, honestly stated that a preliminary enquiry in this case was conducted and it was established that the establishment was involved. Later on, final enquiry was conducted and the Chief Secretary being authorized officer imposed a minor penalty of censure on the defaulting officer.

The Committee noted this state of affairs with great surprise and in the light of the statement of Chief Engineer, directed that 85% amount which according to Audit comes to Rs.5 crore 95 lac, may be recovered from the officers concerned i.e. XEN, SDO and Sub-Engineer at the ratio of 1/3 from XEN alone and 2/3 from both the SDO and Sub-Engineer on equal share within three months if the recovery was made voluntarily in time, no departmental action and no adverse entries in the ACR be made. But if they failed to deposit the amount within the stipulated period then departmental/criminal proceedings, coupled with recovery may be initiated against them. Progress be reported to PAC. Para stands.

3. Learned High Court in the Writ Petition filed by the respondents vide impugned judgment, concluded as follows:-

"For the foregoing reasons stated above, the petitions are accepted and the directions of the PAC and action taken thereon are declared to be illegal. However, it is made clear that the Provincial Government would be at liberty to examine and scrutinize each and every case and can proceed in accordance with law."

4. The Government of NWFP being aggrieved from the judgment of the High Court has instituted present appeals with the leave of the Court.

5. Before dilating upon the respective contentions of the learned counsel for the parties, we consider it appropriate to note that the learned High Court issued Writ in favour of the respondents for the following reasons:-

ATTESTED



- i) As the decision taken by the PAC does not fall within the internal business of the Assembly, therefore, the High Court had jurisdiction to entertain and dispose of the Writ Petitions.
- ii) PAC derives this power from Rule 160 of the Provincial Assembly of North West Frontier Province, Procedure and Conduct of Business Rules, 1988 (hereinafter referred to as the Rules) and according to its provisions, it has no jurisdiction to direct recovery of the outstanding amount from the individual employees of the Provincial Government.
- iii) The respondents have been condemned unheard against the principle of natural justice, audi alteram partem.

6. Learned counsel appearing for the appellants contended that the High Court had no jurisdiction to entertain the Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as the recommendations have been made by the PAC in exercise of the powers conferred upon it under the Constitution read with the Rules.

7. On the other hand, learned counsel appearing for the respondents were of the opinion that the PAC can only make the recommendations but cannot direct for the recovery of the outstanding amounts from the individuals simultaneously, restraining the department from proceeding against them therefore and in view of the law laid down by

this Court in the judgment reported in LET COL FARZAND ALI AND OTHERS VS. PROVINGE OF WEST PAKISTAN THROUGH THE SECRETARY DEPARTMENT OF AGRICULTURE GOVERNMENT OF WEST PAKISTAN LAHORE (PLD 1970 SC 98) and MUHAMMAD ANWAR DURRANI VS. PROVINCE OF BALOCHISTAN (PLD 1989 Quetta 25), such directions/recommendations being beyond the provisions of the Constitution as well as the Rules were amenable to Judicial Review.

8. We have considered the argument of the learned counsel of both the sides and have gone through the provisions of the Constitution as well as Rule 160 of the Rules. In this behalf, it may be noted that Rule 160(4) being relevant, is reproduced hereinbelow:

160(4) If any money has been spent on any service during a financial year in excess of the amount granted by the Assembly for that purpose, the Committee shall examine with reference to the

ATTY
1/2/77

facts of each case the circumstances leading to such an excess and make such recommendations as it may deem fit.

9. A perusal of the recommendations made by the PAC in D.P. 638 Paharipur Irrigation Division reproduced hereinabove, indicate that the Committee instead of making recommendations to the department pointing out illegalities or mis-appropriation of the funds, had issued directions of a binding nature for the recovery of 85% amount from the Officers concerned i.e. XEN, SDO and Sub-Engineer at the ratio of 1/2 from XEN alone and 1/4 from both the SDO and Sub-Engineer in equal share within three months. It was further stated that if the recovery was made voluntarily in time, no departmental action and no adverse entries in the ACRs. be made but if they failed to deposit the amount within the stipulated period then departmental/criminal proceedings, coupled with the recovery may be initiated against them.

10. Thus it is held that proceedings of P.A.C of the nature reproduced hereinabove are not conducted under Articles 69, 171 of the Constitution as well as the Rule 160(4) of the Rules reproduced hereinabove. Therefore, when the P.A.C had traveled outside its jurisdiction, the High Court had jurisdiction to interfere in the matter.

11. Learned counsel next contended that as far as the respondents are concerned, they were given an opportunity to make the payment voluntarily and if they agree to do so then in such situation no action would be taken against them. It may be noted that such recommendations on the basis of the directions of the PAC, have got no legal value because if any one amongst the respondents being the employee of the Government of NWFP is found guilty for violating the Rules and Regulations relating to financial discipline of their department, he or they shall be proceeded against in accordance with rules which also include the departmental proceedings as well as the registration of criminal cases against them. Therefore, on the basis of such recommendations, the respondents cannot be compelled to make the payment voluntarily so they may save themselves from further action provided under the law.

12. It is important to note that the PAC in fact had issued directions without hearing the respondents against whom the penalties have been imposed as it is indicative from the directions of the PAC. It is cardinal principle of law of natural justice that no one should

15
202-SCMR
1077

be condemned unheard. Relevant judgments in this behalf, need not be referred but reference may be made to "ABDUL HAFEEZ-ABBASI AND OTHERS VS. MANAGING DIRECTOR, PAKISTAN INTERNATIONAL AIRLINES CORPORATION, KARACHI AND OTHERS" (2002 SCMR 1034), in which on examining a good number of cases above conclusion was framed.

13. Now question is whether proceedings of P.A.C are internal proceedings and High Court had jurisdiction to issue Writ in favour of the respondents. Article 69 of the Constitution places a bar on Courts not to inquire into proceedings of Parliament or Provincial Assemblies essentially P.A.C.

14. P.A.C is constituted under Rule 135(2) of the Rules 1988. Composition of which is as under:-

"Any such resolution shall have effect, only as a recommendation to Government, except a resolution in connection with an Ordinance promulgated by the Governor under Article 128 of the Constitution, or a resolution with respect to the removal of the Speaker or the Deputy Speaker from office; provided that if a resolution is unanimously adopted, it shall be binding on the Provincial Cabinet to implement the same as their collective responsibility under clause (4) of Article 130 of the Constitution."

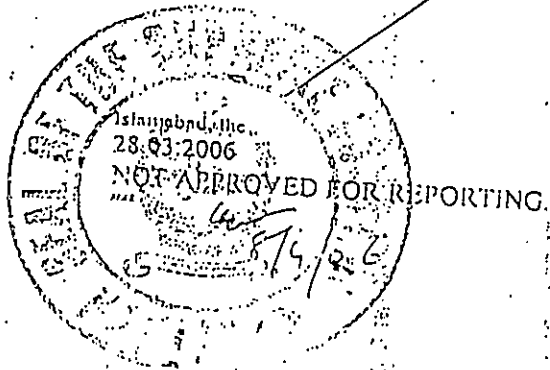
15. The findings of the P.A.C have not been approved by the Provincial Assembly as it is indicative from the record so made available. So at the best, such findings are of the committee constituted under Rules 1988 and not by Assembly. Even if it is considered that P.A.C had constitutional backing it would not be possible to hold that these proceedings were drawn by the assembly. In addition to it, the proceedings of Assembly as well can be looked into by Court if they fall outside the scope of Article 69 of the Constitution. This Court had an occasion to examine the question of interference by the Courts in the internal proceedings of the Assembly in the case of LT. COL. FARZAND ALI AND OTHERS VS. PROVINCE OF WEST PAKISTAN THROUGH THE SECRETARY, DEPARTMENT OF AGRICULTURE, GOVERNMENT OF WEST PAKISTAN, LAHORE (PLD 1970 SC 98), relevant para therefrom is reproduced herein below:-

"It will be observed that in none of these cases had any attempt been made to define as to what constitute "internal proceedings" but this much is clear that they do not extend to

anything and everything done within the House. This as a general rule a criminal act done in the House would perhaps not be outside the course of criminal justice (vide observations of Stephen, J. in *Bradlaugh v. Gossett*). The test indicated by Sir Erskine-May in his book on *Parliamentary Practice* is as to whether what is said or done "forms part of a proceeding of the House in its technical sense, i.e. the formal transaction of business with the Speaker in the Chair or in a properly constituted committee". It would be neither possible nor desirable to attempt any exhaustive classification of the matters that may be comprised within the term "internal proceedings" but it will be sufficient for my purpose to indicate that whatever is not related to any "formal transaction of business" in the House cannot be said to be a part of its "internal proceedings".

16. Before parting with the judgment, we would also like to observe that as far as the department is concerned, it has been allowed by the High Court to proceed against the delinquent Officers as is indicative from the concluding para of the impugned judgment which has been reproduced herein above, therefore, if at all the department is interested it can proceed against them according to the Rules and Regulations, not only for effecting the recovery of amount misappropriated by them but also by getting the cases registered and by initiating the departmental proceedings as well, in accordance with law.

17. Thus for the foregoing reasons, we see no force in these appeals, therefore, the same are dismissed. No order as to costs.



Handwritten notes and signatures in the right margin.

Certified to be a true copy
20.4.06
Superintendent
Supreme Court of Pakistan
ISLAMABAD

17

17

REGISTERED

/IB/N/260-E(3)

Dated Peshawar the 26/7/1995.

