



29.01.2020


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


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

26.02.2020


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


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



24.09.2019

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



Member
Camp Court, D.I.Khan

23/10/2019

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



Reader

27.11.2019

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




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

26.06.2019

Counsel for the appellant Khushal Khan present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving as Assistant Engineer in Irrigation Department. He was imposed major penalty of reduction to lower pay scale for three years vide order dated 30.05.2018 on the allegation that he voluntarily returned the embezzled public money amounting to Rs. 872,786/- to NAB. The appellant filed departmental appeal on 22.06.2018 but the same was not responded hence, the present service appeal on 23.10.2018. Learned counsel for the appellant further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor opportunity of personal hearing, cross-examination and defence was provided to the appellant nor any show-cause notice alongwith copy of inquiry report was handed over to the appellant before passing the impugned order therefore, the impugned order is illegal and liable to be set-aside.

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

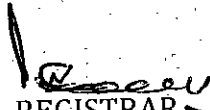



Appellant Deposited
Security & Process Fee


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

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1331/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/10/2018	<p>The appeal of Mr. Khushal Khan received today by post through Muhammad Waqar Alam Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 23/10/18</p>
2-	27.02.2019	<p>This case is entrusted to touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>27-2-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for the appellant present and requested for adjournment. Adjourned to 24.04.2019 for preliminary hearing before S.B at Camp Court D.I.Khan.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member Camp Court D.I.Khan</p>
	24.04.2019	<p>Appellant absent. Learned counsel for the appellant present and again sought adjournment. Adjourn. To come up for preliminary hearing on 26.06.2019 before S.B at Camp Court, D.I.Khan.</p> <p style="text-align: right;"> Member Camp Court, D.I.Khan.</p>

26/3/2020

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

Reader

22/4/2020

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

Reader

as order dt 25/10/18
grievance of the
appellant redressed
by the respondents
hence wants to withdraw
the case.

23/9/2020
23.09.2020

Counsel for appellant present.

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

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

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

Announced.
23.09.2020

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

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

Service Appeal No. 133 /2018

Khushal Khan **VERSUS** Govt. of KPK and others

SERVICE APPEAL

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Dated: ____/10/2018

Humble Appellant


Khushal Khan

Through Counsel


M. Waqar Alam
Advocate High Court
16/10

waqaralam1982@gmail.com

Mob#0333-995-0616

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

Service Appeal No. 1331/2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1551

Dated 23/10/2018

Khushal Khan, Assistant Engineer, Presently posted as
Economist, Office of the Secretary Irrigation Department,
Peshawar.

..... **Appellant**

VERSUS

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

..... **Respondents.**

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

Filed to-day
Registrar
23/10/18

[Handwritten signature]

PRAYER

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

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

Respectfully Sheweth:-

The Appellant most respectfully submits as under:-

1. That the appellant joined irrigation Department, KPK as an Engineer and was posted on different positions, during the tenure has rendered services with unmatched zeal, devotion and commitment while ensuring the above board integrity and reputation. Service book in this respect is very much clear.
2. That, in the year 2005, NAB authorities conducted a site inspection of the ongoing/uncompleted project namely construction of flood protection structures on the right bank of river Indus District Dera Ismail Khan and has suspected that there are some shortcomings in the developmental work, despite the fact that according to Central Public Work Code, all payments in running works to be treated as PW advances which are always adjustable up to the finalization of the project. The so called technical team of NAB authorities spent about more than a week time on site and had not found anything incriminating thus, stated that their technical team will again visit and inspect the site afresh.
3. That, a lapse of one year upon the completion of project another team comprising of Engineer Naeem Khan, Engineer Nasir Ghafoor of Irrigation Department and several others with NAB officials visited and inspected the site/scheme but they did not find any shortcoming or defect at site. Despite

J/mc

this clean chit when NAB had nothing to make a basis for its inquiry, yet some non technical investigation staff who had no understanding of the works department and engineering standards made their own imaginary calculations without considering the ground realities and autocratically fixed certain cooked up losses on the team working on the project including the appellant and few others which includes the then XEN namely Muhammad Iqbal who happened to be the immediate boss of the appellant and the actual in charge of the project.

4. That now in the month of November 2017, the appellant again received show cause notice by the official respondents. Copies of letter and show-cause notices are jointly enclosed herewith.
5. That, after calling upon the appellant and several others connected with the aforesaid project, NAB had placed an option in front of them without sharing any details of supposed delinquencies/anomalies/paid vouchers/cheques and alleged shortcoming and the appellants were demoralized, pressurized and coerced to deposit an amount of face dire consequences including investigation and consequently arrest and detention.
6. That, before taking VR as an instance of incrimination one must also examine the circumstances which lead the appellant to enter into such an unfortunate affair. If one sees the record neutrally, it would be very easy to conclude that the appellant was made a scapegoat and was coerced to pay certain amount almost in circumstances, very similar to the extortion. NAB has the set pattern of harassment and coercion where people are compel and enforced their followed, their called up and detain for power, threats and severing language is used making life hell for somebody facing a NAB inquiry. As such the appellant was left with no other option but to bow down to the pressure and coercion of NAB authorities and was made to enter into VR and compelled to deposit an autocratically determined amount along with

Handwritten signature/initials

other staff and the executive engineer. Thus the appellant being a junior officer in his initial days of service was made a practice board and was continuously manhandled by the prosecution agency. The long torture forced and coerced him to submit an application for VR under extreme duress regardless of his unblemished service record as the NAB authorities were not budging back and kept insisting that they would make him an example. Accordingly the appellant was duped and compelled to pay an amount of Rs. 872786/- together with an affidavit on a preset performa making vague references to admission of some guilt without any further elaboration in early 2006 " it is worth mentioning that same amount was also recovered from Iqbal Khan the then Incharge XEN and other staff".

7. That, the honorable Supreme Court of Pakistan while proceeding in a Suo Moto case No. 17 of 2016 and while examining provisions of Section 25-A of the NAO, 1999 on 24/10/2016 passed/issued an interim order and observed as follows; **"we therefore, direct the Secretary Establishment Division and all the Chief Secretaries of the provinces to ensure initiation of departmental proceedings forthwith against the employees mentioned in CMA No. 6376 of 2016, who have VR the amounts in terms of Section 25-A NAO, 1999 without further loss of time and report compliance"**. Copy of the order dated 24/10/2016 are annexed herewith.
8. That, in the meantime the Supreme Court of Pakistan, refixed the case mentioned above on 17/11/2016 on the various application of the effectees of the order dated 24/10/2016, the appellant also filed a review petition in which the Supreme Court of Pakistan very graciously granted status quo as follows; **"In the meantime, no final adverse/removal order shall be passed against any of the effectees"** the matter was again fixed on 06/12/2016 wherein the august Supreme Court once again directed that no adverse action shall be taken against the person who have made VR of less than two and a half million rupees. Pending further

elaboration, if any, by the aforesaid direction in coming days as it still is an interim order, the appellant along with other effectees of VR filed CMA No. 7290/2016 in Suo Moto case No. 17/2016 for impleadment as respondent and besides file an application for interim relief whereupon the Supreme Court passed the aforesaid order dated 17/11/2016. Copies of CMA No. 7290/2016 along with order dated 17/11/2016 are jointly enclosed herewith.

9. That, the respondents while exceeded from the scope of the order dated 24/10/2016, while totally discarding the order dated 17/11/2016 and 06/12/2016 has issued show cause notice to the appellant on 08/03/2018 wherein major penalty of removal from service was purposed the show cause notice in hand is based on the findings of an inquiry committee that was held pursuant of charge sheets and statement of allegations issued to the appellants along with other connected matter in hand. It is very unfortunate that the inquiry committee had conveniently ignored very plausible explanations put forth by the appellant as written response to the charge sheet that why and in what circumstances the VR option was exercised by the appellant, it was no case to proceed against the appellant any further and therefore, the issuance of the show cause notice was clearly misplaced and not sustainable in the eyes of law despite the above mentioned fact, the appellant submitted a detail reply to the aforesaid show cause notice dated 08/03/2018 and explain the whole matter at length with plausible justification that major penalty shall not be imposed upon him besides the appellant requested to be heard in person. Copy of the Show cause notice and reply are enclosed herewith.

10. That the appellant after getting the show cause notices, filed a review petition before august Supreme Court of Pakistan in Suo Moto case No. 17/2016 in which the appellant is very graciously granted stay order on 17/11/2016. Copy of review petition and order dated 17/11/2016 are enclosed herewith.

11. That now the official respondents finalized the alleged inquiry against the appellant and other employees of the irrigation department and the appellant is awarded major penalty in shape of reduction to lower pay scale for three years. Copy impugned notification dated 30/05/2018 is enclosed herewith.
12. That on 16/04/2018, in WP No. 1692-P/2018 in the writ of appellant the Peshawar High Court Bench Peshawar granted Status Quo regarding no adverse action shall be taken against the petitioner was issued. Copies of Writ Petition along with status quo order are jointly enclosed herewith.
13. That on 26/06/2018, the appellant made a departmental appeal against the major penalty to the respondent No.1 which is still not decided by the competent authority without assigning any reason, hence the instant appeal, inter alia on the following grounds: Copy of departmental appeal is enclosed herewith.

GROUNDS

- A. That the act of respondents is illegal, unjustified and without jurisdiction, hence, liable to be set aside by this Honourable court.
- B. That despite of clear cut order of the august Supreme Court of Pakistan for not taking any adverse action against the appellant yet the respondents issued an notification regarding major penalty against the appellant while totally ignoring the orders of the Supreme Court of Pakistan.
- C. That the honorable apex court has restrained the Government from punitive proceedings adversely/removing the persons on ground of VR vide judgment and order dated 17/11/2016 and 06/12/2016 which orders are still in field. In view of the judgment and orders of the apex court the proceedings so made by the Chief Secretary KPK, approving the major

penalty of reduction to lower pay scale for three years is clearly transgressing the mandate of judgment is thus violative of Article 189 r/w Article 187(ii)(iii) of the Constitution of Islamic Republic of Pakistan, 1973.

