



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

No: SOR-VI/E&AD/2-6

Dated Peshawar, the 17th September, 2011

To

1. The Additional Chief Secretary, Planning & Development Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Additional Chief Secretary (FATA), FATA Secretariat, Peshawar.
3. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
4. All the Administrative Secretaries to Government of Khyber Pakhtunkhwa.
5. All the Divisional Commissioners in Khyber Pakhtunkhwa.
6. All Heads of the Attached Departments in Khyber Pakhtunkhwa.
7. All the District Coordination Officers in Khyber Pakhtunkhwa and Political Agents in FATA.

Subject: KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY AND DISCIPLINE) RULES, 2011.

Dear Sir,

I am directed to invite your attention to the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 published in the Extraordinary issue of the Government Gazette of 16th September, 2011 (copy enclosed) and to state that the procedure to be adopted for proceeding against persons in Government Service under the new rules has been substantially changed. These rules also apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province

A person who is a member of a civil service of the Province or who holds a civil post in connection with affairs of the Province.

2. Salient features of the new rules are as under:-

- (i) Doing away with Authorized Officer.
- (ii) Both competent and appellate authorities clearly defined.
- (iii) Providing express provision for personal hearing;
- (iv) Specifying duties of Departmental representative;
- (v) Recording statement of parties in the presence of accused and vice versa,
- (vi) Specific period for imposing penalty of withholding promotion or increments.
- (vii) Removal from service in cases of willful absence.

*Appellate
of Rule 2011
Civil Service
2(b) as amended
16/9/11*



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 16TH SEPTEMBER, 2011.

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMINISTRATION DEPARTMENT.

NOTIFICATION

Peshawar dated the 16th September, 2011.

No.SO(REG-VDE&AD/2-6/2010).-In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

1. **Short title, application and commencement.**---(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

(3) These shall come into force at once.

2. **Definitions.**---(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "accused" means a person in Government service against whom action is initiated under these rules;
- (b) "appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;
- (c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made thereunder or an authority as notified under the specific laws/rules of Government;
- (d) "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, WEDNESDAY, 13TH DECEMBER, 2017

KHYBER PAKHTUNKHWA
PUBLIC PROCUREMENT REGULATORY AUTHORITY

Regulation 2017

NOTIFICATION

Dated Peshawar, the November, 29, 2017.

No. KPPRA/HR/SR/2016-17.— In exercise of the powers conferred under Section 35(A) read with Section 4 and 13 of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act of 2012, the Khyber Pakhtunkhwa Public Procurement Regulatory Authority is pleased to frame the following regulations, namely:

The KPPRA (Appointment & Conditions of Service Regulations, 2017)

1. **Short title, commencement and scope:**- (1) These regulations may be called the Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Appointment & Conditions of Service) Regulations, 2017.

(2) They shall come into force at once.

(3) Save as otherwise provided in the Act or special terms and conditions of a particular appointment/posting, these regulations shall be applicable to all employees of the Authority including employees posted on deputation and Managing Director.

2. **Definitions:**- (1) In these regulations, unless there is anything repugnant in the subject or context:-

(a) "Act" means "The Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012";

(b) "ad-hoc appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending recruitment in accordance with such method;

(c) "Appointment" means the appointment made in accordance with these regulations;

(d) "Appointing Authority" in relation to a post means the authority competent to make appointment to the post empowered by these regulations;

(e) "Appointment by Promotion" means the appointment made on the basis of seniority-cum-fitness from amongst the employees possessing such minimum qualification / experience as may be prescribed for promotion to higher posts as per schedule-I appended to these regulations and reserved for departmental promotion subject to availability of the appropriate vacant post;

(3) No regular employee shall engage himself directly or indirectly in any business, trade or occupation other than that which may be incidental to performance of his duty such as participation in trainings, academic classes, study, tours, field visits or writing of article and research, provided that no such work shall be undertaken without the permission of the Managing Director.

38. Discharge.-(1) If an employee wishes to resign from service, he shall have to give a notice to the Appointing Authority for the period as may be laid down in his appointment order or deposit pay for that period in lieu of notice and if no such period has been mentioned in the appointment order one month's notice shall be given or one month's pay shall be deposited in lieu thereof. He will continue to perform his duty till the time he is relieved by the competent authority.

(2) If the services of a contract employee are no longer required, the Appointing Authority may terminate his services by giving him one month's quit service notice or one month's pay in lieu thereof.

(3) An employee on contract will complete his prescribed period of employment as per the terms and conditions of his appointment. Prior to the expiry of the stipulated contract period, the contract shall stand terminated, if the authority so decides in the prescribed manner.

(4) A permanent employee whose post has been retrenched/abolished shall be adjusted against any other vacant post in the Authority. In case no adjustment is possible he shall be given three months' notice by the Appointing Authority for termination of service or three months' pay in lieu thereof, or compulsory retirement subject to completion of 25 years qualifying service for pension benefits.

(5) During appointment if an employee ceases to have good mental and bodily health as declared by the competent Medical Board constituted by the Authority, and the Appointing Authority is satisfied that he is not able to discharge his duties satisfactorily on account of indifferent health, his service may be dispensed with on compulsory retirement from service on medical grounds with gratuity/pension benefits, as the case be, as per rules and policy of the Government in similar case.

39. Efficiency and Discipline: - (1) All employees of the Authority shall be governed by the Khyber Pakhtunkhwa Civil Servants (Efficiency and Disciplinary) Rules, 2011 as amended from time to time *mutatis mutandis* unless otherwise provided in these regulations.

2) For the purpose of the said rules, the following shall be the authority:-

Sr. #	Scale of Employees	Authority
1.	Pay Scale 17-19/20	BoD
2.	Pay Scale-1 to Pay Scale-16	The Managing Director, KPPRA

40. Right of Appeal and Representation.-Appeal or application for review in respect of orders relating to the terms and conditions of service shall be made within 30 days of the date of such orders unless permitted otherwise by some specific order. Where appeal or review is not provided, a representation against the order may be made to the officer next above the officer which makes the order.

41. Application of Government Rules.-Subject to the provisions of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 and these rules and the schedule, the following rules framed by the Government, as amended from time to time, shall apply *mutatis mutandis* to the employees of the Authority.

- i. Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987
- ii. Khyber Pakhtunkhwa Civil Servants (Appeals) Rules, 1986
- iii. Khyber Pakhtunkhwa Government Servants (Leave) Rules, 1981
- iv. Khyber Pakhtunkhwa (Travelling Allowance) Rules, 1981

Any other rules framed by the Government which are approved for adoption in the Authority by the Board of Directors.

42. **Miscellaneous.**-(1) In all matters not provided in these regulations, or other regulations framed for the Authority from time to time, the terms and conditions of the service of the employees of the Authority shall be governed by the rules on the subject promulgated by the Government from time to time.

(2) These regulations shall not affect any decision taken prior to their enforcement.

(3) The Board may, from time to time, make further regulations or modify and amend these regulations in the interest of the services of the Authority.

**Managing Director,
Government of Khyber Pakhtunkhwa
Public Procurement Regulatory Authority**

Before the Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Anwar Zeb VS Establishment Deptt & KAPRA

Adjournment.

Respectfully Sheweth:

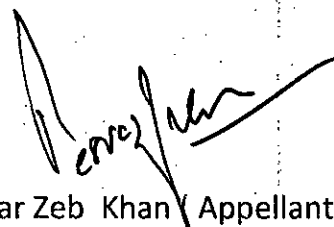
1. That the title case is fixed for 29.06.2020.
2. That the council / Legal attorney of the appellant has to attend a hearing at Islamabad High Court in pursuance to a telephonic message received to him from the Writ Branch of the Hon'ble court latest.

PRAYER: In view of the above mentioned fact it is humbly prayed that exemption from appearance may kindly be granted and hearing adjourned to any next date convenient to the court please.

Dated: 26.6.2020

Anwar Zeb Khan (Appellant)

Through Legal attorney

 26.6.2020

صوبہ پوزیشن PUDB حاذقین سے متعلقہ فی ٹونل 2011ء E+DRule کا اطلاق

میں جو رہا تھا بلکہ بی پرواہی سے سرورس لائنز 1978ء کا وضع اطلاق ہو رہا تھا۔ جو پیر ای پیر ڈی لائنز 2011ء کا اطلاق

Case Judgement

http://www.plsbeta.com/LawOnline/law/content21.asp?Casedcs...

2019 P L C (C.S.) 565

[Peshawar High Court (Abbottabad Bench)]

Before Lal Jan Khattak and Syed Muhammad Attique Shah, JJ

MUHAMMAD MUSHTAQ QURESHI and others

Versus

GOVERNMENT OF KHYBER PAKHTUNKHWA and others

W.P. No. 666-A of 2013, decided on 31st January, 2018.

Distinguishing

2000

PUDB کے مراد لائنز کو نہیں لیا گیا کہ اس کے تحت حاصل تھا

2 - PUDB کے ایک حصے کے سلسلے کے لئے جو ہوئے ہیں جبکہ اس سے اس میں آگیا ہے۔

(a) Provincial Urban Development Board Service Rules, 1978---

---Preamble---Khyber Pakhtunkhwa Urban Planning Ordinance (IV of 1978), S.9---Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, Preamble---Employees of Provincial Urban Development Board---Termination from service under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011---Validity---Provincial Urban Development Board Service Rules, 1978 had been made applicable to the employees of dissolved/defunct Board---Employees were to be dealt with under the Provincial Urban Development Board Service Rules, 1978 and not under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011---Mere adopting Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 by the department the status of employees would not change to be civil servants---Services of petitioners were only to be governed under Provincial Urban Development Board Service Rules, 1978---Disciplinary proceedings initiated against the employees and their dismissal order passed under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 were illegal and without lawful authority---Impugned orders were set aside however, competent authority would be at liberty to proceed under Provincial Urban Development Board Service Rules, 1978---Constitutional petition was allowed accordingly.

(b) Administration of justice---

---When law required a thing to be done in a particular manner, it must be done in that manner or not at all. [p. 570] A

Atta Muhammad Qureshi's case PLD 1971 SC 61; Mughal Sugical's case 2005 PLC 634; Raja Hamayun Sarfraz Khan's case 2007 SCMR 307 and Tehsil Nazim TMA, Okara v. Abbas Ali and 2 others 2010 SCMR 1437 rel.

Abdus Saboor Khan for Petitioners.

Yasir Zahoor Abbasi, A.A.G. and Muhammad Faheem Khan Yousafzai and Sabah-ud-Din Khattak for Respondents.

Date of hearing: 22nd January, 2018.

JUDGMENT

SYED MUHAMMAD ATTIQUE SHAH, J.---Through this single judgment, this Court shall also decide present writ petition as well as the connected writ petitions, Writ Petition No. 913-A/13, Writ Petition No. 923-A/13, Writ Petition No. 931-A/13, Writ Petition No.837-A/13 and Writ Petition No. 437-A/16, having identical facts and question of law involved therein.

The petitioners through these writ petitions have approached this Court, with the prayer that on acceptance of these petitions, declarations sought may be granted in their favour and against the

respondents and their service position may be retained intact as was before the issuance of impugned dismissal letter No.SO(LG-I)3-595/Inq/MDA/2012 dated 21.02.2013.

2. Brief but relevant facts of the present writ petition and connected petitions are that the petitioners were appointed against various posts, in the defunct Provincial Urban Development Board (PUDB) which was established under section 3 of Khyber Pakhtunkhwa Urban Planning Ordinance, 1978 (Ord: No. 04 of 78) dated 04/03/1978; that the petitioners performed their duties in accordance with law, throughout their service career without getting a single adverse remark, nor have ever been proceeded against for any misconduct whatsoever; that all of a sudden, the petitioners were served with a charge sheet of even number No.SO(LGI) F-14/MDA/2011 dated 13/01/2012 followed by show-cause letters and finally they were dismissed from their service on 21.08.2013; that the charge sheets, show-cause notices and their dismissal from service were illegal, based on malice and mala fide; issued without lawful authority, thus the same are liable to be struck down.

