

05.09.2022

Counsel for the appellant present. Preliminary arguments heard and record perused

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for submission of written reply/comments. To come up for written reply/comments on 25.10.2022 before S.B.

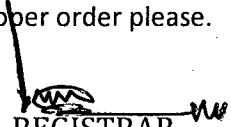



(Fareeha Paul)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No:- 949/2022

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|----------------------------|---|
| 1 | 2 | 3 |
| 1- | 23/06/2022 | <p>The appeal of Mr. Muhammad Yasin presented today by Mr. Muhammad Asif Yousafzai 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</p> |
| 2- | 24-6-22 | <p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>5-7-22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p> |
| | 5 th July, 2022 | <p>Appellant in person present.</p> <p>Appellant seeks adjournment on the ground that his counsel is not available today. To come up for preliminary hearing on 05.09.2022 before S.B.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p> |

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 949 /2022

Engr. Muhammad Yasin

VS


Govt. of KP & others

INDEX

| S.No. | Documents | Annexure | Page No. |
|-------|---|------------|----------|
| 1. | Memo of Service Appeal | ----- | 01-07 |
| 2. | Application for Certificate & Affidavit | ----- | 08-09 |
| 3. | Copy of Charge Sheet & Statement of Allegations | -A& B- | 10-11 |
| 4. | Copy of Inquiry Report & Record | --C & C1-- | 12-35 |
| 5. | Copy of Show Cause & Reply | -D & E- | 36-41 |
| 6. | Copy of Order dated 02.11.2021 | --F-- | 42 |
| 7. | Copy of Review Petition dated 05.11.2021 and Rejection Order dated 08.06.2022 | -G & H- | 43-48 |
| 8. | VakalatNama | ----- | 49 |

APPELLANT

THROUGH:


(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT OF PAKISTAN


(SYED NOMAN ALI BUKHARI)

ADVOCATE HIGH COURT,

(ASAD MEHMOOD)

ADVOCATE HIGH COURT,



(SHAHKAR KHAN YOUSAFZAI)

ADVOCATE PESHAWAR.

①

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 949/2022

Engr. Muhammad Yasin, Superintending Engineer,
Bannu Irrigation Circle, Bannu.

(APPELLANT)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary, Irrigation Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KP SERVICE TRIBUNALS ACT, 1974 AGAINST THE PENALTY ORDER NO.SO(E)IRRI:/12-30/2015/INQUIRY DATED 02.11.2021 WHEREBY THE PENALTY OF WITHHOLDING OF TWO ANNUAL INCREMENTS FOR TWO YEARS WAS IMPOSED UPON THE APPELLANT AND ALSO AGAINST THE REJECTION ORDER DATED 08.06.2022 WHEREBY THE REVIEW PETITION DATED 05.11.2021 HAS BEEN REJECTED BY THE RESPONDENTS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL THE IMPUGNED ORDERS DATED 08.06.2022 AND 02.11.2021 MAY KINDLY BE SET ASIDE AND THE RESPONDENTS MAY KINDLY BE DIRECTED TO RESTORE THE

WITHHELD ANNUAL INCREMENTS FOR THE PERIOD INCURRED BY THE APPELLANT WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL CONSIDER APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:

That the appellant submits as under:

1. That the appellant is working as Superintendent Engineering in the Irrigation Department with utmost dedication and honesty.

2. That the appellant was subjected to an inquiry after the findings of a fact-finding inquiry. The appellant was charged in the charge sheet as *“That you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I.Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filing the same in the court, which has not been done in the case titled Writ Petition No. 214-D of 2019, MuhibUllahV/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court, D.I.Khan Bench causing which the court has decided the case in favour of the petitioner.”* **(Copy of Charge Sheet & Statement of Allegations are attached as Annexures - A & B).**

3. That then to probe into the charges, an inquiry committee was constituted, which comprised of Mr. Nauman Afzal, Chief Economist P&D Department and Mr. Engr. Niaz Sarwar, Chief Engineer Irrigation Department. The inquiry committee probed into the allegations leveled against the appellant. The inquiry committee after conducting the inquiry, gave the conclusion as: *“The charge sheet/ statement of allegations for failing to prepare joint parawise comments and not*

getting it vetted from the office of Additional Advocate General before filing the same in the court of Law were not proved as:

- (i) The joint Para wise comments have been prepared & got it vetted from the learned Additional Advocate General office well in time
- (ii) The Deponent/ representative of Irrigation Department has been identified before the Additional Registrar at the time of deposition by the learned Additional Advocate General.
- (iii) The Deponent/representative of the Irrigation Department deposited the vetted comments in the Peshawar High Court D.I. Khan Bench on behalf of all the respondents well in time.

Hence, the charges against the accused officers have not been proved fully and not found guilty, as per Para No.02 of the Establishment & Administration Department Notification No. SOR-V/(E&AD)/Instruction/2014, dated. 28/03/2014.” (Copy of Inquiry Report & Record are attached as Annexures - C & C1).

4. That despite clear finding by the inquiry committee, the appellant was served with a show cause notice dated 28.12.2020 which was properly replied with a request of Personal Hearing. Thereafter personal hearing was conducted by Mr. Javed Marwat, Secretary Industries as per order of the worthy Chief Minister, Khyber Pakhtunkhwa. The Said Officer (Secretary Industries), after conducting personal hearing, opined that the proposed penalty in the Show Cause Notice may be reviewed as “Censure” keeping in view the finding of the inquiry committee. Copy of Show Cause Notice and Reply to Show Cause Notice are attached as Annexures - D & E.

5. That inspite of clear finding of the Inquiry Committee and opinion of personal hearing conducting authority, the penalty of “withholding of two annual increments for two years” vide order dated 02.11.2021. **(Copy of Order dated 02.11.2021 is attached as Annexure - F).**
6. That the appellant then filed review petition dated 05.11.2021 against the impugned penalty order but unfortunately, it was rejected by the respondent vide order 08.06.2022. **(Copy of Review Petition dated 05.11.2021 and Rejection Order dated 08.06.2022 are attached as Annexures - G & H).**
7. That the appellant comes to this Honourable Tribunal for the redressal of his grievances on the following grounds amongst others:

GROUND:

- A. That the impugned penalty order dated 02.11.2021 and rejection of review petition order dated 08.06.2022 are against the findings of the inquiry committee, where it has been categorically held that the charges against the appellant (then petitioner) have not been proved fully and not found guilty.
- B. That as per Rule-14 of E&D Rules, 2011 the Competent Authority, if satisfied that the inquiry was conducted in accordance with the provisions of E&D Rules and shall exonerate the accused official if charges are not proved. But where the Competent Authority is satisfied that the inquiry proceedings have not been conducted in accordance with the E&D Rules, 2011 (Rule-14(6) then in that case “after recording reasons in writing” either remand the case to the same inquiry committee or may order for denovo inquiry through another inquiry committee. But in case of the appellant neither there is any dissatisfaction note of the authority upon inquiry proceedings or upon the findings of the inquiry committee nor remanded or ordered

denovo inquiry. This shows that the findings of the inquiry committee in respect of the appellant were correct and admitted so by the authority.

