

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	27.03.2017	<p style="text-align: center;">3</p> <p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u></p> <p style="text-align: center;">Appeal No. 157/2014</p> <p>Hashmat Ullah Qureshi Versus Secretary Government of Khyber Pakhtunkhwa Finance Department, Peshawar and others.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Counsel for the appellant and Mr. Muhammad Jan, Government Pleader for respondents present:</p> <p>2. Hashmat Ullah Qureshi son of Aman Ullah Qureshi hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 21.11.2013 vide which orders in respect of reinstatement of appellant in service dated 08.11.2007 and 19.12.2007 were withdrawn with retrospective effect.</p> <p>3. Brief facts of the case of the appellant are that the appellant was serving as Assistant Accountant BPS-16 when dismissed from service vide order dated 25.05.2005. Against the said order appellant availed departmental remedy and vide office order dated 05.11.2007 he was reinstated in service. It was on 21.11.2013 when the said order of reinstatement of appellant in service was withdrawn constraining him to prefer the instant service appeal.</p>

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3.17

4. Learned counsel for the appellant has argued that the impugned order was passed at the back of the appellant as he was neither given any opportunity of hearing nor any notice etc. That the appellant was therefore condemned unheard and as such the impugned order is void and liable to be set aside.

5. Learned Government Pleader has argued that the impugned order was based on the judgment of the competent court of law.

That the appellant was involved in fraud, defalcation and loss to the government property and was therefore convicted by the learned Addl Special Judge Anti-Corruption and as such there was no need to adhere to the provisions of detailed enquiry. In support of his arguments he placed reliance on Section-3-A according to which a civil servant convicted by a court of law can be proceeded against without formal enquiry.

6. According to Section 3-A where a civil servant is sentenced to imprisonment or fine was based on established charges of corruption or moral turpitude, it shall pass order of dismissal from service of the delinquent person effective from the date of his conviction by a court of law. The competent authority may in the light of the facts and circumstances of the case decide as to whether it is a fit case for taking departmental action and if it so decide it may subject to provision of sub-section 2 of Section 3 imposed any penalty provided by this Ordinance as it may think fit.

7. A careful perusal of sub-section 2 of Section 3 of the said Ordinance would suggest that the competent authority is to inform in writing the accused of the action proposed to be taken

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with regard to him and the grounds of the action and give him a reasonable opportunity of showing cause against that action within 7 days or with such extended period as the competent authority may determine except when the competent authority is satisfied that in the interest of security of Pakistan or any part thereof it is not expedient to give such opportunity or when the accused is dismissed under clause(a) of sub-section (2) of Section-3-A where the competent authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to give the accused an opportunity of showing cause.


8. We have heard arguments of learned counsel for the parties and examined the afore-stated provisions of law as well as facts of the case. The impugned order dated 21.11.2013 is not an elaborate order as the competent authority has not referred to any provision of law or rules nor has given reason for proceedings against the appellant without affording him an opportunity of hearing. Apart from dismissal of appellant from service he is also burdened with ~~the~~ of all payment on account of subsistence grant/pay and allowances etc. for the period w.e.f. 19.12.2006.

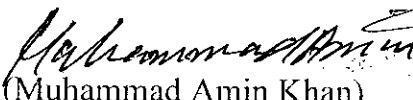
We are of the humble view that such an order should have been passed after affording atleast an opportunity of hearing to the appellant.

9. Since the respondents have failed to afford an opportunity of hearing to the appellant and such an opportunity was required as the appellant was available to the competent authority and, moreover, the competent authority was obliged to hear the appellant regarding the repayment of subsistence grant/pay and

27.03.17

allowances etc. spreading over a period of almost 7 years, <sup>b.</sup> As such we are constrained to accept the present appeal and set aside the impugned order dated 21.11.2013 and, as a consequence thereof direct that the concerned authority shall pass any order deemed appropriate after giving an opportunity of hearing to the appellant for explaining and defending his position. The appellant is therefore reinstated in service. His entitlement to back benefits etc. shall be subject to outcome of the notice and subsequent orders of the competent authority which shall be passed within a period of 2 months from the date of communication of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

  
(Muhammad Azim Khan Afridi)  
Chairman

  
(Muhammad Amin Khan)  
Member

27.03.17

ANNOUNCED  
27.03.2017

28.11.2016

Counsel for the appellant and Mr. Ayub ur Rehman, Assistant alongwith Assistant AG for respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 20.2.17.



(ABDUL LATIF)  
MEMBER



(MUHAMMAD AAMIR NAZIR)  
MEMBER

20.02.2017

Counsel for the appellant and Assistant AG for respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 27.03.2017 before D.B.



(AHMAD HASSAN)  
MEMBER



(MUHAMMAD AAMIR NAZIR)  
MEMBER

29.02.2016

Counsel for the appellant and Mr. Ayub-ur-Rehman, Assistant Treasury Officer alongwith Mr. Muhammad Jan, GP for the respondents present. Rejoinder submitted on behalf of the appellant copy of which is handed over to the respondent-department. To come up for arguments on 26.05.2016 before D.B.



Member



Member

26.05.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Learned counsel for the appellant requested for adjournment. Adjourned for arguments to 6.10.16 before D.B.



Member



Member

06.10.2016

Appellant with counsel and Mr. Ayub-ur-Rehman, Assistant alongwith Mr. Muhammad Jan, GP for respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 28-11-16 before D.B.



(MUHAMMAD AAMIR NAZIR)  
MEMBER



(PIR BAKHSH SHAH)  
MEMBER


25.03.2015

Counsel for the appellant and Mr. Irshad Muhammad Supdt. for respondent No. 1 alongwith Addl: A.G for all respondents present. Requested for adjournment. Directed to submit comments on 2.4.2015 before S.B.

  
Chairman


11 02.04.2015

Appellant with counsel and Mr. Riaz, Assistant for respondent No. 1 alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 14.10.2015.

  
Chairman

14.10.2015

Counsel for the appellant and Mr. Ayub ur Rehman Assistant alongwith Mr. Ziaulla, GP for respondents present Arguments could not be heard due to shortage of time. To come up for arguments on 29-2-16

  
Member

  
Member

8. 29.09.2014

Appeal No. 157/2014  
Mr. Hashim Atullah,

Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 21.11.2013 passed by respondent No.1 vide which the reinstatement orders dated 05.11.2007 and 19.12.2007 of the appellant were withdrawn. Against the above referred impugned order appellant filed departmental appeal on 07.12.2013 which was also rejected vide order dated 29.01.2014, hence the instant appeal on 29.01.2014.

Appellant Deposited  
Security & Process Fee  
Rs. 350/- Bank  
Receipt is Attached with File.

UHO  
7/11/14

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 08.12.2014.

9. 29.09.2014

This case be put before the Final Bench for further proceedings.

Member

Chairman

08.12.2014

Appellant in person and Mr. Ayub-ur-Rehman, Assistant Treasury Officer on behalf of respondent No. 3 with Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for written reply/comments on 25.03.2015.

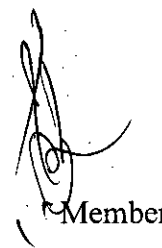
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6.

09.06.2014

Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. *Partly arguments raised.* Counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 07.08.2014.

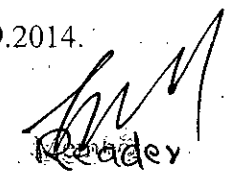
  
Member

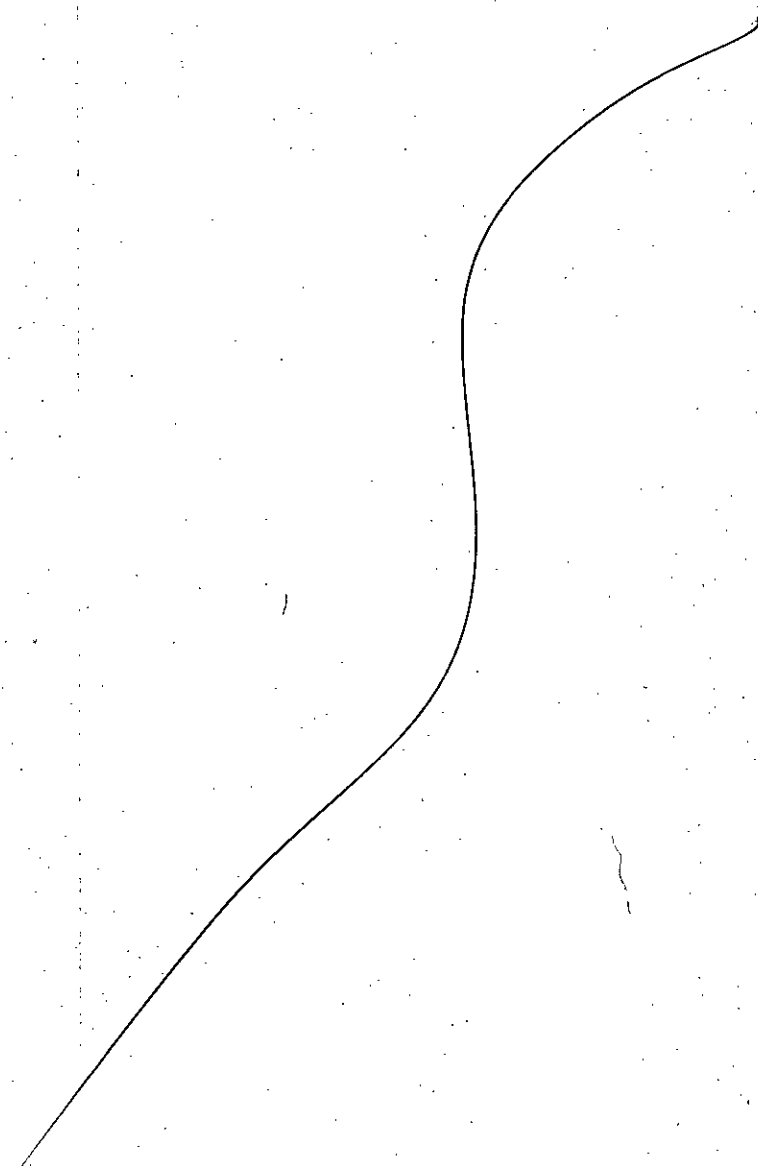
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07.08.2014

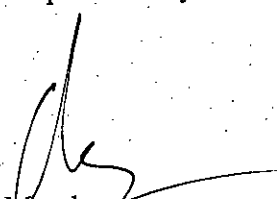
Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. The learned Member is on leave, therefore case to come up for preliminary hearing on 29.09.2014.

  
Reader




3.

26.03.2014 Appellant with counsel present and requested for adjournment. Request accepted. To come up for preliminary hearing on 07.04.2014.

  
Member

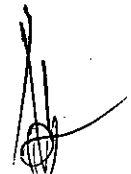
4.

07.04.2014 Counsel for the appellant present. Preliminary arguments partly heard. Pre-admission notice be issued to the GP to assist the Tribunal on 20.05.2014.

  
Member

5.


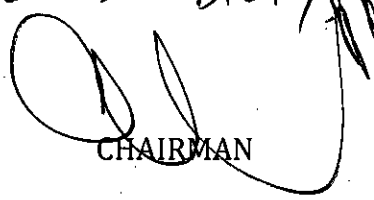
20.05.2014 Junior to counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Junior to counsel for the appellant requested for adjournment due to general strike of the Bar. To come up for preliminary hearing on 09.06.2014.

  
Member

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 157/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	07/02/2014	<p>The appeal of Mr. Hashmatullah resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	11-2-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>26-3-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Hashmatullah Qureshi Ex-Assistant Accountant received today i.e. on 29.01.2014 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexure-B of the appeal is illegible which may be replaced by legible/better one.
- 2- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 138 /S.T,

Dt. 30/01 /2014.

*Handwritten signature*  
REGISTRAR 29/1/2014  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Saadullah Khan Marwat Adv. Pesh.

*Siv*

*Resubmitted H. after*

*completion*

*by*

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

S.A No. 157 /2014

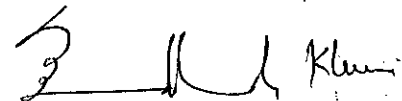
Hashmat Ullah Qureshi Versus Secretary & Others

**I N D E X**

<b>S.#</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Page</b>
1.	Memo of Appeal		1-4
2.	Dismissal Order, 25.05.2005	"A"	5
3.	Convection Order, 15.12.2006	"B"	6-7
4.	Representation for Reinstatement	"C"	8-11
5.	Reinstatement Order, 05.11.2007	"D"	12
6.	Modification Order, 19.12.2007	"E"	13
7.	Representation, 15.03.2011	"F"	14-15
8.	Mercy Petition, 07.02.2013	"G"	16-18
9.	Letter for Stopping of Pay etc, 16.05.2013	"H"	19
10.	Withdrawal of Reinstt:, 21.11.2013	"I"	20
11.	Representation, 07.12.2013	"J"	21-24
12.	Rejection of Representation, 02.01.2014	"K"	25

Appellant

Through



(Saadullah Khan Marwat)  
Advocate

21-A Nasir Mension,  
Shoba Bazar, Peshawar

Ph: 0300-5872676

Dated: 29.01.2014

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

S.A No. 157 /2014

Hashmat Ullah Qureshi S/o Aman Ullah  
Qureshi, Ex - Assistant Accountant,  
District Accounts Officer, Lakki Marwat . . . . . Appellant

Versus

1. Secretary, Govt. of KP, Finance  
Department, Peshawar.
2. Chief Secretary, Govt: of KP,  
Peshawar.
3. District Accounts Officer, Lakki Marwat . . . . . Respondents

**A. W. P. Provision**  
**114**  
**dated 29-1-2014**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT**  
**1974, AGAINST OFFICE ORDER NO.**  
**SO(ESTT)FD/1-76/05, DATED 21.11.2013 OF**  
**RESPONDENT NO. 1 WHEREBY ORDERS OF**  
**REINSTATEMENT DATED 05.11.2007 &**  
**19.12.2007 WERE WITHDRAWN**  
**RETROSPECTIVELY FOR NO LEGAL REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**Respectfully Sheweth:**

1. That appellant was initially appointed as Sub Accountant B-10 on 07.01.1981 and on satisfactory performances, he was promoted to the post of Assistant Accountant, B-13 in April, 1993 and then in year 2007, the post of Assistant Accountant was upgraded to B-16.
2. That in the year 1995, appellant was transferred from the office of District Accounts Office, Bannu to the office of District Accounts Office, Lakki Marwat when at his back F.I.R No. 12, dated 28.08.1996, F.I.R No. 16-21, dated

**29/1/14**

**re-submitted to day**  
**and filed,**  
**7/2/14**

02.10.1996 were registered in P.S, Anti Corruption, Bannu which were tried by the said court and finally, he was convicted and sentenced to 3 years and 3 months by the said court.

3. That as a consequence of the aforesaid conviction, appellant was dismissed from service on 25.05.2005 by the said authority. (Copy as annex "A")
4. That against the said conviction, appellant filed appeals time and again before the Hon'ble Peshawar High Court, Peshawar, Circuit Bench D.I.Khan and finally on 15.12.2006, he was again awarded with the aforesaid punishment and as appellant has under gone the said conviction, so he was released on 26.12.2006. (Copy as annex "B")
5. That appellant submitted representation before the said authority for reinstatement in service. (Copy as annex "C")
6. That on 05.11.2007, appellant was reinstated in service by the authority with immediate effect. (Copy as annex "D")
7. That on 19.12.2007, order dated 05.11.2007 was modified and appellant was reinstated with effect from 26.11.2004 i.e. the date of his dismissal from service, however, he stood suspended from the said date till further orders. (Copy as annex "E")
8. That on 15.03.2011, appellant submitted application to Director Treasury and Accounts, Govt: of KPK to set aside order of suspension, followed by subsequent request dated 18.04.2011 but in vain. (Copy as annex "F")
9. That on 07.02.2013, appellant submitted mercy petition before the authority to kindly set aside order of suspension. (Copy as annex "G")
10. That on 16.05.2013, Director Treasury and Accounts, KPK, Peshawar wrote letter to District Accounts Officer, Lakki

Marwat to stop the subsistence grant of appellant and then his pay was withheld with effect from 01.05.2013. (Copy as annex "H")

11. That on 21.11.2013, the authority did withdraw order of reinstatement dated 05.11.2007 and 19.12.2007 of appellant with further direction to make recovery from him with effect from 19.12.2006 and onward and to deposit the same in Govt: Treasury Office. (Copy as annex "I")
12. That on 07.12.2013, appellant submitted representation before Appellate authority which was rejected on 02.01.2014. (Copies as annex "J" & "K" )

Hence this appeal, inter alia, on the following grounds:-

**GROUND S:**

- a. That the F.I.Rs were registered at the back of appellant as by then he was transferred to District Accounts Office, Lakki Marwat in the year, 1995.
- b. That appellant was put to agonies for indefinite period. He was convicted for 3 times but on appeal, the said judgment was set aside by the Hon'ble High Court, remanding the same for reprobe.
- c. That appellant was reinstated in service by the competent authority with condition of suspension. As per law, suspension only rests for 3 months and could be extended for further 3 months and thereafter the same ceases automatically.
- d. That appellant was trying his best for release of his suspension order but instead, orders of reinstatements were withdrawn for no legal reason.
- e. That the impugned order dated 21.11.2013 is of no legal effect as orders of reinstatements were withdrawn



A

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25-5-05

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

OFFICE ORDER.

NO:SO(ESTT)FD/1-76/2005/. Whereas Hashmatullah, Assistant Accountant District Treasury Bannu was found involved in a case of fraud, defalcation and loss to the government property and a criminal case under sections 409/420/468/471 PPC/5(2) PC ACT, was registered against him at Police Station A.C.E. Bannu vide FIR No.12 dated 28-8-1996.

2. Whereas he was tried in the court of Special Judge Anti-Corruption Northern Region Camp at Bannu for the alleged offences committed by him and was found guilty and sentenced accordingly by the trial court.

3. Whereas in consequence of his conviction, the authority has come to the conclusion that the charges of corruption/moral turpitude stand established against the said official and hence he has made himself liable to the imposition of major penalty of dismissal from service as laid down in Section-3 of NWFP Removal from Service (Special Power) Ordinance, 2000.

4. Now, therefore, the undersigned being competent authority in the case and in exercise of the powers conferred under Section-3 of NWFP Removal From Service (Special Powers) Ordinance, 2000 hereby impose major penalty of dismissal from service on Hashmatullah, Assistant Accountant, District Treasury Bannu with effect from 26-11-2004 i.e. the date of his conviction.

SECRETARY TO GOVT. OF NWFP  
FINANCE DEPARTMENT

No:SO(ESTT)FD/1-76/2005/

Dated Pesh: the 25-5-2005.

Copy forwarded for information and necessary action to:-

1. The Secretary to Govt:of NWFP, Establishment Department, Peshawar.
2. The Accountant General NWFP, Peshawar.
3. The Director Anti-corruption, Estt: Peshawar.
4. All Sr.District Accounts Officer in NWFP.
5. All District/Agency Accounts Officers, NWFP.
6. Mr.Hashmatullah, Ex-Assistant: Accountant  
C/O District Accounts Office, Lakki Marwat.

Attested  
by

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*[Handwritten signature]*

B

6

IN THE COURT OF IKRAMULLAH SHAH ADDL: SPECIAL JUDGE  
ANTI CORRUPTION SOUTHERN REGION AT BANNU.

Case No. 25 of 2006

Date of Institution after Challan:- 17-07-2006

Date of decision:- 15-12-2006

State Vs: 1- Hashmatullah S/O Amanullah  
Ex-Assstt; Accountant treasury  
Bannu resident of Bannu City.  
2- Farooq Shah S/O Daraz Khan,  
resident of Bazid Tughal khel  
District Bannu.

CASE F.I.R NO. 20, DATED 02-10-1996, U/S 409/468/471 PPC  
READ WITH SECTION 5 (2) P.C. ACT OF PS, A.C.E. BANNU.

Judgment

The present case was submitted in this court by the Anticorruption police, Bannu arrest the accused mentioned above vide case F.I.R No.20, Dated 02-10-1996 U/S 409/468/471 PPC Read with Section 5 (2) P.C. ACT of PS, A.C.E. Bannu.

Brief facts of the instant case are the Distt: Accounts Officer, Bannu made a report regarding fraudulent drawl of the lapse deposit amount of Rs. 8,00,000/- through different payment orders. According to report, the following lapsed deposit were passed vide P.O. Nos; and date as under:-

S.No	P.O.No.	Dated	Name of person to whom paid	Amount
1.	91	27/2/1995	Farooq Shah S/O Daraz Khan R/O Bazid Tughal khel.	Rs. 3,00,000/-
2.	92	27/2/1995	-do-	Rs. 2,50,000/-
3.	93	27/2/1995	-do-	Rs. 1,00,000/-
4.	94	27/2/1995	-do-	Rs. 1,50,000/-
			Total	Rs. 8,00,000/-

The prosecution fully proved its case against the accused beyond any shadow of doubt. So keeping in view, the facts and circumstances of the case and the statement of the accused Hashmatullah recorded today in this court in which he pleaded guilty to the charge and placed himself at the mercy of this court.