To

6

- 1/ Technical offices Office of the Chief Engineer (Dev.) Irrigation Department Peshawar.
- 2/ Mr. Mushtaq Ahmad S.D.O O/O Executive Engineer Project Irrigation Division D.I.Khan.
- 3/ Mr. Rasul Jan Assistant Design Engineer Office of Chief Engineer Irrigation Peshawar (Local).
- 4/ Mr. Hidayatullah Sub Engineer O/O Executive Engineer Paharpur Irrigation Division D.I.Khan.
- 5/ Mr. Falak Niaz Sub Engineer O/O Executive Engineer Project Irrigation Division D.I.Khan.
- 6/ Mr. Imam Bakhsh Sub Engineer O/O Executive Engineer Project Irrigation Division D.I.Khan.
- 7/ Mr. Mohammad Ayub Sub Engineer O/O Executive Engineer Project Irrigation Division D.I.Khan.
- 8/ Mr. Khawar Nadeem Sub Engineer O/O Executive Engineer Project Irrigation Division D.I.Khan.
- 9/ Mr. Rehmanullah Sub Engineer O/O Executive Engineer Paharpur Irrigation Division D.I.Khan.
- 10/ Mr. Assadullah Jan Sub Engineer O/O Executive Engineer Marwat Canals Divn. Banna.

Subject: NOTIFICATION.

A copy of Secretary to Govt. of NWFP Irrigation Department, Peshawar Notification No. SO(E) I&PHE/12-2/92(Emb.) /6060-73, dated 10/7/1995 meant for you is sent herewith for information and future guidance.

Encl: As above.

[Signature]
 ADMINISTRATIVE OFFICER
 Phone No. 279251.

No. 19924-28

Copy of the above along with a copy of Secretary to Govt. of NWFP Irrigation Department, Peshawar, Letter No. SO(E) PHE/12-2/92(Emb.) /6060-73, dated 10/7/1995 is forwarded to the

- 1/ Chief Engineer (Development) Irrigation Deptt. Peshawar
- 2/ Executive Engineer Paharpur Irrigation Divn. D.I.Khan
- 3/ Executive Engineer Project Irr. Divn. D.I.Khan for information and further necessary action. They are requested that one of the above quoted Notifications may please be placed in the Personal Register of the officer/officials concerned under intimation to this office.

4/ Accountant General NWFP, Peshawar.

5/ District Accounts Officer D.I.Khan.

Encl: As above.

for information.

[Signature]
 ADMINISTRATIVE OFFICER

18

10/63 12/7
 2528 Date 12/28/95

T.O.	S.W.O.
SE HQ	S.G.
AAO	A.O. ✓

[Handwritten signature]

GOVERNMENT OF N.W.F.P.
IRRIGATION DEPARTMENT.

Dated Pesh: the 10-07-1995.

NOTIFICATION.

NO. SO(E) I&PHE/12-2/92(Emb:) WHEREAS the following officers/officials of the Irrigation Department were proceeded against under the NWFP Government Servants (Efficiency & Discipline) Rules, 1973:

1. Mr. Mohammad Saeed Zaidi, XEN.
2. Mr. Rasool Jan, SDO.
3. Mr. Mushtaq Ahmad, SDO.
4. Mr. Rahmanullah Khan, Sub Engineer.
5. Mr. Imam Bakht, Sub Engineer.
6. Mr. Hidayatullah Khan, Sub Engineer.
7. Mr. Mohammad Ayub, Sub Engineer.
8. Mr. Khawar Nadeem, Sub Engineer.
9. Mr. Asadullah Jan, Sub Engineer.
10. Mr. Falak Naz, Sub Engineer.

2. AND WHEREAS Mr. Abdul Qayum Khan, Chief Engineer, C&W Department was appointed Enquiry Officer in the matter who after conducting the enquiry submitted his report.

3. AND WHEREAS in the light of the enquiry report show cause notices were served upon the accused officers/officials to which they replied.

4. AND WHEREAS the Authorised Officer after having considered the charges, the material on record, the report of Enquiry Officer and giving personal hearing to the officers/officials is of the opinion that the charges of minor ^{have been} penalty proved against the officers/officials concerned.

5. NOW, THEREFORE the Authorised Officer in exercise of powers conferred by Sub Rule (4) 5 of the NWFP Government Servants (Efficiency & Discipline) Rules, 1973 has been pleased to impose the minor penalty of "CENSURE" upon the above officers/officials.

[Handwritten mark]

CHIEF SECRETARY TO GOVT. OF NWFP

Endst: No. SO(E) I&PHE/12-2/92(Emb:) 6061-73 Dt: 10-07-1995.

- Copy forwarded to the:
1. Chief Engineer, Irrigation.
 2. Chief Engineer (Dev:).
 3. PS to Chief Secretary.
 4. officers concerned.
 5. officials concerned.
 6. PF of the officers.

SECTION OFFICER (ESTT:)
IRRIGATION DEPARTMENT.

[Handwritten signature]

19

17

17/2016

IN THE SUPREME COURT OF PAKISTAN
(Review jurisdiction)

CMA No. _____ of 2016
In

Civil Review Pctition No. Nil /2016
In

Suo Moto Case No. 17/2016

(ACTION TAKEN BY THIS HON'BLE COURT TO EXAMINE
THE VIRES OF SECTION 25 OF THE NAB ORDINANCE)

CMA for impleadment as party on behalf of Applicants
filed on 05-11-2016

Faiza Sana, SDO, PHED, etc.

....Petitioners

Versus

Federation of Pakistan through Secretary Establishment
Division, Islamabad and others.

....Respondents

Hidayatullah and two others.

....Applicants

Counsel for the applicants:

Muhammad Shah Nawaz Khan Sikandri ASC
Mehmood Ahmed Sheikh AOR

Counsel for the Respondents:

I N D E X

20

IN THE SUPREME COURT OF PAKISTAN
(Review jurisdiction)

CMA No. _____ of 2016
In
Civil Review Petition No. Nil /2016
In
Suo Moto Case No. 17/2016
(ACTION TAKEN BY THIS HON'BLE COURT TO EXAMINE
THE VIRES OF SECTION 25 OF THE NAB ORDINANCE)

CMA for impleadment as party on behalf of Applicants
filed on 05-11-2016

Faiza Sana, SDO, PHED, etc.Petitioners

Versus
*Federation of Pakistan through Secretary Establishment
Division, Islamabad and others.*Respondents

Hidayatullah and two others.Applicants

Counsel for the applicants: . Muhammad Shah Nawaz Khan Sikandri ASC
Mehmood Ahmed Sheikh AOR

Counsel for the Respondents:

INDEX

S.No.	Description of Documents	Date	Pages
1.	CMA	05-11-2016	1-4
2.	Copy of notifications	10-07-1995 26-07-1995	5-6
3.	Copy of letter No. 5541/ A-3	03-10-2016	7
4.	Copy of show cause notice	31-10-2016	8
5.	Affidavits of Facts	05-11-2016	9
6.	Affidavit of Service	05-11-2016	10

Certified that the Paper Book as bound is complete and correct.

(Mehmood Ahmed Sheikh)
Advocate on Record
Supreme Court of Pakistan
Islamabad.

Dated: -05-11-2016.

21



IN THE SUPREME COURT OF PAKISTAN
(Review jurisdiction)

CMA No. _____ of 2016

In

Civil Review Petition No. Nil /2016

In

Suo Moto Case No. 17/2016

(ACTION TAKEN BY THIS HON'BLE COURT TO
EXAMINE THE VIRES OF SECTION 25 OF THE NAB
ORDINANCE)

Faiza Sana, SDO, PHED, etc.

....Petitioners

Versus

Federation of Pakistan through Secretary Establishment
Division, Islamabad and others.

....Respondents

- 1. Hidayatullah, SDO, CRBC Irrigation D. I. Khan
- 2. Khawar Nadeem SDO Mechanical Division Peshawar.
- 3. Asad Ullah Jan SDO Small Dams Peshawar.

....Applicants

21
20
19
18
17
16
15
14
13
12
11
10
9
8
7
6
5
4
3
2
1

22



-2-

APPLICATION UNDER ORDER V RULE 2 (2) R/W
ORDER XXXIII RULE 6 OF THE SUPREME COURT
RULES 1980 R/W ORDER 1 RULE 10 OF CPC FOR
IMPLEADMENT OF THE APPLICANT AS PARTY.
IN THE INTEREST OF JUSTICE

Respectfully Sheweth,

1. That the above titled Review petition amongst other has been fixed before this august court on 07-11-2016. The same is with a prayer for reviewing the worthy judgment in Suo Moto Case No. 17 /2016 dated 24-10-2016.

2. That previously too the same case of the applicants was decided by this August Court by dismissing the appeals of the respondent Government vide CA No. 444 of 2003 to C.A. No .476/2003 dated 28-03-2006.

3. That the applicants have got the same cause as the petitioners in the Review and as such this application for their impaleadment for the sake justice inter-alia on the grounds below:-

23

3



GROUND

a. That the applicants were previously proceeded departmentally and were imposed minor penalty of censure vide notification dated 10-07-1995.

b. That as for as the action of ~~NAB~~ in the same case against the applicants is concerned, off course the applicants made recovery but infect that was a forced recovery and not voluntarily one, keeping in view the meek and humble position of the applicants / Government Servants.

c. That even the volunteer recovery was made for the applicant in October, 2005 before 10 years moreover the rest of the service record of the applicants are unblemished spotless and efficient.

d. That the grounds taken in the main Review Petition may very kindly be taken as integral part of the instant CMA / application for avoiding repetition.

e. That in view of the worthy judgment of this August Court (Under Review), the applicants have been served with a show cause notices by the

Oct-2005

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

24

32

3

-4-

Government of Khyber Pakhtunkhawa vide dated
31-10-2016.

f. That the applicants are the necessary and proper party to the review petition in panel of petitioners under the law and the principle of justice.