D. That even in the same one case, a competent authority malafidely, discriminately given minor penalty (stoppage of one increment for one year to the then XEN In charge of the project Mr. Iqbal Khan) Copy is enclosed as ready reference.

E. That, it is also pertinent to mention here that the competent authority violated Article 13 of the Constitution of Islamic Republic of Pakistan, 1973 and to prey the appellant to proceed against them on the basis of impugned proceedings as they have once been proceeded in the year 2006. Hence, the impugned notification dated 30/05/2018 is the result of misconception and liable to be set aside by this Honorable Tribunal.

F. That in the same situation one colleague of the appellant approached to the august Peshawar High Court Bench D.I.Khan by filing writ petition which was very graciously allowed and in COC of the said petition, decided in favour of one Mr. Hidayatullah and the impugned notification dated 30/05/2018 is suspended till the final disposal of CMA petition pending before the august Supreme Court of Pakistan. Copy of the COC along with order dated 25/09/2018 is enclosed herewith.

G. That the Counsel for the Appellant may kindly be allowed to raise further legal grounds during the course of arguments.

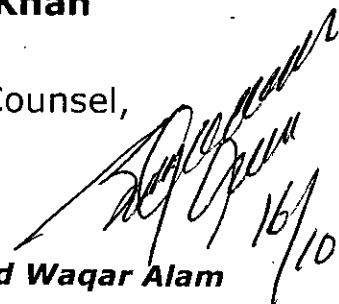
In wake of submission made above, it is humbly prayed that on acceptance of the instant service appeal, the act of respondents may please be declared as illegal without lawful authority, discriminatory and coram non iudice and also to set aside the notification dated 30/05/2018 vide which the appellant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

Date: ___/10/2018

Yours Humble Appellant


Khushal Khan

Through Counsel,


Muhammad Waqar Alam
Advocate High Court

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

Service Appeal No. _____/2018

Khushal Khan (Appellant)

VERSUS

Govt. of KPK and others (Respondents)

SERVICE APPEAL

AFFIDAVIT

I, **Khushal Khan**, Assistant Engineer, Presently posted as Economist, Office of the Secretary Irrigation Department, Peshawar, do hereby solemnly affirm and declare on oath that contents of above Service Appeal are true & correct to the best of my knowledge and that nothing has been concealed from this Honourable Court.

Dated: ____/10/2018



DEPONENT

Oath Commissioner
RO & AC
District Bar D.I.Khan

POST IMMEDIATE



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

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

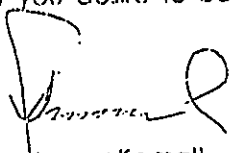
Engr: Khushal Khan,
Assistant Engineer (BS-17),
Presently posted as Executive Engineer (OPS),
Irrigation Division, Kohat.

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

I am directed to refer to the subject noted above and to enclose herewith a copy of the show cause notice containing tentative major penalty of "Removal from Service" and to state that the 2nd copy of the show cause notice may be returned to this Department after having signed as a token of receipt immediately.

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

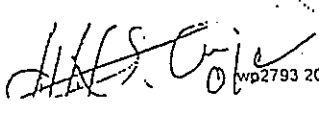
You are further directed to intimate whether you desire to be heard in person or otherwise.

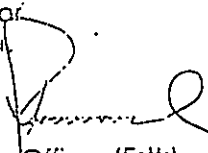

(Engr: Anwar Kamal)
Section Officer (Estt:)

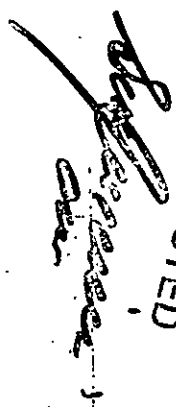
Ref: as above

Encl: No and date even
Copy forwarded to the:-

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




Section Officer (Estt:)


ATTESTED

ATTESTED
ADVOSTE

(Handwritten initials)

SHOW CAUSE NOTICE

I, Muhammad Azam Khan, Chief Secretary, Khyber Pakhtunkhwa as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Engr: Khushal Khan, Assistant Engineer (BS-17), presently posted as Executive Engineer (OPS), Kohat Irrigation Division as follows:

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

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

You have voluntarily returned the embezzled public money amounting to Rs. 872,786/- to NAB, which tantamount to proven guilty of misconduct.

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

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

- i. Removal from Service
- ii. _____

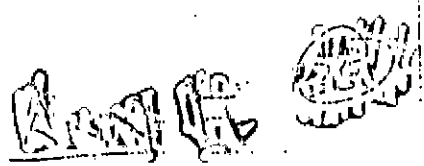
ATTESTED
ADVOCATE

ATTESTED
(Handwritten signature)

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

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

(Handwritten signature)
(Muhammad Azam Khan)
Chief Secretary
Khyber Pakhtunkhwa
Competent Authority



The Honourable Chief Secretary,
Khyber Pakhtunkhwa, Peshawar
(Competent Authority).

REPLY TO THE CHARGE SHEET/STATEMENT OF ALLEGATION

NO. SO(F)IRR/9-3/99/NAB dated 01.01.2018 & office of the CP(DCO) CRW
No. 42/Institution, dated 10.01.2018.

Respected Sir,

1. The undersigned has been served with charge sheet/statement of allegation by the Competent Authority (Chief Secretary), Khyber Pakhtunkhwa as (Competent Authority) under Rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the only allegations in the charge sheet is that "pursuant to the judgment of August Supreme Court in SMC NO. 17/2016 dated 24.10.2016" the competent authority is satisfied that "the undersigned had returned to embezzled public amount to NAB which amounts to proven guilty of misconduct.

2. The facts of the case is that the subject issue was raised by NAB in May 2005 where NAB has observed that there are some shortcoming in the Development work "Construction of Flood Protection Structures (Spurs) on the Right Bank of River Indus District D.I.Khan" which was ongoing work and according to the CPWD code "all payments in in running works be treated as PW advances" instead, the NAB authorities directed that the Technical Team of the NAB will again inspect the work.

After complete one year, in 2006, the NAB Team comprising Engr: Naeem Khan, (Incumbent Secretary Energy & Power), Nasir Ghafoor Khan of the Irrigation Department & others alongwith NAB officials again thoroughly investigate the whole scheme, however, they could not find anything adverse, whatsoever, the NAB authorities at their own calculated certain losses and shared on all the officials /contractors which was not fair. BUT A FORCEFUL DEPOSIT OF MONEY TO NAB". Thus, the question should be 'why NAB made government servants to pay for 'no wrong' whatsoever. Yet, the undersigned does not want to go into any question on merit as the case is sub-judice in the Honourable Supreme Court,

ATTESTED
[Signature]

[Signature]



Therefore, in all fairness and in order to avoid 'multiple' and unnecessary litigation when this very charge sheet/statement of allegation to which the instant reply is being submitted has already been placed before the Honourable Supreme Court as part of the above mentioned CMA. x1

x1

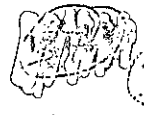
- 3. At the outset, it is also submitted that the case (SMC NO. 17/2016) as referred to in the charge sheet is still pending adjudication before the Hon'able Supreme Court and so far no final order has been passed relating to the "vires of Section 25 (a) of the National Accountability Ordinance, 1999 (Ordinance). It is yet to be finally determined as to whether "entering into voluntary return with NAB" constitutes for the purpose of "service laws" a "misconduct" to entail initiate disciplinary proceedings. The undersigned has already filed an Application (CMA No. 7290/2016) alongwith other officials in SMC No. 17/2016 for impleadment of the undersigned as party to the proceedings. An application for interim relief i.e. that no further adverse orders be passed by any competent authority including the authority that served the charge sheet on the undersigned. Copies of both applications are appended herewith which speak for themselves. Yet, for the time being, the contents thereof are reiterated as an integral part of the instant reply to the charge sheet. x2

x3

- 4. As an easy reference and for the sake of convenience of the competent authority, it is submitted that the submission of the undersigned before the Hon'able Supreme Court is "Section 25 of the Ordinance" was substituted by NAB Amendment Ordinance, 2002 on 23.11.2002 and at the same time "Section 15 of the Ordinance" was also amended. The combined reading of the two sections is that "Voluntary return" does not in any manner disqualify a public office holder to continue with his office while plea bargain does. And at the same time, for the purpose of service laws, it (entering into VR) does not constitute "misconduct" at all. SO FAR THERE IS NOT A SINGLE CASE of the Hon'able Supreme Court that says, VR constitutes "misconduct"

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ATTESTED
ADVOCATE
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of the public servant. That's why about 1600 government servants have entered into VR with NAB and NONE HAS BEEN DISMISSED FROM SERVICE. In the present case, admitted position is that the petitioner had availed facility of voluntary return and not plea bargain. As such, the Accountability court did not convict him. Since, there was no conviction; therefore the petitioner could not be proceeded against departmentally on the basis of his act of entering into voluntary return with the NAB authorities. The first order, on the basis of which the petitioner was compulsory, retired, was thus illegal. Reference might be made, inter alia, to the cases of (i) 2010 PLC(CS)876 "Mehtab Vs NAB, and (ii) 2013 PLC(CS)795 "Muhammad Islam Vs NAB". Even the Hon'able Supreme Court itself, in the case of "Muhammad Aslam Vs/ Auditor General of Pakistan, 2013 SCMR1904 "observed" a similar //**distinction in the case of voluntary return and plea bargain. X3

5. Now, as far as the Order dated 24.10.2016 passed in SMC No. 17/2016 is concerned, the undersigned as well as almost all other officials have invoked the impleadment jurisdiction of the Hon'able Supreme Court itself and the case of the undersigned is subjudice before the Hon'able Supreme Court of Pakistan. The case was fixed for hearing on 07.11.2016 but due to large bench relating to the so-called "Panama Papers petitions", most of the Hon'able Supreme Court time was consumed in the early part of the day; therefore the cases of the government servants including that of the undersigned could not be taken up. In view of its urgency, the case has been fixed dated the Honourable court issued the order that "Hearing of the case is adjourned till the 1st Week of December, 2016. In the mean time no final adverse/removal order shall be passed against any of the officers (copy attached).