The accused Hashmatullah is convicted and sentenced u/s 409 PPC for period of Two years R.I. with a fine of Rs. 2000/- in default of payment of fine he will further suffer one month S.I. He is also convicted under section 420 PPC for six months R.I. with the fine of Rs. 1,000/- in default of payment of fine he will further suffer one month S.I. The accused is further convicted and sentenced u/s 5 (2) PC Act for Two years S.I. with a fine of Rs. 8,75,000/- in default of payment of fine, he will further suffer one year S.I. All the regular imprisonments shall run concurrently and the simple imprisonment in default of payment of fines also shall run concurrently after the expiry of regular imprisonments. Further, accused has been convicted in seven connected cases and all the imprisonment shall run concurrently by the meaning of R.I. and after the expiry of that S.I. respectively. The benefit of section 382-1 CR. PC. is also extended to the accused.

So for the case of accused Farooq Shah is concerned, he is the only helping hand to the accused Hashmatullah Khan. He is convicted and sentenced already under gone by him.

Copy of Judgment be given to the convict free of cost. The case property, if any, shall be kept intact till the expiry of period prescribed for appeal / revision and their be returned to its actual owners. File be consigned to record room after necessary completion.

Announced  
19-12-2006

Sd/-  
(Ikramullah Khan)  
Additional Special Judge Anticorruption  
Southern Region at Bannu

Certificate.

Certified that the judgment is consists of (11) Eleven pages. Each page have a \_\_\_\_\_ read over, \_\_\_\_\_ where-ever necessary and signed by me.

19-12-2006

Sd/-  
Additional Special Judge Anticorruption  
Southern Region at Bannu

Attest  
*[Signature]*

B

6

15-12-06

IN THE COURT OF HONORABLE MR. JUSTICE SPECIAL JUDGE  
ANTI CORRUPTION SOUTHERN DISTRICTS AT BANNU.

Case No. 25 of 2006

Date of Institution of the case:- 17-7-2006.

Date of decision:- 15-12-2006.

State

VS:

1- Hashmatullah S/O Amanullah  
Ex-Assstt; Accountant Treasury  
Bannu resident of Bannu City.

2- Farooq Shah S/O Daraz Khan  
President of Bazid Tughal khel  
District Bannu.

CASE F.I.R.NO.20 DATED 02-10-1995 U/S 409/468/471 PPC  
READ WITH SECTION 5(2) P.C. ACT OF 19, A.C.E. BANNU.

JUDGEMENT

The present case was submitted in this court by the anticorruption police against the accused mentioned above vide Case F.I.R. No. 20 dated 02-10-1995 U/S 409/468/471 PPC read with section 5(2) P.C. Act of 19, A.C.E. Bannu.

Brief Facts of the instant case are the Distt; Accounts officer Bannu made a report regarding fraudulent drawl of the lapse deposit amount of Rs. 3,00,000/- through different payment orders. According to report the following lapsed deposit were paid via P.O. Nos; and date as under:-

Additional Special Judge  
Anti Corruption Southern  
Region at Bannu

S.No.	P.O.No.	Dated	Name of person to whom paid	Amount.
1.	91	27/2/1995	Farooq Shah S/O Daraz Khan R/O Bazid Tughal khel.	Rs. 3,00,000/-
2.	92	27/2/1995	-do-	Rs. 2,50,000/-
3.	93	27/2/1995	-do-	Rs. 1,00,000/-
4.	94	27/2/1995	-do-	Rs. 1,50,000/-
TOTAL:-				Rs. 3,00,000/-

o/c  
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The prosecution fully proved its case against the accused beyond any shadow of doubt. So keeping in view, the facts and circumstances of the case and the statement of the accused Hashmatullah recorded to day in this court in which he pleaded guilty to the charge and placed himself at the mercy of this court.

The accused Hashmatullah is convicted and sentenced u/s 409 IPC for period of two years R.I. with a fine of Rs.2000/- in default of payment of fine he will further suffer one month S.I. He is also convicted under Section 409 IPC for six months R.I. with the fine of Rs.1,000/- in default of payment of fine he will further suffer one month S.I. The accused is further convicted and sentenced u/s 3(2) PC Act for two years R.I. with a fine of Rs.3,75,000/- in default of payment of fine he will further suffer one year S.I. All the regular imprisonments shall run concurrently and the simple imprisonment in default of payment of fines also shall run concurrently after the expiry of regular imprisonments. Further, accused has been convicted in seven connected cases and all the imprisonment shall run concurrently by the meaning of R.I. and after the expiry of that S.I. respectively. The benefit of section 32-1 CR.PC. is also extended to the accused.

As for the case of accused "Aboo" which is concerned he is the only helping hand to the accused Hashmatullah Khan. He is convicted and sentenced already under gone by him.

Copy of judgement be given to the convict free of cost. The case property if any shall be kept in tact till the expiry of period prescribed for appeal/revision and then be returned to its actual owners. File be consigned to record room after necessary completion.

ANNOUNCED  
19-12-2005

(Khan Hashmatullah Khan)  
Additional Special Judge Anticorruption  
Southern Region at Bannu.

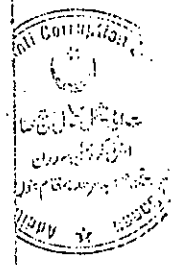
Certificate.

Certified that this judgement is consists of (11) Eleven pages. Each page have been read over, corrected where ever necessary and signed by me.

19-12-2005.

Additional Special Judge Anticorruption  
Southern Region at Bannu

Attested  
[Signature]



[Handwritten signature]

بخدمت جناب سیکریٹری ٹو گورنمنٹ آف این۔ ڈبلیو۔ ایف۔ پی فنانس ڈیپارٹمنٹ پشاور۔  
عنوان:- درخواست برائے بحالی سروس و ادائیگی تقاضا جات۔

جناب عالی!

گذارش بخضور انوریہ کہ من سائل کے محکمہ کے چند اہل کاروں کے خلاف سات ایف۔ آئی آر 1996 میں زیر دفعہ

1- F.I.R.NO.12/96 dated 28/08/1996

۲- F.I.R NO. 16/96 dated 02/10/1996

۳- F.I.R NO. 17/96 dated 02/10/1996

۴- F.I.R NO. 18/96 dated 02/10/1996

۵- F.I.R. NO. 19/96 dated 02/10/1996

۶- F.I.R NO. 20/96 dated 02/10/1996

۷- F.I.R NO. 21/96 dated 02/10/1996

U/S 409/420/468/471/201/P.P.C 5/ (2) P.C Act.

درج کی گئیں۔ ان تمام ایف ای آر میں من سائل کو بے گناہ ملوث کیا گیا۔ من سائل کو جج صاحب انٹی کرپشن نے مورخہ  
 26/11/2004 کو تمام ایف ای آر کا فیصلہ صادر کرتے ہوئے مختلف قسم کے جرمانے اور بہت لمبی چوڑی قید کی سزا سنائی۔  
 من سائل نے اس فیصلہ کے خلاف پشاور ہائی کورٹ پشاور بیچ D.I Kkhan میں مورخہ 13/12/2005 کو اپیل دائر کی۔  
 ہائی کورٹ پشاور بیچ D.I.Khan نے مورخہ 12/02/2005 کو میرے کیس کو ختم کرنے کے بجائے دوبارہ انٹی کرپشن جج  
 صاحب بنوں کو واپس کر دیا۔ اور لکھا کہ اپنے فیصلہ پر نظر ثانی کرو۔ انٹی کرپشن جج صاحب بنوں نے مجھے پھر مورخہ  
 12/05/2005 کو دوبارہ بھاری جرمانوں اور لمبی چوڑی قید کی سزا سنائی۔ من سائل نے ایک دفعہ پھر ہائی کورٹ پشاور بیچ  
 D.I Khan مورخہ 01/06/2005 کو اس فیصلہ کے خلاف اپیل دائر کی۔ ہائی کورٹ پشاور بیچ D.I Khan نے مورخہ  
 04/07/2006 کو پہلے کی طرح اس دفعہ بھی میرے کیس کو ختم کرنے کی بجائے انٹی کرپشن جج صاحب بنوں کو نظر ثانی کے لئے  
 لکھا۔

نوٹ: ان تمام درجہ بالا ایف آر (مقدمات) میں ہائی کورٹ کے فیصلوں کے مطابق من سائل حوالاتی رہا ہے۔ نہ کہ قیدی۔ مگر  
 محکمہ نے 26/11/2004 کو ٹرائیل کورٹ کے فیصلہ پر ہی مجھے نوکری سے برخاست کر دیا تھا۔ اب جب آخری دفعہ جج  
 صاحب انٹی کرپشن کے پاس واپس کیس آیا تو اس نے مجھے کہا کہ اقبال جرم کرو ورنہ سہ بارہ آپ کو قید کرتا ہوں میرے پاس اس کے

علاوہ اور کوئی چارہ نہ تھا کہ اقبال جرم کروں کیونکہ اقبال جرم نہ کرنے کی وجہ سے مجھے پھر سے جیل ہو جاتی۔ میرے پاس تو اپنی بسر زندگی کے لئے رقم نہیں ہے وکیل اور عدالتوں/کچہریوں کے لئے اتنی رقم کہاں سے لاتا۔ عدالتوں کا تو یہ حال ہے کہ ایک ایک کی طرف پھینکتا ہے اور دوسرا دوسرے کی طرف۔ اور میرے پیچھے تو کوئی کیس کی پیروی کرنے والا بھی نہیں تھا۔ اس کے علاوہ جج صاحب نے خود مجھے کہا ہے کہ میں نے آپ سے بہت زیادتی کی ہے انہی کرپشن رولز میں دوسرا میں یکجا نہیں دی جاسکتی یا تو جرمانہ ادا کرنا پڑتا ہے اور یا پھر سزا یعنی جیل کاٹی پڑتی ہے اور میں نے آپ کو دونوں سزائیں سنائیں ہیں۔ مورخہ

19/12/2006 کو یہ فیصلہ سنایا کہ سن سائل نے جتنی بھی حوالات گزاری ہے وہ حوالات اس جج نے قید میں تبدیل کر دی۔ اور یوں مجھے 26/12/2006 کو جیل سے رہائی مل گئی۔ اس کے علاوہ حقیقت کچھ اور ہے۔ اور وہ یہ ہے کہ

۱۔ عمر باز خان جو اس وقت ڈسٹرکٹ اکاؤنٹس آفیسر بنوں تھا اس نے خود عدالت میں اپنے دستخط تسلیم کئے ہیں کہ یہ رقم اس کے دستخط سے برآمد ہوئی ہیں۔

۲۔ یہ ٹھیک ہے کہ کسی کے دستخط کوئی دوسرا بھی کسی طرح کر لے گا۔ لیکن جو بلوں پر اسپیشل سیل لگتی ہے وہ تو ڈسٹرکٹ اکاؤنٹس آفیسر صاحب کی پرسنل کسڈی میں ہوتی ہے تو ان بلوں پر کیسے لگ گئی

۳۔ Payment Order List پر جو دستخط ہوتے ہیں وہ بھی عمر باز نے تسلیم کئے ہیں۔ کہ یہ دستخط اسی نے کئے تھے۔

۴۔ نور محمد خان جو اس وقت اسسٹنٹ اکاؤنٹس آفیسر تھا اس نے خود عدالت میں بیان دیا ہے کہ ہم یہ نہیں کہتے کہ یہ رقم حشمت اللہ کے دستخطوں پر لگی ہے بلکہ ہم مفروضہ قائم کرتے ہیں کہ شاید یہ کام حشمت نے کیا ہو۔

۵۔ ہاں ان دونوں نے مل کر پوری طرح میرے ساتھ دشمنی نبھائی بلکہ یہ نہیں پورے آڈٹ ڈیپارٹمنٹ کو اپنے ساتھ

ملایا اور میرے برخلاف کیا۔ اور اس پر بھی اکتفا نہیں کیا بلکہ میری بیوی بچوں اور دوسرے رشتہ داروں کو خوب دھمکایا۔ کہ اگر اس نے عدالت میں ہمارے خلاف کوئی زبان کھولی تو تمہارے ساتھ ایسا کر لیں گے۔ ویسا کر لیں گے۔ بلکہ ایک ٹیچر تھا جس کا میں نام بھول گیا ہوں وہ میرے گھر جب میں جیل میں تھا بندوق اٹھا کر میرے گھر پہنچ گیا۔ وہاں پر محلہ داروں نے پھر اُسے بھگا دیا۔ اور وہ دوبارہ پھر نہ آیا۔

۶۔ Audit-Report میں جو اسرار الحق آڈیٹر A.C.E نے کی تھی اس نے بھی لکھا ہے کہ یہ کسی فرد واحد کا کام نہیں ہے بلکہ اس میں سارا دفتر شامل ہے۔ اور ساتھ یہ بھی لکھا ہے کہ کسی ایک نے بھی پوری طرح اپنی ڈیوٹی نہیں نبھائی ہے۔ کیا سب دفتر والوں سے مراد صرف میں ہوں۔

۷۔ نیشنل بینک بنوں والوں نے بھی یہ لکھا ہے۔ کہ عمر باز اکاؤنٹس آفیسر بنوں کے دستخط ہم اچھی طرح جانتے ہیں۔

جوبل / اوپر نہیں آئے تھے اور جن پر ہم نے ہیمنٹ کی ہے ان پر عمر باز کے دستخط ٹھیک ٹھیک موجود تھے۔ اور ساتھ ہی اپیشل سیل بھی لگی ہوئی تھی۔ اور ان پر پی او نمبر بھی لگا ہوا تھا۔ جو کہ بالکل صحیح تھا۔

۸۔ نیشنل بینک والوں نے یہ بھی اپنی statement میں لکھا ہے کہ ہم روزانہ بھی اور ماہوار بھی Expenditure Statement ڈسٹرکٹ اکاؤنٹس آفیس بنوں سے Reconcile کرتے ہیں۔ تو جناب اس وقت تک تو ہر چیز ٹھیک تھی بعد میں جب مجھے جیل بھیج دیا گیا تو ان لوگوں نے جو کچھ بھی کیا تھا وہ سب کچھ مجھ پر ڈال دیا۔ کہ یہ بھی اسی نے کیا تھا۔

۹۔ FSL رپورٹ نہیں ہے۔ یعنی Writing Expert Report نہیں ہے۔

۱۰۔ ریاض حسین جو اس وقت انٹی کرپشن دفتر میں CO تھا۔ یہ سارا ڈرامہ اسی نے بنایا تھا۔ پہلے عدالت کو یہ لکھا کہ حشمت اللہ نے اقبال جرم عدالت میں یعنی مجسٹریٹ کے سامنے کیا ہے لیکن جب اس پر عدالت میں جرح ہوئی تو اس نے انکار کر دیا کہ میں نہ تو کبھی حشمت کو عدالت لے کر گیا ہوں اور نہ کبھی اس نے عدالت میں اقبال جرم قبول کیا ہے اس طرح یہ بھی ثابت ہو گیا کہ یہ بھی جھوٹ تھا۔

جناب عالی: جن جن لوگوں کے نام رقوم لکلی تھی۔ یہ سب Directly یا Indirectly طریقے سے ایک دوسرے کے اور اسی طرح عمر باز کے رشتے دار ہیں۔ یہ ایک گروپ تھا۔ جنہوں نے اپنے آپ کو اور خاص طور پر عمر باز، نور محمد اور کوہ نور کو بچانے کے لئے سب ایک ہو گئے۔

۱۱۔ جناب خورشید احمد قصور یہ صاحب جو اس وقت AC/SDM بنوں تھا اور Raiding Magistrate تھا۔ اس نے خود اپنی Statement میں کہا ہے۔ کہ جب میں نے دفتر پر Raid کی تو عمر باز نے پہلے سے تیار شدہ کاغذات میرے حوالے کر دئے۔ اس کے علاوہ مجھے کسی چیز کا پتہ نہیں ہے۔ اور ساتھ یہ بھی کہا کہ اس دوران حشمت اللہ اکاؤنٹس آفس کی مروت میں اپنی ڈیوٹی سرانجام دے رہا تھا۔ جب خورشید احمد قصور یہ صاحب سے یہ سوال کیا گیا کہ کیا آپ Accounts کے متعلق جانتے ہیں۔ تو انہوں نے کہا کہ میں Accounts کے متعلق اس کی ABC سے بھی واقف نہیں ہوں۔ اور اس نے یہ بھی کہا کہ اس لئے Raid کے دوران جو پہلے سے تیار شدہ کاغذات تھے ان ہی پر میں نے اکتفا کیا اور اصل حقائق معلوم نہ کر سکا اور نہ ہی معلوم کرنے کی کوشش کی۔

۱۲۔ یہ بھی ایک حقیقت ہے کہ میں اس دفتر میں 07/11/81 کو سب اکاؤنٹس کی حیثیت سے بھرتی ہوا۔ جب تک دوسرے اکاؤنٹس آفسر تھے تو میری کارکردگی سے متاثر ہو کر مجھے انعامات دیتے اور جب عمر باز آیا تو اس نے مجھ پر الٹا کیس بنا دئے۔ یہ بھی ایک قابل ذکر بات ہے کہ یہ تمام کرپشن 1994-95 جو کہ عمر باز کا پیریڈ ہے اسی میں ہوئی ہے۔

۱۳۔ ایک قابل ذکر بات یہ ہے کہ 20/10/96 Raid کو ہوئی۔

The raid was conducted by the raiding party on 20/10/96. the copies



were attested on 02/10/96 in green ink. It is worth mentioning that the word "attested" mentioned on the voucher was written by someone else.

۱۴۔ عمر باز نے خود یہ تسلیم کیا ہے۔ کہ یہ فراڈ اسی کے پیریڈ میں 96-1993 میں ہوا ہے جب وہ DAO بنوں تھا۔

۱۵۔ جناب عالی اس دفتر میں 50/60 لوگ کام کر رہے تھے۔ دفتر میں کام ایمانداری سے کیا جاتا ہے نہ کہ بے ایمانی سے۔ کیا 50/60 لوگوں سے مراد صرف میں فرد واحد بندہ ہوں۔

۱۶۔ میرے ساتھ کوہ نور اسٹنٹ اکاؤنٹ پر بھی دعوی داری تھی۔ اس کو اس لئے چھوڑ دیا گیا کہ وہ پٹھان تھا۔ اور مجھے اس لئے قربانی کا بکرہ بنا دیا گیا کہ میں پنجابی تھا۔

۱۷۔ جناب حبیب گل خان Dy. Acctt: Genral NWFP نے کہا ہے کہ یہ رپورٹ میری دستخط شدہ نہیں ہے۔ میں نے کسی اور کے متعلق چھان بین اس لئے نہیں کی۔ کہ مجھے صرف حشمت اللہ کے بارے میں کہا گیا تھا۔ کہ اس کو پکڑو اس کا مطلب یہ ہوا کہ صرف مجھے ہی ٹارگٹ کیا گیا تھا۔ ورنہ دوسرے نکلتے۔

جناب عالی! میں ایک ایماندار شخص ہوں اور صرف اس لئے مجھے قربانی کا بکرہ بنا دیا گیا۔ کہ میرے کوئی آگے پیچھے نہ تھا۔ اور دوسری بات یہ کہ میں پنجابی تھا اور باقی لوگ پٹھان تھے۔ اور اس کے علاوہ میرا کوئی پوچھنے والا نہ تھا۔

میں 07/11/1981 سے نوکری کرتا چلا آ رہا تھا۔ اور تاحال کرایہ مکان میں زندگی بسر کر رہا ہوں۔ اگر میں بے ایمانی سے نوکری کرتا تو فراڈ کے سارے طریقوں کو جانتا۔ ان کو بھی کھلاتا اور خود بھی کھاتا۔ اور نہ کہ جیلیں کا شتا اور یہ بھی کہ آج میں انکی طرح جائیدادوں کا مالک ہوتا۔ میرا اللہ گواہ ہے کہ میری کسی قسم کی جائیداد نہیں ہے۔

میں آپ صاحبان سے نہایت ہی ادب کے ساتھ رحم کی اپیل کرتا ہوں اور آپ صاحبان کو اللہ اور اس کے رسول کا واسطہ دیتا ہوں کہ براہ مہربانی میری سروس بحال کر دی جائے اور اس کے ساتھ ہی ساتھ میرے تمام بقایا جات بھی ادا کر دئے جائیں تاکہ میں نئے سرے سے عزت کی زندگی شروع کر سکوں۔

مزید برآں یہ کہ میں 24 سال حکومت کی نوکری کر چکا۔ آٹھ اپریشن کروا چکا ہوں۔ مجھ میں اب مزدوری کرنے کی طاقت نہیں رہی ہے۔ ملازمت ہی میری جائیداد تھی۔ چھوٹے چھوٹے بچے ہیں جو سکول اور کالج جاتے ہیں۔ اسکے علاوہ میری کوئی اور جائیداد نہیں ہے۔

اللہ تعالیٰ آپ کو جلد از جلد مزید ترقیاں نصیب فرماویں۔

العارض

حشمت اللہ قریشی ولد امان اللہ قریشی سابقہ اسٹنٹ اکاؤنٹ ڈسٹرکٹ اکاؤنٹس آفس لکی مروت (حال رہائش: بالا خانہ بالقابل سوکڑی گیٹ بنوں۔)

Attested  
by

D.