PRAYER

Under these circumstances it is humbly prayed that the applicants may kindly be impleaded as party in the above said HRC in the interest of justice.

Drawn by

filed by

(Muhammad Shah Nawaz Khan Sikandri)
Advocate
Supreme Court of Pakistan
Islamabad.
Cell No. 0300-5760612

(Mehmood Ahmed Sheikh)
Advocate on Record
Supreme court of Pakistan

Dated :-05-11-2016.

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, H.C.J.
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE SH. AZMAT SAEED

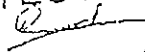
Suo Motu case No.17 of 2016.

(Action taken by this Court to examine the merits of Section 25(a) of the NAB Ordinance.

In Attendance:

Mr Ashtar Ausaf Ali, Attorney General for Pakistan.
Ch. Aamir Rehman, Addl. A.G.
Barrister Asad Rehman, Consultant to A.G.
Mr Waqas Qadeer Dar, PG, NAB
Mr. M. Azam, DPG, NAB.
Mr. Imranul Haq, Spl. Prosecutor NAB.
Mr Abdul Latif Yousafzai, AG, KPK.
Mr Ayaz Swati, Addl. A.G. Balochistan.
Mr Zamir Hussain Ghumro, A.G. Sindh.
Mr Sheharyar Qazi, Addl. A.G. Sindh.
Akhtar Rehana, Addl. P.G Sindh.
Mr Asjad Javed Ghural, Addl. P.G. Punjab.
Mr Mudassar Khalid Abbasi, Asstt. A.G. Punjab.
Mr Asad Khattar, Applicant in CMA No.6374 of 2016.

ATTESTED

for 
Superintendent
Supreme Court of Pakistan
Islamabad

Date of hearing: 24.10.2016.

ORDER

AMIR HANI MUSLIM. J.- This Court on 02.09.2016, during hearing of Civil Appeal No.82-K of 2015, noticed abuse of authority by the NAB while taking cognizance of petty matters in terms of Section 9 of the National Accountability Ordinance, 1999 (hereinafter referred to as the Ordinance). The Ordinance was primarily legislated to counter the cases of mega scandals and initiate proceedings against the accused persons who are involved in scandals of mega corruption and corrupt practices.

26

14

11

2. The Court also noticed that in terms of Section 25(a) of the Ordinance, the NAB authorities after issuance of call up notices suggest to the accused that they may opt to come forward with the offer of voluntary return of the amounts that have allegedly been acquired or earned illegally by them. Section 25 (a) (*ibid*) empowers the Chairman, NAB, to accept such voluntary returns made by the accused persons, the amount is deposited with NAB in installments at the discretion of the Chairman, NAB. Alarmingly, on payment of certain portion of the amount, such person is given clean chit by the NAB to rejoin his job. The frequent exercise of powers under Section 25 (a) (*ibid*) by the NAB on one side has multiplied the corruption usurping the jurisdiction of the F.I.A and Anti-Corruption agencies and defeated the object of the Ordinance on the other hand. In this regard the matter was referred by a Bench of this Court to the Hon'ble Chief Justice of Pakistan, for examining the vires of Section 25(a) (*ibid*) vis-à-vis unbridled powers of the Chairman, NAB to accept the offer of voluntary return from a person regardless of the size of the amount by any mode adopted at his discretion which falls within the domain of the judiciary. The matter was placed before the Hon'ble Chief Justice of this Court, who directed the office to fix the matter in Court, treating it as a Petition under Article 184 (3) of the Constitution. On 02.09.2016, the NAB authorities were further directed to provide the following details

TESTED
in
Chief Justice of Pakistan
dubined.

- (i) The list of the cases in which NAB authorities are conducting enquiries and investigations and or references pending in the NAB Courts, involving an amount of less than Rs.100 Million;
- (ii) The list of the persons, civil servants and or public servants, to be provided by relevant departments of the Governments and or State owned organizations, who entered into Voluntary Return.
- (iii) The action which the Federal/Provincial Governments and or statutory organizations have taken against their employees after their offer of Voluntary Return was accepted by NAB in terms of Section 25(a) of the NAB Ordinance.

27

151

151

3. On 28.09.2016, the matter was adjourned at the request of the learned Law Officers of the Federation and the Provinces as well as the NAB authorities for today. In response to the order dated 02.09.2016, the required reports have been submitted by the Federal Government and the Provincial Governments. The NAB has also filed its report as C.M.A.No.6376 of 2016, giving details of the persons who have offered voluntary return of the monetary gains that they acquired through corrupt practices and such offer was accepted by the Chairman, NAB. From the reports submitted by the Federal Government and the respective Provincial Governments, it appears that no departmental action has been taken against the officers/employees of different organizations including Govt. departments, who had voluntarily returned illegally acquired monetary gains, which is very unfortunate. Once a person accused of corruption or corrupt practices volunteers to offer to return the amount he has pocketed or gained through illegal means, *prima facie*, cannot hold any Government/Public Office, as the very act of his offering the voluntary return falls within the definition of "misconduct" under the service law and calls for initiation of disciplinary action against the accused person(s). The report filed by the NAB mentions that hundreds of employees/civil servants and others who have voluntarily returned the amounts in terms of Section 25(a) (*ibid*) are still enjoying their office, without being exposed to any departmental proceedings which has further multiplied the corruption in the country.

ATTESTED
 for [Signature]
 Superintendent
 Supreme Court of Pakistan
 Islamabad.

4. This inaction on the part of the departmental authorities towards the accused has patronized corruption, by providing a window to the NAB as

Syn Moin Case No. 17/16.

well to the employees, who plunder public money and after paying back a portion of the alleged amount of corruption/corrupt practice continue in their jobs.

5. Primarily, the concept of voluntary return under the Ordinance, was confined to those accused against whom the proceedings were yet to start and they, on their own, had approached the NAB authorities by offering the voluntary return of the amounts illegally gained or acquired by them. This concept, however, was side tracked and instead the accused persons against whom call up notices were issued on the strength of some complaint or otherwise are extended favours by the NAB under the garb of Section 25(a) which was never intended for.

ATTESTED
Superintendent
Supreme Court of Pakistan
Islamabad.

6. In the given circumstances, what has further disturbed us is that the amounts so collected by the NAB in installments or otherwise is not being deposited in its entirety with the concerned Government/Department forthwith, instead some of the amount under the garb of Rules or otherwise is retained by the NAB authorities for distribution to its official towards award.

7. We inquired from the Prosecutor General, NAB, to provide us the details of the amounts of voluntary return recovered from different accused persons and details of its deposit. The P.G, NAB, states that no amount is withheld by the NAB authorities for distribution to its officers who conduct the investigation of the cases as award.

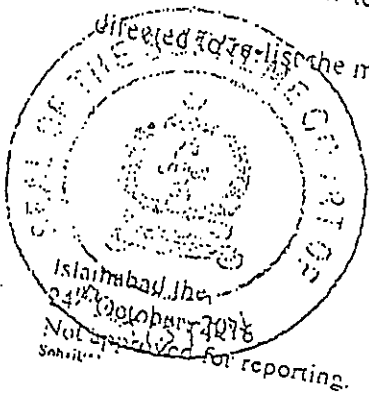
8. The NAB shall provide us the details of the amounts which they have collected from accused persons, during the last 10 years and the

Supp. Appellate Case No. 17/16

amounts which they have deposited with the different Governments. These details should reach this Court by 05.11.2016 positively. Likewise, the Attorney General for Pakistan as well as the Advocate Generals of the Provinces shall handover the copies of C.M.A.No.6376 filed by the NAB to the Secretary, Establishment Division and the Chief Secretaries of all the four provinces, who in turn shall ensure initiation of departmental proceedings against the accused persons mentioned therein who have voluntarily returned the amounts under Section 25(a) of the Ordinance, besides they shall further provide the details of the amounts which different departments have received from the NAB in terms of Section 25(a) (*ibid*).

9. We, therefore, direct the Secretary, Establishment Division and all the Chief Secretaries of the Provinces to ensure initiation of departmental proceedings forthwith against the employees mentioned in C.M.A.No.6376 of 2016 who have voluntarily returned the amounts in terms of Section 25(a) (*ibid*), without further loss of time and report compliance.

10. In the meanwhile, the Chairman, NAB, or any other Officer authorized by him in this behalf, is restrained from accepting any offer of voluntary return in terms of Section 25(a) of the Ordinance. The office is directed to re-litigate the matter on 07.11.2016.