- C. That the authority has not recorded any reasons as to why not agreeing with the findings of the authority (Secretary Industries) who had conducted personal hearing and imposed the penalty without recording disagreement note.
- D. That the so-called basis as given in summaries for imposing penalty was never a part of charge sheet, and as such the appellant has been penalized without charge sheet, show cause notice etc in respect of "basis" of penalty, whereby the allegations as specified in the charge sheet, have already been held as "not proved" by the constituted inquiry committee, upon report of which the Competent Authority had shown his satisfaction as mentioned in Rule-14 of the E&D Rules, 2011.
- E. That the Honourable C.M. was requested to probe into the reasons and persons behind giving and submitting such wrong and baseless summaries for penalizing the appellant at any cost. This aspect also shows the malafide intentions of the authorities / officials who have submitted incorrect and wrongly based summaries, especially, after clear findings of the inquiry committee.
- F. That the appellant has been condemned unheard in respect of "so called basis referred in summaries" of imposing penalty which is the violation of principle of Natural Justice as well as of Article 10-A of the Constitution.
- G. That the allegations, as contained in the charge sheet/ statement of allegations have been declared not proved by the inquiry committee, while for the rest of the "basis" of penalty were never reflected in the

charge sheet and as such also not reflected in the show cause notice. Thus the whole action becomes null and void.

- H. That Review Petition No. 1399-D/2019 against the order of High Court in W.P. No. 214-D/2019 is still pending and subjudice, meaning thereby, the cause of taking action was premature as no loss to Government Exchequer is occurred so far. Thus the impugned penalty is based on a premature lis, and cause and amounts to penalize the appellant on presumptions, which is not permissible in the eyes of law. (Copy of Review Petition is already attached in Annexure - C1).
- I. That the impugned orders are against the law, norms of justice, material on record, and also in violation of spirit of E&D Rules, 2011 as well as principle of Natural Justice, hence, liable to be set-aside.
- J. That the omission and commissions of the respondents are illegal and void ab-initio.
- K. That according to the Rule 14(6) E&D Rules, 2011 if the competent authority was not satisfied with the recommendations of the inquiry committee so the competent authority shall give reasons in writing but in case of the appellant Rule 14(6) E&D Rules, 2011 has been ignored/ violated which is also a violation of superior court judgments.
- L. That the conduct and attitude of the respondents towards the appellant with good record is against the spirit of Article 2-A, 4, 9 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973.
- M. That the mandatory provisions of law have been violated by the respondents and the appellant has not been treated according to law and rules being his fundamental right.

N. That there is no omission and commission on part of the appellant as the appellant has been declared innocent in the inquiry report.

O. That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the impugned orders dated 02.11.2021 and 08.06.2022 may kindly be set-aside and the annual increments of the appellant may be restored with all back and consequential benefits.

[Handwritten Signature]
APPELLANT

THROUGH:

[Handwritten Signature]

(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT OF PAKISTAN

[Handwritten Signature]

(SYED NOMAN ALI BUKHARI)

ADVOCATE HIGH COURT,

(ASAD MEHMOOD)

ADVOCATE HIGH COURT,

[Handwritten Signature]

(SHAHKAR KHAN YOUSAFZAI)

ADVOCATE PESHAWAR.

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. _____/2022

Engr. Muhammad Yasin VS Govt. of KP & others.

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.


DEPONENT

LIT OF BOOKS:


1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE
3. Any other case law as per need.


APPELLANT


THROUGH:


(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT OF PAKISTAN


(SYED NOMAN ALI BUKHARI)
 ADVOCATE HIGH COURT,

(ASAD MEHMOOD)
 ADVOCATE HIGH COURT,


(SHAHKAR KHAN YOUSAFZAI)
 ADVOCATE PESHAWAR.

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. _____/2022

Engr. Muhammad Yasin

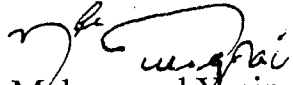
VS

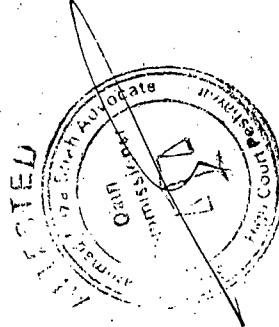
Govt. of KP & others.

AFFIDAVIT

I, Muhammad Yasin, Superintending Engineer, Bannu Irrigation Circle, Bannu (Appellant), do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honourable Tribunal.

DEPONENT


Engr. Muhammad Yasin

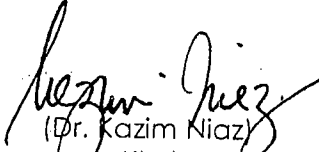


CHARGE SHEET

I, Dr. Kazim Niaz, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Engr: Muhammad Yasin, Executive Engineer (BS-18)/Superintending Engineer (OPS), Swabi Irrigation Circle, Swabi the then Superintending Engineer (OPS), Irrigation Circle, D.I. Khan.

"That you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I. Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I. Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench causing which the court has decided the case in favour of the petitioner".

2. 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.
3. You are, therefore, required to submit your written defense within seven (07) days of the receipt of this charge sheet to the Inquiry Officer/ Inquiry Committee, as the case may be.
4. Your written defense, if any, should reach the Inquiry Officer/Inquiry Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.


(Dr. Kazim Niaz)
Chief Secretary, Khyber Pakhtunkhwa
(Competent Authority)

DISCIPLINARY ACTION

I, Dr. Kazim Niaz, Chief Secretary Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Engr: Muhammad Yasin, Executive Engineer (BS-18)/Superintending Engineer, Irrigation Circle, Swabi the then Superintending Engineer (OPS), Irrigation Circle, D.I. Khan has rendered himself liable to be proceeded against, as he committed the following act/omission, within the meaning of Rule 3 of the Govt. of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

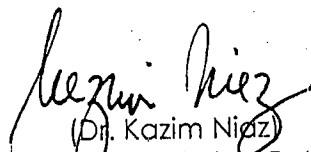
"That he while posted as Superintending Engineer (OPS), Irrigation Circle, D.I. Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I. Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench causing which the court has decided the case in favour of the petitioner".

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

- i. Mr. Nauman Afzal Chief Economist P.O.D.
- ii. Engr. Niaz Sarwar Chief Engr. Irrigation.

3. 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.

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


(Dr. Kazim Niaz)
Chief Secretary, Khyber Pakhtunkhwa
(Competent Authority)



Annexure-C (12)
GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT
(Establishment Section)

Dated Peshawar 08th January, 2020

NOTIFICATION

No. SOE/IRRI/3-248/2019: The Competent Authority i.e Chief Secretary Khyber Pakhtunkhwa is pleased to constitute an Inquiry Committee of the following members to conduct formal inquiry under E&D Rules, 2011 against Engr. Muhammad Yasin, the then Superintending Engineer, D.I.Khan and Engr. Muhammad Tahir, Executive Engineer, Paharpur Irrigation Division, D.I.Khan to probe into " As per procedure, Joint Para Wise Comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office D.I.Khan before filling the same in the Court which has not been done in the instant case".