3. Learned counsel for the petitioners argued that the petitioners were appointed in the establishment of defunct PUBD, however they have been proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011, which were not applicable at all to the cases of the petitioners, as their services were governed under the Provincial Urban Development Board Service Rules, 1978, thus petitioners were wrongly proceeded against under the rules which were not at all applicable to their services. They urged that even in the dissolution Ordinance, 2002 it has specifically been mentioned that the services of the employees of the erstwhile board would be dealt with under the Provincial Urban Development Board Service Rules, 1978, therefore, in presence of the rules ibid, there was no question of the applicability of the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011. Pabb
مطری ذہنیہ

4. On the other hand, learned counsel appearing on behalf of the respondents has vehemently controverted the arguments advanced by learned counsel for the petitioners and argued that the board was dissolved under the Ordinance, 2002 and thereafter Local Government, Election and Rural Development Department, Government of Khyber Pakhtunkhwa on 22/09/2011 adopted the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 for all employees of defunct PUBD/PDA/Local Area Authorities. Therefore, now the services of employees of PUBD are governed under the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 and, if the petitioners were aggrieved from the impugned orders, they could approach the departmental authority in departmental appeals/representations and thereafter, they could also approach the Khyber Pakhtunkhwa Service Tribunal. Further argued that this Court, in view of bar contained in Article 212 of the Constitution cannot entertain the present writ petitions. Further argued that the respondents have not committed any illegality or irregularity by taking action against the petitioners, therefore, the present writ petitions being baseless are liable for dismissal and prayed for dismissal of the same.

5. Arguments heard and record of the case perused with the valuable assistance of the learned counsel for the parties.

6. Perusal of the record reveals that the Provincial Urban Development Board was established under section 3 of The Khyber Pakhtunkhwa Urban Planning Ordinance, 1978 (Ord: No. IV of 1978 dated 04/03/1978). For the sake of convenience, provisions of section 3 are reproduced as under:

"3. (1) As soon as may be after the commencement of this Ordinance, Government shall, by notification, establish a Board to be called the Provincial Urban Development Board, North-West Frontier Province, to perform the functions assigned to it under this Ordinance."
Functions of the Board have been provided by section 9 of the Ordinance ibid, which is also reproduced below:

"9. In order to achieve effective integration of provincial urban development planning by Federal regional and local planning agencies and to ensure that proper planning, and to accomplish other objectives of this Ordinance, the Board shall, subject to such directions as Government may from time to time give, formulate and amend long term, and short term policies for development of urban or as in the North-West Frontier Province, hereinafter referred, to as "Development Policies".

Thus the main object/purpose as provided by section 9 *ibid* was to formulate and amend long term and short term policies for development of urban areas of the Province of Khyber Pakhtunkhwa.

7. The petitioners were appointed against various posts in the erstwhile (P.U.D.B) on various dates. It is pertinent to mention here that subsequently the Provincial Urban Development Board (P.U.D.B.) was dissolved through Ordinance No. XVI of 2002.

7(sic) Section 4 of the Ordinance *ibid* provides for consequential responsibilities. For the sake of convenience, section 4 of the said Ordinance is reproduced below:

"Section 4: Consequential Responsibilities: Consequent upon the repeal of the ordinance, the district government of the district concerned shall be responsible to deal with the matters with the board so dissolved in accordance with the provisions contained in section 182 of the N-W.F.P Local Government Ordinance, 2001 (N-W.F.P Ordinance No. XIV of 2001)".

However under section 6 of the Ordinance *ibid*, it has specifically been provided that "the employees of the Board shall be dealt with in accordance with the terms and conditions of their appointment under the Board". It is also important to note that in the very appointment orders of the petitioners, it has specifically been mentioned that:-

"His services will be governed by the Provincial Urban Development Board Service Rules, 1978 and the rules relating to T.A., leave, medical, pay and discipline etc as framed and amended from time to time."

8. Here it is important to mention that under section 71 of the Khyber Pakhtunkhwa Urban Planning Ordinance, 1978 (Ord: No. 04 of 78) dated 04/03/1978, service rules of (PUDB) were framed and notified on 17 February, 1979. Definition of term "employee" has been provided by section 2(F), which is reproduced below:

"(f) "Employee" means a person employed or previously absorbed whether at the Head Office or at project or in a Sub-Office of the P.U.D.B./L.A.A., and as such a person shall be deemed to be in service of the Board."

It is also worth to mention that schedule of administrative powers of the competent authority have been notified, under which the competent authority of all employees in NPS-17 and above was the Board, whereas employees in NPS-12 to 16, Chairman of the Board was competent authority and for employees in NPS-1 to 11, Secretary of the Board was having the power and authority for appointment. However, perusal of the impugned order dated 21st of August, 2013 reveals that the petitioners had been proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 for the charges mentioned in the charge sheets dated 09.01.2012.

9. It is worth to mention that after dissolution of Board under Ordinance, 2002, the Local Government, Election and Rural Development Department, Government of Khyber Pakhtunkhwa on 22/09/2011 adopted the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 for all employees of defunct PUBD/PDA/Local Area Authorities. Therefore, the question which arises before this Court is "whether in the peculiar facts and circumstances of the present case, the services of the petitioners would be governed under the (P.U.D.B.) Service Rules,

Protection to old law was given in subsequent law therefore...

29

1978 or they are to be dealt with under the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011". In this respect, as discussed earlier, section 6 of the dissolution Ordinance, 2002, has specifically been provided that the services of the employees of the board would be dealt with as per Service Rules of the Board, whereas it has also explicitly been mentioned in the appointment orders of the petitioners, that their services have to be dealt with under the rules of 1978. Moreover, it is also well settled principle of administration of justice that "when a thing is to be done in a particular manner it must be done in that manner and not otherwise". Reliance is placed on "Atta Muhammad Qureshi's case" PLD 1971 SC 61, "Mughal Sugical's case" 2005 PLC 634, "Raja Hamayun Sarfraz Khan's case" 2007 SCMR 307 and "Tehsil Nazim TMA, Okara v. Abbas Ali and 2 others" 2010 SCMR 1437. In this view of the matter, this Court reached at the conclusion that as the (PUDB) service rules of the year 1978 have been made applicable to the employees of the dissolved/defunct board, therefore, they are to be specifically dealt with under the said rules and not under the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011.

9. Learned counsel for the petitioners have also relied upon the judgment of the apex court in case titled "Ehsan Ali, Assistant v. Board of Intermediate and Secondary Education, Peshawar through its Chairman, BISE Peshawar and others" wherein in para-6 it has been specifically held:

"6. Not because the Boards of Intermediate and Secondary Education are autonomous bodies having their own service structure, showing the authority competent to take disciplinary actions for any misconduct or inefficiency of its employees and to impose penalty thus, merely adopting or following the provisions of NWFP (KPK) Civil Servants (E&D) Rules would not render the employees of the Boards to be the civil servants, holding public office or authority in the affairs of the Province but for all intents and purposes they are employees of autonomous bodies and are regulated by the statutory rules therefore, they have no right of appeal before the Service Tribunals." Whereas, in para-7, it has been held that"

"7. In our considered view, the learned Division Bench of the Peshawar High Court did not adhere to the law declared by this Court in Muhammad Mubeen us Slam case (supra) and the rules and regulations, regulating the services of the petitioner were ignored on wrong assumption that E&D Rules framed and published by the Provincial Government for civil servants of the Provinces were borrowed and adopted by all the said Boards and thus, they were civil servants. Merely following or adopting such rules would not change the status of the employees of the autonomous bodies to be civil servants, in view of the law declared by this Court."

بہانوں کو
تعمیرات کو
مکمل کرنے

— یہاں سے لے کر اس کے ذریعے فوٹو لیا گیا ہے۔

Thus, in view of the above referred dicta of the apex Court, this Court holds that by merely adopting the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011, the status of the petitioners would not change to be of civil servants, particularly when section 6 of the dissolution Ordinance, 2002 specifically provides that Provincial Urban Development Board Service Rules, 1978 would be applicable to the services of the petitioners.

10. In view of the above stated peculiar facts and circumstances of the case, this Court would restrain itself from discussing the merits of the present writ petitions, lest it may prejudice the case of either of the parties.

11. Thus, in view of what has been discussed above, this Court reached at the conclusion that the services of the petitioners were only to be governed under Provincial Urban Development Board Service Rules, 1978 and the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 were not applicable to the services of petitioners, therefore, the impugned disciplinary proceedings initiated against the petitioners and their dismissal orders passed under Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 are illegal, without lawful authority, void ab-initio and thus liable to be set-aside, therefore, the same are set-aside, however, if the competent authority wants to proceed against the petitioners, then they are at

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liberty to proceed against them under the (P.U.D.B.) Service Rules, 1978.

12. In view of the above, the instant writ petition as well as connected writ petitions are allowed.

ZC/241/P

Petitions allowed.

دوستی میں نہ ہر ایک کو ملتا ہے اور نہ ہر ایک کو ملنا چاہیے
Engage

07 April
Autonomous body

NA - Satisfactory disposed with -

① Public servant - Rescue

PuDB

حرمینہ صلیبی کی مدد سے
- سول ڈسٹرکٹ ایجنسی کے ذریعے

Probation

Return 07/07 (R 10)

U⁶

Government of Pakistan
Finance Division
(HR-III Section)

F. No. 88/2007-HR-III

Islamabad the 13th September, 2011

SHOW CAUSE NOTICE

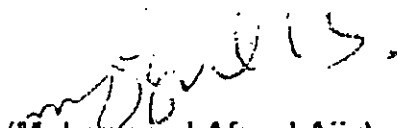
WHEREAS you, Mr. Muhammad Bux, Staff Car Driver (BPS-05), Finance Division, Islamabad, are charged of having committed the following acts which constitute inefficiency and misconduct under Rule 3 (a) & (b) of the Government Servants (Efficiency & Disciplinary) Rules, 1973.

- (i) That you have been keeping yourself absent from duty w.e.f 02.06.2011, without application/prior permission.
- (ii) That you were directed to resume the duty and explain the reasons of your absence from duty vide this Division's memoranda dated 08.06.2011, 25.06.2011, and 04.07.2011, but you failed to resume your duties.
- (iii) Your above acts tantamount to inefficiency and misconduct towards official duties.

2. WHEREAS by reason of above, you, Mr. Muhammad Bux; SCD, prima-facie has been found guilty of misconduct and inefficiency under Rule 3 (a) (b) of Government Servants (Efficiency & Discipline) Rules, 1973 and liable to disciplinary action under aforesaid rules which may lead to imposition of one or more of the penalties including major penalty of dismissal from service, as president in Rule 4 (1) (b) of the Government Servant (E & D) Rules 1973.

3. NOW THEREFORE, you Mr. Muhammad Bux, SCD, are called upon to Show Cause within (14) days of the publication of this notice in Press as to why one or more penalties including the major penalty of "dismissal from service" may not be imposed upon you under Rule 4 of Government Servants (Efficiency & Discipline) Rules 1973, on the above grounds.

4. In case no reply is received within stipulated period it will be presumed that you have nothing to say in defense and an ex-parte decision will be taken against you under Rule 4(1) of Government Servants (Efficiency & Discipline) Rules 1973, which may lead to your dismissal from Government Service. You may also indicate whether you want to be heard in person by the competent authority or otherwise.


(Muhammad Afzaal Ajiz)
Deputy Secretary (HR)
Authorized Officer

Mr. Muhammad Bux, SCD,
House No. 02, Street No. E-7,
Tramri Chowk, Terlai,
Islamabad.

Mr. Muhammad Bux, SCD,
S/o Haji Fatah Muhammad Nangrejo,
Village Muhammad Ramzan Nangrejo,
Taulko Kotdiji, Distt Khairpur, Sindh.