12

5-11-07

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

Dated Peshawar, the 5<sup>th</sup> November, 2007.

1/0 - Hashmatullah

OFFICE ORDER

NO:SO(ESTT)FD/1-76/05/ In pursuance of the judgment of Peshawar High Court Cr. A.No.66 of 2005 dated 4-7-2006, Mr.Hashmatullah, Assistant Accountant o/o DAO Lakki Marwat is hereby re-instated in service, with immediate effect.

2. However after his re-instatement in service, the official viz Hashmatullah, A.A. will remain suspended till the decision of trial court is arrived at.

3. Presently vacant post of Assistant Accountant at DAO Lakki Marwat does not exist, so the officer will draw his pay from District Comptroller of Accounts Swat against the post of Assistant Accountant till further orders.

SPECIAL SECRETARY FINANCE  
GOVT: OF NWFP  
FINANCE DEPARTMENT.

No.SO(ESTT)FD/1-76/05/

Dated Peshawar the 5<sup>th</sup> November, 2007.

Copy forwarded-

- 1. The District Comptroller of Accounts Swat.
- 2. The District Accounts Officer, Lakki Marwat.
- ✓ 3. The official concerned.

*Hashmatullah file*  
*ASD/Adm*

(HABIB-UR-REHMAN)  
SECTION OFFICER(ESTT-I)

E.No. of Office Order

Attested  
*my*

E

13

19-12-07

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

Dated Peshawar, the 19<sup>th</sup> December, 2007.

OFFICE ORDER

NO:SO(ESTT)FD/1-76/05/. Consequent upon award of punishment by the Anti-corruption court Mr.Hashmatullah, Assistant Accountant, District Treasury Bannu (while posted in District Treasury Lakki Marwat) was dismissed from service with effect from 26-11-2004 vide order No.SO(Estt)FD/1-76/05 Dated the 25<sup>th</sup> May, 2005.

2. The Peshawar High Court vide judgement dated 4-7-2006, set-aside the orders of punishment of the lower court and remanded the case to the trial court.

3. Now, therefore, in light of judgment of the Peshawar High Court Mr.Hashmatullah, Assistant Accountant, District Treasury Lakki Marwat re-instated with effect from the date of d.dismissal i.e. 26-11-2004.

4. However on re-instatement, he stands suspended from the said date till further orders. During suspension, he will be entitled to the subsistence grant as admissible under the rules.

5. The order No.SO(Estt)FD/1-76/05 Dated the 5<sup>th</sup> November, 2007 (regarding re-instatement of Mr. Hashmatullah) may be deemed to have been modified/substituted to the above extent.

SECRETARY FINANCE

No.SO(Estt)FD/1-76/05/

Dated Pesh: the 19<sup>th</sup> December, 2007.

Copy-forwarded-

1. The Director, Treasuries & Accounts, NWFP, Peshawar.
2. ~~The District Comptroller of Accounts, Swat.~~
3. The District Comptroller of Accounts, Bannu.
4. The District Accounts Officer, Lakki Marwat.
5. The Budget Officer-IV, Finance Department, Peshawar.
6. The official concerned.

Attested  
by

(HABIB-UR-REHMAN)  
SECTION OFFICER(ESTT-I)

o/c  
35

28/12

F  
14  
15.3.11

The Director,  
Treasury & Accounts,  
Govt. of Khyber Pakhtoonkhwa,  
Peshawar.

Through:- The District Accounts Officer, Lakki Marwat.

Subject:

REQUEST FOR SETTING ASIDE THE SUSPENSION ORDERS BEARING NO; SO ( ESTT:) FD/ 1-76/05, dated 19<sup>th</sup> DECEMBER 2007 ISSUED BY THE SECRETARY FINANCE WHEREBY I WAS KEPT UNDER SUSPENSION FROM 19<sup>th</sup> DECEMBER 2007 TILL FURTHER ORDERS THOUGH I WAS RE-INSTATED IN SERVICE WITH EFFECT FROM 26-11-2004.

Sir,

With humble submissions it is stated that I was re-instated in service w-e-f 26/11/2004 but quite contrary to it, I was kept under suspension from the same date i-e: 26/11/2004 and this anomaly has thus caused grievance to me.

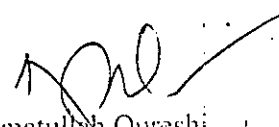
That order of my suspension w-e-f 19/12/2007 till further orders in excess of jurisdiction vested in appointing authority as per laid down in rules and regulations mentioned in the Esta Code. Copy of the relevant page of the Esta Code is enclosed herewith for ready reference. There are no formal orders for extension of the period of suspension beyond the prescribed period of suspension. That neither any denove enquiry was ordered against me nor had any fresh show cause notice been served upon me after November, 2007.

I ~~submit~~ an application to the Honourable Chief Secretary Khyber Pakhtoonkhwa for my re-instatement in service on dated 17/12/2008. In reply to my letter, the Section Officer ( Estt: I) Finance Department vide his letter No.SO (Estt: ) F.D/ 1-76/05 dated 29/1/2009, the District Accounts Officer, Lakki Marwat was asked to write his comments/views in the matter in the light of the prevailing rules/laws so as to proceed in the case.

The District Accounts Officer, Lakki Marwat sent a brief letter alongwith photo copy of the rule to re-instate me vide letter No.DAO/LM17/ Admn:/2010-11/145, dated 22/01/2011.

As I am not in a position to seek other source of livelihood, I therefore prayed your kind honour that I may very kindly be re-instated in service. I will pray for your dignity and honour.

Thanks.  
Yours Faithfully

  
Hashmatullah Qureshi  
s/o

Amanullah Qureshi  
Assistant Accountant  
District Accounts Office,  
Lakki marwat.

Attested  
by

15

15-3-11

No: DAO/LMT/ADMN:/2010-11/307

Dated: 15/3/2011

To,

The Director,  
Treasuries & Accounts,  
Khyber Pakhtoonkhwa, Peshawar.

Subject:- Request for re-instatement of Mr: Hashmatullah Qureshi (Assistant Accountant)

Memo:-

Kindly enclosed find herewith an application in respect of Mr. Hashmatullah Qureshi (Assistant Accountant) regarding his re-instatement is sent herewith for necessary action at your end please.

Attested  
by

15/3  
District Accounts Officer,  
Lakki Marwat.  
15/3

9

16

7-2-13

To

The Secretary Finance,  
Government of Khyber Pakhtoon Khwa,  
Peshawar.

Through: Proper Channel.

**SUBJECT: MERCY PETITION FOR RE-INSTATEMENT IN SERVICE**

Respected Sir,

With humble submissions, it is stated that when I was posted in the office of the District Accounts Officer Lakki Marwat, due to some conspiracy, I was involved in seven different anti-corruption cases during the year 1996 with the remarks that it was yours period at Bannu.

These cases were decided on 26-11-2004, where I was convicted and I was sent to jail by anticorruption judge. During my trial I was under suspension and after conviction all my salaries were stopped without passing any order of my termination.

Afterwards I submitted an appeal against those judgments in the High Court Bench at D.I.Khan where my cases were remanded back to the same judge twice.

At last the anticorruption judge decision was sentence of punishment to a period I remained in jail (3 years and 3 months) so I was released from jail on 26-12-2006, but at that time I had no money even to bear the burden of my Advocates as well as my family. I found no means to help me out that I could submit an appeal in the High Court against those judgments.

I was extremely grieved with those orders, therefore, in the year 2007 (I do not remember exact day and date) I met the most Honorable Secretary Finance at his office. I put up a mercy petition before him for my re-instatement in service w-e-f 26-11-2004 as well as in connection with my cases. He listened me and checked all my documents/ the judgments' orders as well as witnesses of the case.

He agreed and thus re-instated me in service w-e-f 26-11-2004 but quite contrary to it, I was kept under suspension from the same date till further order by the Honorable Secretary Finance vide his orders bearing NO. SO(ESTT)FD/1-76/05, Dated: 19-12-2007.

The order of my suspension w-e-f 19-12-2007 till further orders was in excess of jurisdiction vested in appointing authority as laid down in E & D Rules. No orders for extension of the period of my suspension beyond the prescribed period were issued neither any enquiry was conducted/ ordered against me, nor any show cause notice was served upon me after 19-12-2007.

After long wait for my re-instatement I received no reply from my superiors, therefore, I submit an application to the Honorable Chief Secretary Khyber Pakhtoon khwa for my re-instatement on Dated 17-12-2008.

In reply to my application, the Finance Department Khyber Pakhtoon Khwa through their letter NO: SO(ESTT)FD/1-76/05, Dated: 29-01-2009, asked the District Accounts Officer Lakki Marwat to send his comments/views in the matter, in light of the prevailing rules/Laws so as to proceed further in the case.

The District Accounts Officer Lakki Marwat sent a brief letter along with photo copy of the rule to re-instate me vide his Letter No: DAO-LMT/Admn /2010-11/145, Dated: 22-01-2011, followed by two reminders but in vain.

My honesty speaks as I live in rented building having no personal house/any other property

I am a very poor man. My children are school/college going students. I am the only shelter for my family.

My pay is the only source by which I support my minor children and bear the home expenditures.

Being 52 years of age, I am not in a position to seek any other source of livelihood. I, therefore, once again pray your kind honor to kindly re-instate me in service.

I will pray for your long life, prosperity, dignity and honor for ever.

Attested  
/m

Dated:

-02/02/2013.

Thanks.

Yours obediently

Hashmat Ullah Qureshi  
S/O

Aman Ullah Qureshi  
Assistant Accountant  
District Accounts Office  
Lakki Marwat.

18

7-2-13

OFFICE OF THE DISTRICT ACCOUNTS OFFICERS, LAKKI MARWAT  
No. DAO-LMT/ADMN/2012-13/ 444

Dated: 07.02.2013

To

The Director Treasuries & Accounts,  
Khyber Pakhtoonkhwa,  
Peshawar.

Subject: INFORMATION REGARDING THE SUSPENSION OF THE ASSISTANT  
ACCOUNTANT MR. HASHMATULLAH

Memo:-

Reference to the above subject it is stated that the detail information regarding suspension of Mr. Hashmatullah Assistant Accountant is as under:-

- 1- That the officer concerned was dismissed on 26.11.2004 vide order NO.SO(EST) FD/1-76/05 Dated 25.05.2005,
- 2- That in the light of the Peshawar High Court Bench, D.I.KHAN judgment, the officer concerned was reinstated w.e.f 26.11.2004 by the Secretary Finance, copy attached.
- 3- That the officer concerned took the salaries with arrears of back period.
- 4- That in the reinstatement order, the officer concerned was suspended till further order.
- 5- That after completion of 03 months suspension period, his suspension period was not extended by the higher authorities.
- 6- That after the expiry of the suspension period, the officer concerned should have taken the charge of his duties w.e.f 20.03.2008.

Recommendation:

The officer concerned is cooperative, punctual, well conversant and hard worker. In my opinion the officer concerned may be adjusted against his original post in the best interest of the department.

Attested  
by

16/2/13  
District Accounts Officer,  
Lakki Marwat

Signature



HE

19

16-5-13

FOR IMMEDIATE RELEASE

FORM NO. 1001 (2011)

17 May 2013



# Directorate of Treasuries & Accounts

No: 1-7/DT&A/07/Hashmat/Lakki  
Dated Peshawar the 16-05-2013

~~SECRET~~

To

The District Accounts Officer  
Lakki Marwat

Subject: EMBEZZLEMENT CASE AGAINST MR. HASHMATULLAH ASSISTANT  
ACCOUNTANT O/O THE DISTRICT ACCOUNTS OFFICE, LAKKI MARWAT  
U/S 409/420/466/471 PPC/5(2) P.S. ACE. F. ANNU

Please refer to Section Officer (Asst) Government of Khyber Pakhtunkhwa  
letter No. SO (Asst) FD/1-76/05 dated 25-04-2013 on the above noted subject.

In this connection, it is stated that the competent authority in the  
administrative Department has ordered to stop subsistence grant drawn by Mr.  
Hashmatullah.

Moreover, the official may be directed to provide any such record if any  
appeal made in the court of law after awarding him penalty from High court & Anti  
corruption Court, Bannu.

It is further requested that the total amount of subsistence grant drawn by Mr.  
Hashmatullah may be intimated to this Directorate within two days positively after the  
receipt of this letter so as to proceed further in the matter.

The matter may be treated as most urgent.

*Stamped and  
15/5/2013*  
*20/5/2013*  
Deputy Director  
Treasuries & Accounts  
Khyber Pakhtunkhwa

Enclst No & date even

Copy for information is forwarded to the Section Officer (Asst-1), Finance  
Department, Government of Khyber Pakhtunkhwa, with reference to his above referred letter.

*Attest*  
*[Signature]*

Deputy Director  
Treasuries & Accounts  
Khyber Pakhtunkhwa

I

20 21-11-13



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

Dated Pesh: the 21-11-2013.

OFFICE ORDER.

NO.SO(ESTT)FD/1-76/05/. Consequent upon retrial of the case by the Anti Corruption Court and award of punishment of imprisonment / fine to the accused official Mr. Hashmatullah, Assistant Accountant, Office of the District Accounts Officer, Bannu (now posted in District Accounts Office Lakki Marwat), this Department office order No.SO(Estt)FD/1-76/2005 dated 05-11-2007, and even No. dated 19-12-2007, are hereby withdrawn from its date of issuance.

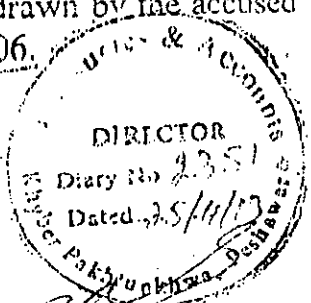
All, payment on account of subsistence grant/ pay and allowances etc drawn by the above named official from the period with effect from 19-12-2006 onward may be recovered from him and deposited in the Government Treasury.

SECRETARY TO GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

Endst: No: As above.

Copy forwarded for information and necessary action to:-

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa, with reference to his letter No.1-76/DT&A/10/Embezzlement case/BU dated 21-06-2013, he is requested to recover the amount of subsistence grant etc, drawn by the accused official after the Judgment of the trial court dated 19-12-2006.
2. The District Comptroller of Accounts Bannu.
3. The District Accounts Officer Lakki Marwat.
4. PS to Finance Secretary, Finance Department.
5. Official concerned.
6. Officer order file.



235/c

*(Handwritten signature)*  
*(Handwritten signature)*  
*(Handwritten signature)*  
**(MEHAMMAD AMAN)**

Attest  
*(Handwritten signature)*

*(Handwritten signature)*

J

21

To,

D. No. 593  
dt. 9.12.13

The Chief Secretary,  
Government of KPK, Peshawar

**Subject:- APPEAL AGAINST OFFICE ORDER NO. SO(ESTT)FD/1-76/05, DATED 21.11.2013 OF SECRETARY, FINANCE DEPARTMENT WHEREBY ORDERS OF REINSTATEMENT DATED 05.11.2007 AND 19.12.2007 WERE WITHDRAWN RETROSPECTIVELY FOR NO LEGAL REASON.**

Respected Sir,

1. That appellant was initially appointed as Sub Accountant B-10 on 07.01.1981 and on satisfactory performances, he was promoted to the post of Assistant Accountant, B-13 in April 1993 and then in year 2007, the post of Assistant Accountant was upgraded to B-16.
2. That in the year 1995, appellant was transferred from the office of District Accounts Office, Bannu to the office of District Accounts Office, Lakki Marwat when at his back F.I.R No. 12, dated 28.08.1996; F.I.R No. 16-21, dated 02.10.1996 were registered in P.S Anti Corruption, Bannu which were tried by the said court and finally he was convicted and sentenced for 3 years and 3 months by the said court.
3. That as a consequence of the aforesaid conviction, appellant was dismissed from service on 25.05.2005 by the said authority.
4. That against the said conviction, appellant filed appeals time and again before the Hon'ble court

Peshawar High Court, Peshawar, Circuit Bench D.I.Khan and finally on 15.12.2006, he was again awarded with the aforesaid punishment and as appellant has undergone the said conviction, so he was released on 26.12.2006.

5. That appellant submitted representation before the said authority for reinstatement in service.
6. That on 05.11.2007, appellant was reinstated in service by the authority with immediate effect.
7. That on 19.12.2007, order dated 05.11.2007 was modified and appellant was reinstated with effect from 26.11.2004 i.e. the date of his dismissal from service, however, he stood suspended from the said date till further orders.
8. That on 15.03.2011, appellant submitted application to Director Treasury and Accounts, Govt: of KPK, to set aside order of suspension, followed by subsequent request dated 18.04.2011.
9. That on 07.02.2013, appellant submitted mercy petition before the authority to kindly set aside order of suspension.
10. That on 16.05.2013, Director Treasury and Accounts, KPK, Peshawar wrote letter to District Accounts Officer, Lakki Marwat to stop the subsistence grant of appellant and his pay was then withheld with effect from 01.05.2013.
11. That on 21.11.2013, the authority did withdraw order of reinstatement dated 05.11.2007 and 19.12.2007 of appellant with further direction to make recovery from him with effect from 19.12.2006 and onward and to deposit the same in Govt: Treasury Office.

12. That on 07.12.2013, appellant submitted representation before Appellate authority which made dead response till date.

Hence this appeal, inter alia, on the following grounds:-

**GROUND S :**

- a. That the F.I.Rs were registered at the back of appellant as by then he was transferred to District Accounts Office, Lakki Marwat in the year, 1995.
- b. That appellant was put to agonies for indefinite period. He was convicted for 3 times but on appeal, the said judgment was set aside by the Hon'ble High Court, by remanding the same for reprobe.
- c. That appellant was reinstated in service by the competent authority with condition of suspension. As per law, suspension only rests for 3 months and could be extended for further 3 months and thereafter the same ceases automatically.
- d. That appellant was trying his best for release of his suspension order but instead, orders of reinstatements were withdrawn for no legal reason.
- e. That the impugned order dated 21.11.2013 is of no legal effect as orders of reinstatements were withdrawn retrospectively and as per law and verdicts of the apex Supreme Court of Pakistan, no administrative order could be made with retrospective effect.
- f. That since the date of reinstatement in service i.e. 05.11.2007, appellant served the department and in a

consequence of his services, he was paid subsistence grant / salaries etc.

- g. That during suspension period, every civil servant is liable under the law to draw all the emoluments of service, so the order of recovery is of no legal effect and is against the judgments of the apex Supreme Court of Pakistan.
- h. That before issuing of the impugned order, appellant was neither served with any notice what to speak of holding of full-fledged inquiry and to give him opportunity of self defence and personal hearing, being mandatory, so the impugned order is not only illegal but is also ab-initio void.
- i. That by not completing the codal formalities, the impugned order is based on malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, the impugned order dated 21.11.2013 of the Secretary Finance Department, be set aside and appellant be reinstated in service by restoring order dated 19.12.2007 with all service benefits, with such other relief as may be deemed proper and just in circumstances of the case .

Dated: 07.12.2013

Appellant

sd/-

Hashmat Ullah  
Ex - Assistant Accountant  
District Accounts Office,  
Lakki Marwat.

Attested  
my



K

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2-1-14

GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

No:SO(ESTT)FD/1-76/05/Hashmatullah/  
Dated Pesh: the 02-01-2014.

To

Mr. Hashmatullah,  
Ex-Assistant Accountant,  
C/O District Accounts Officer  
Lakki Marwat.

Subject:-

APPEAL AGAINST OFFICE ORDER NO.SO(ESTT)FD/1-76/05 DATED 21-11-2013 OF SECRETARY, FINANCE DEPARTMENT WHEREBY ORDERS OF REINSTATEMENT DATED 05-11-2007 AND 19-12-2007 WERE WITHDRAWN RETROSPECTIVELY FOR NO LEGAL REASONS.

I am directed to refer to your appeal dated 07-12-2013 on the above noted subject and to say that the competent authority has been pleased to withhold the subject appeal due to the reasons that it does not comply with the requirements of rule 4 of the Khyber Pakhtunkhwa Civil Servants Appeal Rules, 1986.

(MUHAMMAD AMAN)  
SECTION OFFICER(ESTT:)

Endst: No: As above.