Certified to be true Copy
 [Signature]
 Superintendent
 Civil Branch
 Supreme Court of Pakistan
 Mr. Anwar Zaheer Jamali, HCJ
 Mr. Amir Hani Muallim, J
 Sh. Azmat Saeed, J

30

107

57

IN THE SUPREME COURT OF PAKISTAN.
(Original Jurisdiction)

Present:
Mr. Justice Anwar Zaheer Jamali, H.C.J.
Mr. Justice Amir Hani Musliim

SUO MOTO CASE NO. 17 OF 2016
(Suo moto action to examine the vires of Section 25(a)
of the NAB Ordinance 1999)

CMA. 6374/2014 IN SMC NO.17/2016
(Application of Asd Kharal, Journalist)

CMA. 7126/2016 IN SMC NO.17/2016
(Application for impleadment of Faiza Sana and 41 others)

CMA. 7258/2016 IN SMC NO.17/2016
(Application for impleadment of Jalil-ur-Rehman and others)

CMA. 7259/2016 IN SMC NO.17/2016
(Application for impleadment of Syed Daud Jan and another)

CMA. 7269/2016 IN SMC NO.17/2016
(Application for impleadment of Bakht Naseeb)

CMA. 7268/2016 IN SMC NO.17/2016
(Application for impleadment of Amir Zarin)

CMA. 7268/2016 IN SMC NO.17/2016
(Application for impleadment of Amir Zarin)

CMA. 7270/2016 IN CRP Nil/2016 IN SMC NO.17/2016
(Jalil-ur-Rehman and others vs. Federation and others)

CMA. 7274/2016 IN CRP Nil/2016 IN SMC NO.17/2016
(Syed Daud Jan and another Vs. Federation and others)

CMA. 7278/2016 IN CRP Nil/2016 IN SMC NO.17/2016
(Faiza Sana, SCO, PHED etc Vs. Federation and others)

CMA. 7290/2016 IN SMC NO.17/2016
(Application for impleadment of Muhammad Iqbal and others)

CMA. 7291/2016 IN SMC NO.17/2016
(Application for impleadment of Muhammad Iqbal Gandapur and others)

CMA. 7293/2016 IN SMC NO.17/2016
(Application for impleadment of Roshul Amin and others)

CMA. 7294/2016 IN SMC NO.17/2016
(Application for impleadment of Qudrat Ullah Khan and others)

CMA. 7302/2016 IN SMC NO.17/2016
(Application for impleadment of Jalcel Farrukh Durrani MD and another)

CMA. 7305/2016 IN SMC NO.17/2016
(Application for impleadment of Hidayatullah and others)

CMA. 7308/2016 IN CRP NIL/2016 IN SMC NO.17/2016
(Roshul Amin and others vs. Federation and others)

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

CMA. 7312/2016 IN CRP NIL/2016 IN SMC NO.17/2016
(Qudrat Ullah Khan and others Vs. Federation and others)

CMA. 7361/2016 IN SMC NO.17/2016
(Application for impleadment of Yaqoob Loona and others)

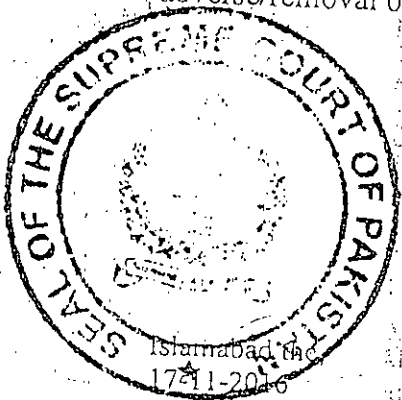
Attendance

- Mr. Ashtar Ausaf Ali, Attorney General for Pakistan
- Ch. Aamir Rehman, Addl. AG.
- Barrister Asad Rehman, Consultant to AG.
- Mr. Abdul Larif Yousafzai, AG KPK.
- Mr. Ayaz Swati, Addl. AG Balochistan.
- Mr. Zamir Hussain Ghmro, AG Sindh.
- Mr. Sheharyat Qazi, Addl. AG Sindh.
- Mr. Zafar Ahmed Khan, Addl. PG Sindh.
- Mr. Rasheed Hafeez, AG Pb.
- Ch. M. Sarwar Sindhu, Addl. PG Pb.
- ← Ms. Asma Jehangir, ASC
- Mr. Qamar Ali, Dy. Secy (Judicial) KPK.
- Syed Mehmood Ali Shah, DC.
- Mr. Muhammad Asif Jameel, DC.
- Mr. Amad, S.O.
- Ch. Qamar Uzzaman, Chairman, NAB
- Col. Sirajul Haeem, DG NAB.
- Qamar Abbas, DD/NAB
- Syed Ali Imran, Spl. Prosecutor, NAB.
- ← Mr. Waqas Qadeer Dar, PG NAB
- Arshad Qayyum, Spl. Prosecutor.
- Mr. Imranul Haq, Spl. Prosecutor NAB
- Mr. Ghulam Ali Brahmani, Addl. Secy (Services) Sindh.
- Kh. Ahmed Tariq Rahim, Sr. ASC
- Mr. Jamal Afridi, ASC (CMA.7269, 7268/2016)
- Kh. Hasan Riaz, ASC (CMA.7586/16)
- Mr. Fareedullah Khan, ASC (CMA.7581/16)
- ← Mr. M. Safdar, ASC (CMA.7626/16)

Date of hearing : 17-11-2016 ✓

ORDER

ANWAR ZAHEER JAMALI, CJ. Hearing of this case is adjourned till the first week of December 2016. In the meantime, no final adverse/removal order shall be passed against any of the affected.



Islamabad, the
17-11-2016
Not approved for reporting.
Saeed**

Sd/- Anwar Zaheer Jamali, CJ
Sd/- Amir Hani Muslim, J
Certified to be True Copy

Judge

Court Associate
Supreme Court of Pakistan
Islamabad

32

18

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:
Mr. Justice Anwar Zaheer Jamali, HCJ
Mr. Justice Amir Hani Muslim

SUO MOTO CASE NO. 17 OF 2016
(Suo Moto action to examine the vires of Section 25(a)
of the NAB Ordinance 1999)

CMA. 6374/2014 IN SMC NO.17/2016
(Application of Asd Kharal, Journalist)

CMA. 7126/2016 IN SMC NO.17/2016
(Application for impleadment of Faiza Sana and 41 others)

CMA. 7258/2016 IN SMC NO.17/2016
(Application for impleadment of Jalil-ur-Rehman and others)

CMA. 7259/2016 IN SMC NO.17/2016
(Application for impleadment of Syed Daud Jan and another)

CMA. 7269/2016 IN SMC NO.17/2016
(Application for impleadment of Bakht Naseeb)

CMA. 7268/2016 IN SMC NO.17/2016
(Application for impleadment of Amir Zarin)

CMA. 7270/2016 IN CRP Nil/2016 IN SMC NO.17/2016
(Jalil-ur-Rehman and others vs. Federation and others)

CMA. 7274/2016 IN CRP Nil/2016 IN SMC NO.17/2016
(Syed Daud Jan and another vs. Federation and others)

← CMA. 7278/2016 IN CRP Nil/2016 IN SMC NO.17/2016
(Faiza Sana, SCO, PHED etc Vs. Federation and others)

CMA. 7290/2016 IN SMC NO.17/2016
(Application for impleadment of Muhammad Iqbal and others)

CMA. 7291/2016 IN SMC NO.17/2016
(Application for impleadment of Muhammad Iqbal Gandapur and others)

CMA. 7293/2016 IN SMC NO.17/2016
(Application for impleadment of Roohul Amin and others)

CMA. 7294/2016 IN SMC NO.17/2016
(Application for impleadment of Qudrat Ullah Khan and others)

CMA. 7302/2016 IN SMC NO.17/2016
(Application for impleadment of Jaleel Farrukh Durrani MD and another)

← CMA. 7305/2016 IN SMC NO.17/2016
(Application for impleadment of Hidayatullah and others)

CMA. 7308/2016 IN CRP Nil/2016 IN SMC NO.17/2016
(Roohul Amin and others vs. Federation and others)

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

Mr. N.A. Butt, ASC (CMA.7361/16)
Mr. Abdul Latif Afridi, ASC (CMA.7258, 7259 & 7293/16)
Syed Arshad, ASC (CMA.7270 & 7274/16)



Date of hearing : 06-12-2016

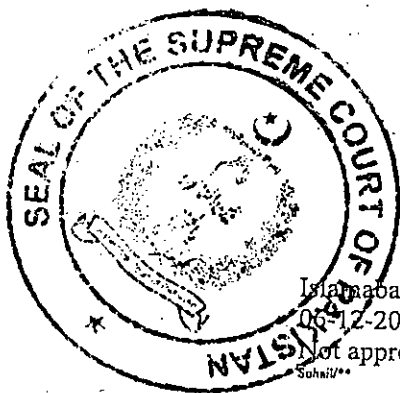
ORDER

AMIR HANI MUSLIM, J.- The learned Attorney General for Pakistan has requested for time to seek instructions from the Government on the issue of exercise of powers by the Chairman NAB under Section 25(a) of the NAB Ordinance.

2. We have heard the Prosecutor General NAB. For want of time, the matter is adjourned. The Federal and Provincial Governments shall conclude the departmental proceedings against the officials who have entered into voluntary return and report compliance. However, no final order of removal from service shall be passed against ~~the~~ any of the officials, who have entered into voluntary return, if the amount of voluntary return paid by him is less than 25 lacs. //

3. In the intervening period, the restraining order passed against the Chairman NAB and or any other officer authorized by him in this behalf from accepting any offer of voluntary return in term of Section 25(a) of the NAB Ordinance, shall continue till disposal of these proceedings. To come up on 2nd January 2017.

Sd/- Anwar Zaheer Jamali, CJ
Sd/- Amir Hani Muslim, J
Certified to be True Copy



Islamabad the,
06-12-2016

Not approved for reporting

21325/16

Handwritten signature
8/12/16

Court Associate
Supreme Court of Pakistan

Civil/Criminal

Date of Filing	08-12-16
No of Words	900
No of Pages	9
Required Fee	5-00
Copy Fee	5-58
Court Fee	10-58
Date of Cont.	8/12/16
Date of delivery	9/12/16
Compared by/Prepared by:	<i>Handwritten initials</i>
Received by:	M. Anwar

MOST IMMEDIATE



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

(34)

No. SO(E)/Irr:/9-3/99/NAB/Vol-III
Dated Peshawar the 9th November, 2016

To

Engr: Hidayat Ullah, ✓
Assistant Engineer (BS-17),
Presently posted as SDO, CRBC-II Irrigation Sub Division,
D.I. Khan.

Subject: URGENT IMPLEMENTATION OF SUPREME COURT JUDGMENT DATED
24.10.2016

I am directed to refer to the subject noted above and to enclose herewith a copy of the show cause notice containing tentative major penalty of "Removal from Service" alongwith august Supreme Court of Pakistan order dated 24.10.2016 in recent Suo Motu Case No. 17 of 2016 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.