- 1- **Engr. Niaz Sarwar Baloch, (BS-20)**
Chief Engineer (North)
 - 2- **Mr. Nauman Afzal Afridi (PAS BS-19)**
Chief Economist P&D Department
2. The Inquiry Committee shall submit the report within 14 days of receipt of this notification.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No. & Date as above

Copy of the above is forwarded to the:-

- 1- CSO to Chief Secretary, Khyber Pakhtunkhwa
- 2- Engr. Niaz Sarwar Baloch (BS-20), Chief Engineer (North) (*photocopies of Charge Sheet & Statement of Allegations are enclosed*)
- 3- Mr. Nauman Afzal Afridi (PAS BS-19), Chief Economist P&D Department (*photocopies of Charge Sheet & Statement of Allegations are enclosed*)
- 4- Engr. Muhammad Yasin, Superintending Engineer Swabi Irrigation (*photocopies of Charge Sheet & Statement of Allegations are enclosed*).
- 5- Engr. Muhammad Tahir, Executive Engineer Paharpur Irrigation Division (*photocopies of Charge Sheet & Statement of Allegations are enclosed*)
- 6- PS to Secretary to Govt. of Khyber Pakhtunkhwa, Irrigation Department.
- 7- PA to Additional Secretary Irrigation, Khyber Pakhtunkhwa
- 8- The Officer concerned.
- 9- Master File.
- 10- Personal File of the Officers.

| | |
|----------------------------------|---------|
| OFFICE OF C.E (North) IRR. DEPT. | |
| Diary No. | 225 |
| Date | 08-1-20 |
| (S.O.) | AB |
| | DD |
| | DDC |

(Abdul Rauf)
Section Officer (Estt.)

ENQUIRY REPORT

[Handwritten signature] (12)

BACKGROUND:

The competent authority i.e. Chief Secretary of Khyber Pakhtunkhwa constituted a committee comprising of Engr: Niaz Sarwar Baloch, Chief Engineer (North) Irrigation Department, and Mr. Nauman Afzal Afridi, Chief Economist P&D Department, to conduct formal inquiry under P&D Rules, 2011 against Engr: Muhammad Yasin and Engr: Muhammad Tahir, the then Superintending Engineer D.I.Khan and Executive Engineer Paharpur Irrigation Division D.I.Khan respectively (Annex-I).

The charge sheet / statement of allegations were that "both the said officers while posted as Superintending Engineer D.I.Khan and Executive Engineer Paharpur Irrigation Division, D.I.Khan have committed the act / omission that as per procedure, joint Para wise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General office D.I.Khan before filling the same in the Peshawar High Court D.I.Khan Bench has not been done in the case titled writ petition No. 214-D of 2019 Muhib Ullah VS Government of Khyber Pakhtunkhwa causing which the court has decided the case in favour of the petitioner" (Annex-II).

PROCEEDINGS:

1. The charge sheet and statement of allegations alongwith the notification were served upon the accused, with the direction to furnish their reply within 05 days vide Chief Engineer (North) Irrigation Department Khyber Pakhtunkhwa office letter No. 186/North/Estb/Enquiry, dated 13-01-2020 (Annex-III).
2. The accused Engr: Muhammad Yasin, the then Superintending Engineer D.I.Khan submitted his reply vide No. 7039-40/11-M, dated 23-01-2020 (Annex-IV), his reply to charge sheet / statement of allegation is reproduced as under:
 - (i) The allegation that Para wise comments were not vetted from the learned Additional Advocate General office is against facts, record and result of miss conception. The true facts are that, not only the Para wise comments were forwarded by the representative of the case, Engr: Muhammad Tahir to the learned Additional Advocate General office for vetting before filling in the

[Handwritten signature]

court rather the said Para wise comments were duly vetted by the learned Additional Advocate General and the said fact is proved from the contents of the back of the last page of the comments wherein, expressly and in unequivocal words it was certified by the Additional Advocate General that the comments in question were duly vetted by him. The relevant certificate duly vetted by the learned Additional Advocate General is reproduced below for convince, "Certified that as per direction of Honorable Court comments are duly vetted".

(ii) Not only were the comments duly vetted by the learned Additional Advocate General rather the record further reveal that the deponent/representative of the Department i.e. Engr. Muhammad Tahir was identified before the Additional Register, at the time of deposition by the learned Additional Advocate General himself.

3. The accused Engr. Muhammad Tahir the then Executive Engineer Paharpur Irrigation Division D.I.Khan submitted his reply (Annex-V), which is reproduced as under;

(i) It is submitted that the allegation that Para wise comments were not got vetted from the learned Additional Advocate General office is against facts, record and result of miss conception. The true facts are that not only the Para wise comments were forwarded to the Additional Advocate General office for vetting, before filing it in the court, rather the said Para wise comments were duly vetted by the learned Additional Advocate General and the said fact is proved from the contents of the back of the last page of the comments wherein, expressly and in unequivocal words, it was certified by the Additional Advocate General that the comments in question were duly vetted by him.

(ii) It is brought to your notice that the order dated 01-10-2019 of the Peshawar High Court Bench D.I.Khan has already been challenged in Peshawar High Court Bench D.I.Khan through "Review petition, which is still sub judice. Engr. Muhammad Tahir Concluded.



FINDINGS:

(15)

2

On the perusal of the record as well as written reply of the accused against the Charge Sheet / Statement of allegations, the findings are as under:-

1. Both the accused were called upon for personal hearing on 27th January 2020. The Department representative for the instant case i.e. Engr: Muhammad Tahir, the then Executive Engineer Paharpur Irrigation Division D.I.Khan appeared and submitted his statement along with supporting documents. Similarly, the accused Engr: Muhammad Yasin, the then Superintending Engineer D.I.Khan was also heard who apprised the committee that the comments were prepared and vetted from the learned Additional Advocate General. He further apprised the committee that after vetting the comments from learned Additional Advocate General is supposed to be re-submitted to the respondents for their signature and after doing needful by all the respondents give proper certificate and affidavit and there after deposited in the Peshawar High Court D.I.Khan Bench. Needless to mention here that the order of Peshawar High Court, DIKhan Bench dated 01-10-2019 has already been challenged in the Honorable Peshawar High Court D.I.Khan Bench "Review Petitioner No. 1399-D/2019" which is still sub judicious.
2. The comments were forwarded to AAG vide letter No.P&D/PS/Chief Engineer (North) Irrigation Department Peshawar/2020-2154, dated 27-01-2020 (Annex-VI) for verification. The learned AAG verified the comments to have been vetted by their office (Annex-VII).
3. The record further reveals that deponent / representative of the Irrigation Department i.e. Engr: Muhammad Tahir, the then Executive Engineer Paharpur Irrigation Division D.I.Khan, was identified before the Additional Registrar at the time of deposition by the learned Additional Advocate General (Annex-VIII).
4. A review petition has been lodged in the Peshawar High Court D.I.Khan Bench, the same been verified from the office of Additional Advocate General office vide letter No. P&D/PS/CI/2020, dated 27-01-2020 (Annex-IX).

2

CONCLUSION:

(15)

The charge sheet / statement of allegations for failing to prepare joint Para wise comments and not getting it vetted from the office of Additional Advocate General before filling the same in the court of Law were not proved as:-

- (i) The joint Para wise comments have been prepared & got it vetted from the learned Additional Advocate General office well in time.
- (ii) The Deponent / representative of Irrigation Department has been identified before the Additional Registrar at the time of deposition by the learned Additional Advocate General.
- (iii) The Deponent / representative of Irrigation Department deposited the vetted comments in the Peshawar High Court D.I.Khan Bench on behalf of all the respondents well in time.

Hence, the charges against the accused officers have not been proved fully and not found guilty, as per Para No.02 of the Establishment & Administration Department Notification No.SOR-V/(E&AD)/Instruction/2014, dated 28/03/2014.

Mr. Nauman Afzal Afridi
Chief Economist P&D
Department Peshawar

Engr: Niaz Sarwar Baloch
Chief Engineer (North) (Retired)
Irrigation Department
Khyber Pakhtunkhwa



OFFICE OF THE SUPERIN
SWABI IRRIGATION
Phone & Fax #

JG ENGINEER
SWABI
030

17

No. 7039-40/11-M,
To

Dated Swabi the 23/01/2020

The Enquiry Committee,

1. Engr: Niaz Sarwar Baloach,
Chief Engineer (North), Irrigation Department,
Khyber Pakhtunkhwa, Peshawar.
2. Mr. Nauman Afzal Afridi (PAS BS-19),
Chief Economist P&D Department, Peshawar.