(3) No regular employee shall engage himself directly or indirectly in any business, trade or occupation other than that which may be incidental to performance of his duty such as participation in trainings, academic classes, study, tours, field visits or writing book, article and research, provided that no such work shall be undertaken without the permission of the Managing Director.

38. Discharge:-(1) If an employee wishes to resign from service, he shall have to give a notice to the Appointing Authority for the period as may be laid down in his appointment order or deposit pay for that period in lieu of notice and if no such period has been mentioned in the appointment order one month's notice shall be given or one month's pay shall be deposited in lieu thereof. He will continue to perform his duty till the time he is relieved by the competent authority.

(2) If the services of a contract employee are no longer required, the Appointing Authority may terminate his services by giving him one month's quit service notice or one month's pay in lieu thereof.

(3) An employee on contract will complete his prescribed period of employment as per the terms and conditions of his appointment. Prior to the expiry of the stipulated contract period, the contract shall stand terminated, if the authority so decides in the prescribed manner.

(4) A permanent employee whose post has been retrenched/abolished shall be adjusted against any other vacant post in the Authority. In case no adjustment is possible he shall be given three months' notice by the Appointing Authority for termination of service or three months' pay in lieu thereof, or compulsory retirement subject to completion of 25 years qualifying service for pension benefits.

(5) During appointment if an employee ceases to have good mental and bodily health as declared by the competent Medical Board constituted by the Authority, and the Appointing Authority is satisfied that he is not able to discharge his duties satisfactorily on account of indifferent health, his service may be dispensed with on compulsory retirement from service on medical grounds with gratuity/pension benefits, as the case be, as per rules and policy of the Government in similar case.

39. Efficiency and Discipline: - (1) All employees of the Authority shall be governed by the Khyber Pakhtunkhwa Civil Servants (Efficiency and Disciplinary) Rules, 2011 as amended from time to time *mutatis mutandis* unless otherwise provided in these regulations.

2) For the purpose of the said rules, the following shall be the authority:-

Sr. #	Scale of Employees	Authority
1.	Pay Scale-17-19/20	BoD
2.	Pay Scale-1 to Pay Scale-16	The Managing Director, KPPRA

40. Right of Appeal and Representation.-Appeal or application for review in respect of orders relating to the terms and conditions of service shall be made within 30 days of the date of such orders unless permitted otherwise by some specific order. Where appeal or review is not provided, a representation against the order may be made to the officer next above the officer which makes the order.

41. Application of Government Rules.-Subject to the provisions of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 and these rules and the schedule, the following rules framed by the Government, as amended from time to time, shall apply *mutatis mutandis* to the employees of the Authority.

V-1
Termination
for contract
9-14

V-1

- I. Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987
- II. Khyber Pakhtunkhwa Civil Servants (Appeals) Rules, 1986
- III. Khyber Pakhtunkhwa Government Servants (Leave) Rules, 1981
- IV. Khyber Pakhtunkhwa (Travelling Allowance) Rules, 1981

Any other rules framed by the Government which are approved for adoption in the Authority by the Board of Directors.

42. **Miscellaneous.**-(1) In all matters not provided in these regulations, or other regulations framed for the Authority from time to time, the terms and conditions of the service of the employees of the Authority shall be governed by the rules on the subject promulgated by the Government from time to time.

(2) These regulations shall not affect any decision taken prior to their enforcement.

(3) The Board may, from time to time, make further regulations or modify and amend these regulations in the interest of the services of the Authority.

Managing Director,
Government of Khyber Pakhtunkhwa
Public Procurement Regulatory Authority

Copy Copy

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, WEDNESDAY, 13TH DECEMBER, 2017

KHYBER PAKHTUNKHWA
PUBLIC PROCUREMENT REGULATORY AUTHORITY

Regulation 2017

NOTIFICATION

Dated Peshawar, the November, 29, 2017.

No. KPPRA/HR/SR/2016-17.— In exercise of the powers conferred under Section 35(A) read with Section 4 and 13 of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act of 2012, the Khyber Pakhtunkhwa Public Procurement Regulatory Authority is pleased to frame the following regulations, namely:

The KPPRA (Appointment & Conditions of Service Regulations, 2017)

1. **Short title, commencement and scope:-** (1) These regulations may be called the Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Appointment & Conditions of Service) Regulations, 2017.

(2) They shall come into force at once.

(3) Save as otherwise provided in the Act or special terms and conditions of a particular appointment/posting, these regulations shall be applicable to all employees of the Authority including employees posted on deputation and Managing Director.

2. **Definitions:-** (1) In these regulations, unless there is anything repugnant in the subject or context:-

(a) "Act" means "The Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012";

(b) "ad-hoc appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending recruitment in accordance with such method;

(c) "Appointment" means the appointment made in accordance with these regulations;

(d) "Appointing Authority" in relation to a post means the authority competent to make appointment to the post empowered by these regulations;

(e) "Appointment by Promotion" means the appointment made on the basis of seniority-cum-fitness from amongst the employees possessing such minimum qualification / experience as may be prescribed for promotion to higher posts as per schedule-I appended to these regulations and reserved for departmental promotion subject to availability of the appropriate vacant post;



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

No. SOR-VI/E&AD/2-6

Dated Peshawar, the 17th September, 2011

To

1. The Additional Chief Secretary, Planning & Development Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Additional Chief Secretary (FATA), FATA Secretariat, Peshawar.
3. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
4. All the Administrative Secretaries to Government of Khyber Pakhtunkhwa.
5. All the Divisional Commissioners in Khyber Pakhtunkhwa.
6. All Heads of the Attached Departments in Khyber Pakhtunkhwa.
7. All the District Coordination Officers in Khyber Pakhtunkhwa and Political Agents in FATA.

Subject: KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY AND DISCIPLINE) RULES, 2011.

Dear Sir,

I am directed to invite your attention to the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 published in the Extraordinary issue of the Government Gazette of 16th September, 2011 (copy enclosed) and to state that the procedure to be adopted for proceeding against persons in Government Service under the new rules has been substantially changed. These rules also apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

A person who is a member of a civil service of the Province or holds a civil post in connection with affairs of the Province.

2. Salient features of the new rules are as under:-

- (i) Doing away with Authorized Officer.
- (ii) Both competent and appellate authorities clearly defined.
- (iii) Providing express provision for personal hearing;
- (iv) Specifying duties of Departmental representative;
- (v) Recording statement of parties in the presence of accused and vice versa,
- (vi) Specific period for imposing penalty of withholding promotion or increments.
- (vii) Removal from service in cases of willful absence.

*Application of Rule 2011-
Civil Service
2(b) as notified*

EXTRAORDINARY

GOVERNMENT



REGISTERED NO. PIII

GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 16TH SEPTEMBER, 2011.

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMINISTRATION DEPARTMENT.

NOTIFICATION

Peshawar dated the 16th September, 2011.

No.SO(REG-VI)E&AD/2-6/2010.-In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973); the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

1. Short title, application and commencement.---(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

(3) These shall come into force at once.

2. Definitions.---(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "accused" means a person in Government service against whom action is initiated under these rules;
- (b) "appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;
- (c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made thereunder or an authority as notified under the specific laws/rules of Government;
- (d) "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;

**THE NORTH-WEST FRONTIER PROVINCE SERVICE TRIBUNALS 28th
March, 1974.**

N.-W.F.P. Act NO. I OF 1974.

[First published after having received the assent of the Governor of the North-West Frontier Province in the Gazette of 'North-West Frontier Province (Extraordinary)', dated the 25th March, 1974].

**AN
ACT,**

to provide for the establishment of Service Tribunals to exercise jurisdiction in respect of matters relating to the terms and conditions of service of civil servants.

Preamble

WHEREAS it is expedient to provide for establishment of Administrative Preamble. Tribunals, to be called Service Tribunals, to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of service of civil servants, and for matters connected therewith or ancillary thereto;

It is hereby enacted as follows :-

1. (1) This Act may be called the North-West Frontier Province Service Tribunals Act, 1974.

Short title,
commencement
and application.

(2) It shall come into force at once.

(3) It applies to all civil servants wherever they may be.

Definitions

2. In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say

“(a) Civil servant means a person who is or has been a civil servant within the meaning of the North-West Frontier Province Civil Servants Act, 1973 (N.W.F.P) act XVIII of 1973), but does not include a civil servant covered by the North-West Frontier Province Subordinate Judiciary Tribunal Ordinance, 1991.”

(d) "Tribunal" means a Service Tribunal established under section 3.

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servant in
CSA 1973
next

1. Sub: by N.-W.F.P. Act No. IX of 1974, section 2.

3. (1) The Governor may, by notification in the official Gazette, establish one or more Service Tribunals and, where there are established more than one Tribunal, the Governor shall specify in the notification the class or classes of civil servants in respect of whom or the territorial limits within which, each such Tribunal shall exercise jurisdiction under this Act.

(2) A Tribunal shall have exclusive jurisdiction in respect of matter relating to the terms and conditions of service of civil servants, including disciplinary matters.

(3) A Tribunal shall consist of—

(a) A Chairman being a person who [is] has been, or is qualified to be

Sec-2

(b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include-

(i) a person who is on deputation to the Province from the Federation or any other Province or other authority;

(ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or

(iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923);

NWFP
civil servant
Act, 1973

KPK E+D Rules, 2011

NOTIFICATION

Peshawar dated the 16th September, 2011.

NO.SO(REG-VD) E&AD/2-6/2010. -In exercise of the powers conferred by section 26, of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

1. Short title, application and commencement.—(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

(3) These shall come into force at once.

2. Definitions.—(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "accused" means a person in Government service against whom action is initiated under these rules;
- (b) "appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;
- (c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made thereunder or an authority as notified under the specific laws/rules of Government;
- (d) "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;
- (e) "Chief Minister" means the Chief Minister of the Khyber Pakhtunkhwa;
- (f) "competent authority" means-
 - (i) the respective appointing authority;
 - (ii) in relation to a Government servant of a tribunal or court functioning under Government, the appointing authority or the Chairman or presiding officer of such tribunal or court, as the case may be, authorized by the appointing authority to exercise the powers of the competent authority under these rules;

Provided that where two or more Government servants are to be proceeded against jointly, the competent authority in relation to the accused Government servant senior most shall be the competent authority in respect of all the accused.

- (g) "corruption" means-
 - (i) accepting or obtaining or offering any gratification or valuable thing, directly or indirectly, other than legal remuneration, as a reward for doing or for bearing to do any official act; or
 - (ii) dishonestly or fraudulently misappropriating, or indulging in embezzlement or misusing Government property or resources; or
 - (iii) entering into plea bargain under any law for the time being in force and returning the assets or gains acquired through corruption or corrupt practices voluntarily; or
 - (iv) possession of pecuniary sources or property by a Government servant or any of his dependents or any other person, through his or on his behalf,

- known sources of income; or
- (v) maintaining a standard of living beyond known sources of income; or
- (vi) having a reputation of being corrupt;
- (h) "Governor" means the Governor of the Khyber Pakhtunkhwa;
- (i) "inefficiency" means failure to efficiently perform functions assigned to a Government servant in the discharge of his duties;
- (j) "inquiry committee" means a committee of two or more officers, headed by a convener, as may be appointed by the competent authority under these rules;
- (k) "inquiry officer" means an officer appointed by the competent authority under these rules;
- (l) "*misconduct*" includes-
 - (i) conduct prejudicial to good order or service discipline; or
 - (ii) conduct contrary to the Khyber Pakhtunkhwa Province Government Servants (Conduct) Rules, 1987, for the time being in force; or
 - (iii) conduct unbecoming of Government servant and a gentleman; or
 - (iv) involvement or participation for gains, directly or indirectly, in industry, trade, or speculative transactions by abuse or misuse of official position to gain undue advantage or assumption of such financial or other obligations in relation to private institutions or persons as may compromise the performance of official duties or functions; or
 - (v) any act to bring or attempt to bring outside influence, directly or indirectly, to bear on the Governor, the Chief Minister, a Minister or any other Government officer in respect of any matter relating to the appointment, promotion, transfer or other conditions of service; or
 - (vi) making appointment or having been appointed or promoted on extraneous grounds in violation of any law or rules; or
 - (vii) conviction for a moral offence by a court of law.
- (2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

3. **Grounds for proceedings.**—A Government servant shall be liable to be proceeded against under these rules, if he is-

- (a) inefficient or has ceased to be efficient for any reason; or
- (b) guilty of misconduct; or
- (c) guilty of corruption; or
- (d) guilty of habitually absenting himself from duty without prior approval of leave; or
- (e) engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with others engaged in subversive activities, or is guilty of disclosure of official secrets to any un-authorized person, and his retention in service is prejudicial to national security; or
- (f) entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily.