You are directed to submit your reply, if any, within 07 days of the delivery of this letter, otherwise, it will be presumed that you have nothing to put in your defence and ex-parte action will follow.

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

Encl: as above


(FAZAL ELAHI) 9/11
Section Officer (Estt.)

Endst: No and date even

Copy forwarded to the:-

1. Chief Engineer (South) Irrigation Department, Peshawar.
2. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. PS to Secretary Establishment Department, Peshawar.
4. PS to Secretary Irrigation Department, Peshawar.


Section Officer (Estt.) 9/11

(35) (19)

SHOW CAUSE NOTICE

I, Abid Saeed, Chief Secretary, Khyber Pakhtunkhwa as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Hidayat Ullah, Assistant Engineer (BS-17) presently posted as SDO, CRBC-II, Irrigation Sub Division, D.I. Khan as follows:

Pursuant to the judgment of the august Supreme Court of Pakistan in a Suo Motu Case No. 17 of 2016 dated 24.10.2016.

I am satisfied that you have committed the following acts/omission specified in rule-3 of the specified rules:

a. You have voluntarily returned the embezzled public money amounting to Rs. 124,341/- to NAB, which tantamount to proven guilty of misconduct.

2. In terms of Rule-5 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, as Competent Authority, dispense with the inquiry and serve you with a show cause notice under Rule-7 of the ibid Rules.

3. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the following penalty under Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

i. Removal from Service

ii.

4. You are, therefore, required to show cause as to why the aforesaid penalty/penalties 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 of 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.

Abid Saeed

(ABID SAEED)
CHIEF Secretary
Khyber Pakhtunkhwa
Competent Authority

MOST IMMEDIATE

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

S.D.O. Sulim

No. SO(E)/Irr/9-3/99/NAB/Vol-III
Dated Peshawar the 8th March, 2018

To

Engr: Hidayat Ullah,
Assistant Engineer (BS-17),
Presently posted as SDO, CRBC-II,
Irrigation Sub Division, D.I. Khan.

Subject: URGENT IMPLEMENTATION OF SUPREME COURT JUDGMENT DATED
24.10.2016 - SHOW CAUSE NOTICE

I am directed to refer to the subject noted above and to enclose herewith a copy of the show cause notice containing tentative major penalty of "Removal from Service" 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.

You are directed to submit your reply, if any, within 07 days of the delivery of this letter, otherwise, it will be presumed that you have nothing to put in your defence and ex-parte action will follow.

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

(Engr: Anwar Kamal)
Section Officer (Estt:)

Encl: as above

Endst: No and date even

Copy forwarded to the:-

1. Chief Engineer (South) Irrigation Department, Peshawar.
2. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. PS to Secretary Establishment Department, Peshawar.
4. PS to Secretary Irrigation Department, Peshawar.

(Engr: Anwar Kamal)
Section Officer (Estt:)

12/3/18

SHOW CAUSE NOTICE

S.D. OC-112

I, Muhammad Azam Khan, Chief Secretary, Khyber Pakhtunkhwa as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Hidayat Ullah, Assistant Engineer (BS-17) presently posted as SDO, CRBC-II, Irrigation Sub Division, D.I. Khan as follows:

Pursuant to the judgment of the august Supreme Court of Pakistan in a Suo Motu Case No. 17 of 2016 dated 24.10.2016.

I am satisfied that you have committed the following acts/omission specified in rule-3 of the specified rules:

You have voluntarily returned the embezzled public money amounting to Rs. 124,341/- to NAB, which tantamount to proven guilty of misconduct.

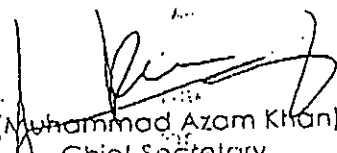
2. In terms of Rule-14(4) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, I as Competent Authority serve you with a show cause notice.

3. As a result thereof, I, have tentatively decided to impose upon you the following penalty under Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

- i. Removal from Service
- ii. _____

4. You are, therefore, required to show cause as to why the aforesaid penalty/penalties 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 of 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.


(Muhammad Azam Khan)
Chief Secretary
Khyber Pakhtunkhwa
Competent Authority

(38)

(38)

(38)

BEFORE THE COMPETENT AUTHORITY, HONOURABLE
CHIEF SECRETARY KHYBER PAKHTUNKHWA PESHAWAR.

Reply to 2nd show cause notice issued vide Section Officer
(Estt), office of the Secretary to Govt of KPK Irrigation
Department Peshawar letter No: SO (E) / Irr/ 9-
3/99/NAB Vol-III dated 8th March 2018

Respected Sir,

The undersigned humbly replies as under,

1. That the on 15/3/2018, 2nd Show cause notice received through fax from your good-self against the undersigned which was received on 15/3/2018. Copy enclosed for ready reference. My para wise submissions are as under;

PARA WISE REPLY:

It is worth mentioning that the judgment of the honourable apex court of the country august Supreme Court of Pakistan in suo-moto case No. 17/2016 dated 24/10/2016 is still under review wherein petitioner is a party in the review petition. Moreover, the order dated 24/10/2016 is totally mis-conceived.

1. That the undersigned by force accepted the VR offer however, the said return was made in October 2005 and almost 10 years elapsed to that issue, hence, that transaction is termed as passed and closed transaction which cannot be opened belatedly without any legal justification. Hence, not admitted. The undersigned never ever embezzled public money amounting to Rs 124,341/-, the said VR is forceful one and could not be termed as VR under the law.
2. That the undersigned had already been proceeded departmentally on the same allegations, under the N-W.F.P Govt. Servants E&D Rules 1973 and awarded censure as punishment. Therefore, the efficiency E&D Rules of 2011 mentioned in the 2nd show cause notice may not be invoked against the undersigned. Which is clearly

39
40

against the fundamental rights guaranteed and secured by the Constitution of Pakistan 1973.

3. That the undersigned has already replied in above para, however, it is respectfully submitted to your good-self that the matter of the undersigned in shape of review petition is still subjudice before the august Supreme Court of Pakistan and during this situation any act/action (if taken) against the undersigned is against law and settled realities of the undersigned's case. Moreover, I had not made any formal request for plea bargaining but the NAB authorities has directed and persuaded me to voluntarily return the amount and I therefore, submitted formal request of voluntarily return but at the time of VR the undersigned informed the concerned NAB authority regarding double punishment was going to be initiated against the undersigned because already on the same allegations undersigned was awarded censure punishment by the Chief Secretary to Govt. of N.W.F.P vide notification No. SO(E)I&PHE/12-2/92(Emb:) dated 10/07/1995. Moreover, the august Supreme Court of Pakistan in Civil Appeal No. 444/2003 to 476-2003 vide judgment dated 28/03/2006, undersigned's case was decided in his favour which is enclosed herewith as ready reference.

i. Unable to furnish any comments being a legal and power conferred upon competent authority under the rules ibid but requested that the undersigned had already been departmentally inquired by the competent authority under E&D Rules 1973 on the same subject matter, this fact is mentioned above in detail.

4. That the august Supreme Court of Pakistan has very graciously be granted stay order to the undersigned as mentioned **"No final adverse/removal order shall be passed against any of the affectee"**, in the review petition of the applicant/undersigned. Moreover, on 06/12/2016, the august Supreme Court of Pakistan, once

2

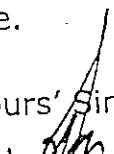
again, issued a clear order/judgment in review petitions by the effectees of VR as under,

"We heard the prosecutor General NAB for want of time the matter is adjourned. The Federal and Provincial Governments, shall conclude the departmental proceedings against the officials who have entered into voluntary return and report compliance. **However, no final order of removal from service shall be passed against any of the official, who have entered into voluntary return paid by him is less than 25 Lacs.**

5. The undersigned wish to be heard in person.
6. Detailed reply has been submitted within stipulated period.

In view of the above submissions, it is humbly requested from your good-self that the undersigned has already been received a show cause notice in this respect which was accordingly replied to the competent authority and now by issuing 2nd show cause notice to the undersigned on the same issue at this time is alien to law, moreover, the undersigned very respectfully requested from your good self to file the 2nd show cause notice against the undersigned till the final disposal of Review petition pending before the august Supreme Court of Pakistan in the large interest of justice.

Yours' Sincerely


Engr. Hidayat Ullah
Assistant Engineer (BS-17)
Presently posted as
SDO, CRBC-II, Irrigation
Sub-Division Dera Ismail Khan

Enclosures List;

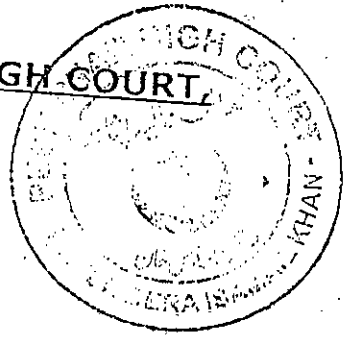
1. Detail reply to 2nd show cause notice.
2. Copy of Supreme Court order dated 06/12/2016.
3. Copy of Supreme Court order dated 28/03/2006 in favor of undersigned.
4. Copy of review petition which is pending before august Supreme Court of Pakistan in case No. 17 of 2016.
5. Copy of Notification regarding Censure Punishment dated 10/07/1995.

(41)

(23)

4

**BEFORE THE HONOURABLE PESHAWAR HIGH COURT,
BENCH DERA ISMAIL KHAN**



Writ Petition No. _____/2018

Hidayatullah, Assistant Engineer, CRBC Irrigation, Sub-Division-II Dera Ismail Khan.

..... Petitioner

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Irrigation, KPK, Peshawar.
2. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar.
3. Secretary Establishment Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
4. Additional Secretary Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
5. Accountant General Khyber Pakhtunkhwa, Peshawar through District Accounts Officer, Dera Ismail Khan.