Subject:- NOTIFICATION

- Reference:-
- (i) Secretary to Govt. of Khyber Pakhtunkhwa Irrigation Department (Establishment Section) Peshawar letter No.SOE/IRRI/3-248/2019, dated 08-01-2020.
 - (ii) Chief Engineer (North) Irrigation Department Khyber Pakhtunkhwa Peshawar letter No.186/North/Estab/Enquiry, dated 13-01-2020.

Please refer to the above wherein the show cause notice has been served upon me stating therein that "as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filling the same in the Court which has not been done in the instant case" In the same Notification the Honourable Chief Secretary, Khyber Pakhtunkhwa Dr. Kazim Niaz, competent authority hereby charged me with the charge sheet which is reproduced as under:-

"that you while posted as Superintending Engineer (OPS) Irrigation Circle D.I.Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filling the same in the Court which has not been done in the case titled Writ Petition No.214-D of 2019. Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I.Khan Bench causing which the court has decided the case in favour of the petitioner"

The Competent Authority Dr. Kazim Niaz, Chief Secretary, Khyber Pakhtunkhwa also served upon me the statement of allegations.

STATEMENT OF ALLEGATIONS

“that you while posted as Superintending Engineer (OPS) Irrigation Circle D.I.Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filling the same in the Court which has not been done in the case titled Writ Petition No.214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I.Khan Bench causing which the court has decided the case in favour of the petitioner”

In this regard, the undersigned, Engr: Muhammad Yasin, submit the following points elaborating the factual position.

| Charge Sheet/Statement of allegations | Reply |
|--|---|
| <p>“that you while posted as Superintending Engineer (OPS) Irrigation Circle D.I.Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filling the same in the Court which has not been done in the case titled Writ Petition No.214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I.Khan Bench causing which the court has decided the case in favour of the petitioner”</p> | <p>1. The allegation that the para wise comments were not vetted from the learned Additional Advocate General, office is against the facts, record and result of misconception. The true facts are that, not only the para wise comments were forwarded by the representative of the case Engr: Muhammad Tahir, to the learned Additional Advocate General office for vetting, before filing it in the Court, rather the said para wise comments were duly vetted by the learned Additional Advocate General and the said fact is proved from the Contents of the back of the last page of the Comments where in, expressly and in unequivocal words, it was certified by</p> |

27

the learned Additional Advocate General that the comments in question were duly vetted by him. The relevant certificate duly vetted of the learned Additional Advocate General is reproduced below for convenience.

“Certified that as per direction of Honourable Court, comments are duly vetted”

copy of the certificate duly attested by the examiner Peshawar High Court Bench D.I.Khan is attached as Annexure-A

2. Not only the comments were vetted by the learned Additional Advocate General rather the record further reveals that the deponent/ representative of the Department i.e Engr: Muhammad Tahir, Executive Engineer (Respondent No.3) was identified before the Additional Registrar, at the time of deposition, by the learned Additional Advocate General himself.

Copy of the affidavit duly attested by the Examiner Peshawar High Court Bench D.I.Khan is attached as Annexure-B.

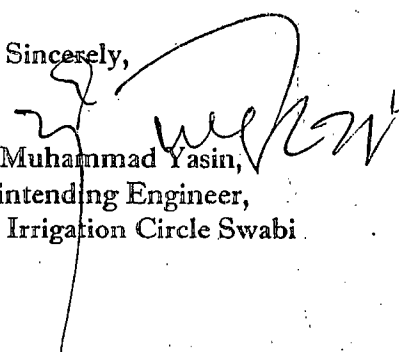
From the above facts, it is crystal clear that the comments were vetted by the learned Additional Advocate General and were considered fit for filing in the Court. Needless to mention here that the order dated 01-10-2019 has already been challenged in the Honourable Peshawar High Court, bench D.I.Khan through Review Petition No.1399-D/2019 which is still sub judicious.



Muhammad Yasin, have not committed the act/omission, within the meaning of Rule 3 of the Govt. of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011.

It is therefore, humbly prayed that the undersigned Engr: Muhammad Yasin, the then Superintending Engineer, D.I.Khan may kindly be exonerated from the charge and allegations and as a result thereof the inquiry proceedings against me, may please be filled.

Yours Sincerely,


Engr: Muhammad Yasin,
Superintending Engineer,
Swabi Irrigation Circle Swabi

①
2

- h). Para h pertains to revenue record and the burdon of proof is on the shoulders of petitioner.
- i) This Para is legal, hence no comments.

It is, therefore, in the light of submissions made above, this Honorable Court may very graciously be please to dismiss the writ petition with cost.

[Signature]
 Superintending Engineer
 Irrigation Department D.IKhan

[Signature]
 Executive Engineer Paharpur Irri:
 Canal Dera Ismail Khan

[Handwritten notes]
 109/119

127
 Application Received on 14-01-2020
 Copying Fee deposited Rs
 No of Papers 06 Page
 Copying Fee 04
 Urgent Fee 24/-
 Total Fee
 Copy ready for delivery 14-01-2020
 Copy delivered on 14-01-2020
 Signature of Examiner
[Signature]
 14-01-2020

Certified to be true copy
 14-01-2020
 EXAMINER
 Muzaffar High Court Bench D.I Khan
 Authority of Under Secretary
 Quarters D.I Khan

(26)

Certified that as per direction of Hon'ble
Court, comments are duly vetted.

ATTESTED
13-02-20
EXAMINOR
Peshawar High Court
Dera Ismail Khan

Handwritten signature
Assistant Director General
E.P.K. D.I.K.

Amex - A

26

Certified that as per direction of Hon'ble Court, comments are duly vetted.

[Handwritten signature]

ATTESTED
[Signature]
14-01-20
EXAMINER
Peshawar High Court
Dera Ismail Khan

1-5-2020

BEFORE THE PESHAWAR HIGH COURT, D.I.KHAN BENCH

Writ Petition No.214/2019

Mohib Ullah Versus Govt. of KPK etc

AFFIDAVIT

I, Muhammad Tahir, Executive Engineer, Paharpur Irrigation Division, D.I.Khan, do hereby solemnly Affirm and declare on Oath that the contents of accompanying Para Wise Comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Court.

04/09/19

DEPONENT
CNIC-#12101-0899586-5


Identified by:

Assistant Advocate-General
Khyber Pakhtunkhwa DIKhan

Name: Mohib Tahir
Designation: Executive Engineer,
Paharpur, D.I.K.
On the 04th day of SEP. 2019
I have read the contents of the above
affidavit before me on oath
3943 04/09/19

ATTESTED
14-01-2020
EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

Examining Officer
Peshawar High Court
Dera Ismail Khan

| | |
|--|---|
|  <p>Ph: 091-9210501</p> | <p style="text-align: center;">GOVERNMENT OF KHYBER PLANNING AND DEVELOPMENT DEPARTMENT</p> <p style="text-align: center;">VA <i>No. P&D/PS/CE/2020</i> <i>Dated Peshawar the 27.01.2020</i></p> |
|--|---|

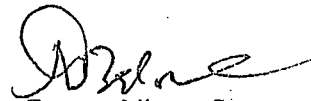
SUMMON

Subject:- **INQUIRY AGAINST ENGINEER . MUHAMMAD YASIN THE THEN SUPERINTENDING ENGINEER D.I.KHAN AND ENGINEER MUHAMMAD TAHIR, EXECUTIVE ENGINEER, PAHARPUR IRRIGATION DIVISON, D.I.KHAN.**

Through proper Channel.