4. **Penalties.**—(1) The following are the minor and the major penalties, namely:

- (a) Minor penalties:
 - (i) censure;
 - (ii) withholding, for a specific period, promotion or increment subject to a maximum of three years, otherwise than for unfitness for

or orders pertaining to the service or post:

Provided that the penalty of withholding increments shall not be imposed on a Government servant who has reached the maximum of his pay scale:

- (iii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order;

(b) Major penalties:

- ¹[(i) reduction to a lower post or pay scale or to a lower stage in a time scale for a maximum period of five years:

Provided that on a restoration to original pay scale or post, the penalized Government servant will be placed below his erstwhile juniors promoted to higher posts during subsistence of the period of penalty;]

- (ii) compulsory retirement;
(iii) removal from service; and
(iv) dismissal from service.

(2) Dismissal from service under these rules shall disqualify a Government servant from future employment under Government.

(3) Any penalty under these rules shall not absolve a Government servant from liability to any other punishment to which he may be liable for an offence, under any other law, committed by him while in service.

5. Initiation of proceedings.—(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-

- (a) proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry:

Provided that no opportunity of showing cause or personal hearing shall be given where-

- (i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or
(ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment; or
(iii) a Government servant is involved in subversive activities; or
(iv) it is not reasonably practicable to give such an opportunity to the accused; or

- (b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

Provided that the competent authority shall dispense with the inquiry where-

- (i) a Government servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or
(ii) a Government servant is or has been absent from duty without prior approval of leave:

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary

شوہلا زکوانی اور
قوانین کے تحت
مقررہ ہے

Exemption
clauses →
معاذ کلانہ کی وجہ سے

شوہلا زکوانی کے تحت
مقررہ ہے

¹ Subs. by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.

writing, it is satisfied that there is no need to hold an inquiry.

(2) The charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent authority.

Suspension.—A Government servant against whom action is proposed to be initiated under rule 5 may be placed under suspension for a period of ninety days, if in the opinion of the competent authority, suspension is necessary or expedient, and if the period of suspension is not extended for a further period of ninety days within thirty days of the expiry of initial period of suspension, the Government servant shall be deemed to be reinstated:

Provided that the competent authority may, in appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave as may be admissible to him, from such date as may be specified by the competent authority.

7. **Procedure where inquiry is dispensed with.**—If the competent authority decides that it is not necessary to hold an inquiry against the accused under rule 5, it shall-

- (a) inform the accused by an order in writing, of the grounds for proceeding against him, clearly specifying the charges therein, alongwith apportionment of responsibility and penalty or penalties proposed to be imposed upon him;
- (b) give him a reasonable opportunity of showing cause against the proposed action, within seven days of receipt of the order or within such extended period, as the competent authority may determine;
- (c) on receipt of reply of the accused within the stipulated period or after the expiry thereof, if no reply is received, determine whether the charge or charges have been proved against the accused or not;

① Communal grounds for proceeding

show cause

Provided that after receipt of reply to the show cause notice from the accused, the competent authority, except where the Chief Minister himself is the competent authority, shall decide the case within a period of ninety days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons:

Provided further that if the case is not decided by the competent authority within the prescribed period of ninety days, the accused may file an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period;

- (d) afford an opportunity of personal hearing before passing any order of penalty under clause (f), if it is determined that the charge or charges have been proved against him;
- (e) exonerate the accused by an order in writing, if it is determined that the charge or charges have not been proved against him; and
- (f) impose any one or more penalties mentioned in rule 4, by an order in writing, if the charge or charges are proved against the accused;

Personal hearing

No disposal with

Provided that where charge or charges of grave corruption are proved against an accused, the penalty of dismissal from service shall be imposed, in addition to the recovery, if any.

8. **Action in case of conviction or plea bargain under any law.**—Where a Government servant is convicted by a court of law on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices, or has been acquitted by a court of law as a result of compounding of an offence involving moral turpitude under any law for the time being in force, the competent authority, after examining facts of the case, shall-

- (a) dismiss the Government servant where he has been convicted on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices voluntarily;

from the date of conviction by a court of law; and

- (b) proceed against the Government servant under rule 5, where he has been convicted of charges other than corruption or moral turpitude.

9. **Procedure in case of wilful absence.**—Notwithstanding anything to the contrary contained in these rules, in case of wilful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

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10. **Procedure to be followed by competent authority where inquiry is necessary.**—

(1) If the competent authority decides that it is necessary to hold an inquiry against the accused under rule 5, it shall pass an order of inquiry in writing, which shall include-

- (a) appointment of an inquiry officer or an inquiry committee, provided that the inquiry officer or the inquiry committee, as the case may be, shall be of a rank senior to the accused and where two or more accused are proceeded against jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused;
- (b) the grounds for proceeding, clearly specifying the charges along with apportionment of responsibility;
- (c) appointment of the departmental representative by designation; and
- (d) direction to the accused to submit written defense to the inquiry officer or the inquiry committee, as the case may be, within reasonable time which shall not be less than seven days and more than fifteen days of the date of receipt of orders.

(2) The record of the case and the list of witnesses, if any, shall be communicated to the inquiry officer or the inquiry committee, as the case may be, along with the orders of inquiry.

(3) In a case where preliminary or fact finding inquiry was conducted, and the competent authority decides to hold formal inquiry, the inquiry officer or the inquiry committee for the purpose of conducting formal inquiry shall be different from the inquiry officer or the inquiry committee which conducted the preliminary.

11. **Procedure to be followed by inquiry officer or inquiry committee.**—(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry *ex-parte*.

(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

(4) Statements of witnesses and departmental representative(s), if possible, will be recorded in the presence of accused and vice versa.

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be

² Deleted by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.

...e, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

(7) The inquiry officer or the inquiry committee, as the case may be. Shall submit his or its report, to the competent authority within thirty days of the initiation of inquiry:

Provided that the inquiry shall not be vitiated merely on the grounds of non-observance of the time schedule for completion of the inquiry.

12. Powers of the inquiry officer or inquiry committee.—(1) For the purpose of an inquiry under these rules, the inquiry officer or the inquiry committee, as the case may be. shall have the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (Act No. V of 1908), in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents, and receiving evidence on affidavits; and
- (c) issuing commissions for the examination of witnesses or documents.

(2) The proceedings under these rules shall be deemed to be the judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

13. Duties of the departmental representative.—The departmental representative shall perform the following duties, namely:

- (a) render full assistance to the inquiry officer or the inquiry committee, as the case may be, during the proceedings where he shall be personally present and fully prepared with all the relevant record relating to the case, on each date of hearing;
- (b) cross-examine the witnesses produced by the accused, and with the permission of the inquiry officer or inquiry committee, as the case may be, may also cross-examine the prosecution witnesses; and
- (c) rebut the grounds of defense offered by the accused before the inquiry officer or the inquiry committee, as the case may be.

14. Order to be passed on receipt of report from the inquiry officer or inquiry committee.—(1) On receipt of report from the inquiry officer or inquiry committee, as the case may be, the competent authority, shall examine the report and the relevant case material and determine whether the inquiry has been conducted in accordance with the provisions of these rules.

(2) If the competent authority is satisfied that the inquiry has been conducted in accordance with the provisions of these rules, it shall further determine whether the charge or charges have been proved against the accused or not.

(3) Where the charge or charges have not been proved, the competent authority shall exonerate the accused by an order in writing, or it shall follow the procedure as given in sub-rule (6) of this rule.

(4) Where the charge or charges have been proved against the accused, the competent authority shall issue a show cause notice to the accused by which it shall-

- (a) inform him of the charges proved against him and the penalty or penalties proposed to be imposed upon him;
- (b) give him reasonable opportunity of showing cause against the penalty or penalties proposed to be imposed upon him and to submit as to why one or more of the penalties as provided in rule 4 may not be imposed upon him and to submit additional defense in writing, if any, within a period which shall not be less than seven days and more than fifteen days from the day the charge or charges have been communicated to him: provided that the accused shall, in his reply to show cause notice, indicate as to whether he

- (c) provide a copy of the inquiry report to the accused; and
- (d) direct the departmental representative to appear, with all the relevant record, on the date of hearing.

(5) After affording personal hearing to the accused the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defense offered by the accused[^] during personal hearing, by an order in writing-

- (i) exonerate the accused if charges had not been proved; or
- (ii) impose any one or more of the penalties specified in rule 4 if charges have been proved.

(6) Where the competent authority is satisfied that the inquiry proceedings have not been conducted in accordance with the provisions of these rules or the facts and merits of the case have been ignored or there are other sufficient grounds, it may, after recording reasons in writing, either remand the inquiry to the inquiry officer or the inquiry committee, as the case may be, with such directions as the competent authority may like to give, or may order a de novo inquiry through different inquiry officer or inquiry committee³ [subject of sub-rule (7) of rule 11].

(7) After receipt of reply to the show cause notice and affording opportunity of personal hearing, the competent authority shall decide the case within a period of fifteen days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons.

(8) If the case is not decided by the competent authority within the prescribed period of fifteen days, the accused may submit an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period.

15. Personal hearing.—The competent authority may, by an order in writing, call the accused and the departmental representative, alongwith relevant record of the case, to appear before him, for personal hearing on the fixed date and time.

16. Procedure of inquiry against Government servant lent to other governments or organizations etc.—(1) Where the services of Government servant to whom these rules apply are transferred or lent to any other government department, corporation, corporate body, autonomous body, authority, statutory body or any other organization or institution, hereinafter referred to as the borrowing organization, the competent authority for the post against which such Government servant is posted in the borrowing organization may-

- (a) suspend him under rule 6; and
- (b) initiate proceedings against him/her under these rules:

Provided that the borrowing organization shall forthwith inform the authority which has lent his services, (hereinafter referred to as the lending organization) of the circumstances leading to the order of his suspension or the initiation of the proceedings, as the case may be:

Provided further that the borrowing organization shall obtain prior approval of the competent authority in the lending organization before taking any action under these rules against a Government servant holding a post in basic pay scale 17 or above.

(2) If, in the light of findings of the proceedings taken against the accused in terms of sub rule (1), the borrowing organization is of the opinion that a penalty may have to be imposed on him, it shall transmit the record of the proceedings to the lending organization, and the competent authority in the lending organization shall thereupon take action against the accused under rule 14.

(3) Notwithstanding anything to the contrary contained in sub-rules (1) and (2), the Chief Minister may, in respect of certain Government servant or class of Government servants to whom these rules apply, authorize any officer or authority in the borrowing organization to exercise all the powers of the competent authority under these rules.

³ Added by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.

7 these rules may, within thirty days from the date of communication of the order, prefer departmental appeal to the appellate authority:

Provided that where the order has been passed by the Chief Minister, the accused may, within the aforesaid period, submit a review petition directly to the Chief Minister.

(2) The authority empowered under sub-rule (1) shall call for the record of the case and comments on the points raised in the appeal from the concerned department or office, and on consideration of the appeal or the review petition, as the case may be, by an order in writing-

- (a) uphold the order of penalty and reject the appeal or review petition; or
- (b) set aside the orders and exonerate the accused; or
- (c) modify the orders or reduce the penalty.