..... Respondents.

**WRIT PETITION of PROHIBITION UNDER
ARTICLE, 199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISATN 1973
AGAINST THE ILLEGAL AND UNJUSTIFIED
PROPOSAL OF PENALTY OF REDUCTION TO
LOWER PAY SCALE FOR THREE YEARS IN CASE
OF PETITIONER.**

today 22/5/18
dd: Registrar.
5/6/18

ATTESTED
31-5-18
EXAMINOR
Peshawar High Court

42

34

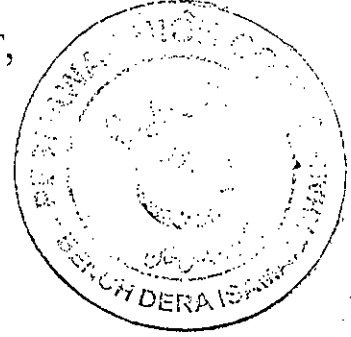
JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

W.P.No. 610-D/2018

Hadiyatullah

Versus

Govt. of Khyber Pakhtunkhwa through
Secretary Irrigation and 04 others



For petitioner: Muhammad Waqar Alam, Advocate

For respondents: Mr. Kamran Hayat Miankhel, Additional
Advocate General.

Date of hearing: 29.05.2018.

JUDGMENT

SHAKEEL AHMAD, J.- Through the instant constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner Hadiyatullah has sought the following relief:-

In wake of submission made above, it is humbly prayed that on acceptance of the instant writ petition the respondents may please be directed to set aside the order dated 11.5.2018 vide which the petitioner is awarded penalty of reduction to a lower pay scale for three years, the respondents may also be directed to allow the petitioner to work on his pay scale till final disposal of the review petition in suo moto case No.17 of 2016 pending before the august Supreme Court of Pakistan.

2. Briefly, the facts of the case are that the petitioner is serving as Assistant Engineer (BS-17) and posted as SDO CRBC-

ATTESTED

31-05-18
EXAMINOR
Peshawar High Court
D.I. Khan Bench

II, Irrigation Sub Division, D.I.Khan pursuant to the recommendations of Public Accounts Committee (PAC), the petitioner, alongwith other employees were held guilty for committing embezzlement of Rs.70.520 million without budget allotment DP.638 Paharpur Irrigation Division, D.I.Khan, and when the National Accountability Bureau (NAB) took cognizance of the matter, the petitioner voluntarily returned the embezzled public money amounting to Rs. 124,341/- to the NAB, whereafter, pursuant to the judgment of the august Supreme Court of Pakistan in the suo moto case No. 17 of 2016 dated 24.10.2016, show cause notice for removal from service was served upon the petitioner on the ground that voluntarily return of embezzled public money amounts to guilty of misconduct, and departmental proceedings were initiated against him. Not contended with the same, the petitioner filed the instant petition.

3. It was argued by the learned counsel for the petitioner that on the same allegations, the petitioner was proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and was awarded minor penalty of Censure. He further contended that show cause notice was issued to the petitioner pursuant to the judgment of the august Supreme Court of Pakistan in the suo moto case No.17 of 2016 dated 24.10.2016, whereafter, review petition was filed and interim order was issued in favour of affectees.

4. Learned Advocate General representing the official respondents opposed the contention of the learned counsel for the petitioner, however, he conceded to the extent that interim order has been issued by the august Supreme Court of Pakistan in favour of affectees.

ATTESTED
31-05-18
EXAMINOR
Peshawar High Court
D.I.Khan Bench

44

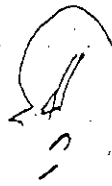


5. Arguments heard and record perused.
6. Perusal of record reflects that pursuant to the judgment of the august Supreme Court of Pakistan in the suo moto case No. 17 of 2016 dated 24.10.2016, show cause notice was issued to the petitioner on the ground that voluntarily return of embezzled public money amounting to Rs.1,24,341/- to the NAB tantamount to guilty of misconduct, however, the affectees filed review petition before the august Supreme Court of Pakistan in the suo moto case No. 17 of 2016 dated 24.10.2016, wherein the following order was passed:-

Hearing of this case is adjourned till the first week of December 2016. In the meantime, no final adverse/removal order shall be passed against any of the affectee.

7. In view of above, without going into the merits of the case, we disposed of this writ petition with the direction to the respondents to proceed against the petitioner in accordance with law, but shall not pass final order till the final disposal of review petition pending before the august Supreme Court of Pakistan in the suo moto case No. 17 of 2016 dated 24.10.2016.

Announced
Dt: 29.5.2018
Hasnain/af



JUDGE


JUDGE

(D.B.)

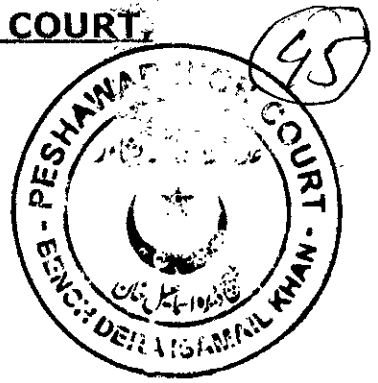
Hon'ble Mr. Justice Ijaz Anwar.
Hon'ble Mr. Justice Shakeel Ahmad.

ATTESTED


31-05-18
EXAMINOR
Feshawar High Court
D.I.Khan Sector

31/5/18

BEFORE THE HONOURABLE PESHAWAR HIGH COURT,
BENCH, DERA ISMAIL KHAN



COC No. _____/2018

In Writ Petition No. 610-D of 2018

Hidayatullah, Assistant Engineer, CRBC Irrigation, Sub-Division-II Dera Ismail Khan. presently working as SDO, Gomal Zam Dam Dera Ismail Khan.

..... **Petitioner**

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Irrigation, KPK, Peshawar. (Naeem Khan)
2. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar. (Azam Khan)
3. Secretary Establishment Irrigation Department, Khyber Pakhtunkhwa, Peshawar. (Arshad Majeed)
4. Additional Secretary Irrigation Department, Khyber Pakhtunkhwa, Peshawar. (Farhad Khan)
5. Accountant General Khyber Pakhtunkhwa, Peshawar through District Accounts Officer, Dera Ismail Khan. (Abdul Ghaffar)

..... **Respondents**

APPLICATION UNDER ARTICLE 204 OF THE CONSTITUTION OF PAKISTAN, 1973 READ WITH SECTION 3/4 OF THE CONTEMPT OF COURT ACT, 1976 FOR INITIATING CONTEMPT PROCEEDINGS AGAINST RESPONDENTS FOR VIOLATING ORDER DATED 29/05/2018 OF THIS HONOURABLE COURT PASSED IN CONTEMPT PETITION NO. 610-D OF 2018.

ATTESTED
EXAMINOR
Peshawar High Court
D.I. Khan Bench

Respectfully Sheweth;

46

1. That the present petitioner had filed a writ petition No 610-D/2018 to direct the respondents to set aside the order dated 11/05/2018 vide which the petitioner was awarded penalty of reduction to a lower pay scale for three years detail fully described in the writ petition. Copy of writ is enclosed herewith.
2. That on 29/05/2018, this honourable court was very graciously allowed the writ petition and the respondents were directed with following wordings,

"in view of the above, without going into the merits of the case, we disposed of this writ petition with the direction to the respondents to proceed against the petitioner in accordance with law, but shall not pass final order till the final disposal of review petition pending before the august Supreme Court of Pakistan in the suo moto case No. 17 of 2016 dated 24/11/2016". Copy of the order dated 29/05/2018 is enclosed.

3. That on 29/05/2018 the petitioner telephonically conveyed the order dated 29/05/2018 of this Honourable court to the respondents. Thereafter the petitioner sent the copies of order dated 29/05/2018 to the respondent via TCS Service. Copies of TCS receipts are enclosed herewith.
4. That after getting attested copies of the order dated 29/05/2018, the petitioner submitted an application along with the order of this honourable court to respondents which was accordingly received by the competent authority on 01/06/2018 vide dairy No. 4402. Copy of application is enclosed.
5. That on 30/05/2018, upon the recommendations of respondent#2, the respondent No. 1 issued a notification No. SO(E)/IRRI:/9-3/99/NAB/Vol-II dated 30/05/2018 vide

ATTESTED
28-05-18
EXAMINOR
Peshawar High Court
D.I. Khan Bench

which the major penalty of the reduction to a lower pay scale in existence of order of this honourable court. Copy of the notification is enclosed.

47

6. That now it is an admitted fact that the respondents violated the order of this honourable court by knowing the fact of order dated 29/05/2018 which is condemnable act of the respondents, hence, feeling aggrieved with the act of respondents the petitioner approaches this court, inter alia, the following grounds.

GROUND S

- a. That the Respondents wilfully and with malafide intentions not obeying the legal orders of this Honourable Court hence liable to be contempt of court proceedings.
- b. That since the aforesaid order passed by this Honourable Court has been violated, the petitioner is left with no option but to invoke the powers vested in the Honourable Court for initiating contempt proceedings or other appropriate order thereon.
- c. That the respondents mala fidely imposed the major penalty upon the petitioner despite of the clear cut orders dated 29/05/2018 of this Honourable court, hence, liable to be punished.
- d. That respondent has been guilty of disobedience of the lawful orders passed by this Honourable Court and therefore, a penal action be initiated against respondents under the law.

In view of above submissions, it is earnestly prayed that on acceptance of this application, contempt proceedings be initiated against respondents and

ATTESTED
28/6/18
EXAMINOR
Peshawar High Court
D.I. Khan Bench

they be apportioned severe punishment in accordance with law and grievance of the petitioner may please be redressed in the large interest of justice.