Copy forwarded for information to PSO to Chief Secretary Khyber Pakhtunkhwa with reference to his diary No.13412 dated 10-12-2013.

SECTION OFFICER(ESTT:)

E.No.1-1-14(R.1)

Received from the  
Office on 24.1.2014

Attested  
by

Mna  
24/1/14

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

**S.A No.157/2014**

**HASHMATULLAH QURESHI**

s/o Amanullah Qureshi, ex-Assistant Accountant,

District Accounts Office, Lakki Marwat ..... Appellant

VERSUS

1. Secretary to Government of Khyber Pakhtunkhwa,  
Finance Department, Peshawar.
2. Chief Secretary, Government of Khyber Pakhtunkhwa.
3. District Accounts Officer, Lakki Marwat ..... Respondent

**JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO.1, 2 & 3**

RESPECTFULLY SHEWETH

PRELIMINARY OBJECTIONS.

- i. That the Appellant has got no cause of action.
- ii. That the Appellant has not come to this honorable court with clean hands.
- iii. That the Appellant has concealed the relevant facts of the case from this Honorable Court.
- iv. That the Appeal is not maintainable in its present form.

ON FACTS

S.Nos.1 to 12 Pertain to record. Hence no comments.

GROUND

- A. On the transfer of above named appellant Mr. Hashmatullah Assistant Accountant from the District Accounts Office Bannu to the District Accounts Office Lakki Marwat, the case of fraudulent drawl came to surface therefore, on the report of the then DAO Bannu, FIR No.16-21 dated 02-10-1996 were registered in the Police Station A.C.E, Bannu. The case was tried in the court of Special Judge Anti Corruption Southern Region Bannu. The above named appellant was proven guilty and awarded sentence of rigorous Imprisonment of 05 years under section 5 (2) of the PC Act, and 3 years R.I. each under section 409,420, & 468 of PPC along fines (Annex-I). In the light of above judgment of the court, the said official (Appellant) was dismissed from service w.e.f. 26.11.2004 (date of his conviction) vide office order dated 25.05.2005 (Annex-II).



The accused official filed appeal in the Peshawar High Court DIKhan Bench, against the judgment of the Learned Trial [redacted] Court. The High Court set aside the judgment of the Learned Trial [redacted] Court by remanding the case back to the Learned Trial [redacted] Court for framing of proper charge (Annex-III). In pursuance to the judgment of the High Court, his case for re-instatement in service was under process in this department, while the Learned Trial [redacted] Court i.e. Special Anti Corruption Court Bannu has retrialed the case and decided the same on 19-12-2006, by awarding the following sentences and fines to the accused official (appellant) (Annex-IV):-

- i. 02 years R.I. with fine of Rs. 2000/- u/s 409 PPC .
- ii. 06 months R.I. with a fine of Rs. 1000/- u/s 420 PPC.
- iii. 02 years R.I. with a fine of Rs. 800,000/- u/s 5(2) of PC Act.

The decision of the Learned Trial [redacted] Court was not communicated to this department neither by the court nor the accused official. The accused official (Appellant) neither filed appeal in the High Court against the decision of the Learned Trial Honourable Court dated 19-12-2006 which reveals that he intentionally concealed the factual position of the case from the department.

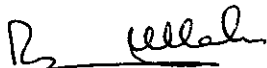
Due to the above mentioned act of the accused official (appellant) (i.e. concealment of factual position of his case) this department remained under the impression that the case is still under trial in the Anti Corruption Court Bannu. Therefore, he was re-instated in service on 05-11-2007, from the date of his conviction i.e. 26.11.2004 but placed under suspension till the decision of the trial court vide office order dated 05.11.2007(Annex-V). He was also allowed to draw subsistence grant as suspended official admissible under the rules. On 17.12.2008, the accused official filed an application to Chief Secretary for representation against department office order dated 15-11-2007 (Annex-VI), for his reinstatement without referring to the second judgment of the Learned Trial [redacted] Court dated 19.12.2006, which proved that the accused official intentionally concealed the facts from the department and tried to even mislead the departmental authority. Thus he was found guilty to misconduct under rule 20 of Khyber Pakhtunkhwa Civil Servant conduct Rules, 1987 (Annex-VII).

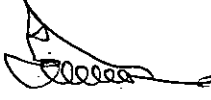
In the revised budget meeting 2011 the case came to surface and after lengthy correspondence with Anti-Corruption Court Bannu the 2<sup>nd</sup> decision of the Learned Trial [redacted] Court (Annex-IV) was obtained on 23-1-2013. Therefore, in the light of said judgment of the Learned Trial [redacted] Court i.e. awarding of imprisonment and fines to the accused official, this department order regarding re-instatement of accused official issued in the light of High Court decision till the decision of the Learned Trial [redacted] Court was withdrawn from the date of issuance (Annex-VIII).

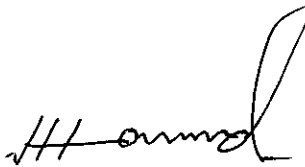
**B.** The appellant was convicted by the Anti-Corruption Court for the embezzlement and corruption.

- C. According to the instructions contained in the Establishment Division O.M. No. 4/12/74-DI/ dated 10<sup>th</sup> March, 1980 a Government Servant arrested on criminal charges should be considered under suspension from the date of arrest and until, the termination of the proceeding against him. In such cases renewal of suspension after every three months is not required. Their case shall be decided on the basis of judgment of the court.
- D. The re-instatement order was withdrawn in the light of court decision i.e. awarding sentences of imprisonment & fines to the appellant.
- E. As per "D" above.
- F. The appellant conceal the facts and mislead the departmental authorities and succeeded to draw subsistence grant / salaries illegally / fraudulently .
- G. Incorrect under rule 5(a) of the Khyber Pakhtunkhwa Government Servant (Efficiency and disciplinary) Rules, 2011 no opportunity of showing cause or personal hearing shall be given where, a Govt: Servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment (Annex-IX).
- H. All orders of the department were in accordance with the rules.

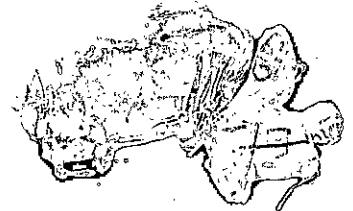
From the foregoing comments, it becomes evident that the accused official was involved in embezzlement of millions of rupees, which was proved before the Court of Law. Furthermore, the official also concealed the factual position of the case under-trial in the Anti Corruption Court from the department authorities and thus drawn subsistence grant during suspension period illegally and fraudulently and also unable to file any appeal in the High Court against the sentence of imprisonment & fine awarded to him by Learned Trial Court. Therefore, it is humbly prayed that instant appeal may be dismissed with cost.

  
Secretary  
Government of Khyber Pakhtunkhwa  
Finance Department, Peshawar  
(Respondent No.1)

  
for  
Chief Secretary  
Government of Khyber Pakhtunkhwa  
(Respondent No.2)

  
District Accounts Officer,  
Lakki Marwat  
(Respondent No.3)

261



IN THE COURT OF IKRAMULLAH KHAN, ADDITIONAL SPECIAL JUDGE, ANTI-CORRUPTION SOUTHERN REGION

CASE NO. 56 OF 2004.

Date of submission of challan:- 23/12/2000.

Date of decision:- 26/11/2004.

THE STATE :-

VERSUS

- 1- HASHMATULLAH KHAN SON OF AMANULLAH KHAN R/O BANNU CITY, ASSISTANT ACCOUNT DAO, OFFICE, BANNU.
- 2- KOH-I-JOOR SON OF SARDAR R/O MANDORI, ASSISTANT ACCOUNTANT DAO, OFFICE, BANNU.
- 3- FAROOQ SHAH SON OF DARAZ KHAN RESIDENT R/O BAZIDA TUGHHEL KHAL, BANNU.

....ACCUSED ON TRIAL:-

CHARGE U/S 409/420/468/471/201 PPC READ WITH SECTION 52) OF P.C ACT VIDE FIR NO. 18 DATED 2/10/1998 OS ACE, BANNU.

JUDGMENT:-

1- The accused named above have been sent up to face trial in case FTR No. 18 dated 2/10/1998 U/S 409/420/471/467/201 PPC read with section 5(2) of the P.C Act, registered at P.S A.C.E, Bannu.

Brief facts of the case are that accused Hashmatullah and Kohi Noor while posted as Assistant Accounts in the District Account

...Contd..

Additional Special Judge  
Anti Corruption Southern  
Region at Bannu

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*7/11/04*

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office, Bannu in the year 1994 while abusing their official positions as Public servants in collusion with accused Farooq Shah dishonestly managed fraudulent drawal of lapsed deposit of Rs. 5,00,000/- (Five lac) on account of refund of lapsed deposit which was paid to the co-accused Farooq Shah and the amount was mis-appropriated. The vouchers of the bill were also destroyed. Thus they caused huge loss to the Government Exchequere and as a result the instant case was registered against them.

3- After completion of the investigation the accused were sent up for trial to this Court, who after complying the provisions of section 265-C Cr:PC were charge-sheeted to which they pleaded not guilty and claimed trial. Trial was accordingly commenced. The prosecution at the trial examined 11 P.Ws and the resume of their evidence is as under:-

1- Israrul Haq, Assistant Account Officer, (P.W. 1) conducted the audit on the request of the Circle Officer, ACE, Bannu and submitted his report, dated 14/11/94. According to him an amount of Rs. 500000/- (Five lac) were drawn and mis-appropriated through

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Additional Special Judge  
Anti Corruption Southern  
Region at Bannu

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 - Initials 'Meh' at the bottom left.  
 - Other illegible initials and marks.

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deceitful and fraudulent means by the officials concerned of the DAO Office, Bannu. He also held responsible the other officials/officers who failed to supervise the work of their subordinate.

5- Riaz Hussain, Assistant Director, FIA (PW:2) on receipt of report of Umer Baz, DAO has registered the case against the accused vide FIR, extra, and then he submitted an application Ex: PW 2/1 to the D.C, Bannu for deputing a Magistrate in order to conduct a raid at DAO Office, Bannu and also requisitioned the services of PW: 1 for the purpose. The D.C, Bannu deputed Rashid Ahmad Quaderia and then the said Magistrate alongwith the witness conducted a raid at DAO office, Bannu and took into possession the relevant record vide recovery memo, Ex: PW 2/2, which comprised of the attested copy of F.O dated 2/12/1994 showing the payment of Rs. five lac i.e, the refund of unclaim deposit of Perog Khan, P-1 and the copy of debt scroll, P-2, copy of page of the cash book for the month of december, 1994 Ex: PW 1-3 in respect of payment of Rs. five lac against head No.1391. According to the witness the auditor conducted the audit and prepared his report and then all the relevant papers were handed over to this witness. ix

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Additional Special Judge  
Anti Corruption Southern  
Region at Bannu

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He recorded the statements of the marginal witnesses, and also took into possession the copies of the relevant documents regarding payment from the National Bank, P-4 to P-7 vide recovery Memo Ex: PW 2/3. He also recorded the statement of the officials of the Bank and that of accused Hashmatullah.

6- Mohammad Atiq Khan, General Manager, National Bank Regional Office, D.I. Khan had handed over the documents P-4 to P/7 vide recovery Memo Ex: PW 2/2 and the covering letter Ex: PW 4/1 in this respect is correct and bears his signature.

7- Rashid Ahmad Qasuria, the then Asstt: Commissioner, Bannu (PW:4) was deputed by the D.C., Bannu for conducting a raid at DAO Office, Bannu and accordingly, he in the presence of the witnesses conducted a raid and recovered P.O list of Rs. Five lakhs P-1, copy of Govt: debt scrol P-2 and copy of cash book P-3 and took into possession vide recovery Memo Ex: PW 2/1. He also prepared his report, Ex: PW 4/1.

*Atiq Khan*

8- Mr. Mohammad, FC (19:5) is marginal witness to the recovery Memo Ex: PW 2/3 whereby the I.C. in his presence took into possession the documents mentioned there. He admitted his signature

Additional Special Judge  
Anti Corruption Southern  
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on the same as correct one.

9- Noor Mohammad Khan, District Account Officer, Bannu (PW:6) deposed that the party of A.G Office was deputed for detection of the forgery and fraudulent drawal of the lapsed deposit amounting to Rs.500000/- through P.O list No.57 dated 1/12/1994, F-1, and he had handed over the relevant record to the said party.

10- Rambail Khan, Sub-Accountant (PW:7) deposed that P.O list Ex: FA mentioned in the Memo Ex: PW 2/2 dated 1/12/1994 was initialled by him, while the entry at SNO.57 in the name of Farooq Jhah was not written by him.

11- Umer Baz Khan, DAO, Bannu (PW:8) deposed that after the unsuccessful attempt of case FIR No.11 through forged vouchers he brought the matter into the notice of D.C, Bannu and also requested Accountant General for inquiry into the matter. That Enquiry Committee was constituted and in the light of the report of Enquiry team the instant case was registered against the accused for embezzlement of Rs.Five Lac.

12- Younis Javed, C.O ACE, Bannu (PW:9) partly investigated the case. He deposed that

Additional Special Judge  
II Corruption Southern  
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he took into possession the documents regarding the account of accused Kohi Noor vide recovery Memo Ex: PW 9/1 sent to him by the Manager, Allied Bank Parade Gate, Bannu City.

After completion of the investigation he submitted complete challan in the case against the accused.

13- Asif Jan, DSP (PW:10) arrested accused Farooq Shah and recorded his statement as well as the supplementary statement of accused Kohi Noor and then submitted his final report.

14- Habib Gul, Deputy Accountant General NWFP (now Retd): PW: 11 deposed that on complaint of Umer Baz DAO, Bannu under his supervision a team was deputed to dig out the embezzlement in the lapsed deposit account drawn through fraudulent means from the Treasury, Bannu. He conducted the inquiry and submitted his detailed report, Ex: PW 11/1, wherein fraudulent withdrawal of an amount of Rs. 5,00,000/- (Five lac) is mentioned.

15- After close of the prosecution evidence the statements of all the accused U/S 342 Cr:PC were recorded, wherein they denied the prosecution allegations and pleaded innocent and their false involvement.

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Additional Special Judge  
Anti Corruption Southern  
Region at Bannu

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there is nothing on record to connect Farooq Shah with fraudulent record of the amount in question and that his name has been added on doubt and suspicion by the committee No.2. It was further argued that no confession nor any direct or indirect evidence was available against him. Lastly he submitted that accused Kohi Noor had got no role at all in the case and no case was proved against him and beside this against the accused Hashmatullah the prosecution had also failed to prove any embezzlement. He prayed for acquittal of the accused.

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18- After hearing the arguments and going through the record it reveals that the prosecution has proved its case against accused Hashmatullah and Farooq Shah beyond any shadow of doubt. PW: 1 Israrul Haq, Assistant Account Officer, who conducted the inquiry has submitted his report, Ex: PW 2/1 where the accused have been fixed with responsibility of mis-appropriation and withdrawal of the amount in question. This factum is further supported by all the evidence produced by the prosecution, especially by the Manager National Bank, Bannu, who handed over the relevant documents P-4 to P-7 to the I.O vide

Additional Special Judge  
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recovery Memo, Ex: PW 2/2. The I.O and the D.A.O and the other witnesses by the prosecution in support of its case have fully supported the prosecution case. Though there are some minor contradictions in their statements but the same are not so fatal. There is nothing on the file which may suggest any enmity or false implication of the accused. Thus the the prosecution has proved its case against the accused Hashmat Ali and Farooq Shah beyond any shadow of doubt, whereas as against the co-accused Kohi Noor no evidence is available which may connect him with the commission of offence. PW: 10 has clearly stated that no proof is available against accused Kohi Noor.

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18- ~~As the result~~ accused Hashmatullah and Farooq Shah are found guilty of the offence accordingly they are convicted U/s 409 PPC to ~~three years~~ three years RI each with a fine of Rs. 10,000/- each or in default thereof to undergo three months RI each. ~~They~~ are further convicted U/s 420 PPC and sentenced to undergo three years RI each with a fine of Rs. 10,000/- or in default thereof to undergo

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3 months SI each, and U/S 468 PPC they are convicted and sentenced to undergo three years RI with a fine of Rs.10,000/- each or in default thereof to undergo 3 months SI each, while U/S 5(2) of the PC Act they are convicted and sentenced to 5 years RI each with a fine of Rs.10,000/- each or in default thereof to suffer 3 months SI each. All the sentences shall run concurrently. Benefit of section 382-B Cr.PC is extended to the accused. The embezzlement amount is ordered to be recovered from the accused as arrears of land revenue. Copy of this Judgment be given to the accused free of costs.

Accused Kohi Noor [redacted] of the charges in the case.

Announced.  
26/11/2004.

(Ikramullah Khan)  
Special Judge, Anti-corruption  
Northern Region Camp: at Bannu.

Certified that this Judgment consists of 11 pages and each page is signed by me after making corrections therein.

Dated 26/11/2004.

(Ikramullah Khan)  
Special Judge, Anti-Corruption  
Northern Region Camp: at Bannu.

Additional Special Judge  
Anti Corruption Southern  
Region: at Bannu

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Annex-II

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

OFFICE ORDER.

NO:SO(ESTT)FD/1-76/2005/. Whereas Hashmatullah, Assistant Accountant District Treasury Bannu was found involved in a case of fraud, defalcation and loss to the government property and a criminal case under sections 409/420/468/471 PPC/5(2) PC ACT, was registered against him at Police Station A.C.E. Bannu vide FIR No.12 dated 28-8-1996.

2. Whereas he was tried in the court of Special Judge Anti-Corruption Northern Region Camp at Bannu for the alleged offences committed by him and was found guilty and sentenced accordingly by the trial court.

3. Whereas in consequence of his conviction, the authority has come to the conclusion that the charges of corruption/moral turpitude stand established against the said official and hence he has made himself liable to the imposition of major penalty of dismissal from service as laid down in Section-3 of NWFP Removal from Service (Special Power) Ordinance, 2000.

4. Now, therefore, the undersigned being competent authority in the case and in exercise of the powers conferred under Section-3 of NWFP Removal From Service (Special Powers) Ordinance, 2000 hereby impose major penalty of dismissal from service on Hashmatullah, Assistant Accountant, District Treasury Bannu with effect from 26-11-2004 i.e. the date of his conviction.

SECRETARY TO GOVT:OF NWFP  
FINANCE DEPARTMENT

No:SO(ESTT)FD/1-76/2005/

Dated Pesh: the 25-5-2005. ✓

Copy forwarded for information and necessary action to:-

1. The Secretary to Govt:of NWFP, Establishment Department, Peshawar.
2. The Accountant General, NWFP, Peshawar.
3. The Director Anti-corruption, Estt: Peshawar.
4. All Sr.District Accounts Officer in NWFP.
5. All District/Agency Accounts Officers, NWFP.
6. Mr.Hashmatullah, Ex-Assistant: Accountant  
C/O District Accounts Office, Lakki Marwat.

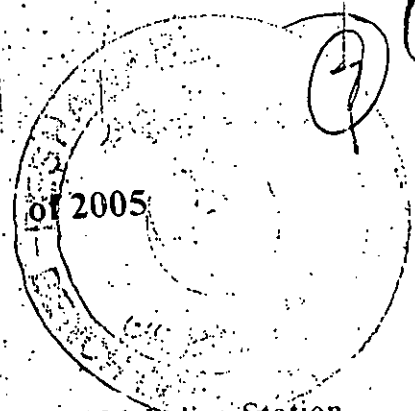
In the Peshawar High Court, Bench D.I. Khan

Amended III  
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Criminal Appeal No

65

of 2005



Case F.I.R No.21 dated 2.10.1996 Police Station  
ACE District Bannu U/Ss 201/ 409/420/468/471  
P.P.C / 5(2) P.C Act.

Farooq Shah S/O Daraz Khan

R/O Bazida Tughul Khe T hsil &

District Bannu .....(Appellant)

Versus

1. The state

2. Umer Baz Khan Distri accounts  
Officer, Bannu .....(Respondents)

Criminal appeal against the Judgment and Order  
Dated 12.05.2005 passed by learned Additional Special  
Judge, Southern Region D.I.Khan Camp at Bannu in  
Case No.57 of 2004 vide which the Appellant was  
convicted and sentenced under Section 468 P.P.C to  
under go three (3) years R.I with fine of Rs.100000/-  
in default thereof to under go three (3) months S.I. the  
benefit of section 382 (b) Cr.P.C was also extended. In  
addition to above 50% of embezzled amount was also  
ordered to be recovered from the Appellant as arrears  
of Land Revenue.