We are all hopeful that the undersigned and all other government servants are heard through their respective counsels by the Hon'able Supreme Court especially when it is yet to be decided as to whether VR at all constitutes a "misconduct" and if yes, whether

ATTESTED
 [Signature]

ATTESTED
 [Signature]



it is not to be applied prospectively. In both cases, the case of the undersigned will not be subjected to departmental proceedings. Therefore, the charge sheet needs to be recalled till final disposal of the SMC No. 17/2016.

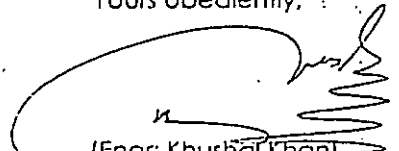
It is pertinent to mentioned here that Article-113 of the Constitution of Islamic Republic of Pakistan, gives clearly forbidden not to award double punishment to any person on one & the same charge, so, therefore I have already awarded punishment of illegal recovery of losses calculated by NAB for which I was not responsible but due to fear of arrest/prosecution and presume of NAB, the amount of deposited which could not be counted fair play in the instant case.

In view of the foregoing, it is therefore, most respectfully requested that the subject charge sheet/statement of allegation dated 01.01.2017 shall be withdrawn and the matter be considered as closed forthwith or put on hold till the subject SMS No.17/2016 is finally decided by the Honourable Supreme Court in the interest of justice.

Moreover, it is humbly requested that, the undersigned may please be heard in person before imposition any penalty under newly imposed E& D rules 2011, as the case in which the undersigned presumed to be guilty is DIFFERENT IN NATURE FROM OTHER CASES OF REPORTED "V.R".

With all due regards,

Yours obediently,


(Engr: Khushal Khan)
Assistant Engineer (BS-17)
Executive Engineer (OPS) Kohat
Irrigation Division, Kohat.

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CHARGE SHEET

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[Circular stamp]

I, Muhammad Azam Khan, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Mr. Khushal Assistant Engineer (BS-17), presently posted as Executive Engineer, Irrigation Division, D.I. Khan (GPS).

"That you while posted as S.D.O, Irrigation Circle, D.I. Khan committed the acts/omission of voluntarily return of the embezzled public money amounting to Rs. 872,786/- to NAB, which is an amount to misconduct".

By reasons of the above you appear to be guilty of misconduct under Rule-3 of the Govt. of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified under Rule- 4 of the rules ibid.

You are, therefore, required to submit your written defense within seven (07) days of the receipt of this charge sheet to the Inquiry Committee, as the case may be.

If your written defense, if any, should reach the Inquiry Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case execution shall be taken against you.

Intimate whether you desire to be heard in person.
A statement of allegations is enclosed.

[Signature]
(Muhammad Azam Khan)
Chief Minister, Khyber Pakhtunkhwa
(Competent Authority)

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SECRETARY

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DISCIPLINARY ACTION

Muhammad Azam Khan, Chief Secretary Khyber
Competent Authority, am of the opinion that Mr. Khushal
Engineer (BS-17), presently posted as Executive Engineer,
Water Division, D.I. Khan (CPS) has rendered himself liable to be
against, as he committed the following act/omission, within
of Rule 5(b) of the Govt. of Khyber Pakhtunkhwa Govt.
Efficiency & Discipline) Rules, 2011.

(D-1)

STATEMENT OF ALLEGATIONS.

"That he while posted as SDO, Irrigation Circle, D.I. Khan
committed the act/omission of voluntarily return of the
embezzled public money amounting to Rs. 872,786/- to NAB,
which tantamount to misconduct".


For the purpose of inquiry against the said accused with
reference to the above allegations, an inquiry officer/inquiry committee,
one of the following is constituted under Rule 10(1) (a) of the rules:

Engr. Fazle-Wahab, SE BS-19

ii. Ms. Askan Khan, D.S. Fard

The Inquiry Officer/Inquiry Committee shall, in accordance
with the provisions of the ibid rules, provide reasonable opportunity of
hearing to the accused; record its findings and submit report within 30
days of the receipt of this order, as to the commission of the aforesaid act
of misconduct.

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


(Muhammad Azam Khan)
Chief Minister, Khyber Pakhtunkhwa
(Competent Authority)

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SECRETARY



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The Honourable Chief Secretary,
Khyber Pakhtunkhwa Peshawar,
(Competent Authority).

Section Officer (Establishment).

REPLY TO THE SHOW CAUSE NOTICE.

S.O (E) NO. SO(E)IRR/9-3/99/NAB /Vol-III, dated.08.03.2018. (Received on
16.03.2018 at 03:45 PM.

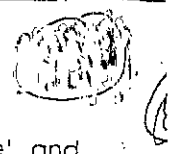
Sir,

1. The undersigned has been served with Show cause Notice /statement of allegation by the Competent Authority (Chief Secretary), Khyber Pakhtunkhwa as (Competent Authority) under Rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the only allegations in the Show cause Notice is that "pursuant to the judgment of August Supreme Court in SMC NO. 17/2016 dated 24.10.2016" the competent authority is satisfied that "the undersigned had returned to embezzled public amount to NAB which amounts to proven guilty of misconduct.
2. The facts of the case is that the subject issue was raised by NAB in May 2005 where NAB has observed that there are some shortcoming in the Development work "Construction of Flood Protection Structures (Spurs) on the Right Bank of River Indus District D.I.Khan" which was ongoing work and according to the CPWD code "all payments in running works be treated as PW advances" instead, the NAB authorities directed that the Technical Team of the NAB will again inspect the work.
After complete one year, in 2006, the NAB Team comprising Engr: Naeem Khan, (Incumbent Secretary Energy & Power), Nasir Ghafoor Khan of the Irrigation Department & others alongwith NAB officials again thoroughly investigate the whole scheme, however, they could not find anything adverse, whatsoever, the NAB authorities at their own calculated certain losses and shared on all the officials /contractors which was not fair. BUT A FORCEFUL DEPOSIT OF MONEY TO NAB". Thus, the question should be 'why NAB made government servants to pay for 'no wrong' whatsoever. Yet, the undersigned does not want to go into any question on merit as the case is sub-judice in the Honourable Supreme Court.

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Received Assistant
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21/3/2018



therefore, in all fairness and in order to avoid 'multiple' and unnecessary litigation when this very Show cause Notice /statement of allegation to which the instant reply is being submitted has already been placed before the Honourable Supreme Court as part of the above mentioned CMA.

3. At the outset, it is also submitted that the case (SMC NO. 17/2016) as referred to in the Show cause Notice is still pending adjudication before the Hon'able Supreme Court and so far no final order has been passed relating to the "vires of Section 25 (a) of the National Accountability Ordinance, 1999 (Ordinance). It is yet to be finally determined as to whether "entering into voluntary return with NAB" constitutes for the purpose of "service laws" a "misconduct" to entail initiate disciplinary proceedings. The undersigned has already filed an Application (CMA No. 7290/2016) alongwith other officials in SMC No. 17/2016 for impleadment of the undersigned as party to the proceedings. An application for interim relief i.e. that no further adverse orders be passed by any competent authority including the authority that served the Show cause Notice on the undersigned. Copies of both applications are appended herewith which speak for themselves. Yet, for the time being, the contents thereof are reiterated as an integral part of the instant reply to the Show cause Notice.

4. As an easy reference and for the sake of convenience of the competent authority, it is submitted that the submission of the undersigned before the Hon'able Supreme Court is "Section 25 of the Ordinance" was substituted by NAB Amendment Ordinance, 2002 on 23.11.2002 and at the same time "Section 15 of the Ordinance" was also amended. The combined reading of the two sections is that "Voluntary return" does not in any manner disqualify a public office holder to continue with his office while plea bargain does. And at the same time, for the purpose of service laws, it (entering into VR) does not constitute "misconduct" at all. SO FAR THERE IS NOT A SINGLE CASE of the Hon'able Supreme Court that says, VR constitutes "misconduct"

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of the public servant. That's why about 1600 government servants have entered into VR with NAB and NONE HAS BEEN DISMISSED FROM SERVICE. In the present case, admitted position is that the petitioner had availed facility of voluntary return and not plea bargain. As such, the Accountability court did not convict him. Since, there was no conviction; therefore the petitioner could not be proceeded against departmentally on the basis of his act of entering into voluntary return with the NAB authorities. The first order, on the basis of which the petitioner was compulsory, retired, was thus illegal. Reference might be made, inter alia, to the cases of (i) 2010 PLC(CS)876 "Mehtab Vs NAB, and (ii) 2013 PLC(CS)795 "Muhammad Islam Vs NAB". Even the Hon'able Supreme Court itself, in the case of "Muhammad Aslam Vs/ Auditor General of Pakistan, 2013 SCMR1904 "observed" a similar //distinction in the case of voluntary return and plea bargain.

5. Now, as far as the Order dated 24.10.2016 passed in SMC No. 17/2016 is concerned, the undersigned as well as almost all other officials have invoked the impleadment jurisdiction of the Hon'able Supreme Court itself and the case of the undersigned is subjudice before the Hon'able Supreme Court of Pakistan. The case was fixed for hearing on 07.11.2016 but due to huge backlog relating to the so-called "Panama Papers petitions", most of the Hon'able Supreme Court time was consumed in the early part of the day; therefore the cases of the government servants including that of the undersigned could not be taken up. In view of its urgency, the case has been fixed dated the Honourable court issued the order that "Hearing of the case is adjourned till the 1st Week of December, 2016. In the mean time no final adverse/removal order shall be passed against any of the officers (copy attached).