An Inquiry has been initiated against the above accused officers in the Writ Petition No. 214-D of 2019 Muhib Ullah Khan V/S Government of Khyber Pakhtunkhwa in PHC D.I.Khan Bench vide Notification No.SOE/IRRI/3-248/2019dated 08.01.2020 with the allegations against the accused officers for not vetting the comments from the Additional Advocate General before filing in the August High Court Bench D.I. Khan. You are therefore requested to depute your authorized representative in the office of Chief Economist P&D Department on 06.02.2020 at 11.00 AM (Thursday) with the original/ duly attested and vetted copies of the record and comments in the instant case submitted in the Court alongwith complete file for verification and perusal. (A copy of the comments submitted by the accused officers are enclosed)

Inquiry Committee



- 1) Engr. Niaz Sarwar
Baloch BPS-20 CE
North.

- 2) Nauman Afzal Afridi,
(BPS-19) Chief
Economist P & D
Deptt.

To
 Additional Advocate General.
 D.I. Khan Bench D.I. Khan

No. 8618 /AAG, dated D.I.Khan, the 24-02 /2020.

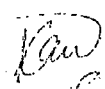
From: The Additional Advocate-General
Khyber Pakhtunkhwa, D.I.Khan.

To : Inquiry Committee
1. Engr Niaz Sarwar
Baloch BPS-20 CE
North.
2. Nauman Afzal Afridi
BPS-19 Chief Economist
P&D Deptt:

Subject: **Inquiry against Engineer Muhammad Yasin the then
Superintending Engineer D.I.Khan and Engineer Muhammad
Tahir, Executive Engineer, Paharpur Irrigation Division,
D.I.Khan.**

Memo:

Refer to your letter No.P&D/PS/CE/2020-2154 dated 27.01.2020 on the subject noted above, it is brought to your notice that the para wise comments in writ petition No.214-D/2019, titled Mohib Ullah Khan Vs Govt. of KPK etc, were produced by respondent No.3 (Executive Engineer Paharpur Irrigation Division D.I.Khan), also signed by respondent No.2 (Superintending Engineer Irrigation Department D.I.Khan), and were duly vetted, as per assertion of the respondents department, by the then Assistant Advocate-General D.I.Khan before filing in the Honorable Peshawar High Court, D.I.Khan Bench and in this regard proper identification was also done by the then Assistant Advocate-General.


Additional Advocate-General
Khyber Pakhtunkhwa, D.I.Khan



Ph: 091-9210501

GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING AND DEVELOPMENT DEPARTMENT

No. P&D/PS/CE/2020
Dated Peshawar the 12.02.2020

To

CHIEF ECONOMIST

Diary No. 2337 (B)

Dated 12/02/2020

The Additional Advocate-General
Khyber Pakhtunkhwa, D.I.Khan.


Subject:-

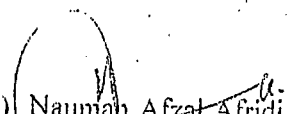
CERTIFIED COPY OF REVIEW PETITION NO. 1399-D/2019 (INQUIRY AGAINST ENGINEER, MUHAMMAD YASIN THE THEN SUPERINTENDING ENGINEER D.I.KHAN AND ENGINEER MUHAMMAD TAHIR, EXECUTIVE ENGINEER, PAHARPUR IRRIGATION DIVISION, D.I.KHAN.

In continuation of this Department letter of even number dated 27.01.2020 on the subject noted above an Inquiry is being conducted in the subject matter.

It is requested that attested copies of the Admission of the Review Petition No. 1399-D/2019 may kindly be submitted to facilitate the Inquiry Committee please.

Inquiry Committee


1) Engr. Niaz Sarwar
Baloch BPS-20 CE
North.


2) Naumah Afzal Afridi,
(BPS-19) Chief
Economist P & D
Deptt.

Rel A 360704

No. 3673-74/AAG, dated D.I.Khan, the 15-02-2020.

From: The Additional Advocate-General
Khyber Pakhtunkhwa, D.I.Khan.

To : Inquiry Committee
1. Engr Niaz Sarwar
Baloch BPS-20 CE
North.
2. Nauman Afzal Afridi
BPS-19 Chief Economist
P&D Deptt:

385
18/2/2020

247
19-2-2020

Subject: Inquiry against Engineer Muhammad Yasin the then
Superintending Engineer D.I.Khan and Engineer Muhammad
Tahir, Executive Engineer, Paharpur Irrigation Division,
D.I.Khan.

Memo:

Refer to your letter No.P&D/PS/CE/2020 dated 12.02.2020 on the
subject noted above, the attested copy of Review Petition No.1399-D/2019 is sent
herewith to you for your perusal.

Encl. certified copy of review

Kau
Additional Advocate-General
Khyber Pakhtunkhwa, D.I.Khan

D.I.Khan
[Handwritten signature]
19/2

[Handwritten signature]
(BLO)

IN THE PESHAWAR HIGH COURT,
DERA ISMAIL KHAN BENCH

Review Petition

CIVIL MISCELLANEOUS NO. 1399 -D OF 20 19.

Petition Presented by Kamran Hafeez Khan (P.W. 1)

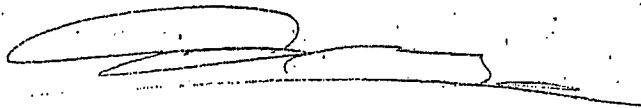
On behalf of the petitioner (or the petitioner, personally).

This petition is in proper form and is accompanied by
copies of all necessary documents. Enter petition in register
and place before a judge (S.B./D.B) for orders.

Cm
Reader to Additional Registrar

Dated 12/12/19

COUNTERSIGNED



ADDITIONAL REGISTRAR

**IN THE PESHAWAR HIGH COURT,
DERA ISMAIL KHAN BENCH**

CIVIL MISCELLANEOUS NO. 1400 -D OF 20 19


Petition Presented by Kamran Hayat Khan (Man)

On behalf of the petitioner (or the petitioner, personally).

This petition is in proper form and is accompanied by

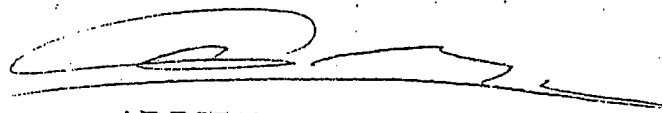
copies of all necessary documents. Enter petition in register

and place before a judge (S.B./D.B) for orders.