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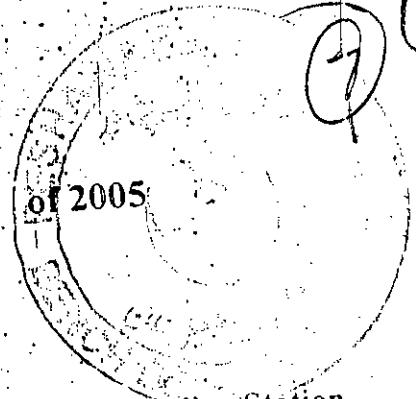
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Income Peshawar High Court, Bench D.I. Khan

Criminal Appeal No

65

of 2005



Case F.I.R No.21 dated 2.10.1996 Police Station  
ACE District Bannu U/Ss 201/ 409/420/468/471  
P.P.C / 5(2) P.C Act.

Farooq Shah S/O Daraz Khan

R/O Bazida Tughul Khe T hsil &

District Bannu .....(Appellant)

Versus

1. The state

2. Umer Baz Khan Distri accounts  
Officer, Bannu .....(Respondents)

Criminal appeal against the Judgment and Order  
Dated 12.05.2005 passed by learned Additional Special  
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Case No.57 of 2004 vide which the Appellant was  
convicted and sentenced under Section 468 P.P.C to  
under go three (3) years R.I with fine of Rs.100000/- in  
default thereof to under go three (3) months S.I. the  
benefit of section 382 (b) Cr.P.C was also extended. In  
addition to above 50% of embezzled amount was also  
ordered to be recovered from the Appellant as arrears  
of Land Revenue.

Entry No 1312  
Filed today

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**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT, D.I. KHAN BENCH**  
**(JUDICIAL DEPARTMENT)**

C.A. No. 65 of 2005

JUDGMENT

Date of hearing 8-6-06 (Judgment announced on 4-7-06)  
Appellant-Petitioner (Farooq Shah) Mr. Zahidul Haq Advocate for  
Respondent (State) Muhammad Sharif Chaudhry O.A.G for  
State

SAID MAROOF KHAN, J.- The District Accounts Officer Bannu lodged a report regarding fraudulent drawal of an amount of Rs.8,75,000/- stating that two bills of the refund of lapsed deposits amounting to Rs.4,25,000/- and Rs.4,50,000/- were passed vide P.Q. Nos.225 and 226 dated 23.4.1995 in the name of one Rabnawaz. That subsequently the perusal of the Bank Scroll revealed that the amount in question was paid to the above named person on 24.4.1995 by transfer to his Bank Account No.2402 in Allied Bank. On inquiry from the Bank it came to light that the amount in question was transferred by Rabnawaz from his account to the Bank Account of Farooq Shah bearing PLS No.3855 in the same Bank. No entry of the bills was made in the Lapsed Deposits Register. Original deposit against which these bills were passed was also not available in the registers. Vouchers of the bills were also not available. Thus it was found that the amount was fraudulently drawn and the bills were passed with the forged signature of the District Accounts Officer by Hashmatullah the concerned dealing Assistant and the main custodian of the record.

  
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2. On the basis of the above report of DAO the case was registered under Sections 409/420/468/471/201 PPC read with Section 5(2) PC Act vide FIR No.21 dated 02.10.1996 at Police Station ACE Bannu. The matter was investigated and the accused-appellants Hashmatullah and Farooq Shah were arrested and on completion of investigation challan was submitted in the Court of learned Additional Special Judge Anti Corruption Southern Circle D.I.Khan at Bannu. On 26.3.2002 charge was framed against the accused-appellants under Sections 409/420/468 PPC read with Section 5(2) Prevention of Corruption Act to which they pleaded not guilty and claimed trial. The prosecution, in order to prove its case against the accused-appellants, examined sixteen P.Ws. The accused-appellants were examined under Section 342 Cr.P.C and in their statements they denied the allegations of prosecution and professed innocence. On conclusion of the trial the learned trial Judge convicted and sentenced both the appellants under the above sections of law vide judgment dated 26.11.2004. Feeling aggrieved the accused-appellants had filed appeals which were accepted vide judgment dated 25.2.2005 and the case was remanded back to the learned trial Court for decision afresh by determining, inter-alia, the questions as to whether all the above penal provisions of law were applicable in the case and whether the ingredients constituting the above offences were proved or not.

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 Senior High Secy  
 at Bannu. S.I.P.  
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3. After remand the learned trial Court heard the arguments of learned counsel for the parties and convicted and



entenced the appellants vide judgment dated 12.5.2005. The relevant paras of the judgment are reproduced below:-

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"So far the case of accused Hashmatullah is concerned, the prosecution has successfully proved his guilt beyond any shadow of doubt. PW-1 Israr-ul-Haq, Assistant Accountant Officer had conducted the enquiry and submitted his report Ex.P.W.1/1 wherein the accused has been fixed with the responsibility of misappropriation and drawal of the amount in question. PW-14 & 15 Bank Managers Allied Bank Parady Gate Bannu has supported the case of the prosecution and beside it; the I.O and DO of the present have also fully supported the case of the prosecution. Accused Hashmatullah was in direct custody of the relevant record and he was the key figure to manipulate the forged documents and on the basis of which he has committed the offence.

So, in these circumstances the accused Hashmatullah is convicted and sentenced w/s 5(2) PC Act to rigorous imprisonment of 05 years and is also convicted and sentenced to a fine of Rs.1,00,000/- or default, whereof he should suffer 03 months SI. He is also convicted and sentenced w/s 409/420 PPC to rigorous imprisonment for a period of 02 years for each offence and to a fine of Rs.1000/- for each offence or default whereof he should suffer 03/3 months SI.

So far the case of the accused Farooq Shah is concerned his guilt is also proved on the record that he has credited the amount in question by claiming it and was credited in a fake account in the name o Rab Nawaz and later on he withdrew the same. There is nothing on record which may reveal that the accused has malafidely been involved in the present case due to any enmity. The amount in question, as evident from the record was transferred from the account of the Rab Nawaz to the Bank account of Farooq Shah bearing AC No.3835. So, in these circumstances, he is convicted and sentenced to

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03 years rigorous imprisonment with a fine of Rs. 1,00,000/- or default whereof he should suffer 03 months SI u/s 468 PPC. Other sections of law against the accused Farooq Shah are not attracted; hence he is acquitted u/s 409/420 PPC/5(2) PC Act.

The sentenced passed against the accused Hashmatullah shall run concurrently.

As accused Hashmatullah and Farooq Shah are the major beneficiaries; hence it is ordered that the embezzled amount be recovered from the both accused in equal shares as arrears of the land revenue."

4. Being aggrieved of the above judgment the appellant Farooq Shah filed Cr. Appeal No.65/2005 whereas Hashmatullah appellant filed Cr. Appeal No.75/2005. Both the appeals having arisen out of one and the same case are being disposed of by this single judgment.

5. I have heard the arguments of M/S Sanaullah Khan Gandapur, Israr-ul-Haq and Zahid-ul-Haq learned counsel for the appellants and Mr. Muhammad Sharif Chaudhary learned Deputy Advocate General for the state and perused the record with their assistance.

6. The impugned judgment reveals that the learned trial Court has convicted and sentenced Hashmatullah appellant for three different offences under Sections 409/420 PPC read with Section 5(2) Prevention of Corruption Act and Muhammad Javed appellant for offence under Section 468 PPC without giving any finding as to whether all the above sections of law were applicable in the case and whether the ingredients constituting the above offences were existing or not. The charge framed against the accused appellants is

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also defective as it has been drawn for four different offences under a single head without specifying the details constituting the four offences of criminal breach of trust, cheating and dishonest inducement, forgery and criminal misconduct. The charge is also not specifically mentioning the allegations against Farooq Shah accused-appellant. The facts stated therein do not constitute four offences for which the appellants have been convicted and sentenced. Due to defect in the charge the appellants have been prejudiced in their defence and as such their conviction and sentence are not sustainable in law.

7. Both the appeals are, therefore, accepted, the conviction and sentence of the appellants are set aside and the case is remanded to the learned trial Court with the direction to frame a proper charge, under separate heads, in view of the allegations against the accused-appellants and then to proceed with the case according to law. As almost all the P.Ws have already been examined and duly cross examined, the parties shall not be bound to re-examine or cross examine them again after framing of modified charge. They shall be at liberty to rely on the evidence already recorded and if they desired so the learned trial Court may with their written consent dispose of the case on the basis of available evidence. Accused-appellant Hashmatullah is detained in Jail. He shall be treated as an under-trial prisoner till the disposal of case. His co-accused Farooq Shah appellant is present on bail and he is directed to appear before the learned Additional Special Judge Anti Corruption Southern Region at Bannu on 15.7.2006. The record of the case be sent back to the learned trial Court within a week. The

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accused Hashmatullah shall be summoned by the learned trial  
Judge, on receipt of the case file, for a date convenient to him.

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Announced  
DT: 04.7.2006.

JUDGE

Office  
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Annex IV

IN THE COURT OF IKRAMULLAH KHAN ADDL: SPECIAL JUDGE  
ANTI CORRUPTION SOUTHERN DISTRICTS AT BANNU.

Case No.25 of 2006

Date of Institution after remand:- 17-7-2006.

Date of decision:- 19-12-2006.

State VS: 1- Hashmatullah S/O Amanullah  
Ex-Asstt; Accountant treasury  
Bannu resident of Bannu City.  
2- Farooq shah S/O Daraz Khan  
resident of Bazid Tughal khel  
district Bannu.

CASE F.I.R.NO.20 DATED 02-10-1996 U/S 409/468/471 PPC  
READ WITH SECTION 5(2) P.C. ACT OF PS, A.C.E. BANNU.

JUDGEMENT

The present case was submitted in this court by  
the anticorruption police Bannu against the accused mentioned  
above wide Case F.I.R. No.20 dated 02-10-1996 U/S 409/468/471  
PPC read with section 5(2) PC act of PS, ACE Bannu.

Breif facts of the instant case are the Distt;  
Accounts officer Bannu made a report regarding fraudulent drawl  
of the lapse deposit amount of Rs.8,00,000/- through diff-  
-errent payment orders. According to report the following  
lapsed deposit were passed vide P.O.Nos; and date as under:-

Additional Special Judge  
Anti Corruption Southern  
Region at Bannu

S.No.	P.O.No.	Dated	Name of person to whom paid	Amount.
1.	91	27/2/1995	Farooq shah S/O Daraz Khen R/O Bazida Tughal khel.	Rs.3,00,000/-
2.	92	27/2/1995	-do-	Rs.2,50,000/-
3.	93	27/2/1995	-do-	Rs.1,00,000/-
4.	94	27/2/1995	-do-	Rs.1,50,000/-
TOTAL:-				Rs.8,00,000/-

The bank scroll dated 06-3-1995 reveals that the amount of Rs.8,00,000/- was paid to Mr.Farooq shah by transfer credit to his Bank account No.3835 (PLS) opened in the Allied Bank Bannu. Neither any entry was available in the register of deposits nor the original deposits against which the refund was made existed in these registers. Vouchers of theses bills were also not available which reveals that the bills have been passed with forged signature of the Distt; Accounts officer Bannu. The amount has been fraudulently drawn by Mr.Hashmatullah as he was officially responsible for such payments to have been made to forged claimant Mr.Farooq shah from the Bank by causing wrongful loss to the Govt; Exchequer.

After the completion of investigations case was putting to this court and accordingly accused were summoned. They were charged sheeted to which they not plead guilty and they claim trial. During the trial prosecution produced and examined Twelve witnesses & the gist of their evidence is as under:-

1- PW-1 is Israrul Haq Asstt:Accounts officer A.G.Office Peshawar who stated that on the request of circle officer Anti corruption Bannu he conducted audit in the present case.

He prepared audit report consisting of three sheets which is Ex:PW 1/1 and correctly bears his signature. According to his observation a sum of Rs.8,00,000/- were drawn and mis appropriated through deceitful and fraudulent means by the official concerned of the D.A.O. Office Bannu. He also held repponsible the other officials who failed to supervise the working of their subordinates. He is also marginal witness to recovery memo: Ex PW 1/2 vide which the raidy Magistrate took into possession certain documents from the office of D.A.O Bannu/ The documents comprise of Photo state Attested copy of P.O.List dated 27-2-1995 showing the payment of

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Rs.8,00,000/-to be refunded in the name of Farooq shah  
 Ex; P-1, Photto state attested copy of Govt;debit scroll  
 Ex:P-2 showing the payments vide P.O.Nos: 91, 92, 93,& 94  
 Photto state attested copy of Page of Cash Book Ex:P-3  
 regarding payment for the month March-1995 in r/O payment  
 made on 06-3-1995 against the head of account 1391. The  
 memo correctly bears the signature.

2- PW-2 is Riaz Hussian Asstt;Director F.I.A. D.I.Khan.  
 Who stated that during the days of occurrence he was posted  
 as C.O.officer ACE, Bannu. On receipt of report of Umarbaz  
 Accounts officer Bannu he registered the present case against  
 the accused vide FIR Ex;P-A, which is correct and correctly  
 bears his signature. The report was in-corporated in the  
 F.I.R. completely. After the registration of case he submitted  
 an application Ex;PW2/1 to D.C.Bannu for depotation of Magis-  
 -trate to supervise the raid proceedings on the office of  
 DAO Office Bannu. He had also requisitioned the services of  
 Mr.Israrul Haq Auditor of ACE, Peshawar. The Auditor arrived  
 in Bannu and on the same day Rashed Ahmad Qasooria was also  
 nominated by the then D.C.Bannu for conducting raid proceeding.  
 So he in their company alongwith the officials of A.C.E.  
 went to the office of D.A.O.Bannu. The raidy Magistrate took  
 into possession the relevent record from the office, prepared  
 the recovery memo; and raid report. Similarly, the auditor  
 conducted the audit and prepared his audit report. They  
 handed over to him all the relevent papers. He recorded state-  
 -ments of marginal witnesses of the memos:prepared by the  
 Magistrate. On 23-10-1996 he took into possession copy of the  
 relevent documents with the regard to payment from National  
 Bank which are Ex;P-4 to P-8 vide recovery memo:Ex:FW 2/2.  
 He recorded statements of the officials of Banks. He arrested

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accused Hashmatullah on 26-11-1996. In he meanwhile he was transferred and remaining investigation was conducted by his successor in his office.

3- PW-3 is Noor Muhammad Khan Distt:Accounts officer Bannu who stated that after detection of fraudulent drawl of lapse deposit and report vide FIR No.11 dated 26-7-96 they made further probe in to the accounts and found that dealing Assis-  
-tants Hashmatullah accused also dishonestly and fraudulently made fraudulent payment through forged vouchers of Rs.8,00,000/- to Farooq sheh through transfer credits to his Bank account No.3235- PLS maintained in the A.B.L.Bannu vide payment order Nos; 91,92,93 & 94; dated 27-2-1995. The vouchers were found missing which fact further indicated that the claim was not genuine and the said amount was drawn fraudulently. This checking and probe was conducted jointly with the team arranged by them and he was the head of the team and while Mr.Habib Gul Dy:Accountant Genrel NWFP, Peshawar. Accordingly they wrote down the joint report Ex;PW 3/1 and submitted the same to A.G. And D.C.Bannu for further necessary action. The D.C.Bannu vide his endorsement recorded at the end of their reports directed registration of case against the concerned accused officials seperately in r/o of each transaction. So accordingly the instant case was reported and registered.

4- PW-4 is Muhammad Attiq Khan Genrel manager N.B.P. main branch Bannu. Who stated that on 2-10-96 the Anticorruption staff came to his Bank and produced a order of Distt; & session Judge Bannu regarding the permission for collecting some documents. They enquired about the payments dated 27-2-1995. Accordingly he prepared the orders Ex;PW 4/1 mentioning the documents and handed over the same to anticorruption staff Bannu. The P.O.List Ex;PW 4/2 containing 3-pages, summary of debit scroll Ex;PW 4/3, photo copy attested of Govt; debit scroll Ex;PW 4/4 containing 5-pages and copy of day to day transaction

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between Bank and DAO office Bannu which is Ex:FW 4/5. All the documents are correct and correctly bears my signature.

5- PW-5 is Rasheed Ahmad Qasooria who stated that during the days of occurrence he was Asstt; Commissioner Bannu. The then D.C. Bannu deputed him as raidy Magistrate to supervise the said proceedings vide order Ex;FW 5/1. In compliance with the same order he raided over the D.A.O Office Bannu and took into possession photo state attested copies of various documents mentioned in the recovery memo: ExPW 5/2. The recovery memo: was prepared in the presence of Marginal witnesses and correctly bears his signature. There-after on the spot he prepared detailed report which is Ex:FW 5/3 And then handed over all the documents alongwith raid report to J.C. ACE Bannu for further investigation.

6- PW-6 Mr. Gul Mohammed Constable ACE, Bannu who is a marginal witness to recovery memo; Ex: FW 6/1 vide which the A.D. ACE, Bannu took into possession some documents mentioned in the recovery memo: from the Manager N.B. Bannu. The memo: correctly bears his signature.

7- PW-7 is Umar Baz Khan DAO, Tank, who stated that during those days he was posted as DAO Bannu when an attempt was made for the drawl of lapse deposit amount through forged vouchers and the same was made un-successful and a case was registered against the accused Hashmatullah and others vide F.I.R. No.96. Then he requested to the A.G. NWFP, Peshawar for deputing an enquiry team to dig out other such like embezzlements in his office. An enquiry team was constituted and on the report of that enquiry team he reported the instant case which was registered vide FIR No.20 dt: 02-10-96 against the accused facing trial. The Anticorruption police Bannu registered the same case for embezzlement of Rs.8,00,000/- through

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P.O.No.91,92,93, and 94 dated 27-2-1995 in favour of accused Farooq shah.

8- PW-8 is Younas Javid who appeared and stated that during the days of occurrence he was transferred as C.O. ACE, Bannu. Investigation of the present case was complete. Then he submitted only complete challan against the accused.

9- PW-9 is Asif Jan Khan DSP, who stated that he has partially investigated the instant case and arrested accused Farooq shah. He has recorded the statement of accused Farooq Shah and also recorded the supplementary statement of accused Koochi Noor.

10- PW-10 is Ghulam Rabbani Manager A.B.L.Bannu. Who deposed that on 28-2-1995 he was Manager A.B.L. Preddy Gate Bannu City when accused Farooq shah S/O Daraz Khan opened the account No.3835 PLS in A.B.L. Bannu with the deposit of Rs.500/-. The S.S. card in respect of Farooq shah was also prepared. Thereafter vide paying slips Rs.6,00,000/-deposited in the said account. The said amount was drawn on various dates from the account through cheques from 03/1995 to 23/4/1995.

11- PW-11 is Mr.Naimetullah Khan Manager A.B.L. Bannu. He is stated that in November-1996 he was posted as Manager A.B.L. Bannu. The Circle Officer ACE, Bannu came to his Bank and took into possession various documents relating to the present case produced by him. The record was taken into the possession through recovery memo; Ex;11/1 in the presence of Other witnesses. He correctly signed the same recovery memo: The detail of the documents is given in the recovery memo: which is present on Judicial file. He has also given statement to the C.O. under section 161 Cr.P.C. which is correctly bears his signature and is PW 11/2.

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12. PW-12 is Habib Gul. Dy. Accountant Genrel MWFP, Pesh: who is the last prosecution witness and he stated that during the days of occurrence he was deputed for conducting enquiry regarding embezzlement in the office of District Accounts office Bannu. He conducted enquiry with the help of a team and submitted detailed report. This report was forwarded by the then D.A.O. Bannu to S.O. MWFP, Pesh: and the then S.O. Bannu. Copy of the report is available on the file of this case which is Ex-PW 12/1 At the S.No.5 of the above report the fraudulent draw relating to the instant case for Rs.3,00,000/- is mentioned. The same amount was drawn through different P.O.Nos by fraudulent means and was paid to accused Farooq Shah.

13- After the close of evidence the statement of both the accused were recorded u/s 342 CR.pC. where-in they denied the allegations and pleaded innocense and their false involvement in the present case. However, they do not wanted to produced defence evidence nor wanted to be examined on Oath U/S 340 (2) CR.PC.

*[Handwritten signature]*  
Judge  
of both the side the case was decided on 23-11-2004 and both the accused were convicted for the charges levelled against them and feeling aggrieved they preferred an appeal requesting for their acquittal.

14. It is worth mentioning that after hearing arguments of both the side the case was decided on 23-11-2004 and both the accused were convicted for the charges levelled against them and feeling aggrieved they preferred an appeal requesting for their acquittal.

15- The worthy Hon: J. J. Shah on 15-2-09 set-aside the conviction and remanded the case back to this court for delivering fresh judgment bases on the allready recorded evidence by examining the following points:-

- (i) Whether the ingredients constituting each of the offence against each of the accused are proved?
- (ii) Whether a particular penal provision is attracted to a particular accused of this case? If so, what should be the appropriate punishment to each of the accused

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keeping in view the role played by him and the benefit derived by him.

(iii) How the embezzlement amount of each case be apportioned between more than one accused for the recovery of arrears of land.