We are all hopeful that the undersigned and all other government servants are heard through their respective counsels by the Hon'able Supreme Court especially when it is yet to be decided as to whether VR at all constitutes a "misconduct" and if yes, whether

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24/10/2016

it is not to be applied prospectively. In both cases, the case of the undersigned will not be subjected to departmental proceedings. Therefore, the Show cause Notice needs to be recalled till final disposal of the SMC No. 17/2016.

It is pertinent to mention here that Article-113 of the Constitution of Islamic Republic of Pakistan, gives clearly forbidden not to award double punishment to any person on one & the same charge, so, therefore I have already awarded punishment of illegal recovery of losses calculated by NAB for which I was not responsible but due to fear of arrest/prosecution and presume of NAB, the amount of deposited which could not be counted fair play in the instant case.

In view of the forgoing, it is therefore, most respectfully requested that the subject Show cause Notice/statement of allegation dated 08.03.2018 shall be withdrawn and the matter be considered as closed forthwith or put on hold till the subject SMS No.17/2016 is finally decided by the Honourable Supreme Court in the interest of justice.

Moreover, it is humbly requested that, the undersigned may please be heard in person before imposition any penalty under newly imposed E& D rules 2011, as the case in which the undersigned presumed to be guilty is DIFFERENT IN NATURE FROM OTHER CASES OF REPORTED "V.R".

With all due regards,

Yours obediently,

(Engr. Khushal Khan)-
Assistant Engineer (BS-17)
Executive Engineer (OPS) Kohat
Irrigation Division, Kohat.

Signature
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Signature

10/10/2016

-22-

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE SH. AZMAT SAEED

Suo Motu case No.17 of 2016.

(Action taken by this Court to examine the vires of Section 23(a) of the NAB Ordinance.)

In Attendance:

Mr Ashtar Ausaf Ali, Attorney General for Pakistan.

Ch. Aamir Rehman, Addl.A.G.

Barrister Asad Rehman, Consultant to A.G

Mr Waqas Qadeer Dar, PG, NAB

Mr. M. Azam, DPG, NAB.

Mr Imranul Haq, Spl. Prosecutor NAB.

Mr Abdul Latif Yousafzai, AG, KPK.

Mr Ayaz Swati, Addl.A.G, Balochistan.

Mr Zamir Hussain Ghumro, A.G, Sindh.

Mr Sheharyar Qazi, Addl.A.G, Sindh.

Akhtar Rehana, Addl.P.G Sindh.

Mr Asjad Javed Ghural, Addl.P.G. Punjab.

Mr Mudassar Khalid Abbasi, Asstt.A.G, Punjab.

Mr Asad Kharral, Applicant in CMA No.6374 of 2016.

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Date of hearing

24.10.2016.

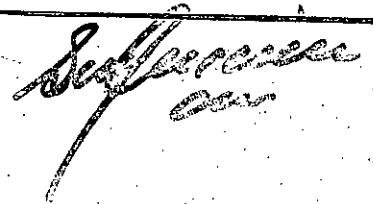
ORDER

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

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

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

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

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

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Suo Motu Case No.17/16.

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

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

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

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

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

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Suo Motu Case No. 17/16.

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

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

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

Islamabad the,
24th October, 2016.
Not approved for reporting.
Sohail**

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Chief Justice

Judge

Judge

Amir

-27-

AMIR HANI

Mr. H. A. Butt, ASC (CMA.7361/16)
Att. Abdul Latif Afridi, ASC (CMA.7258, 7259 & 7293/16)
Sd/- Arshad, ASC (CMA.7270 & 7274/16)

Date of hearing . . . 06-12-2016

ORDER

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

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

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

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

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8/12/16

Court Associate
Supreme Court of Pakistan
Civil/Criminal/Adm

Enlarged this,
06-12-2016

Not approved for reporting

Case No.	21342/16
No. of pages	03-12-16
No. of Exhibits	200
Page No.	9
Page No.	500
Page No.	508
Court No.	12-23
Date of Court	8/12/16
Date of delivery of copy	8/12/16
Compared by/Prepared	<i>[Signature]</i>
Checked by	<i>[Signature]</i>

BEFORE THE SUPREME COURT OF PAKISTAN AT ISLAMABAD
(Original Jurisdiction)

CMA No. _____/2016

IN

Suo Muto Case No.17/2016

(Action taken by this Hon'ble Court to examine the vires of
Section 25 (a) of the NAB Ordinance)

1. Muhammad Iqbal s/o Nauroz Khan
House No:15-C, CRBC Colony
DI Khan
(DG, Small Dams, KPK)
2. Khushal Khan s/o Awal Sher,
Mahmood House, J- Dyal Road,
Chazlabad Colony,
DI Khan
(SDO, Irrigation Dept, KPK)
3. Inayatullah s/o Saidullah
Fort Road, Kothi Nawab,
DI Khan
(Sub-Engineer, Irrigation Dept, KPK)

-----Interveners/Applicants

Application, on behalf of Interveners (public office holders) under Order-V, Rule
Order 33, Rule 6 of The Supreme Court Rules, 1980 and all other enabling
provisions of law for impleadment as Respondents in the titled 'Suo Muto Case

is respectfully submitted as follows:

The titled suo muto case is pending adjudication before this Hon'ble Court that
relates to the constitutionality of Section 25 (a) of the National Accountability
Ordinance, 1999 (hereinafter referred to as "Ordinance"). This Hon'ble Court,
Justice Amir Hani Muslim) after disposing of a bail related appeal (CA
12-K/2015 'NAB Vs Hanif Hyder, etc) on 02-09-2016, took suo muto notice of
the vires of § 25 (a) of the Ordinance i.e. voluntary return.

On 10-10-2016, NAB filed CMA No.6376/2016 in SMC No.17/2016 containing the
names of, *inter alia*, public office holders who had entered into 'voluntary return'
with NAB. The names of the Applicants have been mentioned at S.No.550,
S.No.551 and S.No.552 respectively at Page.189 of the aforesaid CMA filed by
NAB. It has been stated in the CMA No.6376/2016 that, *inter alia*, these public
office holders (Applicants herein who are all serving in the irrigation department
of KPK) had entered into 'voluntary return' with NAB in 2006.

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calling to the CMA filed by NAB, Applicant No.1 and 2 paid Rs.872,786 each Applicant No.3 paid Rs.436,400 as 'voluntary-Return' to NAB in 2006. However, the amount or the allegations, the Applicants had entered into VR NAB which even otherwise reflected the high handedness of NAB detrimental to the Applicants' fundamental rights in that 'NAB had alleged short coming in the running flood protection project on the Indus River in May 2006 funded by THE ASIAN DEVELOPMENT BANK under the Flood Protection Sector Project-II (FPSP-II). The NAB along with a technical team inspected the whole project in February 2006 and observed No deficiency in the work and declared as NO LOSS to the Government.

for the purpose of the instant application, the Applicants don't want to go into the legality or lawfulness of those deals (voluntary return arrangements), it is submitted that at the material and relevant time, it had been confirmed by NAB and on legal advice the Applicants had agreed to the terms of so-called VR NAB that 'there would be no disqualification to hold public office that they were holding as the 'LAW' i.e. § 25 (a) of the Ordinance as then interpreted by superior courts NEVER envisaged a misconduct to entail departmental proceedings leading to a major penalty including dismissal or removal from service.

However in the titled Suo Muto Case, this Hon'ble Court observed or held vide its order dated 24-10-2016 (without hearing the Applicants as they were neither present in the proceedings nor NAB pointed out the rights and interests of the Applicants or similarly placed other public office holders), that "the very act of voluntary return falls within the definition of 'misconduct' under the service rules and call for initiation of disciplinary action against the accused persons". The Applicants are thus being placed in a situation of facing departmental proceedings that could lead to 'removal or dismissal from service' on the basis of the decision of this Hon'ble Court in light of the interpretation placed by this Hon'ble Court on § 25 (a) of the Ordinance. In fact, Applicant No.3, namely Khattak has already been served with a Show Cause Notice on the basis of the Hon'ble Court Order dated 24-10-2016. The competent authority has even exercised his mind in the Show Cause Notice (being so influenced by the decision of this Hon'ble Court in the aforesaid Order) by saying that "I, the competent authority, have tentatively decided to impose upon you the major penalty... dismissal from service...". Hence, it would be just a matter of days for the Applicants to be "dismissed from service" simply because this Hon'ble Court directed on 24-10-2016 (without hearing the Applicants) in the titled case.

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The Applicants/Intervenors are therefore aggrieved of and dissatisfied with the said Order dated 24-10-2016 and the subject proceedings as their vested and fundamental rights could be affected by further orders of this Hon'ble Court in

"voluntary return" on its own entailed "the consequences of disciplinary proceedings to result in removal or dismissal from service"

(141)

Therefore, when National Accountability Ordinance, 1999 was promulgated on 1999 (PLD2000Statute57), it contained Section 25 with the provisions for 'voluntary return' as under:

Section 25. Voluntary Return/Plea Bargaining:

25. Voluntary return/plea bargaining.--Where, before the commencement of the trial at any time thereafter, with the leave of the Court, the holder of a public office or any other person accused of any offence under this Ordinance voluntarily returns to the NAB, the assets or gains acquired through corruption or corrupt practices and discloses the full particulars relating thereto, the Chairman NAB, may release the accused person with the leave of the Court, or proceed with the trial subject to such conditions if any, as may be imposed by the Court.

As aforesaid Section 25 was substituted vide NAB (Amendment) Ordinance, 2003-02-2000, published as (PLD2000Statutes130). The substituted Section reproduced as under:

Section 25. Voluntary Return (plea bargaining):

25. Voluntary return (plea bargaining). (a) Where at any time whether before or after the commencement of trial the holder of a public office or any other person accused of any offence under this Ordinance, returns to the NAB the assets or gains acquired through corruption or corrupt practices,--

(i) if the trial has not commenced, the Chairman NAB may release the accused; and
(ii) if the trial has commenced, the Court may, with the consent of the Chairman NAB, release the accused.