48

Date: 08/06/2018

Yours Humble Petitioner

Hidayatullah

Through Counsel,

[Handwritten signature]
8/6
Muhammad Waqar Alam
Advocate High Court
Dera Ismail Khan

[Handwritten signature]
28-10-18
EXAMINOR
Peshawar High Court
Dera Ismail Khan Bench

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

49

C.O.C. No.747-D/2018 with
C.M. No.748-D/2018.



Hidayat Ullah
Vs.
Govt. of KPK etc.

JUDGMENT

For Petitioner: **Muhammad Waqar Alam, Advocate.**

For Respondents: **Mr. Adnan Ali Khan, Asstt: A.G.**

Date of hearing: **25.9.2018.**

SHAKEEL AHMAD, J.- Through the instant petition, petitioner Hidayat Ullah seeks initiation of contempt of Court proceedings against the respondents, failing to comply with the order of this Court dated 29.5.2018, passed in constitutional petition No.610-D/2018.

2. Brief facts of the case, out of which the present petition arises, are that the petitioner is ~~sewing~~ ~~as~~ Assistant Engineer (BS-17) and was posted as SDO CRBC-II, Irrigation Sub Division, D.I.Khan pursuant to the recommendations of Public Accounts Committee (PAC), the petitioner alongwith other employees were held guilty for committing embezzlement of Rs.70.520 million without budget allotment DP .638 Paharpur

ATTES/EL
EXAMINOR
Peshawar High Court
D.I.Khan Bench

Irrigation Division, D.I.Khan, and when the National Accountability Bureau (NAB) took cognizance of the matter, the petitioner voluntarily returned the embezzled public money amounting to Rs.124,341/- to the NAB, whereafter, pursuant to the judgment of the august Supreme Court of Pakistan in the *suo moto* case No.17 of 2016 dated 24.10.2016, show cause notice for removal from service was served upon him on the ground that voluntarily return of embezzled public money amounts to guilty of misconduct and departmental proceedings were initiated against him. The petitioner being aggrieved, filed constitutional petition No.610-D/2014, against the respondents which was disposed of vide order dated 29.5.2018, with the direction to the respondents to proceed against the petitioner in accordance with law, but shall not pass final order till the final disposal of the review petition pending before the august Supreme Court of Pakistan in *suo moto* case No.17 of 2016 dated 24.10.2016, but despite clear cut direction, the respondents failed to comply with the order of this Court and passed the final order imposing major penalty of reduction to the lower pay scale vide office order dated 30.5.2018, hence this petition.

50

see

ATTESTED
28-10-18
EXAMINOR
Peshawar High Court
D.I.Khan Bench

3. It is argued by the learned counsel for the petitioner that the petitioner is penalized by the inaction of the respondents. He next contended that the respondents are under legal obligation to honour the order of this Court, but they adopted the device to frustrate the judgment of this Court. He lastly contended that the act of the respondents is not only contemptuous, but also to lower the position of the Judiciary in the eyes of public-at-large, therefore, they are liable to be proceeded against for committing contempt of Court.

51

4. As against that, the learned Asstt. A.G. appearing on behalf of the respondents, submitted that the order of this Court has been questioned before the apex Court. He next submitted that the respondents are law-abiding government officials and cannot think of committing the contempt of Court.

5. We have given our anxious consideration to the contentions of the learned counsel for the parties and perused the record.

6. It is better and appropriate to reproduce operative part of the judgment of this Court:-

red

“6. Perusal of record reflects that pursuant to the judgment of the august Supreme Court of Pakistan in the *suo moto* case No.17 of 2016 dated 24.10.2016, show cause notice was issued to the petitioner on the ground that voluntarily return of

ATTESTED
28-10-18
EXAMINOR
Peshawar High Court
D.I. Khan Bench

embezzled public money amounting to Rs.1,24,341/- to the NAB tantamount to guilty of misconduct, however, the affectees filed review petition before the august Supreme Court of Pakistan in the *suo moto* case No.17 of 2016 dated 24.10.2016, wherein the following order was passed:-

(52)

Hearing of this case is adjourned till the first week of December, 2016. In the meantime, no final adverse/removal order shall be passed against any of the effectee.

7. In view of the above, without going into the merits of the case, we disposed of this writ petition with the direction to the respondents to proceed against the petitioner in accordance with law, but shall not pass final order till the final disposal of review petition pending before the august Supreme Court of Pakistan in the *suo moto* case No.17 of 2016 dated 24.10.2016.

7. Plain reading of the aforesaid judgment would make it crystal clear that the respondents were directed to proceed against the petitioner in accordance with law, but shall not pass final order till the final disposal of the review petition pending before the august Supreme Court of Pakistan, however, the respondents have not acted in consonance with the order passed by this Court and imposed the major penalty of reduction to lower pay scale.

8. It is now settled principle of law that nobody should be penalized by the inaction of the public functionaries as laid down in the case reported as **Ahmad Latif Qureshi Vs. Controller of Examination**

red

FILED
28-10-18
EXAMINOR
Peshawar High Court
D.I. Khan Bench

Board of Intermediate and Secondary Education,
Lahore (PLD 1994 Lahore 3). It is also settled
principle of law that everybody is bound to obey the
command of the Constitution in view of Article 5(2) of
the Constitution, as laid down by the Honourable
Supreme Court in **Chaudhry Zahoor Elahi's case**
(PLD 1996 S.C 383). The public functionaries are also
bound to act in accordance with law in view of Article 4
read with Articles 189, 190 & 201 of the Constitution.
Meaning thereby, to act within the framework of law
and constitution. Laws are made not to make them
merely a statute book which are framed to act upon
them, which are in consonance with Holy Quran, as
enshrined in *Surah Baqra*. Strong and independent
judiciary is sine qua non for a sovereign Islamic State.
Concept of sovereign Islamic State minus a strong
judiciary is unimaginable, if the judiciary of a country is
stripped off its powers, the country would cease to exist
as free nation, as laid down by the august Supreme
Court of Pakistan in **State Vs. Tariq Aziz & 6 others**
(2000 SCMR 751). Non-observance of the orders of the
Court would definitely create a chaos.

9. The learned Asstt: A.G. stated that final
order has been passed by the respondents under

53

28/10/18
EXAMINOR
Peshawar High Court
D.I. Khan Bench

misconception and that they will be careful in near future. Therefore, we have taken a lenient view not to proceed against the respondents under contempt proceedings following the law laid down by the august Supreme Court of Pakistan in the case reported as **Mst. Safia Bibi Vs. Mst. Aisha Bibi (PLD 1982 S.C. PSC Cases 304)**.

59

10. In view of what has been discussed above, we deem it appropriate to suspend the operation of the impugned order dated 30.5.2018, whereby major penalty of reduction to lower pay scale was imposed upon the petitioner till the final disposal of the review petition in the *suo moto* case No.17 of 2016. With these observations, this petition is disposed of.

Announced.
Dt: 25.9.2017.

Kifayat/*



JUDGE



JUDGE

(D.B)
Hon'ble Mr. Justice Ijaz Anwar
Hon'ble Mr. Justice Shakeel Ahmad

Alpe
For
28/9

G.R.No. 2846
Application Received on 25-09-18
Copying Fee deposited Re —
No of Papers 10 page
Copying Fee 00
Urgent Fee 400
Total Fee —
Copy ready for delivery 28-10-18
Copy delivered on 28-10-18
Signature of Examiner [Signature]
28-10-18

Certified to be true Copy
28/10/18
EXAMINOR
Peshawar High Court Bench D I Khan
Authorized Under Section 97 of
Qanun-e-Shahadat Act



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

55
55

Dated Peshawar, the 30th May, 2018

NOTIFICATION

No. SO(E)/IRRI/9-3/99/NAB/Vol-II: WHEREAS, Hidayat Ullah, Assistant Engineer (BS-17)/SDO, Gomal Zam Irrigation Sub Division, D.I. Khan was proceeded against under the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011 in the voluntarily returned the embezzled public money amounting to Rs. 150,000/- to NAB.

AND WHEREAS, for the said act/omission specified in rule-3 of the rules ibid, he was served Show Cause notice to which he replied.

AND WHEREAS, he was provided opportunity of personal hearing as required under Rule- 15 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 so as to fulfill the legal requirements.

NOW THEREFORE, the Competent Authority, after having considered the charges, material on record and explanation of the officer concerned, in exercise of the Powers under Rule- 4 (b)(i) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the major penalty of "Reduction to a lower pay scale for three years" upon the aforementioned officer.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Encl. No. & date even.

Copy of the above is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South) Irrigation Department, Peshawar.
3. The Chief Engineer (North) Irrigation Department, Peshawar.
4. The Director General, Small Dams, Peshawar.
- X 5. All Superintending Engineers of Irrigation Department.
- X 6. PS to Minister for Irrigation, Khyber Pakhtunkhwa.
7. PSO to Chief Secretary, Khyber Pakhtunkhwa.
8. The Section Officer (Dev.) Irrigation Department.
9. The Section Officer (General), Irrigation Department.
- X 10. The officer concerned.
11. The District Accounts Officer, D.I. Khan.
12. PS to Secretary Irrigation Department.
13. PS to Secretary Establishment Department.
14. PA to Additional Secretary, Irrigation Department.
- X 15. Personal file of the officer.

Section Officer (Estt)

o/c
JHS cu
31/5/18

To

56

The Worthy Chief Minister,
Khyber Pakhtunkhwa, Peshawar.

Through Proper Channel

Subject: DEPARTMENTAL APPEAL AGAINST ILLEGAL AND UNJUSTIFIED ORDER NOTIFICATION NO. SO(E)/IRRI/9-3/99/NAB/VOL-II DATED 30TH MAY, 2018, VIDE WHICH THE APPELLANT WAS PLEASED TO IMPOSE THE MAJOR PENALTY OF "REDUCTION TO A LOWER PAY SCALE FOR 3 YEARS".