(3) An appeal or review petition preferred under these rules shall be made in the form of a petition, in writing, and shall set forth concisely the grounds of objection in impugned order in a proper and temperate language.

18. Appearance of counsel.—No party to any proceedings under these rules at any stage of the proceedings, except proceedings under rule 19, shall be represented by an advocate.

19. Appeal before Khyber Pakhtunkhwa Province Service Tribunal.—(1) Notwithstanding anything contained in any other law or rules for the time being in force, any Government servant aggrieved by any final order passed under rule 17 may, within thirty days from the date of communication of the order, prefer an appeal to the Khyber Pakhtunkhwa Province Service Tribunal established under the Khyber Pakhtunkhwa Province Service Tribunals Act, 1974 (Khyber Pakhtunkhwa Act No. I of 1974).

(2) If a decision on a departmental appeal or review petition, as the case may be, filed under rule 17 is not communicated within period of sixty days of filing thereof, the affected Government servant may file an appeal in the Khyber Pakhtunkhwa Province Service Tribunal within a period of ⁴[ninety] days of the expiry of the aforesaid period, whereafter, the authority with whom the departmental appeal or review petition is pending, shall not take any further action.

20. Exception.—Notwithstanding anything to the contrary contained in these rules, in cases where Government servants collectively strike work, wilfully absent themselves from duty or abandon their official work, the competent authority in respect of senior most accused may serve upon them through newspapers or any other mean, such notice as may be deemed appropriate to resume duty and in the event of failure or refusal to comply with the directive contained in the notice, impose upon the defaulting Government servants any of the major penalties prescribed in these rules.

21. Indemnity.—No suit, prosecution or other legal proceedings shall lie against the competent authority or any other authority for anything done or intended to be done in good faith under these rules or the instructions or directions made or issued there-under.

⁵[.....]

23. Repeal.—(1) The Khyber Pakhtunkhwa government servants (Efficiency & Discipline) Rules, 1973 are hereby repealed.

(2) Notwithstanding the repeal of the aforesaid rules, all proceedings pending immediately before the commencement of these rules against any Government servant under repealed rules shall continue under these rules.

(3) Notwithstanding the repeal of the aforesaid rules, all proceedings pending immediately before the commencement of these rules against any employee under the said repealed rules or under the Khyber Pakhtunkhwa Civil Servants Act, 1973 and rules made thereunder, or any other law and rules shall continue under that law and rules, in the manner provided thereunder.

⁴ Subs. by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.

⁵ Deleted by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.

**SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT.**

1997 S C M R 1552

[Supreme Court of Pakistan]

KAPR 1

PTO

Present: Ajmal Mian, Actg, CJ., Irshad Hasan Khan and , Nasir Aslam Zahid, JJ

THE SECRETARY, GOVERNMENT OF THE PUNJAB, through Secretary, Health Department,
Lahore and others--Petitioners

versus

RIAZ-UL-HAQ---Respondent

Civil Appeal No. 1428 of 1995, decided on 5th June, 1997.

(On appeal from the judgment dated 30-11-1994 of the Punjab Service Tribunal, Lahore, passed in Appeal No.657 of 1992).

(a) Punjab Civil Servants Act (VIII of 1974)---

----S. 10(3)---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 7---Constitution of Pakistan (1973), Art. 212(3)--Misconduct---Temporary employee engaged on contract---Termination of service of employee on ground of misconduct and that his performance was not found satisfactory and that he failed to prove his innocence---Leave to appeal was granted to consider, as to whether employee's services could be terminated under S.10(3), Punjab Civil Servants Act, 1974 by serving him 30 days' notice as he was temporary employee.

(b) Civil service---

---- Termination of service---Misconduct---Civil servant's services were on temporary basis liable to be terminated on 30 days' notice or pay in lieu thereof on either side---Services of civil servant were to be governed by statute and Rules/Instructions/Regulations framed thereunder---If a person is employed on contract basis and terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof---Where, however, a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or probationer, he is entitled to a fair opportunity to clear his position which means that there should be a regular enquiry in terms of Efficiency and Discipline Rules before condemning him for the alleged misconduct.

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393 and Pakistan (Punjab Province) v. Riaz Ali Khan 1982 SCMR 770 ref.

(c) Civil service---

----Termination of service---Misconduct---Regular enquiry---If an accused civil servant/employee is charged, with misconduct of the nature which cannot be proved without holding of regular enquiry, the removal or dismissal from service of a civil servant on the basis of summary enquiry is not sustainable in law---Charges of defiance of orders of superiors; being rude to his colleagues and having concealed the factum of having a job in another department, which the civil servant had denied involved factual controversy which could not be resolved without holding regular enquiry and services in such a situation could not be terminated without such enquiry.

Deputy Inspector-General of Police, Lahore, and others v. Anis-urRehman Khan PLD 1985 SC 134;

Alamgir v. Divisional Forest Officer, Multan and others 1993 SCMR 603; Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another 1993 SCMR 1440; Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others PLD 1994 SC 222 and Ghulam Muhammad Khan v. Prime Minister of Pakistan and others 1996 PLC (C.S.) 868 ref.

Ehsan Sabri, Assistant Advocate-General, Punjab for Petitioners.

Malik Amjad Pervez, Advocate Supreme Court for Respondent.

Date of hearing: 5th June, 1997.

ORDER

AJMAL MIAN, ACTG. C.J.---This is an appeal with the leave to this Court against the judgment dated 30-11-1994 of the Punjab Service Tribunal, Lahore, hereinafter referred to as the Tribunal, passed in Appeal No.657 of 1992, filed by the respondent against the termination of his service by an order dated 29-5-1991 while working as a Stenographer in the Office of the Project Director, Paediatric Hospital/Institute, Lahore, hereinafter referred to as the Institute, allowing the same as follows:--

"18. Section 10(3) *ibid* prescribes 30 days' notice and not 10 days. Obviously it did not meet the requirement. In any event section 10 had no application inasmuch as it was not an ad hoc appointment. Parties were agreed that it was regular employment though they differed as to the precise date of joining it on the part of the appellant. Thus, 10 days' notice did not improve the situation.

19. As a result the appeal is allowed. The impugned order is set aside and the appellant is re-instated with back benefits. "

2. The brief facts are that the respondent was employed on 26-4-1986 on contract basis by the Health Department at the behest of the Project Director of the Institute. It seems that at the time of the respondent's induction into service, there were no rules to govern terms and conditions of the staff of the Institute. The rules were subsequently framed, which came into force with effect from 28-10-1988. It appears that after the framing the aforesaid rules, the respondent's services were regularised by an order dated 8-1-1989 retrospectively i.e. from the date when he joined the Institute on 26-4-1986. It was also stated in the aforementioned order of regularisation that like others, the respondent would also be treated as a civil servant and governed by the rules applicable to them. It further seems that the respondent's services were terminated by an order dated 18-5-1991. However, the above termination order was not acted upon and the respondent was served with a show-cause notice, calling upon him to explain as to why he observed local holidays without permission and why he used to leave the office without permission while his officers were still working in the office and thereby committed an act of misconduct and indiscipline. He was required to submit his reply within 10 days. It appears that before the expiry of above period of 10 days, the department served another notice dated 22-5-1991 upon the respondent, further charging him with defiance of orders of the superiors, being rude to his colleagues, having concealed the factum of having a job of a Stenographer with the Board of Excellence of Education by making a formal application there etc. It seems that the respondent refuted all these allegations. He also expressed his apprehension that he would not get justice from appellant No.4 Project Director of the Institute and requested that an Enquiry Officer might be appointed to look into the charges. It was further asserted by him that he was no more on probation and he had become a regular incumbent, whose services could not have been terminated especially by aforesaid order dated 18-5-1991. On receiving the above reply from the respondent, the Project Director of the Institute (i.e. appellant No.4) by his aforesaid order dated 29-5-1991 terminated the respondent's services. After that the respondent filed a departmental appeal and then approached the Tribunal through the aforementioned appeal, which was

upheld in the above terms. Thereupon, the appellants i.e. the Government of the Punjab and other officials, filed a petition for leave to appeal, which was granted to consider, as to whether the respondent's services could be terminated under section 10(3) of the Punjab Civil Servants Act, 1974, hereinafter referred to as the Act, by serving 30 days notice as he was a temporary employee.

3. In support of the above appeal Mr. Ehsan Sabri, learned Assistant Advocate-General, Punjab, has vehemently contended that since the respondent was employed on contract basis and as he was a temporary employee, his services could have been terminated by serving 30 days' notice and, therefore, the respondent, at the most, was entitled to one month's salary in lieu of the notice period.'

On the other hand, Malik Amjad Pervaiz, learned Advocate Supreme Court for the respondent, has strongly urged that factually the respondent was a permanent employee of the Institute as he was inducted against a permanent post and his services were regularised after the enforcement of the rules with effect from 28-10-1988. His further submission is that even if it is to be held that the respondent was a temporary employee of the Institute, his services could not have been terminated under section 10 of the Act read with Rule 7 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, hereinafter referred to as the Rules, particularly by condemning the respondent without holding an enquiry.

4. In order to appreciate the respective contentions of the learned counsel for the parties, it may be pertinent to reproduce the above termination order dated 29-5-1991, which reads as under:--

"Whereas Mr. Riaz ul Haq Stenographer of this office was served with Memo. No.PF/4182/PH & I, dated May 18, 1991 to put up his defence in writing or otherwise as to why his services may not be terminated during probation under section 10 of the Punjab Civil Servants Act, 1974 read with Rules 7 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 on account of his work and conduct during the probation period being not satisfactory.

And whereas, he submitted a representation dated 26-5-1991 in this behalf which was given due consideration and he was also heard in person on the same day.

And whereas, the representation of the official having not been found satisfactory and he having not been able to prove his innocence in this behalf, therefore, in exercise of the powers conferred under section 10 of the Punjab Civil Servants, 1974, I hereby terminate his services with immediate effect in the public interest. "

A perusal of the above order indicates that the respondent's services were terminated on the ground that his performance was not found satisfactory and that he failed to prove his innocence. Reference has also been made to the show-cause notice and the reply submitted by the respondent, and it has been stated that the respondent's reply was given due consideration and was also afforded personal hearing.

5. It will not be out of context to refer to the aforesaid order dated 8-1-1989, whereby the respondent's services were regularised. The above, order is at pages 35 and 36 of the paper book, which indicates that the respondent's services were regularised on the following terms and conditions:-

"(1) that your service will be governed by the provisions of the Punjab Civil Servants Act, 1974 and all Rules/Regulations/Instructions framed thereunder;

(2) that you will be required to undergo a medical examination if not already done on your first entry into Government service, and your appointment will be subject to the conditions that you are declared medically fit by the competent medical authority.

(3) that your appointment will be subject to verification of your character and antecedents to the

satisfaction of the Government.

(4) that your appointment in the Paediatric Hospital/Institute will be on temporary basis liable to terminate on 30 days notice or pay in lieu thereof on either side.

(5) that you will be governed by such rules and orders relating to leave, T.A., Medical Attendance, Pay etc. as may be issued by the Government from time to time for the category of Government servants to which you will belong."

6. It is evident from the abovequoted terms and conditions that the respondent's services were to be governed by the provisions of the Act and of the Rules/Regulations/Instructions framed thereunder. It is also manifest that the respondent's services were on temporary basis, which were liable to be terminated on 30 days' notice or pay in lieu thereof on either side.