16- After the remand the case file was registered on its old number and accused were summoned and after hearing the arguments of both the sides the case was decided in the light of the directions given by the Hon'ble High Court mentioned above vide this court judgement dated 12-5-2005. Both the accused were again convicted and sentenced under the above sections of law.

17- Being aggrieved of the above judgement of this court dated 12-5-2005 both the accused again preferred appeals in the Hon'ble High court bench D.I.Khan for their acquittal.

18- The worthy Hon'ble court Peshawar bench D.I.Khan on the date 04-7-2006 again set-aside the conviction and sentence and remanded the case to this court with the directions to frame a proper charge, under separate heads as per allegation levelled against both the accused and then to proceed with the case according to law. Further, that as all the PWs have already been examined and duly cross examined, the parties shall not be bound to re-examined Or cross examined them again after framing of modified charge. They shall be at liberty to rely on the evidence already recorded and if they desired so, the trial court may with their written consent disposed off case on the basis of available evidence.

19- After remand the case file was registered and accused were summoned. According to the directions of worthy High court accused were separately charge sheeted under separate heads as per allegation levelled against them, to which they

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pleaded not guilty and claim trial. The learned defence counsel were directed to submit their written options as to whether they rely on the evidence already recorded or want to cross examined the PAs. The parties submitted their written options that they rely on the evidence already recorded and also rely on statements of accused already recorded.

Arguments heard and record perused.

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20- The nutshell of the above arguments are that the prosecution so produced its evidence is a solid, corroborative and certain being a documentary evidence. PW -1 Israrul Haq who is a auditor and an expert of audit field conducted audit and submitted his report Ex;PW1/1 where in accused held responsible for with-drawl and mis-appropriation of amount the Rs.8,00,000/-through deceitful and fraudulent means and caused pecuniary loss to the Govt; Exchequer being custodian of the Treasury record. Further, investigation officer Riaz Hussain proved the allegations levelled against the accused as a correct as these were reported in the F.I.R. He taken into possession all the relevent record relating to the above fraudulent drawl in the supervision of a Magistrate and also got audited the same and in support he taken into possession bank record regarding payment to accused Farooq shah. He has also further recorded the statements of PWA Umar Baz Khan then DAO, Noor Muhammad Asstt;Accounts office Bannu who clearly stated that Hashmatullah Khan as posted as Assistant accountant in treasury Bannu. He is accused Hashmatullah who with the collusion of accused Farooq shah prepared bogus vouchers and then he himself entered in to the dairy registers and into the register of lapse deposit and issued payment order himself. Entry regarding passing of the vouchers was also made by him. He has not only passed the above vouchers

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rather recorded a certificate and identified the claimant being his personal friend and completed codel formalities and thus got payment illegally from the Bank. The Bank officials appeared as prosecution witnesses and supported the prosecution version that accused Farooq shah has opened account in their Bank and the above amount of Rs.8,00,000/-was transferred to his account which he has drawn through seperate cheques. All the above statements of Fws reveals that in fact accused Hashmatullah is the person who played main role. He was responsible for maintaining record and he was custodian of all the record i.e. register of amount of lapse deposit, he was holding a very responsible seat and by abusing his official position he had left no stone unturned to clean hand on the amount which was withdrawn under his signature. The entire embezzlement was done so boldly and tactfully by putting dust in the eyes of other officers. The prosecutions proved that accused hashmatullah had dominion over the Govt; property being a public servant and he by abusing his official position with the active connivance of his co-accused Farooq shah managed illegal drawl from lapse deposit account for sum of Rs.8,00,000/- and embezzled the same and committed the offence of criminal breach of trust. Further, it is also proved from the prosecution evidence that accused Hashmatullah was posted as Asstt: Accountant treasury Bannu, he by abusing his official position and with the co-llusion of co-accused entered and passed bogus claimes and after getting payments destroyed the same. This illegal act of the accused proved that he is committed offence of cheating and dishonest inducement. The role accused hashmatullah being a public servant and mis-using his official position and causing wrongful loss mentioned above to public ex-chequer and corresponding gain to himself also proved by the evidence so produced and accused was not able to shatter

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the prosecution evidence, therefore, they are guilty of the offences charged with and the prosecution has fully succeeded to prove case against them beyond any shady of doubt. Therefore, I convict accused Hashmatullah u/s 409 PPC to Two years R.I. with a fine of Rs.2,000/- and in default one month S.II. He is further convicted u/s 420 PPC to six months R.I. with a fine of Rs.1,000/- and in default one month S.I. He is also convicted u/s 5 (2) PC Act, to two years R.I. with a fine of Rs.8,00,000/- and in default of payment of fine one year S.I. All the regular imprisonments shall run concurrently and the simple imprisonment in default of payment of fine also shall run concurrently but after the expiry of regular imprisonments. Further accused has been convicted in seven connected cases and all the imprisonments shall run concurrently by the meaning of R.I. and after that S.I. respectively. The section of benefit of section 382-B CR.PC. is also extended to the accused.

So far the case of Farooq Shah accused is concerned he is the only helping hand to the accused Hashmatullah Khan. He is convicted and sentenced already undergone by him.

Copy of judgement be given to convict free of cost. The case property if any, shall be kept in tact till the expiry of period prescribed for appeal/revision and then be returned to its actual owner. This file be consigned to record room.

ANNOUNCED  
19-12-2006.

CERTIFICATE.

Certified that this judgement is consists of Eleven Pages. Each page has been read, signed and corrected with my initial where necessary.

19-12-2006.

(Ikramullah Khan)  
Addl; Special Judge,  
Anticorruption  
Southern Distts: Bannu.

(Ikramullah Khan)  
Addl; Special Judge,  
Anticorruption  
Southern Distts: Bannu.

(42) 188 - (163)

IN THE COURT OF MR. IKRAMULLAH KHAN ADDL: SPECIAL JUDGE  
ANTI CORRUPTION SOUTHERN DISTRICTS AT BANNU.

Case No. 26 of 2006.

Date of Institution after remand:- 17/7/2006

Date of Decision:- 19-12-2006.

State

Vs;

1- Hashmatullah S/O Amanullah  
Ex-Sub Accountant of Distt;  
Accounts office Bannu & resident  
of Bannu City.

2-Farooq shah S/O Daraz Khan resident  
of Bazid Tughal khel, Distt; Bannu.

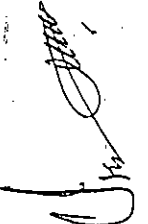
CASE F.I.R.NO. 21 DATED 02/10/1996 UNDER SECTIONS 409/420/  
468/PPC READ WITH SECTION 5(2) PC ACT OF P.S. ACE BANNU.

JUDGEMENT.

The case in hand was put in court by the Anti corrup-  
-tion police Bannu against the accused vide F.I.R.No.21 Dt:  
02/10/1996 under Sections 409/420/468/PPC read with section  
5 (2) PC act of PS, ACE Bannu.

Breif fact. of the case are that the then Distt;  
Accounts officer Bannu reported regarding the fraudulent drawl  
of Rs.8,75,000/- (Eight lac, Seventy Five thousand only) from  
the lapse deposit account by the above accused to the Anti-  
-corruption police Bannu and the same formed a base for the  
Registration of the case against the accused, facing trial &  
the same is as under:-

" Two (2) Bills of refund of lapsed deposits amounting  
to Rs.4,25,000/- and Rs.4,50,000/- were passed vide F.O.No.225  
dated 23/4/95 and No.226 Dt: 23/4/95 respectively in the name  
of Rabnawaz. The perusal of Bank scroll shows that the amount  
in question were paid to the above named person on 24/4/95 by  
transfer to his Bank account No.2402 (Current account) open  
in the Allied Bank Bannu. On enquiry from the Bank it came  
to the notice that the amount in question was transferred by  
Mr.Rabnawaz from his account to the Bank account of Mr.Farooq  
Shah bearing account No.3835 ( PLS) open in the same Bank.  
No entry of the Bills were made in the lapse deposits register.  
Original deposit against which these bills were passed also

  
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District Bannu



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not available in the registers. Vouchers of the bills were also not available. From the facts it is evident that the amount was fraudulently drawn and the bills were passed with the forged signature of the Distt; Accounts officer, by Mr. Hashmatullah the concerned dealing Assistant of the seat and the main custodian of the record."

After the completion of investigation the case in hand was sent to this court for trial. Accordingly the case was registered in the relevant register and accused were summoned. After getting their formal appearance they were delivered copies of documents as required under the law. After complying the codel formalities accused were charge sheeted to which they pleaded not guilty and claim trial. Accordingly trial commenced. During the trial prosecution produced 16 witnesses in the support of prosecution case. The gist of the evidence of each Pws is given below:-

1- PW-1 is Israrul Haq Assistant Accounts officer who conducted audit in the present case and his report is Ex- PW 1/1 (Three pages), placed on file. According to his observation a sum of Rs.8,75,000/- were drawn and misappropriated through deceitful and fraudulent means by the official of Distt; Accounts office Bannu. He has also held responsible the other officials of the said office to supervise the work of their subordinates. He is also marginal witness to recovery memo; Ex; PW 1/2 vide which the raiding Magistrate during raid took into possession certain documents from the D.A.O. Office Bannu. The documents comprises of photo copy of P.O.List dated 23/4/1995 showing payment of Rs.8,75,000/-that is the refund of un-claimed deposit in respect of Mr.Rabnawaz Ex; P-1, Photo state attested Govt; debit scroll Ex; P-2 showing that a sum of Rs.8,75,000/-vide P.O.No.225 and 226 have been paid to Rabnawaz. Similarly, photo state attested copy of the page of the Cash Book of payment Ex. P-3 for the month of April 1995 in r/o payment of Rs.8,75,000/-made on 24/4/1995. He admitted that the memo; is correct and correctly bears his signature.

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2- PW-2 is Riaz Hussain Asstt: Director who deposed that during the days of occurrence he was posted as C.O. ACE, Bannu. On receipt of report of Umar Bax Khan Accounts officer Bannu He register the case against the accused vide F.I.R. Ex-PA, which correctly bears his signature. After the registration of case he submitted an application Ex. PW2/1 to then D.C. Bannu for deputation of Magistrate to supervise the raid proceedings on the office of D.A..OBannu. He has also requisitioned the services of Israrul Haq Auditor A.C.S. Peshawar. On the arrival of auditor on the same day Rashid Ahmad Qasooria was also nominated for conducting raid proceedings. So he accompanied with officials of ACE, went to the office of DAO Bannu. In his presence raiding Magistrate took into possession the relevent record, prepared the recovery memo: and raid report. Similarly, the auditor conducted the audit and prepared his audit report. Both handed over to him all the relevent papers. He recorded the statements of Marginal witnesses of the memos: prepared by the Magistrate. On 23-10-1996 he took into possession copies of the relevent documents with regard to payment from National Bank which are Exp-4 to P-8 vide Mmo: Ex:PW 2/2. He also recorded statements of Bank officials. He arrested accused Hashmatullah on 20-11-1996. In the meanwhile he was transferred and remaining investigation was conducted by his successor in his office.

3- PW-3 is Muhammad Atteeq Khan Manager National Bank Bannu who deposed that on 23-10-96 anticorruption staff came to the Bank alongwith order of the Distt. & Session Judge Bannu and enquired about two payments of Rs.4,25,000/- & Rs.4,50,000/-. He prepared an office order alongwith relevent documents which Ex; PW 3/1 and 3/2. The summery of Govt; debit scroll, Ex: PW3/3 and copy of Govt; debit scroll Ex; PW 3/4 containing of seven pages. He stated that copy of Ex PW 3/4 pertains day to day transaction/ verification register. All the copies were duly attested and handed over to the ACE Authority.

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4- PW-4 is Rashid Ahmad Qasooria who stated that during the days of occurrence he was posted as Asst; Commissioner Bannu. On the direction of the then D.C. Bannu, he raided the office of DAO Bannu. During the raid proceedings he took into possession photto copy of P.O. List dated 23-4-95 showing the payment of Rs. 4,25,000/- bearing No. 225, and P.O. No. 226 dated 24-4-95 for Rs. 4,50,000/-. The same is Ex PW 4/1. He also took into possession copy of Govt; debit Scroll dated 24-4-95 which is Ex. PW 4/2. He also took into possession phot#o copy of Cash Book showing the payment of Rs. 8,75,000/- which is Ex. PW 4/3. All these documents were taken into possession vide recovery memo: Ex PW 4/4. He prepared the raid report Ex PW 4/5 and handed over all the documents to the CO ACE, Bannu for further investigation.

5- PW-5 is Abdur keuf Sub Inspector who stated that he had arrested the accused Koochi Noor and recorded his statement under section 161 CR PC.

6- PW-6 is Umar Baz Khan Distt; Accounts officer Bannu who deposed that in those days he was D.A.O. Bannu. The case F.I.R. No. 11 of 1996 was detected during the attempt. After that he brought the same into the notice of Deputy Commissioner Bannu who ordered for joint enquiry by the then Asstt; Commissioner Bannu Rashid Ahmad Qasooria and by him. Both of them conducted enquiry and in the result of raid conducted by Rashid Ahmad Qasooria and audit conducted by Israrul Haq Auditor, the other cases were also registered. During the raid documents were taken into possession vide recovery memo: already Ex PW4/4. The memo; correctly bears the signature. He also given complete statement during the raid which is Ex; PW 6/1.

7- PW -7 is Rambeel Khan Sub Accountant Treasury Bannu. Who stated that in those days he was also posted on the same post. He has seen the P.O. List containing payment orders No. 225 for Rs. 4,25,000/- and P.O. No. 226 for Rs. 4,50,000/- in respect of Rabnawaz dated 23-4-95. The same were initialed by him and subsequently were signed by Noor Muhammed, the then

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Asstt; Accounts officer Bannu. He stated that he does not remember that who made the entries in the payment order list who ever he does not know about the entries at S.No.225 & 226 in the P.O.List that who has made the same entries because he was also running at the same time the seat of pension payment.

8- PW-8 is Noor Ayaz Khan supdt: registration office Bannu He stated that he is a marginal witness to recovery memo: Ex PW 8/1 vide which the circle officer ACE, Bannu took into possession one form 'Alaf' from the Distt; Registrar recording accused the Daraz Khan. Further that memo is correct and correctly bears his signature.

9- PW -9 is Gul Muhammad Khan Constable who stated that he is marginal witness to recovery memo: Ex PW 9/1 vide which the A.D.C. Bannu took into possession some documents from National Bank of Pakistan Bannu and that memo; is correct and correctly bears his signature.

10- PW-10 is Ayaz Khan Contable who appeared and stated that he is marginal witness to recovery memo; Ex PW 10/1 vide which the I.O. took into possession some documents from ALLIED Bank Bannu and the the memo; correctly bears his signature. He has also signed the memo; Ex PW 10/2 vide which the I.O. sent some documents took to F.S.L. for Chemical Examination. He is also marginal witness to Parcel Memo: Ex; 10/3 vide which the C.O. sent some documents to FSI which correctly bears his signature.

11- IW-11 is Noor Muhammad Khan Distt; Accounts Officer Bannu who deposed that during those days he was posted as Asstt; A/Cs Officer Bannu. That a party of A.G. Office alongwith officials of D.A.O. Office Bannu were deputed for conducting enquiry regarding fraudulent drawl from lapse deposit amount through P.O.No.225 and 226 dated 23-4-95 for Rs.4,50,000/- & Rs.4,25,000 in the name of Rabnawaz. The enquiry committee conducted enquiry and he headed the local staff and handed over the relevent documents to the committee.

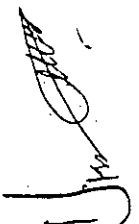
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12. PW 12 is Younas Javid CO ACE Bannu who stated that when he taken over charge as CO Bannu the instant case was under investigation. That it was transpired, the accused Rab Nawaz Khan was un-traced, who was required for investigation. That he thoroughly interogated accused Farooq shah and then took into possession form 'Alaf' from the registration office in the name of Daraz Khan son of Shah Maraz Khan resident of Bazid Tughal khel Bannu through recovery memo; Ex PW 8/1, the memo; Correctly bears his signature as well as signatures of marginal witnesses. He also took into possession one original card bearing thumb impression and photto graphs of Rab Nawaz S/O Shah Maraz Khan Ex PW-1, account opening form of Rab Nawaz S/O Shah Maraz Ex PW-2 and cheque No. 35010051 dated 26-4-98 in the name of Rab Nawaz S/O Shah Maraz bearing his thumb impression for amounting Rs. 8,75,000/- which is Ex PW-3. All these documents were recovered through memo; Ex PW 10/1, which correctly bears his signature as well as signature of witnesses. He also sealed into parcel form 'Alaf' of Draz Khan S/O Shah Maraz Khan regarding Identity Card No. 155-34-398338 which was already in his custody. In this regard the memo; was prepared in the presence of Marginal witnesses which is Ex; PW 10/2 and correctly bears his signature. He also sealed into parcel documents already recovered on 27-7-98 through memo; Ex; PW 10/3 and sent the same to F.S.L. for opinion. He also received the F.S.L. Report which is Ex: PK. He also prepared recovery memo; Ex :PW 12/1 for documents regarding the account of accused Koohi Noor in Allied Bank Bannu. Which is correctly bears his signature. After completion of his investigation he submitted complete challan of the instant case.

13- PW-13 is Muhammad Asif Jan D.S.P. who stated that he partially investigated the instant case and arrested accused Farooq shah and also recorded his statement. Further that he recorded supplementary statement of accused Koohi Noor. He also recorded the statement of PW Maqbool Zaman.

  
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Anti Corruption Southern  
Region at Bannu

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14. PW 14 is Haimatullah Khan Manager Allied Bank Limited Freedy Gate Bannu. He stated that when fraudulent drawl of the instant case was detected then the ACE staff came to his Bank and enquired about the account of Rab Nawaz Khan. He produced the relevent documents to them and prepared attested copies and detailed mentioned in recovery memo; Ex PW 14/1. He correctly signed the recovery memo; and also given statement to the C.O. ACE, Bannu which is Ex PW 14/2.

15- PW 15 is Ahmad Nawaz Khan Manager A.B.L. Proedy Gate Bannu. He stated that he produced documents regarding of a/c of accused Rab Nawaz Khan B/O Shah Maraz Khan who opend the A/C No. 2402 dated 19-4-95 with thumb impression. That an amount of Rs.8,75,000/-had been drawn through Cheque No.35010051 dated 26-4-95. He produced the relevent documents mentioned in memo:already Ex PW 10/1 which correctly bears his signature. He has also given written statement to the CO ACE Bannu which is Ex: PW 15/1.

16- PW 16 is Habib Gul the then Dy: Accountant General Pesh: who stated that during those days he was posted as Asstt: A/cs Officer A.G. Office Peshawar. He was deputed by the Accountant Genrel Pesh: for verification/enquiry of the Embazzelment in the office of D.A.O. Bannu. He alongwith his team thoroughly checked the record of DAO Office Bannu and submitted detailed report about the said embazzelement. The report was reported by the DAO Bannu, copy of which is Ex PW 16/1. At S.No.6 of the above said report the fraudulent drawl in the instant case for Rs.8,75,000/-is mentioned.

17- After the close of evidence, statements of both the accused were recorded under section 342 CR.PC. where in they denied the allegations and pleaded innocence and their false involvement in the present case. However, they do not wanted to produced defence nor wanted to be examined on oath u/s 340 sub section(2) CR.PC.

18- It is worth mentioning that after hearing arguments

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of both the sides the case was decided on 26-11-2004 and both the accused were convicted for the above charge and feeling aggrieved they preferred an appeal requesting for acquittal.

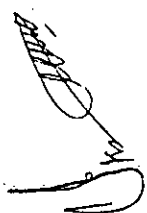
19- The worthy Pesh: High Court Bench D.I. Khan on 25-2-2005 set-aside ~~the conviction~~ and remanded the case back to this court for ~~delivering~~ fresh judgement based on the already recorded evidence by examining the following points:-

- (i) Whether the ingredience constituting each of the offence against each of the accused are proved?
- (ii) Whether a particular penpal provision is attracted to a particular accused of this case? If so, what should be the appropriate punishment to each of the accused keeping in view the role played by him and the benefit derived by him?
- (iii) How the embezzlement amount of each case shall be apportioned between more than one accused for its recovery as arrear of land revenue?

20- After the remand, the case file was registered on its old number, and accused were summoned. After hearing arguments of both the sides the case was decided in the light of the directions given by the H'able Pesh: High Court Bench D.I. Khan mentioned above vide this court judgement dated 12-5-2005 and both the accused were again convicted and sentenced under the sections of Law.

21- Being aggrieved of the above judgement of this court dated 12-5-2005 both the accused again preferred appeals in H'able Pesh: High Court Bench D.I. Khan for their acquittal.