The amount deposited by the accused with the NAB shall be transferred to the Federal Government or, as the case may be, a Provincial Government or the concerned bank or financial institution etc., within one month from the date of such deposit.

In 2001, the Hon'ble Supreme Court decided the case of 'Asfandiyar Wali vs. Government of Pakistan' relating to the vires of NAB Ordinance, 1999, reported 2001SC607. As far as relevant to the instant controversy, One of the questions for consideration by the Supreme Court related to this Section 25 'Voluntary Return/Plea Bargain' (which was reproduced in Para.265 of the judgment) as "Whether the case of voluntary return (plea bargaining) under section 25 of the National Accountability Ordinance is derogatory to the concept of independence of judiciary where the trial has commenced the Court cannot release the accused without the consent of the Chairman NAB?"

The Supreme Court decided that question relating, inter-alia, to the vires of Section 25 and observed as under:

266. A perusal of the Preamble of the NAB Ordinance shows that it is a comprehensive law and its interpretation has to be done in a manner different from the interpretation placed on purely criminal statutes. This law deals with, among others, the setting up of the National Accountability Bureau, which is an executive as well as a quasi-judicial authority and an investigating agency; which deals with several aspects of corruption, etc. The NAB does not merely deal with crimes of corruption; it also deals with the investigation and settlement out of court. Bargain out of court is now an

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established method by which things are settled in several developed societies. It was necessary in cases where the criminal is a potential investor and is inter-linked with the economy of the society; he should be given an opportunity to play his role in the society after he has cleared his liability. There appears to be nothing amiss insofar as it does not oust the jurisdiction of the Accountability Courts to exercise their judicial power in appropriate proceedings, rather this is in the nature of a facility provided to the accused. There is nothing wrong with the NAB Ordinance providing for a procedure of bargaining.

(Handwritten initials)

Para.267. Moreover, the scheme for exploring the possibility of settlement during investigation/inquiry stage by the Chairman NAB cannot be ignored straight away. At the outset, most of the lawyers tend to consider the question of settlement out of Court. There is need to focus attention on this significant facet of the matter. The rationale behind the Ordinance is not only to punish those who were found guilty of the charges leveled under the Ordinance but also to facilitate early recovery of the ill-gotten wealth through settlement where practicable. The traditional compromise, settlement, compoundability of offence during the course of proceedings by the Courts after protracted litigation is wasteful. Viewed in this perspective, a power has been vested in the Chairman NAB to facilitate early settlement for recovery of dues through 'plea bargaining' where practicable. Lawyers are often interested in settling the disputes of their clients on just, fair and equitable basis. There are different approaches to settlement. Plea-bargaining is not desirable in cases opposed to the principles of public policy. Chairman NAB/Governor, State Bank of Pakistan, while involved in plea bargaining negotiations, should avoid using their position and authority for exerting influence and undue pressure on parties to arrive at settlement. However, in the interest of revival of economy and recovery of outstanding dues, any type of alternate resolution like the 'plea bargaining' envisaged under Section 25 of the Ordinance should be encouraged. An accused can be persuaded without pressure or threat to agree on a settlement figure subject to the provisions of the Ordinance. Establishing this procedure at the investigation/inquiry stage greatly reduces determination of such disputes by the Court. However, as the plea bargaining/compromise is in the nature of compounding the offences, the same should be subject to approval of the Accountability Court. Accordingly, Section 25 of the impugned Ordinance be suitably amended.

In any case, in light of the 'Asfandiyar Wali Judgment, on 10-03-2001, Section 25 (a) of the Ordinance was then substituted vide NAB (Amendment) Ordinance, 2001 published as PLD2002Statutes81. Certain words were also added in § 25 (b) as follows:

Section 25. Voluntary Return (plea bargaining):

25. Voluntary return (plea bargaining) (i) Where at any time whether before or after the commencement of trial the holder of a public office or any other person accused of any offence under this Ordinance, returns to the NAB the assets or gains acquired through corruption or corrupt practices, the Court or the Chairman NAB with the approval of the Court or the Appellate Court, as the case may be, may release the accused.
 (i) If the trial has not commenced, the Chairman NAB may release the accused; and
 (ii) if the trial has commenced, the Court may, with the consent of the Chairman NAB, release the accused.
 (b) The amount deposited by the accused with the NAB shall be transferred to the Federal Government or, as the case may be, a Provincial Government or the concerned bank or financial institution, corporate body, cooperative society, statutory body or authority concerned within one month from the date of such deposit.

As relevant to the instant application and subject S.M.C proceedings, Section C was added to section 25 for the FIRST TIME on 05-07-2000, vide (Second Amendment) Ordinance, 2000, published as PLD2000Statute361.

Sub-section (ii) of Section 25 was also substituted. Thereafter, Section 25 of the Ordinance read as under:

ATTESTED
 ADVOCATE
(Signature)

Section 25, Voluntary Return (plea bargaining):

25. Voluntary return (plea bargaining), (a) Where at any time whether before or after the commencement of trial the holder of a public office or any other person accused of any offence under this Ordinance, returns to the NAB the assets or gains acquired through corruption or corrupt practices,--

(i) if the trial has not commenced, the Chairman NAB may release the accused; and
(ii) if the Court has taken cognizance of the offence or the trial has commenced, the Chairman, NAB may, with the approval of the Court, release the accused, and

(b) The amount deposited by the accused with the NAB shall be transferred to the Federal Government or, as the case may be, a Provincial Government or the concerned bank or financial institution, etc., within one month from the date of such deposit.

(c) Notwithstanding anything contained in section 15 or in any other law for the time being in force, where a holder of a public office or any other person voluntarily comes forward to return the illegal gain made by him or loss caused by him to the State exchequer through corruption and corrupt practices, the Chairman, NAB may accept the offer and after determination of the amount of illegal gain or loss caused, as the case may be, and its deposit with NAB, discharge such person of all his liabilities relating to the matter or transactions in issue:

Provided that the matter is not under inquiry or investigation or sub judice in any Court of law.

Finally, Section 25 of the Ordinance was substituted on 23-11-2002 vide NAB (Amendment) Ordinance, 2002, published as PLJ2003Fed.Statutes301. After such substitution, it stood as under:

Section 25, Voluntary return and plea bargain:

(a) Notwithstanding anything contained in section 15 or in any other law for the time being in force, where a holder of public office or any other person, prior to the authorization of investigation against him, voluntarily comes forward and offers to return the assets or gains acquired or made by him in the course, or as the consequence, of any offence under this Ordinance, the Chairman NAB may accept such offer and after determination of the amount due from such person and its deposit with the NAB discharge such person from all his liability in respect of the matter or transaction in issue:

Provided that the matter is not sub judice in any Court of law.

(b) Where at any time after the authorization of investigation, before or after the commencement of the trial or during the pendency of an appeal, the accused offers to return to the NAB the assets or gains acquired or made by him in the course, or as a consequence of any offence under this Ordinance, the Chairman, NAB, may in his discretion after taking into consideration the facts and circumstances of the case, accept the offer on such terms and conditions as he may consider necessary, and if the accused agrees to return to the NAB the amount determined by the Chairman, NAB, the Chairman, NAB shall refer the case for the approval of the Court, or as the case may be, the Appellate Court and for the release of the accused.

(c) The amount deposited by the accused with the NAB shall be transferred to the Federal Government or, as the case may be, a Provincial Government or the concerned bank or financial institution, company, body corporate, cooperative society, statutory body, or authority concerned within one month from the date of such deposit.

It is very pertinent to add that "Section 25 of the Ordinance" as reproduced hereinabove stands in the same form till date and so is its § 25 (a). The relevant part relating to 'voluntary return' has never been interpreted that 'availing the benefit thereof would entail, a 'stigma including a misconduct' on the part of the persons in question.

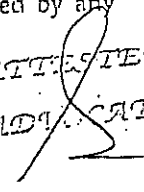
ATTORNEY
ADVOCATE



It is also pertinent to add that it is by now settled law that the effect of 'compounding of an offence is acquittal'. This Hon'ble Court observed in Asfandyar Wall's case that "...the plea bargaining/comprromise is in the nature of compounding the offences...". Hence, once compounded the 'question of misconduct or dismissal from service does not even arise'. Attention of this Hon'ble Court, *inter alia*, might be invited to the case of 'Chairman, ADBF Vs Mumtaz' reported as PLD2010SC695 where after 'compounding the offence of murder, the accused person was also reinstated in service. This supports the long-standing practice in NAB cases that 'in that no person was ever dismissed from service in VR cases'. This principles needs to be reaffirmed and upheld in the titled proceedings too and the Applicants would assist this Hon'ble Court in these lines.

As submitted above, 'voluntary return' has never been considered to be a vice to require 'disciplinary proceedings' against those who entered into it. Yet, on 18-02-2015 while disposing a bail petition (CP No.28/2015 'Muhammad Ghufraan Vs NAB'), this Hon'ble Court (Mr. Justice Amir Hani Muslim) showed concern when informed that 'public officer' holders continue with their office even after entering into VR with NAB'. This Hon'ble Court directed on 20-02-2015 in that case that a separate file be constituted for 'this issue' (i.e. § 25 (a) of the Ordinance). Accordingly, SMC No.02/2015 was constituted and fixed for hearing before this Hon'ble Court relating to the same issue of § 25 (a) of the Ordinance, titled as "Suo Muto Action regarding unwarranted exercise of discretion under § 25 (a) of the NAB Ordinance, 1999 by the Chairman, NAB in discharging the officers who were accused of various offences". This SMC No.02/2015 was disposed on 06-01-2016 without any adverse order against those who had entered into VR with NAB, who are about 1504 persons according to CMA No.6376/2016 filed in the titled case by NAB. It is also amazing to note that 890 persons belong to KPK alone.