You're humble Appellant

[Signature]
Hidayatullah
SDO,
presently working at
Gomal Zam Dam, D.I.Khan

① *Ans*
25/6/18

D/No.	150
Date	(1) 21/6
AS	57
SIR (S)	0100
OST	ON/C

D/No.	6787
Date	25/6/18
AS	✓
DIR (
DST	

To

The Worthy Chief Minister,
Khyber Pakhtunkhwa, Peshawar.

Through Proper Channel

Subject: DEPARTMENTAL APPEAL AGAINST ILLEGAL AND UNJUSTIFIED ORDER NOTIFICATION NO. SO(E)/IRRI/9-3/99/NAB/VOL-II DATED 30TH MAY, 2018, VIDE WHICH THE APPELLANT WAS PLEASED TO IMPOSE THE MAJOR PENALTY OF "REDUCTION TO A LOWER PAY SCALE FOR 3 YEARS".

Respected Sir,

Appellant humbly submits as under,

1. That the appellant is serving as SDO, presently posted at Gomal Zam D.I.Khan in BPS-17 and performing his duties to the entire satisfaction of his superiors.
2. That the appellant was earlier been proceeded under E&D rules 1973, vide which a detail inquiry was conducted against the appellant and on the allegations of embezzlement the IO Mr. Abdul Qayyum Khan, Chief Engineer, C&W department was appointed as Inquiry Officer in the matter who after conducting the Inquiry the competent authority Chief Secretary to Govt. of NWFP vide notification dated 10/07/1995 imposed minor penalty of CENSURE. Copy of the notification dated 10/07/1995 is enclosed herewith.
3. That thereafter, the public accounts committee of the NWFP Govt. raised an objection and recommended the concerned officials who were responsible of unauthorized expenditure of 70.520 Millions without budget allotment DP 638 Paharpur, Irrigation Division, the Public Accounts Committee directed to the Chief Engineer that 85% amount which according to audit comes to Rs. 5 Crores and 95 lacs may be recovered from the officers concerned. Being aggrieved from the recommendation of Public Accounts Committee, the effectees knocked at the door of competent jurisdiction by filing writ petition against the concerned authorities in shape of writ

petition which was graciously be accepted on 09/04/2002 passed by Peshawar High Court, Peshawar by holding that:

- i. As the decision taken by the Public Accounts Committee does not fall within the internal business of the Assembly; therefore the High Court had jurisdiction to detain and dispose off the writ petition.
 - ii. Public Accounts Committee derives this power from rule 160 of the Provincial Assembly of NWFP, procedure and conduct of business rule 1988 and according to its provisions, it has no jurisdiction to direct the recovery of the outstanding amount from the individual employees of the Provincial Government.
4. That, being aggrieved from the judgment of Peshawar High Court, Peshawar the Govt. filed appeals in the apex court of Pakistan which was very graciously dismissed by the Supreme Court of Pakistan vide order dated 28/03/2006, by maintaining/upholding the judgment of the Peshawar High Court, Peshawar dated 09/04/2002. Copy of Supreme court order is enclosed herewith as ready reference.
 5. That now, the Supreme Court of Pakistan in Suo-Motu Case No. 17 of 2016 issued directions vide order dated 24/10/2016 to the concerned Chief Secretaries, Secretaries of the provinces to take action against the officials who during service voluntarily returned the amounts u/s 25-A of the NAB ordinance. The order dated 24/10/2016 of the Supreme Court is enclosed herewith.
 6. That the appellant received show cause notices from the concerned competent authority on the past and closed transactions and replied in detail. Copies of Show Cause notices and replies are enclosed herewith.
 7. That it is pertinent to mention here, the Appellant after show cause notices filed a review petition in the Supreme Court of Pakistan vide CMA No. 7626/2016 which was fixed on 17/11/2016 and the Honorable Supreme Court of Pakistan very graciously granted Stay Order with the direction to the concerned officials "No final adverse/removal order shall be passed against any of the effectec" which was communicated accordingly to the concerned IO/authorities. Copy of Review Petition along with order dated 17/11/2016 is enclosed herewith.

(59)

(3)

8. That, on 11/05/2018 the Chief Secretary of KPK province accepted the recommendations submitted for approval of major penalty of reduction to a Lower Pay Scale for 3 years, being aggrieved by the order dated 11/05/2018, the appellant preferred a writ petition in Peshawar High Court Bench, D.I.Khan which was very graciously disposed off on 29/05/2018 by the **directions to the respondents to proceed against the petitioner in accordance with law, but shall not pass the final order till the final disposal of the review petition pending before the august Supreme Court of Pakistan in the Suo-Motu Case No. 17/2016 dated 24/10/2016.** Copy of writ Petition no. 610-D/2018 along with order dated 29/05/2018 are enclosed herewith.
9. That now on 30/05/2018, the appellant is punished under E&D rules 2011, by imposing major penalty of reduction to a lower pay scale for 3 years and the order dated 30/05/2018 is communicated to the appellant on 7/6/2018, hence being aggrieved from the order dated 30/05/2018, the appellant approached to your good self for the redressal of his grievances through this departmental appeal, Inter alia on the following grounds:

Grounds:

- a. That, the order dated 30/05/2018 is illegal without jurisdiction, without lawful authority and issued in violation of the clear cut directions of the Honorable Supreme Court of Pakistan as well as Peshawar High Court, D.I.Khan Bench. Hence, liable to be set aside.
- b. That, the order dated 30/05/2018 is alien to law because it is a settled principle of jurisprudence that no one should be penalized for the same offence twice but in the case of present appellant astonishingly two penalties already awarded by the authorities, one is of minor penalty of CENSURE and other one is forceful VR by the NAB authorities on the same subject matters and now the third penalty of reduction to a lower pay scale for 3 years is imposed by the chief Secretary without any legal justification hence, on this sole ground the appeal of the

appellant is acceptable and the order dated 30/05/2018 is liable to be set aside.

- c. That, the appellant provided all the judgments and other relevant material to the concerned officials during the Inquiry but unfortunately knowingly the valid material of the appellant is not considered which shows malice on their part hence, the appellant is penalized thrice for the same matter.
- d. That the appellant is condemned unheard by violating the settle principles of service rules and regulations hence, the impugned order dated 30/05/2018 is liable to be set aside.

In wake of submission made above the appellant humbly requested from your good-self that Notification order bearing No. SO(E)/IRRI/9-3/99/NAB/VOL-II, dated 30th may, 2018 issued by Chief Secretary, KPK may please be declared as against law, without jurisdiction and against the settled ground realities and be set aside in the larger interest of justice.

Dated: 22/06/2018

You're humble Appellant

Hidayatullah
SDO /presently working at
Gomal Zam Dam, D.I.Khan

61



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 25th May, 2018

NOTIFICATION

No. SO(E)/IRRI/9-3/99/NAB/Vol-IV: WHEREAS, Engr. Muhammad Iqbal, Superintending Engineer (BS-19) presently posted as Director General (OPS), Small Dams, Peshawar was proceeded against under the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011 in the voluntariness return of the embezzled public money amounting to Rs. 872,786/- to NAB.

2. AND WHEREAS, for the said act/omission specified in rule 3 of the rules ibid, he was served Show Cause notice.

3. AND WHEREAS, Secretary to Govt. of Khyber Pakhtunkhwa Agriculture Department providing opportunity of personal hearing to the accused in terms of Rule- 15 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 so as to fulfill the legal requirements, who submitted the report.

4. NOW THEREFORE, the Competent Authority, after having considered the charges, material on record and explanation of the officer concerned, in exercise of the Powers under Rule- 4 (a)(ii) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the minor penalty of "Withholding of one increment for one year" upon the aforementioned officer.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Encls. No. & date even.

Copy of the above is forwarded to:-

1. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The Chief Engineer (South) Irrigation Department, Peshawar.
4. The Chief Engineer (North) Irrigation Department, Peshawar.
5. The Director General, Small Dams, Peshawar.
6. All Superintending Engineers of Irrigation Department.
7. PS to Minister for Irrigation, Khyber Pakhtunkhwa.
8. PSO to Chief Secretary, Khyber Pakhtunkhwa.
9. PS to Secretary Establishment Department.
10. PS to Secretary Irrigation Department.
11. PA to Additional Secretary, Irrigation Department.
12. Personal file of the officer.

ATTESTED
[Signature]

[Signature]
Section Officer (Estt)

جی اینڈ اسٹیٹوٹریٹو ایڈوکیٹ

16/10/18

بھارت

I have the honor to acknowledge the receipt of your letter of the 14th inst. regarding the above subject. I am sorry to hear that you are having difficulties in getting the necessary documents for the purpose of the appeal. I am sure that you will be able to overcome these difficulties and submit the documents in due time. I am enclosing herewith a copy of the appeal form for your reference. Please fill it up and submit it to the concerned authorities. I am sure that you will be able to get the necessary documents in due time. I am sure that you will be able to overcome these difficulties and submit the documents in due time.

جی اینڈ اسٹیٹوٹریٹو ایڈوکیٹ

اپنی طرف سے

اپنی طرف سے

The Kyber-Pakhtunkhwa Service Tribunal
 Hyderabad
 Government of K.P.K. etc
 Service appeals of the
 Service Tribunal Act 1974
 Hyderabad

Author's Name: _____
 Address: _____
 City: _____
 State: _____
 Zip: _____
 Telephone: _____
 Fax: _____
 E-mail: _____

Received by: _____
 Date: _____
 Signature: _____
 Designation: _____

بھارت

16