7. Without going into the controversy, as to whether the respondent's claim that he was a permanent employee, we may observe that there is a marked distinction between simpliciter termination of services in accordance with the terms of appointment and the termination of services on the ground of misconduct. There is no doubt that if a person is employed on contract basis and if the terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof. However, if a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or a probationer, he is entitled to a fair opportunity to clear his position, which means that there should be a regular enquiry in terms of the Efficiency and Discipline Rules before condemning him for the alleged misconduct. In this regard, reliance has been placed by the learned counsel for the respondent on the case of Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan (PLD 1974 SC 393), in which Waheeduddin Ahmad, J. has succinctly brought out a distinction between termination of services of a probationer on the ground of unsatisfactory performance and the ground of misconduct as follows:--

"In the light of the above discussion, it appears to me that a probationer is a person who is taken in service subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service. I agree with the view expressed in Muhammad Afzal Khan v. The Superintendent of Police, Montgomery and Riaz Ali Khan v. Pakistan, that a person who is on probation is subject to all checks to which a permanent servant is subject. He cannot, for example, refuse to obey orders, keep his own hours of duty, or indulge in any malpractice. In my opinion, if the service of a probationer is terminated on the ground of unsatisfactory work that will not amount to dismissal or removal from service, such termination will be in terms of the contract or the rules made by the Government but if the service of a probationer is terminated on the ground of misconduct that will amount to removal or dismissal. It will be a stigma in his favour. In the last-mentioned case, the probationer will be protected by the provisions of Article 177 of the Constitution of 1962 and will be entitled to a show-cause notice and a proper enquiry against him must be made. "

8. The above view was reiterated by this Court in the case of Pakistan (Punjab Province) v. Riaz Ali Khan (1982 SCMR 770) as under:--

"From the pleadings of the parties it is clear that there was no latent stigma of misconduct but the sole ground of termination of service was his unsatisfactory work which was also apparent from the explanation submitted by the respondent. Therefore, the result of this appeal is concluded by a judgment of this Court reported as Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan (PLD 1974 SC 393). It was observed in this case at page 401 that a probationer is taken in service subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service; and if the service of a probationer is terminated on the ground of unsatisfactory work, it will not amount to dismissal or removal from service. Such termination will be in accordance with the terms of the contract or the Rules made by the Government in that behalf. However, a distinction was drawn that if such termination was on the ground of misconduct then it will be subject to

the Constitutional protection which is not the case here."

9. We respectfully agree with the proposition of law as enunciated in the above reports. The same is in line with the view which we are inclined to take and which has been highlighted hereinabove.

It may be observed that in the present case, inter alia, the respondent was charged with defiance of the orders of his superiors, being rude to his colleagues, having concealed the factum of having a job of a Stenographer with the Board of Excellence of Education etc., which the respondent had denied and, therefore, there was a factual controversy which could not have been resolved without holding regular departmental disciplinary proceedings. In this regard, reference may be made to the following cases: --

- (i) Deputy Inspector-General of Police, Lahore and others v. Anis-ur Rehman Khan (PLD 1985 SC 134);
- (ii) Alamgir v. Divisional Forest Officer, Multan and others (1993 SCMR 603);
- (iii) Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another (1993 SCMR 1440);
- (iv) Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others (PLD 1994 SC 222); and
- (v) Ghulam Muhammad Khan v. Prime Minister of Pakistan and others (1996 PLC (C.S.) 868);

In all the above reports, it has been held that if an accused civil servant/employee is charged with misconduct of the nature which cannot be proved without holding of a regular enquiry, the removal or dismissal from service of a civil servant on the basis of a summary enquiry is not sustainable in law. It will suffice to reproduce para. 5 from the last report, which reads as under:--

"5. It has been consistently held by this Court that there is a marked distinction between Rule 5 and Rule 6 of the Rules, inasmuch as under the former Rule, a regular inquiry can be dispensed with, whereas the latter Rule envisages conducting of regular inquiry which will necessitate the examination of witnesses in support of the charges brought against the accused civil servant, his right to cross-examine such witnesses and his right to produce evidence in rebuttal. The question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the alleged misconduct is such on which a finding of fact cannot be recorded without examining the witnesses in support of the charge or charges, the regular inquiry could not be dispensed with. Reference may be made in this behalf to the case of Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others (PLD 1994 SC 222)."

10. The above cases support the view of the Tribunal that the respondent's services could not have been terminated in the manner which was resorted to in the present case.

11. The upshot of the above discussion is that the instant appeal has no merits and the same is, accordingly, dismissed. However, there will be no order as to costs.

M.B.A./S-1/S

Appeal dismissed.

PLD 1994 Supreme Court 222

*Present: Nasim Hasan Shah, C.I., Shafiur Rahman,
Abdul Qadeer Chaudhry Ajmal Mian and
Fazal Ilahi Khan, JJ*

NAWAB KHAN and another---Appellants

versus

GOVERNMENT OF PAKISTAN through Secretary, Ministry of
Defence, Rawalpindi and others---Respondents

Civil Appeals Nos. 312 and 313 of 1993, decided on 15th November, 1993.

(On appeal from the judgments dated 30-9-1992 and 31-10-1992 of the Federal Service Tribunal, 230(8)/92, respectively).

(a) Constitution of Pakistan (1973)---

---Art. 212(3)---Leave to appeal was granted to consider whether major penalty of compulsory retirement of civil servant from service could be awarded without holding any enquiry under law.

(b) Government Servants (Efficiency and Discipline) Rules, 1973---

---R. 5(1)(iii)---Imposition of major penalty without holding an inquiry---

Validity---Question, whether any major punishment could be imposed upon any civil servant without holding enquiry, would depend upon facts of each case---Authorised Officer was empowered to dispense with the enquiry but he was required (by an order in writing) to inform the accused of the action proposed to be taken in regard to him and the grounds of action and to give him reasonable opportunity of showing cause against the proposed action.

Islamabad, passed in Appeals Nos. 231(8)/92 and Nasir Said v. WAPDA through its Chairman and another PLD 1987

(c) Government Servants (Efficiency and Discipline) Rules, 1973---

---8. 5(1)(iii)---Misconduct by civil servant---Non-holding of regular enquiry---Effect---Authorised Officer had discretion to decide, whether in a disciplinary proceeding against a civil servant in response to his reply to the charge-sheet, regular inquiry should be held or not---Such discretion was not controlled by any pre-condition or guideline but nevertheless, such discretion like all other discretion should be exercised fairly and reasonably and not arbitrarily or capriciously with the object to deny civil servant right of fair defence---Where, therefore, charge was founded on admitted documents/facts, no full-fledged inquiry was required, however, if such charge was based on disputed questions of fact, civil servant could not be denied a regular inquiry because charge in question, could not be resolved without recording evidence and providing opportunity to parties to cross-examine witnesses---If findings of fact in such matters were recorded without recording any evidence same would be based on surmises and conjectures, which would have no evidentiary value as to warrant imposition of any punishment on civil servant concerned.

The Deputy Inspector-General of Police, Lahore and others v. Anisw-Rehman Khan PLD 1985 SC 134; Muhammad Saleem Akhtar v. The Director, Food, Punjab, Lahore and another 1987 SCMR 829; Deputy Postmaster General (PS), Metropolitan Circle, Karachi and 2 others 1990 SCMR 347; Alamgir v.

Not affixed to us

Divisional Forest Officer, Multan and others 1993 SCMR 603; Government of Sindh and others v. Saiful Haq Hashmi and others 1993 SCMR 956 and Javid Akhtar v. Secretary, Ministry of Interior, Government of Pakistan, Islamabad and others. 1991 SCMR 140 rel.

(d) Government Servants (Efficiency and Discipline) Rules, 1973---

---R. 5(1) (iii)---Constitution of Pakistan (1973), Art. 212---Penalty of compulsory retirement from service after compliance of R.5(1)(iii) of the Rules---Validity---Civil servants had admitted charge of misconduct to the effect that they had addressed their letters to higher authorities by by-passing normal channel; contents of their letters also indicated that they had used highly insolent and derogatory language against their officers---One civil servant instead of repenting over his such conduct repeated the same objectionable language in reply to charge-sheet and show-cause notices---No factual controversy was involved which warranted holding of regular enquiry for recording evidence---Civil servants were informed by Authorised Officer after receipt of their replies to charge-sheet/show-cause notice, of the action which he proposed to take against them---Substantial compliance of R.5(1)(iii), Government Servants (Efficiency and Discipline) Rules, 1973 thus was made--Penalty of compulsory retirement imposed upon civil servants was, therefore, justifiable in circumstances.

Imtiaz Muhammad Khan, Advocate-on-Record for Appellants' (in both the Appeals).

Mumtaz Ali Mirza, Deputy Attorney-General with Ch. Akhtar Ali, Advocate-on-Record for Respondents (in both the Cases).

Date of hearing: 15th November, 1993.

JUDGMENT

AJMAL MIAN, J.---By this common judgment, we intend to dispose of the above two appeals which have been filed with the leave of this Court against the judgments dated 30-9-1992 and 31-10-1992 passed by the Federal Service Tribunal, Islamabad, hereinafter referred to as the Tribunal, in Appeals Nos. 231(R)/92 (Old Appeal No. 73(L)/91) and 230(R)/92, respectively, filed by the appellants against the order of compulsory retirement dated 10-1-1991 and dismissal order dated 20-3-1991, respectively, dismissing the above Appeal No. 231(R)/92 and partly allowing Appeal No.230(R)/92, by substituting the punishment of dismissal by compulsory retirement.

2. Leave to appeal was granted in the above two appeals by a common order to consider, whether the major punishment of compulsory retirement of the appellants from service could be awarded without holding any enquiry under the law.

Civil Appeal No. 312 of 1993

3. The brief facts are that the appellant was serving as a Chargeman, (ITT) Directorate, when he was served with the charge-sheet under the Government Servants (Efficiency and Discipline) Rules, 1973, hereinafter referred to as the Rules; containing the following charge of misconduct alongwith the statement of allegations:--

"CHARGE; MISCONDUCT -- VIOLATION OF CHANNEL

- (a) In that he submitted an application direct to CJAS & C whereas he was serving in (ITT) Dte GHQ and thus have violated the channel of submission laid down in SPAO 3/70.
- (b) He used objectionable language of being sarcastic and abusive within the provisions of para. 7 of SPAO 3/70 and made certain allegation to a senior officer in a taunting manner which amounts to misconduct and is un-congenial to the unit discipline.

- (c) He was granted three days casual leave from 4 August to 6th August, 1990 thereafter. he absented from duty without permission from 7 to 10 August, 1990 and again from 15 August, 1990 to date."

Since the appellant had not submitted any reply to the above charge-sheet, he was served with a show-cause notice dated 21-9-1990 calling upon him to show cause in writing within 10 days of the receipt of the above show-cause notice as to why he should not be dismissed from service on the above charge of misconduct. The above show-cause notice was responded to by the appellant by his letter dated 1-10-1990, in which he did not controvert the allegations but stated as under:--

"Most humbly it is submitted that by an individual having no links/relations with authorities at decisive bargaining positions in Government departments, if demand of Pay and Allowances and request for sanction of EOL without pay for regularisation of service, to support school going children, to voice against unfair displacement and to speak truth about the prevailing circumstances there at LAS & C as mentioned in my personal letter to Col. Amanullah Khan, is an Offence, then I do admit the same and with a view of persistent injustice at all levels for a helpless. man like me, apologize will be careful in future."

After that, the appellant was served with a second show-cause notice dated 17-11-1990. In response whereof, he sent his letter dated 21-11-1990, in which he alleged that he had not received the charge-sheet dated 22-10-1990 for the reason that he had changed his house. After that, the appellant was retired from service by the above order dated 10-1-1991. He filed the above service appeal without any success. Thereupon, he filed a petition for leave to appeal, which was granted to consider the above question.

Civil Appeal No. 313 of 1993

3. The appellant, at the relevant time, was serving as an Assistant Foreman in IAS & C at Karachi when he was served with a charge-sheet dated 12-1-1991 alongwith the statement of allegation containing the following charges:--

"Charge. MISCONDUCT -- VIOLATION OF CHANNEL (1ST CHARGE).

In that he violated normal channel of command by sending an application directly to DITD on 22 Dec. 90 regarding his posting from IAS & C Karachi to ASID Lahore despite the fact that he was advised by Mr. Agha Muhammad Aslam, Research Officer, Gde-I OTC SOC Wing to submit his application for posting to ASID, Lahore.