22- The worthy Pesh: High Court bench D.I. Khan on 04-7-2006 again set-aside the conviction and sentence and remanded the case back to this court with the directions to frame proper charge, under seperate heads, as per allegations levelled against both the accused and then to proceed with the case according to law. Further, that as all the PWS have already been examined and duly cross examined, the parties shall be bound to re-examine or cross examine them again after

  
Additional Special Judge  
Anti Corruption Southern  
Region at Bannu

Judge

Judge

TA  
D.

framing of modified charge. They shall be at liberty to rely on the evidence already recorded and they desired so, The trial court may with their written consent dispose off case on the basis of available evidence.

23- After remand the case file received and was register and accused were summoned. According to the Direction of the Worthy Pesh: High Court bench D.I. Khan accused were separately charge sheeted under separate head as per allegations level against them to which they pleaded not guilty and claim trial. The learned defence counsel were directed to submit their written options as to whether they rely on the evidence already recorded or want to cross-examine the Fws. The parties submitted their written options, that they rely on evidence already recorded and also rely on statements of accused already recorded.

Arguments heard and record perused.

The crux of the above arguments are that the prosecution so produced its evidence is a solid, corroborative and certain being a documentary evidence. Fw Israrul Haq who is a auditor and submitted his report ex Fw 1/1 who is accused and held responsible for the mis-appropriation of amount mentioned in charge. Further, Riaz Hussain the Investigation officer also proved the allegations levelled against the accused as correct as narrated in the F.I.R. He also taken into possession all the relevant record regarding fraudulent drawl. The Pesh: Magistrate also supported the prosecution case. Further, Fws Umar Baz Khan the then DAO Bannu and Noor Muhammad Asstt; A/Cs Officer Bannu clearly connected the accused Hashmatullah with the commission of offence. The Bank officials also supported the prosecution version and handed over the documents regarding the payment to accused Farooq Shah. All the Fws: statements reveals that in fact accused Hashmatullah was the person who played the main role, he was the responsible for maintaining record and he was the custodian of all record regarding the lapse deposit, he was holding a very responsible

Additional Special Judge  
Anti Corruption Southern  
Region at Bannu



(10)

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post and by abusing his official position he had left no stone un-turned to clean hand on the amount which was withdrawn under his signature. The entire embezzlement was done so boldly & tactfully by putting dust in the eye of other officers. The prosecution proved that accused Hashmatullah had dominion over the Govt; property being a public servant and by abusing his official position with active connivance of co-accused Farooq shah managed illegal drawl of Lapse deposit accounts for sum of Rs.8,75,000/- and embezzled the same. By doing so he committed the offence of criminal breach of trust. It is also proved by the prosecution evidence that accused Hashmatullah was posted as Asstt; Accountant Treasury Bannu and he by abusing his official position and with the collusion of co-accused entered and passed bogus claimes & after getting payment destroyed the same. This illegal act of the accused proved offence of cheating and dis-honest enducement. The role of accused Hashmatullah being a public servant and mis-abusing his official position and causing loss to public ex-chequer and wrongly gain to himself also proved by evidence of the prosecution so discussed & accused was not able to shatter the statement of FWS.

Additional Special Judge  
Anti Corruption Southern  
Region at Bannu

So as the case of accused Farooq shah concerned, he is helping hand in this entire episode as both the accused had their hands in Glove, therefore he with the help of accused Hashmatullah who was then posted as Asstt; Accountant in Treasury Bannu prepared forged documents regarding the fraudulent drawl from lapse deposit accounts and it is proved from the evidence that both of them succeeded and caused the huge loss to public ex-chequer. This role of the accused Farooq shah proved offence of forgery committed by him which has been further proved by the auditor ACE, I.O, Bank Officials and officers of the Accounts office Bannu beyond any shadow of doubt. There is nothing on file which may suggest any enmity or false implication of the accused.

(11)

The prosecution fully proved its case against the accused beyond any shadow of doubt. So keeping in view, the facts and circumstances of the case and the statement of the accused Hashmatullah recorded to day in this court in which he pleaded guilty to the charge and placed himself at the mercy of this court:

① The accused Hashmatullah is convicted and sentenced u/s 409 PPC for period of ~~two years~~ R.I. with a fine of Rs.2000/- in default of payment of fine he will further suffer one month S.I. He is also convicted under Section 420 PPC for six months R.I. with the fine of Rs.1,000/- in default of payment of fine he will further suffer one month S.I. The accused is further convicted and sentenced u/s 5(2) PC Act for two years R.I. with a fine of Rs.8,75,000/- in default of payment of fine he will further suffer one year S.I. All the regular imprisonments shall run concurrently and the simple imprisonment in default of payment of fines also shall run concurrently after the expiry of regular imprisonments. Further, accused has been convicted in seven connected cases and all the imprisonments shall run concurrently by the meaning of R.I. and after the expiry of that S.I. respectively. The benefit of section 382-B CR.PC. is also extended to the accused.

So for the case of accused Parooq shah is concerned he is the only helping hand to the accused Hashmatullah Khan. He is convicted and sentenced already under gone by him.

Copy of judgement be given to the convict free of cost. The case property if any shall be kept in tact till the expiry of period prescribed for appeal/revision and then be returned to its actual owners. File be consigned to record room after necessary completion.

ANNOUNCED

19-12-2006

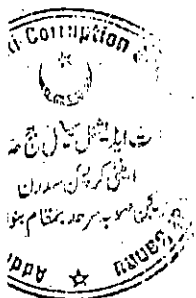
Certificate.

Certified that this judgement is consists of (11) Eleven pages. Each page have been read over, connected where-ever necessary and signed by me.

19-12-2006.

(Ikramullah Khan)  
Additional Special Judge Anticorruption  
Southern Region at Bannu.

Additional Special Judge Anticorruption  
Southern Region at Bannu



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Modified order at Page-105/c.

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

Dated Peshawar, the 5<sup>th</sup> November, 2007.

OFFICE ORDER

NO:SO(ESTT)FD/1-76/05/. In pursuance of the judgment of Peshawar High Court Cr. A.No.66 of 2005 dated 4-7-2006, Mr.Hashmatullah, Assistant Accountant o/o DAO Lakki Marwat is hereby re-instated in service, with immediate effect.

2. However after his re-instatement in service, the official viz Hashmatullah, A.A. will remain suspended till the decision of trial court is arrived at.

3. Presently vacant post of Assistant Accountant at DAO Lakki Marwat does not exist, so the officer will draw his pay from District Comptroller of Accounts Swat against the post of Assistant Accountant till further orders.

SPECIAL SECRETARY FINANCE  
GOVT: OF NWFP  
FINANCE DEPARTMENT.

Dated Pesh: the 5<sup>th</sup> November, 2007.

No.SO(Estt)FD/1-76/05/

Copy forwarded-

- 1. The District Comptroller of Accounts Swat.
- 2. The District Accounts Officer, Lakki Marwat.
- 3. The official concerned.

*Handwritten initials and date: 7/11/07*

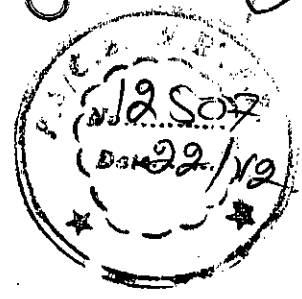
*Signature*  
(HABIB-UR-REHMAN)  
SECTION OFFICER(ESTT-I)

F.Name. Office Order

*o/c*  
*Handwritten initials and date: 7/11/07*

Annex VI  
113

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The Chief Secretary,  
Government of N.W.F.P.,  
Peshawar.

subject:- REPRESENTATION AGAINST OFFICE ORDER BEARING  
NO: SO(ESTT:)FD/1-76/05 OF 19TH DECEMBER, 2007  
PASSED BY SECRETARY FINANCE WHEREBY PETITIONER  
WAS KEPT UNDER SUSPENSION FROM 19TH DECEMBER,  
2007 TILL FURTHER ORDERS THOUGH THE PETITIONER  
WAS REINSTATED IN SERVICE WITH EFFECT FROM 26.11.2004.

sir,

The petitioner was reinstated with effect from 26.11.2004  
but quite contrary to it the Petitioner was deemed to be  
under suspension with effect from 26.11.2004, and this anomaly  
has thus caused grievance to the petitioner.

- 1- That order of his suspension with effect from 19.12.2007 till further orders is in excess of jurisdiction vested in appointing authority.
- 2- There is no formal order for extension of the period of suspension beyond the prescribed period of suspension.
- 3- That neither any denovo enquiry was ordered against the petitioner nor any fresh show cause Notice had been served upon the petitioner after November, 2007.
- 4- That such act of indifference and omission has been and source of embassament both financial and administrative since petitioner has been kept stranded and stuck up and

Prov: Finance Controller  
Dairy No 5456  
Date 24/12/08

Secy Finance NWFP  
Dairy No 19944  
Date 23/12/08

~~AF & DT~~  
off Mr. ...

Chief Secretary  
NWFP

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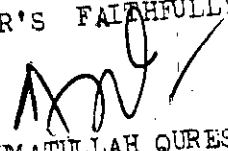
has not been in a position to seek other source of livelihood under the aspiration of fullscale reinstatement.

It is therefore prayed that order for formal induction of the petitioner as Assistant Accountant may graciously be passed.

The petitioner also wishes to be heard in person.

With Regards.

YOUR'S FAITHFULLY,

  
HASHMATULLAH QURESHI SON OF  
AMANULLAH QURESHI,  
ASSTT: ACCOUNTANT, DISTRICT ACCOUNTS  
OFFICE, LAKKI MARWAT.

Dated 17.12.2008.

Provided further that non-Gazetted Government servant may, without such sanction, undertake a small enterprise which absorbs family labour and where he does so shall file details of the enterprise along with the declaration of assets.

(2) Notwithstanding anything contained in sub-rule (1) no Government servant shall associate himself with any private trust, foundation or similar other institution which is not sponsored by Government.

(3) This rule does not apply to sports activities and memberships of recreation clubs.

17. No Government servant shall live beyond his means, etc. — No Government servant shall live beyond his means or indulge in ostentation on occasions of marriage or other ceremonies.

18. Subletting of residential accommodation allotted by Government. — No Government servant shall, except with the prior permission of the Head of the Department, sublet residential accommodation or any portion thereof let to him by Government.

19. Insolvency and habitual indebtedness. — (1) A Government servant shall avoid habitual indebtedness. If a Government servant is adjudged or declared insolvent or if the whole or that portion of his salary which is liable to attachment is frequently attached for debt or has been continuously so attached for a period of two years, or is attached for a sum which, in ordinary circumstances, he cannot repay within a period of two years, he shall be presumed to have contravened these rules unless he proves that the insolvency or indebtedness is the result of circumstances which, with the exercise of ordinary diligence, he could not have foreseen or over which he had no control and was not due to extravagant or dissipated habits.

(2) A Government servant who applied to be or is adjudged or declared insolvent shall forthwith report his insolvency to the Head of the Office or Department or to the Secretary of the Administrative Department, as the case may be, in which he is employed.

20. Report by Government servant in case of his involvement in a criminal case. — If a Government servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction, as the case may be, to the notice of the Head of the Office or Department immediately or, if he is arrested and released on bail, soon after such release.

I



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

Dated Pesh: the 21-11-2013.

OFFICE ORDER.

NO.SO(ESTT)FD/1-76/05/. Consequent upon retrial of the case by the Anti Corruption Court and award of punishment of imprisonment / fine to the accused official Mr. Hashmatullah, Assistant Accountant, Office of the District Accounts Officer, Bannu (now posted in District Accounts Office Lakki Marwat), this Department office order No.SO(Estt)FD/1-76/2005 dated 05-11-2007, and even No. dated 19-12-2007, are hereby withdrawn from its date of issuance.

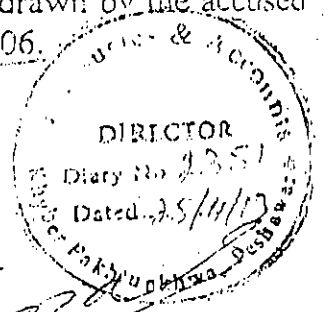
All, payment on account of subsistence grant/ pay and allowances etc drawn by the above named official from the period with effect from 19-12-2006 onward may be recovered from him and deposited in the Government Treasury.

SECRETARY TO GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

Endst: No: As above.

Copy forwarded for information and necessary action to:-

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa, with reference to his letter No.1-76/DT&A/10/Embezzlement case/BU dated 21-06-2013, he is requested to recover the amount of subsistence grant etc, drawn by the accused official after the Judgment of the trial court dated 19-12-2006.
2. The District Comptroller of Accounts Bannu.
3. The District Accounts Officer Lakki Marwat.
4. PS to Finance Secretary, Finance Department.
5. Official concerned.
6. Officer order file.



(MEHAMMAD AMAN)

Attest  
*[Signature]*

*[Signature]*

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

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

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

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

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

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

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

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry.

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



1

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A. No. 157/2014

Hasmat Ullah Qureshi

Versus

Secretary & others

**REPLICATION**

**Respectfully Sheweth,**

**PRELIMINARY OBJECTION.**

All the four preliminary objections are illegal and incorrect, No reason in support of the same is ever given as to why the appellant has got no cause of action, he has not come to the Hon'ble Tribunal and not Court with clean hands, he has concealed the relevant facts of the case from this Hon'ble Tribunal and appeal is not maintainable in its present form.

**ON FACTS**

1-12. Not replied/commented upon by the respondents of the paras of the facts of appeal, so the same are admitted correct by them.

**GROUNDS:**

- a. In response to para "a" of the ground, it was incumbent upon DAO, Bannu to enquire well within time the fraudulent drawl of money, if any and apart from the same, every year audit took place but no such fraudulent drawl was ever pointed/dig out.
- b. Not correct. The ground of the appeal is correct.
- c. As above.
- d. Not correct. If order of reinstatement was required to be withdrawn, the same shall have been per the mandate of law and not otherwise i.e to serve appellant with show cause notice and to provide him full opportunity of defence but the same lacks in the case in hand.
- e. Not correct. The ground of the appeal is correct regarding withdrawal of reinstatement order with retrospective effect.




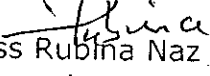
- f. As above.
- g. Not correct. Rule 5 (a) of KP Govt. Servant (Efficiency & Disciplinary) Rule, 2011 is not applicable to the case in hand as the matter pertains to previous NWFP, Govt. Servants (E&D) Rules, 1973, so the action taken in the matter is quite contrary to law and on this score alone, the impugned order is liable to set aside.
- h. Not correct. The ground of the appeal is correct regarding none completion of codal formalities. Moreso, appellant performed duty at the legal order of the competent authority, so he is/was entitled for all benefits of rendered service and as per the judgment of the apex Court, duty is equal to pay, so the retrospective order of recovery from appellant has no legal value.

In similar circumstances, the apex Court is/was pleased to reinstate aggrieved person in service with all back benefits vide judgment dated 23.04.2013, 2011 SCMR 1220, 2001 PLC CS 241, 1992 SCMR 1420, etc. (Copies attached)

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.

Through

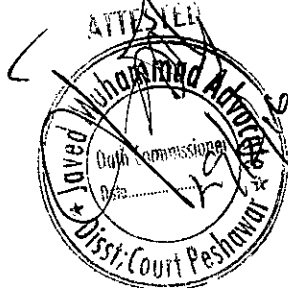
Dated: .02.2016

  
 Appellant  
  
 Saadullah Khan Marwat  
  
 Arbab Saif Ul Kamal  
  
 Miss Rubina Naz  
 Advocates,

**AFFIDAVIT**

I, Hashmat Ullah Qureshi Appellant do hereby solemnly affirm and declare that contents of **Appeal & Rejoinder** are true and correct to the best of my knowledge and belief while that of the reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.



  
 DEPONENT

2011 S C M R 1220

**[Supreme Court of Pakistan]****Present: Javed Iqbal, Raja Fayyaz Ahmed and Asif Saeed Khan Khosa, JJ****CHIEF SECRETARY, GOVERNMENT OF PUNJAB and others---Petitioners****Versus****Malik ASIF HAYAT---Respondent**

Civil Petition No. 1724-L of 2010, decided on 2nd March, 2011.

(On appeal from the judgment dated 1-7-2010 passed by Punjab Service Tribunal Lahore in Appeal No. 1059 of 2010).

**(a) Punjab Service Tribunals Act (IX of 1974)---**

----S. 4---Rules of Business (Punjab), 1974, Sched. VII, Part-A, Sr.No.20---General Clauses Act (X of 1897), Ss. 21 & 24---Constitution of Pakistan, Art. 212(3)---Appeal---Assistant Sub-Inspector Police---Dismissal from service vide order dated 5-7-1994---Absence from duty, charge of--- Rejection of appeal by Service Tribunal---Directive of Chief Minister issued after accepting mercy petition in June 2005 for reinstatement of appellant in service---Implementation of such directive by authority, completion of one year "D" Course by appellant and subsequent entering his name into list "E" and promotion to post of Sub-Inspector---Issuance of show-cause notice by authority after two years alleging appellant's reinstatement to be illegal---Withdrawal of such show-cause notice by authority during pendency of constitutional petition filed thereagainst by appellant and his subsequent promotion to rank of Inspector---Dismissal of appellant from service w.e.f. 5-7-1997 vide order dated 2-1-2002 on same ground---Acceptance of appellant's appeal by Service Tribunal--- Validity---Termination from service could not be with retrospective effect, unless competent authority was expressly empowered in such regard by some statute or rules made thereunder--- Rectification of wrong could not be made at any time as such practice would be dangerous for service structure---Action should have been initiated against those responsible for such wrong, which could not be rectified after a long period during which appellant had not only performed his duties diligently, but had also earned few promotions and risen to rank of Inspector---Such directive of Chief Minister was not liable to be implemented, but none had shown moral courage to resist same at relevant time--- Appellant had been reinstated in year 2005, while he had been dismissed finally on 2-1-2010 with retrospective effect i.e. on 5-7-1994---Authority had already exercised powers under S. 21 of General Clauses Act, 1897 by issuing show-cause notice, which had been withdrawn during proceedings pending in High Court---Such matter was closed once for all and could not be re-opened without any lawful justification---Order passed by a competent authority, if had taken effect and conferred a legal right, could not be rescinded subject to

certain lawful exceptions---Supreme Court refused to grant leave to appeal, in circumstances.

Syed Sikandar Ali Shah v. Auditor-General of Pakistan 2002 SCMR 1124; Noor Muhammad v. Member Election Commission 1985 SCMR 1178; Noor Muhammad v. Muhammad Abdullah 1984 SCMR 1578; Dr. Muhammad Abdul Latif v. The Province of East Pakistan PLD 1964 Dacca 647 and Nawab Syed Raunaq Ali v. Chief Settlement Commissioner PLD 1973 SC 236 **rel.**

**(b) Civil service---**

---Service could not be terminated with retrospective effect, unless competent authority was expressly empowered in such regard by some statute or rules made thereunder.

Syed Sikandar Ali Shah v. Auditor-General of Pakistan 2002 SCMR 1124; Noor Muhammad v. Member Election Commission 1985 SCMR 1178; Noor Muhammad v. Muhammad Abdullah 1984 SCMR 1578; Dr. Muhammad Abdul Latif v. The Province of East Pakistan PLD 1964 Dacca 647 and Nawab Syed Raunaq Ali v. Chief Settlement Commissioner PLD 1973 SC 236 **rel.**

**(c) Locus poenitentiae, principle of---**

----Power of authorities to pass orders to retrace wrong steps taken by them---Scope.

There can hardly be any dispute with the rule that apart from the provisions of section 21 of the General Clauses Act, locus poenitentiae, i.e. the power of receding till a decisive step is taken, is available to the Government or the relevant authorities. In fact, the existence of such a power is necessary in the case of all authorities empowered to pass orders to retrace the wrong steps taken by them. The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights.

Pakistan, through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi PLD 1969 SC 407; Chairman, Selection Committee v. Wasif Zamir Ahmad 1997 SCMR 15; Miss Safia Hameed v. Chairman, Selection Committee Medical College, Quetta and 6 others PLD 1979 Quetta 12; Secretary, Ministry of Finance v. Muhammad Himayatullah Farukh PLD 1969 SC 407; Chief Secretary, Government of Sindh and another v. Sher Muhammad Makhdoom and 2 others PLD 1991 SC 973 and Government of Sindh v. Niaz Ahmed 1991 SCMR 2293 **rel.**

Ch. Khadim Hussain Qaiser, Additional A.-G. and Muddasir Khalid Abbasi, A.A.-G. for Petitioners.

Pervaiz Inayat Malik, Advocate Supreme Court for Respondent.

Date of hearing: 2nd March, 2011.

**JUDGMENT**

**JAVED IQBAL, J.**---This petition for leave to appeal is directed against judgment dated 1-7-2010 passed by learned Punjab Service Tribunal, Lahore, whereby appeal preferred on behalf of Malik Asif Hayat (respondent) has been accepted.