In any case, at this stage, the vested and fundamental rights as well as lawful interests of the Applicants are at great risk. Any order passed by this Hon'ble Court could adversely affect those fundamental rights and lawful interests. The Applicants had entered into VR with NAB when NAB categorically had stated that 'the Applicants were legally entitled to avail of this benefit in the circumstances' and with consequences as summarized hereinabove. On the face of the Order dated 24-10-2016, a new definition with retrospective effect is being envisaged through these suo muto proceedings relating to § 25 (a) i.e. VR with NAB. Therefore, the vested rights of the Applicants could be affected by any adverse order including the Order dated 24-10-2016.

ATTESTED
 ADJUTANT




Accordingly, in view of the foregoing, the Interveners/Applicants are, 'necessary and proper' parties to be Impleaded as respondents to SMC No.17/2016 and afforded an opportunity of being heard through their counsel before this Hon'ble Court for just and fair disposal of the titled case. It is also desirable and necessary to effectively and completely adjudicate upon and settle all questions involved in the titled proceedings, if at all. Thus, the instance application needs to be entertained and allowed by this Hon'ble Court in the interest of justice:

The Applicants also seek leave of this Hon'ble Court to take up additional pleas or grounds in relation to the titled application or the subject SMC as may be appropriate and necessary in due course of time.

Therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to allow the instant application and direct the impleadment of the applicants as respondents in the titled case in the interest of justice. Other relief as deemed appropriate may also be granted in favor of the applicants.

-SETTLED BY-

Aitzaq
AITZAZ AHSAN
Senior ASC

By:

Gohar Ali Khan
3/11/2016

Gohar Ali Khan
Attorney Supreme Court

Filed By:

M.S. Khattak
Advocate-on-record

ATTESTED
ADVOCATE

03-11-2016

IN THE SUPREME COURT OF PAKISTAN AT ISLAMABAD
(Original Jurisdiction)

CMA No. _____/2016
IN
CMA No. _____/2016
IN
Suo Muto Case No.17/2016

[Handwritten signature]



(Action taken by this Hon'ble Court to examine the vires of
Section 25 (a) of the NAB Ordinance)

Muhammad Iqbal s/o Nauroz Khan
House No.15-C, CRBC Colony
DI-Khan-
(DC, Small Dams, KPK)
AND TWO OTHERS

-----Interveners/Applicants

Under Order 33, Rule 6 of Supreme Court Rules, 1980 read with all other
enabling provisions of law for Interim relief

submitted as follows:

The suo muto case is pending adjudication before this Hon'ble Court and
the respondents have filed the titled Application for impleadment as 'respondents'
proceedings. That application may kindly be read as an integral part of
the application.

In the background leading upto the filing of the titled application has been
mentioned therein, it may however be added that the Applicants were named
in CMA No.6376/2016 filed by NAB in the aforesaid SMC No.17/2016. This
Court was pleased to direct and observe on 24-10-2016 as under:

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

9. We, therefore, direct the Secretary, Establishment Division and all the
Chief Secretaries of the Provinces to ensure initiation of departmental
proceedings forthwith against the employees mentioned in C.M.A.No.6376 of
the Ordinance who have voluntarily returned the amounts in terms of Section 25 (a) (ibid),
to avoid further loss of time and report compliance.

ATTESTED
SECRETARY
[Handwritten signature]

STATE ATTORNEY GENERAL'S OFFICE

STATE ATTORNEY GENERAL'S OFFICE

Attorneys

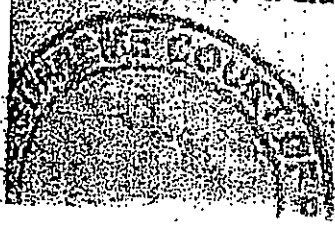
- Mr. Aftab Ahmad Ali, Attorney General (Sindh)
- Mr. Amir Hashim, Addl. AG
- Mr. Ahsan ul Rehman, Consultant to AG
- Mr. Asad ul Khan, AG Q&A
- Mr. Asif Syed, Addl. AG Balochistan
- Mr. Asim ul Ghani, AG Sindh
- Mr. Asif Syed Qazi, Addl. AG Sindh
- Mr. Zahir Ahmed Khan, Addl. PG Sindh
- Mr. Rashed Haseem, AG Pb
- Mr. M. Saad Sindh, Addl. PG Pb
- Mr. Asim Ishaq, ASC
- Mr. Qamar Ali, Dy. Secy. (Judicial) KPK
- Syed Mahmood Ali Shah, DC
- Mr. Muhammad Asif Jameel, DC
- Mr. Ahmad, S.O.
- Ch. Qamar Urzman, Chairman, NAB
- Col. Sirajul Hameed, DG NAB
- Qasim Abbas, DD/NAB
- Syed Ali Imran, Spl. Prosecutor, NAB
- Mr. Waqas Qadeer Dar, PG NAB
- Asim Qayyum, Spl. Prosecutor
- Mr. Imranul Haq, Spl. Prosecutor NAB
- Mr. Ghulam Ali Brahnum, Addl. Secy (Services) Sindh
- Kh. Ahmed Tariq Rahim, Sr. ASC
- Mr. Jamai Afidi, ASC (CMA. 7269, 7268/2016)
- Kh. Hazim Raz, ASC (CMA. 7586/16)
- Mr. Farooqullah Khan, ASC (CMA. 7581/16)
- Mr. M. Safdar, ASC (CMA. 7626/16)

ATTESTED
Sd/- Asif Syed
AG

Date of hearing 17-11-2016

ORDER

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



Sd/- Anwar Zaheer Jamali, CJ
Sd/- Amir Hamid Mushtaq,
Certified to be true copy



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

-37-

NOTIFICATION

Dated Peshawar the 30th May, 2018

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

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

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

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

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No: & date even.

Copy of the above is forwarded to:-

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


Section Officer (Estt:)

ATTESTED


Before the Peshawar High Court, Peshawar

Writ Petition No. _____ -P of 2018

Khushal Khan

versus

Government of Khyber Pakhtunkhwa et al

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[Signature]

PETITIONER
Through *[Signature]*
Shumail Ahmad Butt,
Advocate Supreme Court,
Hazrat Bilal Khan
Advocate High Court
0301-8580077

(11)

Before the Peshawar High Court, Peshawar

Writ Petition No. _____-P of 2018

Khushal Khan,
Assistant Engineer,
Presently posted as Executive Engineer,
Irrigation Department Kohat.

Versus

..... Petitioners

- 1 Government of Khyber Pakhtunkhwa,
Through Chief Secretary,
Civil Secretariat, Peshawar.
- 2 Secretary to the Government, Irrigation Department,
Government of Khyber Pakhtunkhwa,
C&W Building, Civil Secretariat,
Peshawar.
- 3 Secretary to the Government, Establishment Department,
Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
- 4 Engineer Fazli Wahab,
Principal Design Engineer (Buildings)
Member Inquiry Committee,
Civil Secretariat Peshawar.
- 5 Askar Khan,
Deputy Secretary Food Department,
Civil Secretariat, Peshawar.

..... Respondents

Petition under Article 187 and Article 199
Of the Constitution of Islamic Republic of Pakistan, 1973

Please this Honorable Court

Petitioner while gravely aggrieved of the acts and omissions of the respondents, as narrated hereunder, seeks solace to his grievances, as follows:

Leading to this Writ Petition:

ATTESTED
[Signature]



unlawful, without lawful authority and thus of no legal effect and therefore liable to be set aside and reversed.

ii. Petitioner have already been proceeded thus he is not liable to be re-prosecuted or vexed twice for the same sets of allegations and thus any further departmental proceedings in matter are illegal, unlawful, without lawful authority and are liable to be stopped and put to naught at once.

iii. Impugned proceedings arising from impugned Show Cause Notice dated 08.03.2018 and all legal consequences arising there-from or incidental thereto are even otherwise in violation of the judgment of the apex Court.

iv. The Petitioner cannot be treated discriminately from his high up in the same project who has been awarded minor penalty.

v. Interim Relief: In view of existence of all the requisite ingredients, the Respondents may be restrained from adversely proceeding against the petitioner till the final disposal of the main Writ Petition.

vi. Any other relief, not specifically prayed may also graciously be granted, if appears just, necessary and appropriate.

PETITIONERS

Through

Shunhail Ahmad Butt,
Advocate, Supreme Court

H. Bilal Khan,
Advocate High Court(s)

ATTESTED

2018

Annex J

48

PESHAWAR HIGH COURT PESHAWAR
FORM "A"
FORM OF ORDER SHEET

Court of.....

Case No.....



Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2	3
	12.04.2018	<p><u>WP No. 1692-P/2018.</u></p> <p>Present:</p> <p>Mr. Shumail Ahmad Butt, advocate for petitioner.</p> <p>*****</p> <p>In view of orders of the Hon'ble Supreme Court of Pakistan dated 24.10.2016 and 6.12.2016 rendered in Suo motu case No.17 of 2016, pre admission notice was given to the respondents which was accepted by Mr. Mansoor Tariq, Assistant Attorney General present in Court in some other matter, for 19.4.2018.</p> <p><u>Interim Relief:</u></p> <p>Worthy AAG also accepts notice of the instant interim relief for 19.4.2018. Till then no adverse action shall be taken against the petitioner.</p> <p><i>[Signature]</i> JUDGE</p> <p><i>[Signature]</i> JUDGE</p>

Attested: (DD) Mr. Justice Raza Raza & Mr. Justice Iqbal Khan & Mr. Justice Iqbal Khan

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[Signature]

ATTESTED
ADVOCATE
[Signature]

To

The Honorable Chief Minister
Government of Khyber Pakhtunkhwa.

Subject:

APPEAL FOR EXONERATION FROM MAJOR PENALTY SO
IMPOSED VIDE NOTIFICATION NO. SO(E)IRRI/9-
3199/NAB/VOL-II-DATED:30-05-2018.