Reader to Additional Registrar

Dated 12/12/19

COUNTERSIGNED



ADDITIONAL REGISTRAR

IN THE PESHAWAR HIGH COURT, DERA ISMAIL KHAN BENCH

CHECK LIST

| | | Yes | No |
|----|--|-----|----|
| 1 | Case title <u>Govt. of KPK etc. vs- Mohib Ullah Khan</u> | ✓ | |
| 2 | Case is duly signed | ✓ | |
| 3 | The law under which the case preferred has been mentioned | ✓ | |
| 4 | Approved file cover is used | ✓ | |
| 5 | Affidavit is duly attested and | ✓ | |
| 6 | Case and Annexure are properly paged and numbered according to index | ✓ | |
| 7 | Copies of Annexure are legible and attested (If, not then better copies duly attested have been annexed) | ✓ | |
| 8 | Certified copies of all the requisite documents have been filed | ✓ | |
| 9 | Certificate specifying that no case on similar grounds was earlier submitted in this Court/ filed. | ✓ | |
| 10 | Case within time | | ✓ |
| 11 | The value for purpose of Court fee and jurisdiction has been mentioned in the relevant column | ✓ | |
| 12 | Court fee in shape of Stamp Paper is affixed, (For Writ Rs.500/-) For other requirement | ✗ | ✗ |
| 13 | Power of attorney is on proper form | ✓ | |
| 14 | Memo of Address filed | ✓ | |
| 15 | List of Book mentioned in the Petition | ✓ | |
| 16 | The requisite number of spare copies attached, (Writ Petition-3, Nos. Civil appeal (SB-1, SB-2), Civil Revision (SB-1, SB-2) | ✓ | |
| 17 | Case (Revision/Appeal/petition etc) is filed on the Prescribed form | | ✓ |
| 18 | Power of Attorney is attached by Jail Authority (For Jail Prisoners Only) | | ✓ |

It is certified that formalities/documentation as required in column No.2 to 18 above, have been fulfilled

Additional Advocate-General,
Khyber Pakhtunkhwa,

AD. Khan
High Court Dera Ismail Khan Bench

FOR OFFICE USE ONLY

Case No _____

Case received 12-12-2019

Complete in all respect (Yes/No) (If no, the ground _____)

Dated in Court _____

Signature [Signature]
(Reader)

Dated 12-12-2019

Countersigned _____
(Additional Registrar)

IN THE PESHAWAR HIGH COURT, PESHAWAR
OPENING SHEET FOR WRIT BRANCH

Date of Filing: _____
District: _____

Case Type: Writ Petition Nature of Original Proceeding: _____

Category Code:

| | | | |
|---|---|---|---|
| 0 | 5 | 4 | 7 |
|---|---|---|---|

(Categories & Sub categories are given at the back of the opening sheet)

Review/Contempt of Court in respect of: _____

Writ of:

| | | | | |
|---------------|-------------|----------|--------------|------------|
| Habeas Corpus | Prohibition | Mandamus | Quo Warranto | Certiorari |
|---------------|-------------|----------|--------------|------------|

If Certiorari:

| Forum | Date | (Interlocutory/ (F)inal Order |
|-------|------|-------------------------------|
| | | |
| | | |
| | | |
| | | |

Case Pertains to
 SB
 DB

Filed today 6/08
Addl. Registrar
12-12-19

| | |
|-----------------|----------------------------------|
| Petitioner Name | Govt. of Khyber Pakhtunkhwa etc. |
| Mobile No. | 09669280229 |
| Address | Addl. Advocate - General KPK |
| CNIC No. | — |
| Email Address | aagdikhani@gmail.com |

| | |
|----------------------------|------------------------------|
| Counsel for Petitioner (s) | Advocate - General, KPK |
| Mobile No. | 0966-9280229 |
| Address | Addl. Advocate - General KPK |
| CNIC No. | — |
| Email Address | aagdikhani@gmail.com |

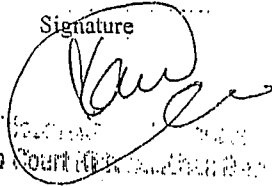
| | |
|-------------|------------------|
| Respondents | Mohib Ullah Khan |
| Address | — |

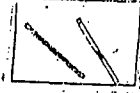
Original Order/Action/Inaction Complained of: _____

Prayer: It is, therefore, humbly prayed that on acceptance of this Review Petition the judgment/order dated 01/10/2019 passed by this Hon'ble Court in writ petition No. 214-D/2019 may kindly be reviewed and writ petition of the present Respondent may graciously be dismissed.

Law/Rules governing the original proceedings/action/inaction _____

Note: Any suggestion to improve the proforma will be appreciated.

Signature

High Court



SHOW CAUSE NOTICE

I, Mahmood Khan, Chief Minister as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Engr: Muhammad Yasin, Executive Engineer (BS-18)/Superintending Engineer (OPS), Irrigation Department as follows:

"That you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I. Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I. Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench causing which the court has decided the case in favour of the petitioner".

I am satisfied that you have committed the acts/omission specified in Rule-3 (b) of the said rules:


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/penalties specified under Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

i. Withholding of two increments
ii. for a two years.

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 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.


(Mahmood Khan)
Chief Minister,
Khyber Pakhtunkhwa



**GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT**

No. SO(Lit)/Irr:/3-248/2019 (Muhib Ullah)
Dated Peshawar the 28th December, 2020

To

Engr: Muhammad Yasin,
Superintending Engineer (OPS)/,
Project Manager, Remodeling of Warsak Canals System Project,
Peshawar.

Subject: SHOW CAUSE NOTICE

I am directed to refer to the subject noted above and to enclose herewith a copy of Show Cause Notice, duly signed by the competent authority i.e. Chief Minister, Khyber Pakhtunkhwa.

You are required to show cause as to why the penalty mentioned therein should not be imposed upon you and intimate whether you desire to be heard in person. If no reply to this notice is submitted within 07 days of its delivery, it shall be presumed that you have no defence to put in and exparte action will be taken against you.

(Signature)
(Abdul Rauf)
Section Officer (Estt:)

Encl: as above

*Immediate
PM
Form/a no.
29/12/20*

| | |
|---|------------|
| Remodeling of Warsak Canal System Irr: Deptt: | |
| Duty No. | 751 |
| Date | 28-12-2020 |
| BU | DD-I |
| PM | DD-II |
| Advisor | AD |
| JDA | |

Annexure - ~~11~~ ~~11~~ ~~11~~

38



GOVERNMENT OF KHYBER PAKHTUNKHWA
PROJECT DIRECTOR, REMODELING OF WARSAK CANAL SYSTEM
IN DISTRICT PESHAWAR & NOWSHERA, IRRIGATION DEPARTMENT,
Civil Colony, Warsak Road, Kababyan, Peshawar, Ph: 091-9222774-5 Fax: 091-52016

To

The Honorable Chief Minister,
Khyber Pakhtunkhwa

Subject: **SHOW CAUSE NOTICE.**

Ref: Secretary to Govt. of Khyber Pakhtunkhwa Irrigation Department
letter No. SO(Lit)/Irr/3-248/2019 (Muhib Ullah), dated 28-12-2020.