MISCONDUCT -- USING OF HIGHLY INSOLENT AND DEROGATORY LANGUAGE AGAINST CHIEF INSPECTOR (2ND CHARGE).

In that he used highly insolent and derogatory language in his application dated 22 Dec. 90 against Chief Inspector, LAS & C, Karachi.

The above charge-sheet was responded to by the appellant through his letter dated 15-1-1991, in which he again used derogatory language. After that, he was served with a show-cause notice dated 30-1-1991 stating therein that the explanation submitted by him to the charge-sheet was found not satisfactory. He was called upon to show cause within 10 days of the receipt of the above show-cause notice as to why he should not be dismissed from service. The appellant replied to the above show-cause notice through his letter dated 8-2-1991 running into 14 pages. In response to the above reply, the appellant was served with the above notice dated 21-2-1991, whereby he was dismissed from service on the ground. that his explanation was found not satisfactory by the competent authority. Thereupon, the appellant filed the above service appeal without any success and then a petition for leave to appeal, which was granted to consider the above question.

4. In support of the above appeals, Mr. Imtiaz Muhammad Khan, learned counsel appearing for the appellants, has vehemently contended that since the punishments of compulsory retirement and dismissal from service were major punishments, the same could not have been imposed upon the appellants without holding a regular enquiry. Reliance was placed by him on the case of Nasir Said v. WAPDA through its Chairman and another (PLD 1987 SC 421), wherein this Court allowed the appeal of an employee of WAPDA on the ground that the order of retirement was passed against the appellant not by the Authority under the WAPDA Employees (Retirement) Rules, 1979, but was passed by the Appointing Authority which was different.

5. The above case has no application to the controversy in issue. The learned counsel for the appellants is unable to cite any law or rule or authority of any superior Court in support of his above contention. In our view, the above contention is devoid of any force. The question, whether any major punishment can be imposed upon a civil servant without holding an enquiry, depends on the facts of each case. Clause (iii) of sub-rule (1) of Rule 5 of the Rules empowers the Authorised Officer to dispense with the enquiry but he is required (by an order in writing) to inform the accused of the action proposed to be taken in regard to him and the grounds of action and to give him a reasonable opportunity of showing cause against the proposed action.

6. Mr. Mumtaz Ali Mirza, learned Deputy Attorney-General, has referred to the following cases in support of his submission that in the case in hand since the charges of misconduct against the appellants were founded on the admitted facts, there was no need of holding any formal enquiry.

(i) The Deputy Inspector-General of Police Lahore and others v. Anis-ur-Rehman Khan (PLD 1985 SC 134)

wherein this Court allowed the appeal of the Police Department against the judgment of the Punjab Service Tribunal and dilated upon the question of dispensing with holding of enquiry as follows:-

"A discretion has, therefore, been conferred on the competent authority to decide whether a departmental inquiry through an inquiry Officer is not necessary. The exercise of this discretion is not controlled by any pre-requisite or guidelines. All the same as held by the Tribunal, it should appear ex facie from the record to have been resorted to fairly and justly and not oppressively and perversely. In the case in hand there was ample justification for dispensing with the inquiry through an Inquiry Officer. A superior officer of the appellants had conducted the raid in the company of another functionary of the Martial Law Headquarters. The things appearing before the superior officer itself established that there was laxity in observing the discipline and there was breach of it. On the facts, therefore, where a superior who has even otherwise the authority to control and supervise the functioning of his subordinates conducted such a raid, the results whereof were accepted by the appellants themselves, the resort to the show-cause procedure without appointing any Inquiry Officer cannot on any principle be objected to as abuse of the discretion or unjustified in law."

(ii) Muhammad Saleem Akhtar v The Director. Food Punjab Lahore and another (1987 SCMR 8291;

In the above case this Court, while declining leave to appeal against the judgment of the Punjab Service Tribunal, repelled somewhat similar contention which has been urged by Mr. Imtiaz Muhammad Khan as under:--

"3. It is contended on behalf of the petitioner that as in his case no regular inquiry was held the imposition of major penalty upon him was illegal. We find little merit in this contention. It is to be noticed that under rule 6(3) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1973, the authorised officer was competent to dispense with a regular inquiry. In this particular case, the proof against the petitioner was entirely of a documentary nature. It may also be mentioned that in his appeal before the Director he had made no grievance of the fact that no regular inquiry was held in his case or that he had been in any manner prejudiced in his defence in the absence of a regular

inquiry. Similarly in his reply to the show-cause notice he did not ask for a regular inquiry. No substantial question of law of public importance arises in this petition. It is hereby dismissed."

Reference may also be made to the following cases:--

(i) Deputy Postmaster General (PS), Metropolitan Circle, Karachi and 2 others (1990 SCMR 347); in which this Court, while allowing the appeal of the Deputy Postmaster General against the judgment of the Federal Service Tribunal, has dilated upon the question of dispensing with holding-of a regular enquiry with reference to Rule 5 of the Rules as follows:--

"13. As regards the second question on which leave to appeal has been granted, there was indeed a proposal that a regular enquiry through Enquiry Officer should be held in the case. The Authority, however, took a different view and without expressly recording an order for the appointment of an Enquiry Committee or an Equity Officer, approved the charge-sheet when it was subsequently put up before him. The charge-sheet was in the form of a show-cause notice enumerating the charges, the material on which it was based and the extent to which the respondent was involved. The shorter procedure of a show-cause notice was adopted by serving such a charge-sheet and this was a substantial compliance with the requirements of Rule 5 of the Efficiency and Discipline Rules, 1973. The respondent had no vested right in the procedure and the competent authority could decide on the material which was before it and adopt the shorter procedure, which it did. No legal defect can for either of the reasons be attributed to it."

(ii) Alamgir v. Divisional Forest Officer, Multan and others (1993 SCMR 603)

In the above case, this Court allowed the appeal of a civil servant working in the Forest Department on the ground that no full-fledged enquiry was held though it was necessary for resolving controverted questions of fact. Evidence was required to be recorded and opportunity of cross-examination was to be given.

(iii) Government of Sindh and others v. Saiful Haq Hashmi and others (1993 SCMR 956);

in which the majority view on the controversy in issue is as follows:--

"Rule 5(3) confers a discretion in the 'authorised officer' to decide whether inquiry should be conducted through inquiry officer/inquiry committee or not. It is not necessary that he may pass any order or issue any notice for deciding such aspect of the case. He has to take such decision after examining the facts and the records of the case. The fact that a notice under Rule 5(3) had been issued speaks of itself that the 'authorised officer' had decided to invoke this provision and not to appoint any inquiry officer or inquiry committee. The facts of the case as involved entirely depended upon the documents of the suit and the execution proceeding. In the lengthy reply submitted by the respondent reference has been made to the entire record and copies of many relevant documents were also submitted. This shows that he had access to the documents and was actually in possession of the same. Further, he was personally heard by the 'authorised officer'. The respondent at no stage seems to have claimed that he would produce witness in his defence. He had asked for personal hearing which was duly afforded. The nature of proof required depends upon the facts and circumstances of each case. In every case it is not necessary to produce oral evidence. Cases which are clearly dependent on documents alone on which both the parties rely, hardly require any oral evidence unless shown to be needed by any party. There were no disputed questions of fact with regard to pleadings of the parties, applications and the orders passed by the respondent. Only assessment of the record was to be made by the 'authorised officer' before deciding the course of action. In such cases depending on facts, if inquiry officer or inquiry committee is not appointed it would not amount to illegality."

(iv) Javid Akhtar v. Secretary, Ministry of Interior, Government of Pakistan, Islamabad and others (1991 SCMR 140);

In the above case, it was held that a civil servant could not have a choice nor could he insist that a particular procedure for holding a disciplinary proceeding should be followed.

8. The ratio of the above cases seems to be that under Rule 5(1)(iii) of the Rules, an authorised officer has discretion to decide, whether in a disciplinary proceeding against a civil servant in response to his reply to the charge-sheet, a regular inquiry should be held or not. The above discretion is not controlled by any precondition or guideline but nevertheless this discretion like all other discretion is to be exercised fairly and reasonably and not arbitrarily or capriciously with the object to deny the civil servant the right of fair defence. So if the charge is founded on admitted documents/facts, no full fledged inquiry is required but if the charge is based on disputed questions of fact, a civil servant cannot be denied a regular inquiry, as the same cannot be resolved without recording evidence and providing opportunity to the parties to cross-examine the witnesses. In such a matter if findings of fact are recorded without recording any evidence, the same will be based on surmises and conjectures, which will have no evidentiary value as to warrant imposition of any punishment on the civil servant concerned.

9. In the instant cases, the appellants had admitted that they had written their letters to higher authorities by by-passing the normal channel. The contents of their letters also indicate that they have used highly insolent and derogatory language against their officers. The appellant in Civil Appeal No. 313 of 1993, Abdul Hafeez, instead of repenting over his above conduct, repeated the same objectionable language in his replies to the charge-sheet and the show-cause notices. In our view, no factual controversy of the nature was involved which warranted holding of a regular enquiry for recording evidence. The appellants were informed by the 'authorised officer' after receipt of their replies to the above charge-sheets/show-cause notices of the action which he proposed to take against them. In this view of the matter, there has been substantial compliance of clause (iii) of sub-rule (1) of Rule 5 of the Rules. The appeals have no merits and the same are, accordingly, dismissed. However, there will be no order as to costs.

AA/N-357/5

Appeals dismissed

1993 S C M R 603

[Supreme Court of Pakistan]

Present: Shafiur Rahman, Saad saood Jan
and Abdul Shakurul salam, JJ

ALAMGIR-- Appellant

versus

DIVISIONAL FOREST OFFICER, MULTAN
and others---Respondents

Civil Appeals Nos. 272 and 273 of 1990, decided on 4th October, 1992.

(On appeal from the judgment of Punjab Service Tribunal, dated 29-2-1988 passed in Appeals Nos.415/397 of 1985 and 416/398 of 1985).

(a) Punjab Civil Servants (Efficiency and Discipline) Rules, 1975---

---R.6(3)---Constitution of Pakistan (1973), Arts.25 & 212(3)---Leave to appeal was granted to examine whether R.6(3), Punjab Civil Servants (Efficiency and Discipline) Rules, 1975, was ultra vires of Art.25 of the Constitution and whether on facts, dismissal of appeals filed by civil servants before Service Tribunal was justified.

(b) Punjab Civil Servants (Efficiency and Discipline) Rules, 1975---

---R.6(3)---Recourse to shorter procedure of show-cause---Essentials-Controversial questions of fact---Mode for resolving---Competent Authority is conferred with discretion to decide whether a departmental inquiry through an Inquiry Officer was not necessary---Such decision is not controlled by any prerequisite or guidelines---For resolving controversial questions of fact where evidence has to be recorded and opportunity of cross-examination has to be given, the proper course would be to hold a full-fledged inquiry, otherwise finding recorded would be based more on conjectures than on evidence/material available on record properly produced and accepted.

Ch. Khalilur Rahman, Senior Advocate instructed by Sh. Salahuddin, Advocate-on-Record for Appellants.

M. Gulzar Ahmed, Advocate instructed by Rao Muhammad Yusuf Khan, Advocate-on-Record for Respondents.

Date of hearing: 4th October, 1992.

JUDGMENT

SHAFIUR RAHMAN, J.---Leave to appeal was granted to the two employees of the Forest Department to examine whether rule 6(3) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1975 is ultra vires of Article 25 of the Constitution and whether on facts the dismissal of the appeals A filed by the appellants before the Service Tribunal was justified.