THROUGH SECRETARY IRRIGATION/PROPER CHANNEL:

Respected Sir,

FACTS LEADING TO THIS APPEAL/REPRESENTATION:

1. That the Appellant joined Irrigation Department Khyber Pakhtunkhwa as an Engineer and was posted on different positions. During tenure, Appellant has rendered services with unmatched zeal, devotion and commitment while ensuring aboveboard integrity and unblemished reputation.
2. That, in the year 2005, NAB Authorities conducted a site inspection of the on-going / un completed Project namely, "Construction of Flood Protection Structures on the Right Bank of River Indus District Dera Ismail Khan" and has suspected that there are some shortcomings in the development work despite the fact that according to Central Public Work Code (CPWD Code) all payments in running works to be treated as PW Advances which are always adjustable upto the finalization of the project. The so called technical team of NAB authorities spent about more than a weak time on site and had not found anything incriminating thus stated that their technical team will again visit and inspect the site afresh.
3. That after a lapse of one year upon the completion of Project, another team comprising of Engr. Naeem Khan (recently retired Secretary Irrigation), Engr. Nasir Ghafoor of Irrigation Department and several others along-with NAB Officials once again visited and inspected the site/scheme but they did not find any shortcoming or defect at site. Despite this clean chit when NAB had nothing to make a basis for its inquiry yet some non-technical investigation staff who had no understanding of the works department and engineering standards made their own hypothetical calculations on their own, without considering the ground realities and autocratically fixed certain cooked up losses on the team working on the Project including the Appellant (the then SDO) and few others which includes the then XEN namely Mr. Muhammad Iqbal (BPS-18), who happened to be the

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- immediate boss of the Appellant and the actual in-charge of the project.
4. That after calling upon the Appellant and several others connected with the aforesaid project, NAB had placed an option in front of them without sharing any details of supposed delinquencies / anomalies / paid vouchers / cheques and alleged shortcoming and the Appellants were browbeaten, pressurized and coerced to deposit an amount or face dire consequences including investigation and consequently arrest and detention.
 5. That before taking Voluntary Return as an instance of incrimination, one must also examine the circumstances which led the Appellant to enter into such an unfortunate affair. If one sees the record neutrally, it would be very easy to fathom that the Appellant was made a scapegoat and was coerced to pay certain amount almost in circumstances, very similar to extortion. NAB has a set pattern of harassment, stalking and coercion where people are browbeaten and badgered, they are followed, they are called up and detained for hours without even a single question, telephone calls are made at odd hours, threats and sweating language is used making life hell for somebody facing a NAB inquiry. As such the Appellant was left with no other option but to bow down to the pressure and coercion of NAB authorities and was made to enter into Voluntary Return (VR) and compelled to deposit an autocritically determined amount along with other staff and the Executive Engineer. Thus the Appellant being a junior officer in his initial days of service was made a practice board and was continuously manhandled by the prosecution agency. The long torture forced and coerced him to submit an application for Voluntary Return under extreme duress regardless of his unblemished service record as the NAB Authorities were not budging back and kept insisting that they would make him an example. Accordingly, the Appellant was duped and compelled to pay an amount of Rs. 872,786 together with an Affidavit on a pre-set pro-forma making vague references to admission of some guilt without any further elaboration in early 2006. "It is worth mentioning that same amount was also recovered from Iqbal Khan the then incharge XEN and other staff".
 6. That the Honorable apex Supreme Court of Pakistan while proceeding in a Suo Motto Case # 17 of 2016 and while examining provisions of Section 25(a) of the NAO, 1999 on 24.10.2016 passed an interim order and observed:
"We therefore, direct the Secretary, Establishment Division and all the Chief Secretaries of the Provinces to ensure initiation of

ATTESTED

departmental proceedings forthwith against the employees mentioned in CMA No. 6376 of 2016, who have voluntarily returned the amounts in terms of Section 25(a) (ibid), without further loss of time and report compliance”

(Copy of the Order dated 24.10.2016 is attached as Annexure “A”)

7. That in the meantime thereview of the aforesaid Order dated 24.10.2016 has been sought before the apex Supreme Court by various parties and the matter was again fixed on 17.11.2016 wherein the Honorable apex Court directed the Respondents that *“In the meantime, no final adverse/removal order shall be passed against any of the affectees.”* The matter was again fixed on 06.12.2016 wherein the august Supreme Court once again directed that no adverse action shall be taken against the persons who have made Voluntary Return of less than two and half million rupees. Pending further elaboration, if any, by the apex Supreme Court of its aforesaid direction in coming days as it still is an interim order. The Appellant along with two other affectees of VR filed CMA No. 7290/2016 in Suo Moto Case. NO.17/2016 for implement as Respondents and besides filed an application for Interim relief whereupon the Honorable apex Court was kind enough to pass the aforesaid order dated 17.11.2016.

(Copy of the Order dated 17.11.2016 is Annexure “B”)

(Copy of the Order dated 06.12.2016 is Annexure “C”)

8. That the Government of Khyber Pakhtunkhwa whilst exceeded from the scope of the order dated 24.10.2016 while totally discarding the order 17.11.2016 and 06.12.2016, has issued Show Cause Notice to the Appellant on 08.03.2018 wherein major penalty of “removal from service” was proposed. The Show Cause Notice in hand is based on the finding of an Inquiry Committee that was held pursuant of Charge-sheet(s) and statement of allegations issued to the Appellant along with other connected with the matter in hand. It is very unfortunate that the inquiry committee had conveniently ignored very plausible explanations put forth by the Appellant in his written response to the charge-sheet that why and in what circumstances the VR option was exercised by the Appellant, it was no case to proceed against the Appellant any further and therefore the issuance of the show-cause notice was clearly misplaced and not sustainable in the eyes of law. Despite the above mentioned fact, the Appellant submitted a detailed reply to the aforesaid Show Cause dated 08.03.2018 and explained the whole matter at

ATTESTED

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length with plausible justification that major penalty shall not be imposed upon him. Besides the Appellant requested to be heard in person.

(Copies of the Show Cause Notice dtd 08.05.2018 are Annexure "D")
(Copy of the reply to Show Cause Notice is Annexure "E")

9. That consequent to the above, the Appellant was directed to be heard by Secretary Establishment thus the Appellant appeared before Secretary Establishment on the date fixed and explained the whole matter along with the fact that Mr. Muhammad Iqbal the then XEN of the Project who happens to be the drawing and disbursing officer while having more responsibility then the Appellant was awarded a Minor Penalty of "withholding of 01 increments for 01 years" thus the Appellant requested for his exoneration but most unfortunately Secretary Establishment while totally discarding the aforementioned reasons ritualistically and mechanically went ahead to propose of a major penalty namely "reduction to a lower pay scale for three years"

(Copy of approved penalty and notification of Secretary Irrigation is Annexure "F")

GROUND FOR ACCEPTATION OF MY APPEAL & EXONERATION FROM THE MAJOR PENALTY (REDUCTION TO A LOWER PAY SCALE FOR THREE YEARS):

- a. Because the Honorable apex court has restrained the governments from finally proceeding adversely/removing the persons on ground of VR vide Judgment and order dated 17.11.2016 and 06.12.2016 which orders are still in field. In view of the Judgment and Order of the apex court, the proceedings so made by the Chief Secretary KPK approving the major penalty of "reduction to a lower pay scale for three years" is clearly transgressing the mandate of judgment and is thus violative of Article 189 read with Article 187(2)(3) of the Constitution.
- b. Because even in the same one case a competent authority (Chief Minister) given minor penalty (Stoppage of 01 increment for 01 year to the then incharge XEN Mr. Iqbal Khan (Copy Attached)
- c. Because the Respondents are acting in violation of the order dated 24.10.2016, 17.11.2016 and 06.12.2016 as neither in the orders it is directed to proceed against the Appellants without due course of law nor it is stated there to pass any final order.

ATTESTED
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- d. Because the Order dated 24.10.2016 is still an interim order which is pending further elaboration by the apex Supreme Court in coming days as its review has also been sought by the many officials others.
- e. Because it is also the violation of Article 13 of the Constitution of the Islamic Republic of Pakistan to pry the Appellant or proceed against them on the basis of impugned proceedings as they have once been proceeded in the year 2006.
- f. Because if seen in context of different treatment, impugned proceedings are clearly hit by Article 25 of the Constitution as in other provinces of the country people who have made VR are exonerated or punished with minor penalty such as censure and stoppage of increment. Similar is the case of the then XEN Mr. Muhammad Iqbal whose merely one increment was stopped for one year thus the Appellant cannot be treated differently.

(Copy of the minor penalty and exonerated letters are Annexure "H")

- g. Because the Voluntary Return was never a ground of "misconduct" in the year 2006 and thus any amendment in E&D Rules 2011 cannot be given retrospective effect.

Therefore, it very humbly requested that may please accept my appeal and exonerate from the given major penalty (reduction to lower pay scale for three years) by Chief Secretary Government of Khyber Pakhtunkhwa.



Khushal Khan, 26/6/18
Assistant Engineer,
Presently Posted as Economist
Office of the Secretary
Irrigation Department, Peshawar.

ATTESTED



-47-



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 25th May, 2018

NOTIFICATION

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

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

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

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

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Encl. No. & date even.