Respectfully Sheweth,

The Competent Authority i.e the Honorable Chief Minister Khyber Pakhtunkhwa Mehmood Khan served upon me the Show Cause Notice stating therein that **"That you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I.Khan committed the act/omission that as per procedure, joint Para wise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench causing which the court has decided the case in favor of the petitioner"**

In this regard, the undersigned, Engr. Muhammad Yasin, Executive Engineer (BS-18)/Superintending Engineer (OPS), without prejudice my right to object the proceeding and subject show cause notice, I submit the following points elaborating the factual position.

| Show Cause Notice | Reply |
|---|---|
| That you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I. Khan committed the act/omission that as per procedure, joint Para wise comments were required to be prepared and were supposed to | 1. That prior to the instant show cause notice, the undersigned was served with charge sheet and statement of allegations by the inquiry Committee, the reply whereof was filed inter alia, as under: (i). The allegation that the Para wise |

24

| | |
|--|---|
| <p>be vetted from the Additional Advocate General Office, D.I.Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/S Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench causing which the court has decided the case in favour of the petitioner"</p> | <p>comments were not vetted from the learned Additional Advocate General office is against the facts, record and result of misconception. The true facts are that, not only the Para wise comments were forwarded by the representative of the case Engr. Muhammad Tahir, to the learned Additional Advocate General office for vetting, before filing it in the Court, rather the said Para wise comments were duly vetted by the learned Additional Advocate General and the said fact is proved from the Contents of the back of the last page of the Comments wherein, expressly and in unequivocal words, it was certified by the learned Additional Advocate General that the comments in question were duly vetted by him. The relevant certificate duly vetted of the learned Additional Advocate General is reproduced below for convenience. "Certified that as per direction of Honorable Court, comments are duly vetted" copy of the certificate duly attested by the examiner Peshawar High Court Bench D.I.Khan is attached as Annexure-A</p> <p>(ii). Not only the comments were vetted by the learned Additional Advocate General rather the record further reveals that the deponent /representative of the Department i.e Engr. Muhammad Tahir, Executive Engineer (Respondent No.3) was</p> |
|--|---|



identified before the Additional Registrar, at the time of deposition, by the learned Additional Advocate General himself. Copy of the affidavit duly attested by the Examiner Peshawar High Court Bench D.I.Khan is attached as **Annexure-B**.

(iii). Needless to mention here that the order dated 01-10-2019 has already been challenged in the Honorable Peshawar High Court, bench D.I.Khan through Review Petition No.1399-D/2019 which is still sub judicious.

2. That in the light of my reply, the inquiry committee sought the record/comments of learned Additional Advocate General who confirmed in his report that the impugned comments were duly vetted by his office, before filing it in the Court.

3. That after the receipt of report and record of learned Additional Advocate General no force and substance was left in the charge and allegation and that is why that the Inquiry Committee in its report gave finding / opinion in an unequivocal terms that the impugned comments were got vetted by learned Additional Advocate General. It was also reported by learned Additional Advocate General. That representative of the Department i.e Muhammad Tahir Executive Engineer, Pharpur Irrigation Division D.I.Khan was identified before

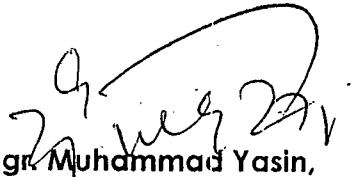
(B9)
41

Assistant Registrar. The inquiry Committee also opined that the charge was not proved fully and the accused were found not guilty. Copy of the inquiry report is attached as **Annexure-C**.

4. In the light of the report of learned Additional Advocate General coupled with the opinion of inquiry Committee, where by it declared the accused innocent, there was no justification for issuance of instant show cause notice and no ground is present for imposing penalty of withholding of increments for two years, particularly in the circumstance when the very show cause notice, charge sheet and statement of allegation are issued in gross violation of E&D Rules, 2011.

In these circumstances, it is crystal-clear that the undersigned Engr. Muhammad Yasin, Executive Engineer (BS-18)/Superintending Engineer (OPS) has not committed the act/omission specified in the Rule 3(b) of Efficiency & Disciplinary Rule 2011. Therefore, the penalty, proposed in the Show Cause Notice, is unjustified, against the Law & Rules and the undersigned may kindly be exonerated from the charges.

Note: "It would be matter of honor for me to avail the chance of personal hearing, if given"


Engr. Muhammad Yasin,
Project Manager (RWCS)
04/1/2021

Annexure - F

To be substituted for this Department order of even number dated 26th October, 2021



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 02nd November, 2021

ORDER

No. SO(E)/IRRI/12-30/2015/Inquiry: WHEREAS, Engr. Muhammad Yaseen, Executive Engineer (BS-18)/Superintendent Engineer (OPS) Irrigation Department was proceeded against under the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, for the alleged allegation that you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I. Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and be vetted from the Additional Advocate General Office, D.I. Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench, the court decided the case against Department and resultantly interest of the Government was compromised.

2. AND WHEREAS, for the said act/omission specified in rule-3(b) of the rules *ibid*, he was served charge sheets/statement of allegations.

3. AND WHEREAS, an inquiry committee comprising of Engr. Niaz Serwar Baloch, Chief Engineer (North) Irrigation Department and Mr. Noman Afzal Afridi, Chief Economics P&D Department was constituted, who submitted the inquiry report.

4. AND WHEREAS, an opportunity of personal hearing was afforded by the competent authority before the Secretary to Govt. of Khyber Pakhtunkhwa Industries, Commerce & Technical Education Department 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.

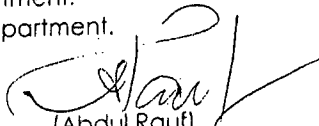
5. NOW THEREFORE, the Competent Authority, after having considered the charges, material on record, inquiry report of the inquiry committee and explanation of the officers/official concerned, in exercise of the Powers under Rule- 14 (5)(ii) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the minor penalty of "withholding of two annual increments for two 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. All Superintending Engineers of Irrigation Department.
5. The District Accounts Officer, Bannu.
6. PSO to Chief Secretary, Khyber Pakhtunkhwa.
7. PS to Secretary Irrigation Department.
8. PS to Secretary Establishment Department.
9. PA to Additional Secretary, Irrigation Department.
10. PA to Deputy Secretary (Tech) Irrigation Department.
11. Officers/Official concerned.


(Abdul Rauf)
Section Officer (Estt.)



OFFICE OF THE SUPERINTENDING ENGINEER
GOVT: OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT BANNU

No. 2224 / I-E1

Dated Bannu the 05 / 11 / 2021

To

The Secretary to Govt: of Khyber Pakhtunkhwa,
Irrigation Department Peshawar.

Attention: Section Officer (Establishment)

Subject:- ORDER

Reference: Your good office No: SO(E)/Irr:/12-30/2015/Inquiry, dated: 02-11-2021.

Your kind attention is invited to the orders issued vide letter under reference and the Review Petition under Rule-03 of the Khyber Pakhtunkhwa Civil Servant (Appeal) Rules, 1986 read with Rule-17 of the Government Servant (E&D) Rule-2011 against the penalty order dated: 02-11-2021 is hereby submitted for your kind perusal and with the request to kindly process the same to the Honorable Chief Minister for his consideration, please.

Encl: As Above

SUPERINTENDING ENGINEER

Copy forwarded in advance to the Honorable Chief Minister for consideration, please.

SUPERINTENDING ENGINEER
Bannu Irrigation Circle Bannu

Office of the PSCM

Diary No. 1749

Dated 07 / 11 / 2021

To

The Worthy Chief Minister,
Khyber Pakhtunkhwa, Peshawar

(Reviewing Authority)

THROUGH PROPER CHANNEL

Subject: - **REVIEW PETITION UNDER RULE-3 OF THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPEAL) RULES, 1986 READ WITH RULE-17 OF THE GOVERNMENT SERVANTS (E&D) RULES, 2011 AGAINST THE PENALTY ORDER NO.SO(E)/IRR:/12-30/2015/INQUIRY DATED 02.11.2021, WHEREBY THE PENALTY OF WITHHOLDING OF TWO ANNUAL INCREMENTS FOR TWO YEARS IS IMPOSED UPON THE PETITIONER.**

Sir,

Most profoundly, the petitioner submits as under:-

1. That the petitioner was subjected to a formal inquiry after the findings of the fact-finding inquiry.
2. That the petitioner was charged in the charge sheet as "*that you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I.Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filing the same in the Court, which has not been done in the case titled writ petition No. 214-D/2019, Mohibullah VS Govt. of Khyber Pakhtunkhwa in Peshawar High Court, D.I.Khan Bench causing which the court has decided the case in favour of the petitioner.*" (Charge Sheet & Statement of Allegation are attached as Ann-I & II.)
3. That to probe into the charges, an inquiry committee was constituted, comprised of Mr. Nauman Afzal Chief Economist P&D Department and Mr. Engr: Niaz Sarwar, Chief Engineer Irrigation Department. The inquiry committee probed into the allegations leveled against the petitioner. The inquiry committee after conducting the inquiry, gave the conclusion as



" The charge sheet/ statement of allegations for failing to prepare joint para wise comments and not getting it vetted from the office of Additional Advocate General before filing the same in court of law"

were not proved as:-

- (i) The joint para-wiswe comments have been prepared & got it vetted from the learned Additional Advocate General office well in time.
- (ii) The Deponent/ representative of Irrigation Deptt: has been identified before the Additional Registrar at the time of deposition by the learned Additional Advocate General.
- (iii) The Deponent/representative of the Irrigation Deptt: deposited the vetted comments in the Peshawar High Court D.I Khan Bench on behalf of all the respondents well in time.