2. During the Eid holidays of 1984, two Shisham trees from Chak Nos.9 and 10 were unauthorisedly removed. The Divisional Forest Officer received a confidential information to that effect and also it was reported to him that irrigation water meant for Forest area was sold unauthorisedly during Eid holidays

from Chak No.9 to private land owners. He asked confidentially his subordinate to look into the matter and report to him. The Sub-Divisional Forest Officer (SDFO) who inquired into the matter reported on 26-9-1984 as hereunder:--

"It is submitted that two Shisham trees were cut illicitly from Chak Nos.IX and X during Eid holidays. I had investigated the matter and come to the conclusion that the Shisham trees were cut without the connivance of the field staff from Chak No.X but the tree cut from Chak No.IX compartment No.64/E lying wind fallen over the main was removed with the connivance of field staff (B.O.& F.G.). The compensation and value and this damage had been realized. As regards selling of irrigation water from Chak No.IX it is incorrect, as Chak No.IX is surrounded by F.D. on its northern side, by Chak NO.VI-A on western side, on Chak VIII, on southern side and Chak No.XI on western side."

3. The Divisional Forest Officer as the Authorised Officer decided to adopt the shorter procedure of show-cause notice which was served on the two appellants. The factual aspect of the charge was controverted but the Divisional Forest Officer without holding any inquiry passed the operative order as hereunder:--

"The explanations submitted by the accused officials seem an afterthought and concocted story because they connived in the illicit disposal of Shisham tree valuing Rs.1,300 and on information about the complaint they issued damage report etc.

Considering all the above i.e. report of S.D.F.O. Muhammad Naseer Ahmad Khan, explanation of the accused officials and personal hearing, the connivance of the accused officials has been proved and they deserve dismissal from service but taking a lenient view I hereby decide the case as under:--

(1) Mr. Zafar Iqbal Forester:

(i) Reduced to the minimum of basic pay scale i.e. Rs.520 per month

(ii) Character roll warning to be careful in future. (2) Mr. Alamgir F. Guard:

(i) Reduced to the minimum of basic pay scale i.e. Rs.460 per month

(ii) Character roll warning to be careful in future."

4. This was challenged in appeal before the Conservator of Forests and before the Service Tribunal but without any success. The defence of the appellants was that they had not connived at the felling of the Shisham trees; that it had been unauthorisedly done and reported, the charges against the appellants were decided against them without recording any evidence of their immediate superior with regard to the complaint.

5. On the factual side of the case we find that in the preliminary inquiry or the so-called investigation conducted by the Sub-Divisional Forest Officer the appellants were not associated at all. The findings of fact had been recorded behind their back. Out of the three charges of having connived and cut the two Shisham trees and having sold irrigation water, only one appeared to be tenable to the Investigating Officer. It was of felling of one Shisham tree. In their defence, it appears, they had mentioned that the reports had been duly lodged. The finding of this report of being antedated has been made on visual inspection of the report and not on examination of the record of the Department or by reference to their immediate superior officer.

6. In the Deputy Inspector-General of Police, Lahore and others v. Anis-ur-Rahman Khan PLD 1985 SC 134 it has been pointed out that in what circumstances recourse to the shorter procedure of show-cause is justified. For resolving controverted questions of fact where evidence has to be recorded and opportunity of cross-examination has to be given, the proper course is always to hold a full-fledged inquiry.

Otherwise, the findings recorded, as in this case, will be based more on conjectures than on evidence/material available on record properly produced and accepted.

7. Without going into the larger question of vires of rules, we accept the appeals, set aside the impugned judgment of the Service Tribunal and while accepting the service appeals of the two appellants set aside their order of punishment. This would, however, not preclude the competent authority from proceeding afresh by way of a formal inquiry into the allegations levelled against them. No order is made as to costs.

AA A-982/S

Appeals accepted

1993 S C M R 1440

[Supreme Court of Pakistan]

Present: Ajmal Mian, Sajjad Ali Shah and Saleem Akhtar, JJ

JAN MUHAMMAD---Appellant

versus

THE GENERAL MANAGER, KARACHI TELECOMMUNICATION REGION, KARACHI and another---Respondents

Civil Appeal No. 149-K of 1991, decided on 31st March, 1992.

(On appeal from the judgment of the Federal Service Tribunal, Islamabad dated 13-1-1991 passed in Appeal No.56(K) of 1987).

Government Servants (Efficiency and Discipline) Rules, 1973---

---Rr. 6, 5 & 4---Misconduct---Compulsory retirement---Enquiry against Government servant---Procedure---Enquiry proceedings were conducted by way of questionnaire without examination of witnesses in support of charge or defence---Such enquiry proceedings being not consistent with requirements of R. 6, Government Servants (Efficiency and Discipline) Rules, 1973 was not sustainable.

In Government Servants (Efficiency and Discipline) Rules, 1973, "misconduct" is defined. Rule 4 contemplates minor and major penalties. Compulsory retirement is included in major penalties. Rule 5 empowers authorised officer to direct enquiry against Government servant through an Enquiry Officer or Enquiry Committee or if he is satisfied, may order that there would be no enquiry in the interest of security of the country. If it is decided that there should be enquiry either by Enquiry Officer or Enquiry Committee then procedure laid down in Rule 6 is to be followed and the requirements enumerated therein are that charge shall be framed and Government servant proceeded against would be allowed to reply to the charge after which evidence is to be recorded by examining witnesses in support of the charge allowing opportunity to the affected Government servant to cross-examine the witnesses and he can also produce witnesses in his defence. In the present case this procedure as such was not followed in letter and spirit and witnesses were not examined in support of the charge. It was necessary for that reason that ultimately major penalty has been imposed upon the civil servant. The manner in which enquiry proceedings were conducted by way of questionnaire without examination of witnesses in support of charge or defence cannot be approved as it was not consistent with requirements of Rule 6 of the above mentioned Rules. Before the Service Tribunal in written objections filed on behalf of Department order of compulsory retirement has been defended on other unconnected grounds that civil servant was inefficient and unwilling worker. In the enquiry report no comment was made upon plea of civil servant that his immediate superior officer recommended that he was overburdened with his own work and should not be given additional work. Order of compulsory retirement, therefore, was not sustainable as enquiry was not held in accordance with procedure laid down in Rule 6 of Government Servants (Efficiency and Discipline) Rules, 1973. Judgment of Service Tribunal and order of compulsory retirement of civil servant was set aside with the direction that he be reinstated with back benefits. Order of compulsory retirement of civil servant having been set aside on the ground that enquiry was not held as required under the Rules, it was open to Department to take action against him on that ground but strictly according to law and rules.

Rasheed A. Razvi, Advocate Supreme Court instructed by M.A.I. Qarni, Advocate-on-Record for Appellant.

M. Umar Qureshi, Advocate Supreme Court instructed by S.M. Abbas, Advocate-on-Record for Respondents.

Date of hearing: 31st March, 1992.

JUDGMENT

SAJJAD ALI SHAH, J.---In this appeal with leave is challenged judgment dated 13-1-1991 of the Federal Service Tribunal, Islamabad, whereby service appeal of the appellant is dismissed on the ground that it has no merit.

2. Briefly stated the relevant facts giving rise to this appeal are that appellant was serving as Lower Selection Grade Clerk (BPS-9) posted as Head Clerk Phone Branch, Karachi, when on 7-7-1986 he received order from Director, Telephones-II giving him additional work of "Minister communication cases". Assistant Director, Phones-II, who was immediate superior officer of appellant forwarded a note recommending that appellant should be spared as he was already loaded with heavy work on account of shortage of staff and for that reason additional work may be assigned to some other Head Clerk. On the following day appellant was suspended and on 20-7-1986 he was served with charge-sheet on the ground that he had disobeyed the order of superior officer which amounted to misconduct. Appellant submitted his defence denying allegations. Mr. Zahiruddin Siddiqui, A.D. Engineering-II proceeded to examine appellant by directing him to answer questionnaire which was done. After formal personal hearing, order of compulsory retirement of appellant from Government service was passed on 18-11-1986. According to the appellant, he had put in 28 years of service. He filed departmental appeal which was dismissed after which he filed service appeal before the Tribunal which is also dismissed as stated above.

3. We have heard learned counsel for both the parties. It appears from the impugned judgment of Service Tribunal that charge against the appellant is that he disobeyed office order passed on 7-7-1986 directing him to look after "Minister communications cases" in addition to his own duties, which he refused. It is submitted on behalf of the appellant that he did not refuse or disobey the order but apprised his own immediate superior officer about the order and the factual position with regard to his own load of work and on that note his immediate superior officer A.D. Phones-II agreed and recommended in writing that appellant was already overloaded with heavy work in his normal duties, which he had been performing in the face of shortage of suitable staff, hence additional work should be assigned to some other Head Clerk.

4. We have noted in the record that order assigning additional duty was passed on 7-7-1986 and on the same day appellant forwarded a note in writing to A.D. Phones-II, who on the same day added his own note in hand in the margin agreeing with appellant and recommending that he should be spared. There is also another note of the same officer i.e. A.D. Phones-II made on the following day directing appellant to clear all the files on his table and then start attending to additional work as well. It, therefore, appears that inbetween these two notes this officer was called and persuaded to change his mind and not recommend that appellant should be spared from additional duty.

5. On 8-7-1986 appellant was suspended and on 20-7-1986 he was charge-sheeted and required to show cause within 7 days as to why penalty of dismissal from service as specified in Government Servants (Efficiency and Discipline) Rules, 1973 should not be imposed upon him on the ground of misconduct. Mr. Zahiruddin Siddiqui A.D. Engineering-II was appointed as Enquiry Officer. On 3-8-1986 appellant filed written reply to charge-sheet in which allegation levelled against him was denied. Appellant asked for change of Enquiry Officer but his request was declined. In the enquiry no witness was examined and as it appears from the enquiry report dated 26-8-1986, four allegations were noted from which one related to refusal to do additional work and the other three with regard to the objections raised by the appellant himself. It further appears that appellant was cross-examined on these points and his defence in writing was considered and in one short paragraph conclusion is noted that charge of misconduct stands justified. vide order dated 18-11-1986, authorised officer, who is Assistant General Manager-I, Karachi, Telecommunication Region, Karachi, retired appellant compulsorily from Government service with effect

from 17-11-1986 with all admissible benefits treating period of suspension as leave admissible.

6. In Government Servants (Efficiency and Discipline) Rules 1973, "misconduct" is defined. Rule 4 contemplate minor and major penalties. Compulsory retirement is included in major penalties. Rule 5 empowers authorised officer to direct enquiry against Government servant through an Enquiry Officer or Enquiry Committee or if he is satisfied, may order that there would be no enquiry in the interest of security of the counts if it is decided that there should be enquiry either by Enquiry Officer or Enquiry Committee then procedure laid down in Rule 6 is to be followed and the requirements enumerated therein are that charge shall be framed and Government servant proceeded against would be allowed to reply to the charge after which evidence is to be recorded by examining witnesses in support of the charge allowing opportunity to the affected Government servant cross-examine the witnesses and he can also produce witnesses in his defence. It appears that in the instant case this procedure as such was not followed in letter and spirit and witnesses were not examined in support of the charge. It was necessary for that reason that ultimately major penalty has been imposed upon the appellant. The manner in which enquiry proceedings were conducted by way of questionnaire without examination of witnesses in support of charge or defence cannot be approved as it is not consistent with requirements of Rule 6 of the abovementioned Rules. Before the Service Tribunal is written objections filed on behalf of respondents order of compulsory retirement has been defended on other unconnected grounds that appellant was inefficient and unwilling worker. In the enquiry report no comment is made upon plea of appellant that his immediate superior officer recommended that appellant was overburdened with his own work and should not be given additional work. For the facts and reasons mentioned above, we are of the view that order of compulsory retirement is not sustainable as enquiry was not held in accordance with procedure laid down in Rule 6 of Government Servants (Efficiency and Discipline) Rules, 1973. We, therefore, set aside impugned judgment of Service Tribunal and order of compulsory retirement of appellant and direct that he be reinstated with back benefits. Since we are striking down order of compulsory retirement of appellant on the ground that enquiry was not held as required under the rules, it is open to the respondents to take action against appellant on that ground but strictly according to law and rules.

Appeal is allowed.

M.BA./J-99/S

Appeal allowed.