Copy of the above is forwarded to:-

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

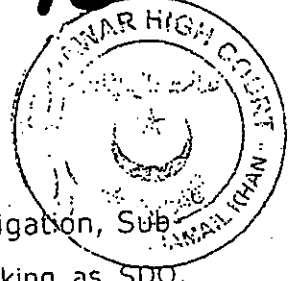
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Section Officer (Estt)

COC.No. /2018

In Writ Petition No. 610-D of 2018



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

..... Petitioner

VERSUS

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

..... Respondents

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

ATTESTED

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ATTESTED
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EXAMINOR
Peshawar High Court
D.I.Khan Bench

Respectfully Sheweth;

-49-

1. That the present petitioner had filed a writ petition No. 610-D/2018 to direct the respondents to set aside the order dated 11/05/2018 vide which the petitioner was awarded penalty of reduction to a lower pay scale for three years detail fully described in the writ petition. Copy of writ is enclosed herewith.
2. That on 29/05/2018, this honourable court was very graciously allowed the writ petition and the respondents were directed with following wordings,
in view of the above, without going into the merits of the case, we disposed of this writ petition with the direction to the respondents to proceed against the petitioner in accordance with law, but shall not pass final order till the final disposal of review petition pending before the august Supreme Court of Pakistan in the suo moto case No. 17 of 2016 dated 24/11/2016". Copy of the order dated 29/05/2018 is enclosed.
3. That on 29/05/2018 the petitioner telephonically conveyed the order dated 29/05/2018 of this Honourable court to the respondents. Thereafter the petitioner sent the copies of order dated 29/05/2018 to the respondent via TCS Service. Copies of TCS receipts are enclosed herewith.
4. That after getting attested copies of the order dated 29/05/2018, the petitioner submitted an application along with the order of this honourable court to respondents which was accordingly received by the competent authority on 01/06/2018 vide dairy No. 4402. Copy of application is enclosed.
5. That on 30/05/2018, upon the recommendations of respondent#2, the respondent No. 1 issued a notification No. SO(E)/IRRI:/9-3/99/NAB/Vol-II dated 30/05/2018 vide

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REGISTERED
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EXAMINER
Sindhwar High Court
O.I. Khan, etc

scale in existence of order of this honourable court. Copy of the notification is enclosed.

-50-

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

GROUND S

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

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

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28-9-18
EXAMINOR
D.I. Khan Bench

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

-51-

Date: 08/06/2018

Yours Humble Petitioner

Hidayatullah

Through Counsel,

Muhammad Waqar Alam
8/6
Muhammad Waqar Alam
Advocate High Court
Dera Ismail Khan

ATTESTED
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28-06-18
EXAMINOR
Dera Ismail Khan
D.I. Khan Bench

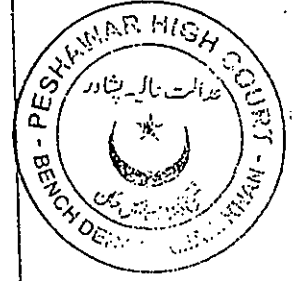
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D.I. Khan Bench

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

-52-

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

Hidayat Ullah
Vs.
Govt. of KPK etc.



JUDGMENT

For Petitioner: Muhammad Waqar Alam, Advocate.

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

Date of hearing: 25.9.2018.

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

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

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28-09-18
EXAMINOR
Peshawar High Court
D.I.Khan Bench

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

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 ATTESTED
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ATTESTED
 S/D
 EXAMINER
 SUPREME COURT
 D.I.Khan Bench

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

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

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

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

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

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28-09-18
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D. J. Khan

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

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

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

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

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

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REGISTERED
28-9-18
EXAMINER
Shawar Hissar
U.I.Khan Officer

-55-

-56-

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

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

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ADMITTED
28-09-18
EXAMINOR
Peshawar High Court
D.I. Khan Bench

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

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

Announced.
Di: 25.9.2017.

Kifayat

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ATTESTED

JUDGE

JUDGE

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

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G.R.No. 2846
Appointed on 25-9-18
Case No. 11 Page 2
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28-9-18

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28-09-18
EXAMINOR
Peshawar High Court Bench D.I.Kh
Authorized Under Section 87 of
Qanoon-e-Ashmud-Act

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

SERVICE APPEAL NO.1330/2018 and 1331/2018

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

(Appellants)

VERSUS

Govt. of Khyber Pakhtunkhwa
Through Secretary Irrigation & others


(Respondents)

IMPLEMENTATION REPORT ON BEHALF OF OFFICIAL RESPONDENTS.

Respectfully sheweth:-

The appellants Engr: Khushal Khan and Engr: Hidayat Ullah Assistant Engineers (BS-17) Irrigation Department were proceeded under Efficiency and Discipline Rules 2011 and were awarded the major penalty of "Reduction to a lower pay scale for three years" on the basis of voluntarily return of the embezzled public money amounting to Rs. 872,736/- and 440,986/- respectively to NAB Authorities vide notifications dated 30-05-2018. (Annex-I & II)

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


Secretary Irrigation
Govt. of Khyber Pakhtunkhwa
(Respondents No. 03)

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 30th May, 2018.

NOTIFICATION

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

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

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

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

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy of the above is forwarded to:-

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


Section Officer (Estt.)

GOVERNMENT OF KHYBER PAKHTUNKHTA
IRRIGATION DEPARTMENT

Dated Peshawar the 30th May, 2018.

NOTIFICATION

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

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

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

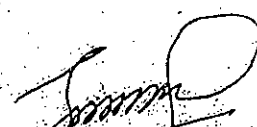
NOW THEREFORE, the Competent Authority, after having considered the charges, material on record and explanation of the officer concerned, in exercise of the Powers under Rule- 4 (b)(i) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the major penalty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

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy of the above is forwarded to:-

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


Section Officer (Estt.)



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 08th November, 2018

NOTIFICATION:

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

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy of the above is forwarded to:-

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


Section Officer (Estt.)



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 08th November, 2018

NOTIFICATION

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

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy of the above is forwarded to:-

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


Section Officer (Estt.)

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

SERVICE APPEAL NO.1330/2018 and 1331/2018

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

(Appellants)

VERSUS

Govt. of Khyber Pakhtunkhwa
Through Secretary Irrigation & others

(Respondents)

IMPLEMENTATION REPORT ON BEHALF OF OFFICIAL RESPONDENTS.

Respectfully sheweth:-

The appellants Engr: Khushal Khan and Engr: Hidayat Ullah Assistant Engineers (BS-17) Irrigation Department were proceeded under Efficiency and Discipline Rules 2011 and were awarded the major penalty of "Reduction to a lower pay scale for three years" on the basis of voluntarily return of the embezzled public money amounting to Rs. 872,736/- and 440,986/- respectively to NAB Authorities vide notifications dated 30-05-2018. (Annex-I & II)

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


Secretary Irrigation

Govt. of Khyber Pakhtunkhwa
(Respondents No. 03)

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 30th May, 2018

NOTIFICATION

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

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

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

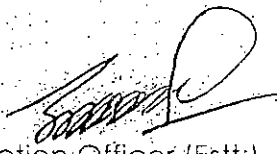
NOW THEREFORE, the Competent Authority, after having considered the charges, material on record and explanation of the officer concerned, in exercise of the Powers under Rule- 4 (b)(i) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the major penalty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

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Encls. No. & date even.

Copy of the above is forwarded to:-

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


Section Officer (Estt.)

GOVERNMENT OF KHYBER PAKHTUNKHTWA
IRRIGATION DEPARTMENT

Dated Peshawar the 30th May, 2018

NOTIFICATION

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

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

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

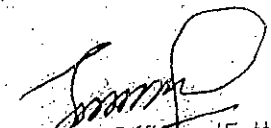
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Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

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7. PSO to Chief Secretary, Khyber Pakhtunkhwa.
8. The Section Officer (Dev.) Irrigation Department.
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13. PS to Secretary Establishment Department.
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15. Personal file of the officer.


Section Officer (Estt.)



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 08th November, 2018

NOTIFICATION:

No. SO(E)/IRRI/7-3/99/NAB/Vol-II: In pursuance of advice tendered by the Law, Parliamentary Affairs and Human Rights Department vide letter No. SO(OP-1)/LD/5-4/2012-Vol-II-36237-38, dated 25.10.2018, the Competent Authority has been pleased to withdraw the major penalty of "**Reduction to a lower pay scale for three years**" imposed on Mr. Khushal, Executive Engineer (BS-17)(OPS) Marwat Canal Irrigation Division Bannu under the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011 vide this Department notification dated 30.05.2018 subject to final decision by the Hon'ble Supreme Court of Pakistan in review petition in Suo Motu case No. 17 of 2016.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

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15. Personal file of the officer.


Section Officer (Estt.)



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 08th November, 2018

NOTIFICATION

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

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

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Section Officer (Estt.)

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

SERVICE APPEAL NO.1330/2018 and 1331/2018

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

(Appellants)

VERSUS

Govt. of Khyber Pakhtunkhwa
Through Secretary Irrigation & others

(Respondents)

IMPLEMENTATION REPORT ON BEHALF OF OFFICIAL RESPONDENTS.

Respectfully sheweth:-

The appellants Engr: Khushal Khan and Engr: Hidayat Ullah Assistant Engineers (BS-17) Irrigation Department were proceeded under Efficiency and Discipline Rules 2011 and were awarded the major penalty of "Reduction to a lower pay scale for three years" on the basis of voluntarily return of the embezzled public money amounting to Rs. 872,736/- and 440,986/- respectively to NAB Authorities vide notifications dated 30-05-2018. **(Annex-I & II)**

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


Secretary Irrigation

Govt. of Khyber Pakhtunkhwa
(Respondents No. 03)

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 30th May, 2018

NOTIFICATION

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

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

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

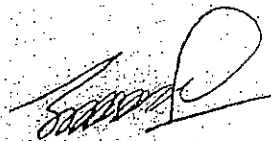
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Section Officer (Estt.)

GOVERNMENT OF KHYBER PAKHTUNKHTA
IRRIGATION DEPARTMENT

Dated Peshawar the 30th May, 2018

NOTIFICATION

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

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

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Section Officer (Estt.)



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 08th November, 2018

NOTIFICATION

No. SO(E)/IRRI/2-3/99/NAB/Vol-II: In pursuance of advice tendered by the Law, Parliamentary Affairs and Human Rights Department vide letter No. SO(OP-1)/LD/5-4/2012-Vol-II-36237-38, dated 25.10.2018, the Competent Authority has been pleased to withdraw the major penalty of "Reduction to a lower pay scale for three years" imposed on Mr. Khushal, Executive Engineer (BS-17)(OPS) Marwat Canal Irrigation Division Bannu under the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011 vide this Department notification dated 30.05.2018 subject to final decision by the Hon'ble Supreme Court of Pakistan in review petition in suo Motu case No. 17 of 2016.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
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