Hence, the charges against the accused officers **have not been proved fully and not found guilty** as per para-No.02 of the Establishment & Administration Department Notification No. SOR-V/(E&AD)/Instructions/2014, dated. 23.03.2014."

(Copy of inquiry report is attached as -Ann-III.)

4. That despite clear finding by the inquiry committee, the petitioner was served with a show cause notice dated 28.12.2020 which was properly replied with a request of Personal Hearing. Thereafter personal hearing was conducted by Mr. Javed Marwat, Secretary Industries as per order of the worthy Chief Minister, Khyber Pakhtunkhwa. The Said Officer (Secretary Industries), after conducting personal hearing, opined that the proposed penalty in the Show Cause Notice may be reviewed as "**Censure**" keeping in view the finding of the inquiry committee.
5. That inspite of clear finding of the Inquiry Committee and opinion of personal hearing conducting authority, the penalty of withholding of two annual increments for two years has been imposed upon the petitioner under (E&D) Rules, 2011 vide order dated 02.11.2021.

(Copy of order is attached as Annex-IV)

6. That the penalty order, referred to above, is liable to be reviewed/set-aside on the following grounds amongst the other.

GROUND:-

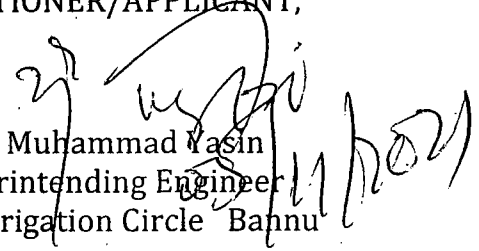
- A. Because, the impugned penalty order is against the findings of the inquiry committee, which has categorically held that "Charge not proved" and the petitioner "not found guilty".
- B. Because as per Rule-14 of E&D Rules, 2011 the Competent Authority, if satisfied that inquiry was conducted in accordance with the provisions of E&D Rules and shall exonerate the accused official if charges are not proved. But where the Competent Authority is satisfied that the inquiry proceedings have not been conducted in accordance with the E&D Rules, 2011 (Rule-14(6) then in that case "after recording reasons in writing" either remand the case to the same inquiry committee or may order for denovo inquiry through another inquiry committee. But in case of petitioner, neither there is dis-satisfaction note of the authority upon inquiry proceedings or upon the findings of the inquiry committee nor remanded or ordered denovo inquiry. This shows that the findings of the inquiry committee in respect of petitioner were correct and admitted so by the authority.
- C. Because the authority has not recorded any reasons as to why not agreeing with the findings of the authority (Secretary Industries) conducted personal hearing and imposed the penalty without recording disagreement note.
- D. Because, the so-called basis as given in summaries of imposing penalty was never a part of charge sheet or show cause notice and as such the petitioner has been penalized without charge sheet, show cause notice etc in respect of "basis" of penalty, whereby the allegations as specified in the charge sheet, have already been held as "not proved" by the constituted inquiry committee, upon report of which the Competent Authority had shown his satisfaction as mentioned in Rule-14 of the E&D Rules, 2011.
- E. The Hon'able C.M is requested to probe into the reasons and persons behind giving and submitting such wrong and baseless summaries for penalizing the petitioner at any cost. This aspect also shows the malafide intentions of the

authorities / officials who have submitted incorrect and wrongly based summaries, especially, after clear findings of the inquiry committee.

- F. Because, the petitioner has been condemned unheard in respect of "so called basis referred in summaries" of imposing penalty which is the violation of principle of Natural Justice as well as of Article 10-A of the Constitution.
- G. Because the allegations, as contained in the charge sheet/ statement of allegations have been declared not proved by the inquiry committee, while for the rest of the "basis" of penalty were never reflected in the charge sheet and as such also not reflected in the show cause notice. Thus the whole action becomes null and void.
- H. Because, a Review petition No. 1399-D/2019 against the order of High Court in W.P No. 214-D/2019 is still pending and subjudice, meaning thereby, the cause of taking action was premature as no loss to Govt: Exchequer is occurred so far. Thus the impugned penalty is based on a premature lis, and cause and amounts to penalize the petitioner on presumptions, which is not permissible in the eyes of law.
- I. Because, the impugned penalty order is against the law, norms of justice, material on record, and also in violation of spirit of E&D Rule, 2011 as well as principle of Natural Justice, hence, liable to be set-aside.

It is, therefore, most humbly prayed that the impugned order dated 26.11.2021 (referred in heading of Review Petition) may very graciously be set-aside/reviewed and the annual increments of the petitioner may be restored with all back and consequential benefits.

PETITIONER/APPLICANT,


Engr: Muhammad Yasin
Superintending Engineer
Bannu Irrigation Circle Bannu

Most Immediate

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

No. SO(E)/Irr:/9-3/99/NAB/Vol-VIII
Dated Peshawar the 08th June, 2022

To

Engr. Muhammad Yaseen,
Superintending Engineer,
Bannu Irrigation Circle, Bannu

Subject:

REVIEW PETITION UNDER RULE-3 OF THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPEAL) RULES, 1986 READ WITH RULE-17 OF THE GOVERNMENT SERVANTS (E&D) RULES, 2011 AGAINST THE PENALTY ORDER NO. SO E/IRR/12-30/2015/INQUIRY DATED 02.11.2021, WHEREBY THE PENALTY OF WITHHOLDING OF TWO ANNUAL INCREMENTS FOR TWO YEARS IS IMPOSED UPON THE PETITIONER.

I am directed to refer to your appeal against the penalty "Withholding of Two Increment for Two Years" received to this Department vide Chief Minister's Secretariat Letter No. SO(Lit/Estt) CMS/KP/4-1/Appeals/2021/11716-17 dated: 26.11.2021 on the subject noted above and to state that the competent authority (Chief Minister, Khyber Pakhtunkhwa) has considered your appeal and has decided to uphold the order of penalty and to reject the review petition having no valid grounds.

Encl; As Above;

(Signature)
(IJAZ KHAN)
Section Officer (Estt.) 8/6/22

Endst: Even No. and Date.

Copy of the above is forwarded to: -

1. The Section Officer (Lit/Estt), Chief Minister's Secretariat, Peshawar, w/r to the letter quoted above.
2. PS to Secretary Irrigation Department.
3. PA to Additional Secretary Irrigation Department.
4. PA to Deputy Secretary (Admn) Irrigation Department.

Section Officer (Estt:)