2. Precisely stated the facts of the case are that "the appellant joined Punjab Police as ASI on 24-1-2009 and while serving as such he proceeded on 90 days leave in 1994. The appellant was to report back to his department on 21-4-1994, however he did not report back and applied for extension in leave which was not further sanctioned and ultimately S.P. Headquarter taking ex parte decision dismissed the appellant vide order dated 5-7-1994. The appellant after exhausting departmental remedy preferred service appeal before this Tribunal which was rejected. However in 2005 he submitted Mercy Petition before the Chief Minister, Punjab who vide serial No.20, of Scheduled VII Part A Rules of Business 1974 issued a directive for reinstatement of the appellant into service which was duly implemented by the then Inspector-General of Police Punjab/respondent No.2 and the appellant was reinstated into service on 28-6-2005. Accordingly the appellant joined the department on 11-7-2005 and transferred to Investigation Wing where he completed one year "D" Course. He was made confirmed as ASI vide order dated 11-11-2005 w.e.f. 24-1-1990 and his name was entered into list "E" accordingly. He was further promoted to the post of Sub-Inspector on 2-1-2006 w.e.f. 30-9-1997. He was confirmed in the rank of Sub-Inspector w.e.f. 30-9-1997 vide order dated 11-6-2007. However, the department issued him a show cause notice on 24-7-2007 that he was wrongly reinstated into service by the Chief Minister and he has withdrawn his earlier directive hence why his order of reinstatement dated 28-6-2005 may not be withdrawn. The said show-cause notice was challenged by the appellant through Writ Petition No.7352 of 2007 in Hon'ble Lahore High Court, Lahore and during the pendency of this writ petition department itself withdrew the show-cause notice by a speaking order dated 31-3-2009 and subsequently the name of the appellant was also entered into list "F" and even promoted to the rank of Inspector vide order dated 7-8-2009. The writ petition was disposed of vide Hon'ble High Court order dated 22-6-2009. Again respondent No.2 dismissed the appellant w.e.f. 5-7-1994 vide order dated 2-1-2010 on the same grounds. The appellant preferred departmental appeal which is still hanging fire. After availing the statutory period he filed the instant appeal before this Tribunal under section 4 of the Punjab Service Tribunal Act, 1974." As mentioned hereinabove, the appeal preferred on behalf of respondent has been accepted hence this petition.

3. Ch. Khadim Hussain Qaiser, learned Additional Advocate-General, Punjab entered appearance on behalf of Government of Punjab and contended that legal and factual aspects of the controversy have not been appreciated in its true perspective resulted in serious miscarriage of justice. In order to substantiate the said contention, it is urged with vehemence that the appellant approached after exhausting all the departmental remedies and preferred appeal before the learned Service Tribunal which was rejected after affording him proper opportunity of hearing against which no appeal was filed before the Supreme Court of Pakistan and accordingly the order so passed by the learned Punjab Service Tribunal had attained finality. It is next contended that though a mercy petition was filed yet the Chief Minister has no power to get the respondent reinstated as Schedule VII Part A, Rules of Business, 1974 does not empower the Chief Minister to pass such an order being a past and closed transaction. It is also contended that Inspector-General of Police has full authority to withdraw the orders dated 28-6-2005, 2-1-2006 and 7-8-2009 with retrospective effect i.e. 5-7-1994 which amounts to rectification of error irrespective of the fact whether it is inten

1992 S C M R 1420

[Supreme Court of Pakistan]

Present: Muhammad Afzal Zullah, CJ. and Naimuddin, J

MUHAMMAD NAWAZ --- Petitioner

versus

FEDERATION OF PAKISTAN and 61 others--- Respondents

Civil Petition for Leave to Appeal No.100 of 1991, decided on 27th October, 1991.

(On appeal from the judgment 20-1-1991 passed in appeals Nos.169(R), 175(R), 183(R), 185(R) to 200(R) all of 1989, by the Federal Service Tribunal).

**Civil service---**

---- Rule of locus poenitentiae---Appreciation---Competent Authority had competently passed the orders regularising the services of certain officers and same Authority had confirmed the services of some other officers which orders had taken effect and created valuable rights in favour of the persons mentioned in the said orders---Cancellation of such two orders by the Ministry of the Department, was not valid as under the rule of locus poenitentiae the said order could not be cancelled: --[Locus poenitentiae].

Manzoor Elahi Oureshi, Advocate Supreme Court and Sh. Muhammad Iqbal, Advocate Supreme Court instructed by Ch. Akhtar Ali, Advocate-on-Record for Petitioner.

Ch. Ijaz Ahmad Dy. A.-G. with Imtiaz Muhammad Khan Advocate-on-Record for Respondents Nos.1 and 2.

Respondents 3-62 not represented.

Date of hearing: 27th October, 1991.

## JUDGMENT

**NAIMUDDIN, J.**---The petitioner seeks leave to appeal from the judgment and order, of the Federal Service Tribunal, Islamabad dated 20-1-1991 whereby the appeals filed by respondents Nos.3 and 44 to 62 against the Secretary, Establishment Division, Islamabad and the Secretary, Ministry of Information and Broadcasting, Islamabad and others were allowed and the Ministry of Information and Broadcasting's Notification No.1(1)/89-PNC dated 19-4-1989 was cancelled and, the Directorate General's Office Order No.F-2-50/PNC(Estt), dated 15-11-1988 and Notification No.F-1-98/Estt/89 dated 3-1-1989 were restored.

2. The two Ministries have accepted the judgment of the Service Tribunal and have not filed any petition as stated at the Bar. However, the petitioner, who was one of the respondents before the

Service Tribunal, has filed this petition. Another petition, being No.101 of 1991, has been filed by four other respondents before the Service Tribunal.

3. The facts giving rise to this petition are that respondents 3 and 44 to 62 were Programme Managers (BPS 16) in Pakistan National Centre. They objected to the notification No.1 (1)/89-PNC dated 19-4-1989 of the Ministry of Information and Broadcasting whereby the Directorate General, Pakistan National Centre's Office Order No.F.2-50/PNC(Estt) dated 15-11-1988 and notification NO.F.1-98/Estt/ 89 dated 3-1-1989 were superseded. All the aforesaid respondents, except Mir Hafeezur Rehman Mari, were appointed on 15-3-1981 as Programme Managers BPS 16, in the then Directorate of Mobile Information Unit of the Ministry of Information and Broadcasting on ad hoc basis before the merger of the Directorate of Mobile Information Unit and the Directorate General, Pakistan National Centre, Islamabad. Respondent 58 was appointed as Programme Manager on ad hoc basis after the merger. When the aforesaid respondents were appointed on ad hoc basis, there were no rules for the post of Programme Manager. The rules were framed and enforced, for the first time, on 14-10-1986. Thereafter, the Directorate General, Pakistan National Centre issued Office Order No.F-2-50/PNC(Estt), dated 15-11-1988, the opening paragraph whereof reads as follows:--

"In terms of Rule 7 of the Existing Rules of Recruitment pertaining to the posts of the Directorate General, Pakistan National Centre and its subordinate offices as well as recommendations of O&M Division contained in para. 7 of item No.9 vide their No.6-3/88/O&M-11, dated 3-11-1988 the services of the following Programme Managers in various Pakistan National Centres are regularised in the basic pay scale and with effect from the date shown against each."

The list below this para included the names of the said respondents with the dates of their appointments. Some of them had been appointed as Programme Managers on ad hoc basis in the first instance. However, subsequently, another notification No.F.1-98/Estt/89 dated 3-1-1989 was issued by the Directorate General, Pakistan National Centre, the opening paragraph whereof reads as follows:--

"In terms of Establishment Division's O.M. No.1/PT/1/R-1, dated 1-9-1987 the Competent Authority is pleased to confirm the following Programme Managers, working in various Pakistan National Centres as well as at Directorate-General, Islamabad, against BPS-16 posts with effect from 1-1-1989."

The list below this paragraph included the names of the said respondents. However, this order and notification were superseded by another notification dated 19-4-1989, issued by the Ministry of Information and Broadcasting, the opening paragraph whereof reads as follows:--

"No. 1(1)/89-PNC. In terms of Rule 7 of the Recruitment Rules pertaining to the posts of the Directorate General, Pakistan National Centre, and its subordinate offices, and on the recommendation of the 25th Meeting of the Standing Organization Committee, the services of the following ad hoc Programme Managers (BPS 16) are regularised in their basic pay scale, without affecting their inter se seniority, with effect from November 15, 1988."

This last notification was objected to by the said respondents in the appeals before the Federal Service Tribunal.

4. It was urged before the Service Tribunal that para. 7 of the Recruitment Rules, dated 14-10-1986 was included in the Rules for regularisation of the appointments to various posts made before the

issuance of the Rules. Rule 7 provided that appointments made prior to the notification containing the rules shall be deemed to have been made on regular basis if the persons fulfil the qualifications and other conditions prescribed at the time of appointment and were appointed/regularised with the approval of the competent authority. It was further contended before the Service Tribunal that the said respondents fulfilled the requisite conditions prescribed at the time of their appointments and were eligible for regularisation under the Recruitment Rules and that the Director-General, who was head of the Department and a BPS 20 Officer was competent to regularise the appointments of said respondents under Rule 7 of the Rules. Rule 7 of the Rules reads as follows:--

"7. The appointments made prior to the Notification of these Recruitment Rules shall be deemed to have been made on a regular basis provided the persons appointed as such, fulfilled the qualifications and other conditions prescribed at the time of their appointment, and were appointed/regularised with the approval of the competent authority. The appointments not covered by this rule shall be regularised in accordance with these Recruitment Rules."

The learned counsel further submitted that rule of locus poenitentiae was not available, as a valuable right had already accrued.

5. In reply, the learned counsel for the petitioner relied on Office Memorandum No.1(8)/72-D-11 dated 4-5-1972 (Estacode 1989 edition page 235) and contended that ad hoc service does not reckon for the purpose of seniority when the ad hoc appointment is converted into regular appointment. It was further contended that the Government can rescind an order in view of section 21 of the General Clauses Act, 1897.

6. The Service Tribunal noted that in the case the competent authority, namely, the Director-General, Pakistan National Centre, passed the order, dated 15-11-1988, regularising the service of certain Programme Managers and the same competent authority confirmed the services of some officer on 3-1-1989 and that the two orders, having been passed competently, had taken effect and created valuable rights in favour of the persons mentioned in the orders and, accordingly, held that the cancellation of these two orders by the Ministry of Information and Broadcasting was, therefore, not valid and thus, allowed the appeals.

7. We have heard the learned counsel for the petitioner. The learned counsel submitted that rule 7 of Notification No.47(77)-AD.I(PT) dated 14-10-1986, by which the appointments made prior to this notification were deemed to have been made on regular basis, was dependent on the fulfilment of certain qualifications and conditions prescribed at the time of respondents' appointments, and they did not fulfil those conditions.

8. The submission is without force, for, rule 7 governs their cases and the mention of qualifications and conditions, in our opinion, relates to their personal qualifications.

9. It was next contended that the Government could rescind its earlier orders, dated 15-11-1988 and 3-1-1989 but this contention is misconceived because these orders were acted upon and created a vested right in the respondents. Therefore, under the rule of locus poenitentiae, the said orders could not be cancelled.

10. Therefore, the order of the Federal Service Tribunal is unexceptionable. Accordingly, we find no merits in this petition and dismiss it.



9 قریبی

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

PRESENT: Mr. Justice Anwar Zaheer Jamali.  
Mr. Justice Iqbal Hameedur Rahman.

**Civil Appeal No. 1520/2008.**

(On appeal against the judgment dated 04.09.2006  
passed by NWFP Service Tribunal, Peshawar,  
in Appeal No. 7/2002)

Abdul Qadus.

Appellant(s).

Versus

Government of NWFP through Secretary Education  
Department, NWFP, Peshawar, etc.

Respondent(s).

For the Appellant(s):

Mr. Jan Muhammad Khan, ASC/AOR.

For Respondent Nos. 1-5:

S. Arshad Hussain, Shah, Addl.AG,KPK.

Date of Hearing:

23.04.2013.

**JUDGMENT**

**Iqbal Hameedur Rahman, J:** - The instant appeal, with the leave of the Court, is directed against the judgment dated 04.09.2006 passed by NWFP Service Tribunal, Peshawar (hereinafter to be referred as "the Tribunal"), in Appeal No. 7/2002, whereby appeal filed by the appellant was partially accepted. Leave was granted by this Court on 07.10.2008 in the following terms: -

" The petitioner after the period of his suspension on the allegations of being involved in a criminal case was reinstated in service and the period of suspension was considered as E.O.I. without pay and he was adjusted against a vacant post of S.V in the same school, vide order dated 21.9.1994. However, after some time, another order was passed on 24.9.2000, vide which his pension case was dropped and recovery of alleged irregular payment was also ordered with the observation that how he could be reinstated after being involved in a criminal case. This order was passed without issuance of any show cause notice to the petitioner otherwise too, once he was reinstated in service, served the department for a period of about 6/7 years, such an order was uncalled for.

2. Points raised need consideration, therefore, leave to appeal is granted. Appeal to be heard on the present record with liberty to the

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Supreme Court of Pakistan  
Islamabad

C. A. No. 1520/2008


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parties to file additional documents if they wish to rely. Being service matter be listed for early hearing."

2. The concise facts of the instant case are that the appellant was inducted in service as CT Teacher on 01.08.1961. During the tenure of his service he was found involved in a criminal case wherein was subsequently sentenced to three years imprisonment with a fine of Rs.5000/-. Thereafter, vide letter dated 21.09.1994, he was reinstated in service with immediate effect and the period w.e.f. 05.06.1985 to 20.09.1994 (3395 days) was treated as Extra Ordinary Leave without pay. The said order was implemented and the appellant started rendering service upto 06.08.2000. Thereafter, his pension papers were prepared but his case was dropped on account of order dated 24.09.2000 wherein his order of reinstatement in service was withdrawn. The appellant filed a representation to respondent No. 1 for award of pension as well as salary from 03.02.1989 to 17.07.1994 but the said representation was not decided within the statutory period of 90 days so the appellant preferred an appeal before the Tribunal which was partially accepted vide impugned judgment, hence this appeal with the leave of the Court.

3. It is being argued by the learned counsel for the appellant that after reinstatement of the appellant in service the order dated 24.09.2000, withdrawing his reinstatement, had been illegally passed without adopting proper procedure as no show cause notice was issued. That the said order of withdrawal of his reinstatement had been passed after the appellant had served for 6/7 years as such he was fully entitled to pensionary benefits. His appeal was accepted in the terms as "...The Tribunal holds that the appellant has a long service at his credit and consider it appropriate to compensate him for the service rendered by him before he was involved in the criminal case which subsequently resulted in conviction of the appellant

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Supreme Court of Pakistan  
Islamabad


by the court through judicial proceedings. In order to enable the appellant to get his pension for the period before his involvement in the criminal case the retirement order dated 26.8.2000 is amended to the extent that he will stand retired from service on the date of registration of FIR i.e. 5.6.1985. The appeal is accepted to that extent and the impugned order is partially set aside. No order as to costs. File be consigned to the record". He further asserted that the Tribunal has also failed to take into consideration that the appellant after reinstatement have rendered service for 6/7 years on account of which he was entitled to pension from the period 06.02.1989 to 17.07.1994. Therefore, while granting the appellant partial relief the same should have been allowed which needs to be rectified.

4. On the other hand, the learned Additional Advocate General, KPK, stated that after conviction of the appellant, which had been maintained in appeal also, he was not entitled to pensionary benefits rather the Tribunal has also erred in partially accepting the appeal while considering the appellant to be retired from the date of registration of the FIR i.e., 05.06.1985. That after conviction the appellant was not entitled to get any pensionary benefits.

5. We have heard the learned counsel for the appellant as well as learned Additional Advocate General, KPK, and have gone through the impugned judgment and the material available on record.

6. The appellant has a long service record at his credit. He had been inducted in service as CT Teacher on 01.08.1961, he has not been involved in any departmental disciplinary proceeding and prior to the period of his conviction his performance has been judged to be satisfactory. Moreover, the contention of the appellant for the grant of pension for the period from 06.02.1989 to 17.07.1994 cannot be justified in any manner as during this

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Lahore

C. A. No. 1520/2008.

period he has been absent from service which, on sympathetic grounds, has been converted into Extra Ordinary Leave without pay.

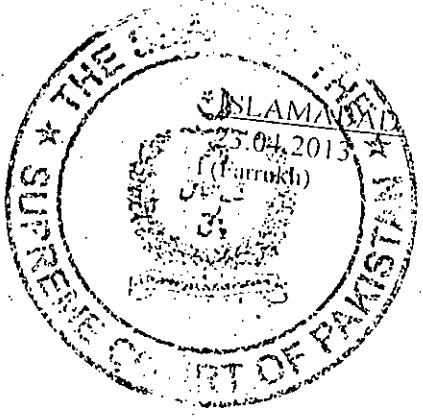
7. In the above perspective, we find that the learned Tribunal has done substantial justice and no exception can be taken to it, therefore, no interference is required. Resultantly, this appeal is dismissed with no order as to costs.

*Justice Anwar Zaheer Jamali*  
*Justice Syed Hamidur Rahman*

Certified to be True Copy

*Muhammad* 27/5/2013

Superintendent  
Supreme Court of Pakistan  
Islamabad



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which prevailed with the learned Chairman of the Service Tribunal in suspending the transfer order was the fact that the appeal had been admitted to regular hearing. No other reason has been recorded by the learned Chairman of the Tribunal. It may be pointed out that admission of an appeal to regular hearing does not automatically lead to a stay order. For issuing a stay order there must be a prima facie good case and the factors of balance of convenience and irreparable loss should be considered. However the learned Chairman of the Tribunal did not address himself to these points."

The position is exactly the same as in the present case.

13  
Before parting with the case we have to dispose of an objection raised by the learned counsel for the respondents, Sardar Rafiqe Mahmood Khan, that the appellants did not file appeal against the orders passed in favour of the respondents in 1994 under which they have been holding senior posts. This objection is only raised during arguments and is not supported by any proof. However, from the other side it is argued that this contention is contradicted by para. 8 of the writ petition reproduced above. The orders passed in 1994 were in any case purely temporary in nature and were stop-gap arrangement. If a person does not challenge stop-gap arrangement, his right is not waived. It may be pointed out that judgments in Muhammad Rashid Chaudhry and Dr. Khawaja Mushtaq Ahmed cases had not been published when the respondents were appointed to hold higher posts. Apart from that the appellants have not filed the writ petition, it is the respondents who have come to the Court for permanent absorption. The appellant has every right to defend his rights. It may also be observed that the fact that they have been holding senior posts for four years in violation of law on temporary basis does not confer any right on the respondents. They are, if at all, being transferred by the Government and not demoted. In any case the order passed by the High Court gives a fresh cause of action to the appellants.

In light of the foregoing discussion, the portion of the order under appeal by which the status quo was ordered to be maintained is vacated and the application for interim relief moved by the respondents in the High Court is dismissed. The admission order stays undisturbed. B

The appeal is partly accepted as indicated above. No orders as to the costs.

H.B.T. 57/SC(AJ&K)

Order accordingly.

2001 PLC (C.S.) 241

[Punjab Service Tribunal]

Before Abdul Hafeez Cheema, Chairman

MUNEER AHMAD, EX-PTC TEACHER

versus

DIRECTOR EDUCATION (E), DIRECTORATE  
OF EDUCATION, D.G. KHAN and 2 others

Appeal No.2800 of 1999, decided on 2nd March, 2000.

Civil service—

---Reversion---Locus poenitentiae, principle of---Applicability---Civil servant who initially was recruited as "Mali" passed Matriculation Examination in second division and also obtained P.T.C. Certificate---Civil servant, on the basis of said qualifications was promoted and appointed as P.T.C. Teacher---After about two years civil servant was reverted to his original position, after issuing him show-cause notice on grounds; firstly that he got Third Division in Matric; secondly that despatch number allotted to appointment order of civil servant was in conflict with office record and thirdly that appointment order was signed by incompetent officer---Validity---Civil servant was admittedly Second Division Matriculate and also P.T.C. in First Division and thus possessed requisite qualifications---Civil servant was not responsible for wrong despatch number and signing of appointment order by incompetent officer which was fault of the department and not of civil servant---Civil servant having worked as P.T.C. for quite some time, valuable right had accrued to him and after a long time Authority could not be allowed to turn around and say that order passed by Authority was incompetent in view of principle of locus poenitentiae---Civil servant was allowed to continue as P.T.C. Teacher. [pp. 242, 243] A & B

PLD 1964 SC 572 and PLD 1969 SC 407 ref.

Mahmood Ahmad Qazi for Appellant.

Ch. Manzoor Hussain, D.A. for Respondents.

Date of hearing: 2nd March, 2000.

JUDGMENT

The appellant was recruited as Mali on 9-10-1984. He served the department to the best of his abilities for over (sic). He passed Matriculation Examination in 2nd Division. He also obtained PTC certificate and applied for promotion against departmental quota of 1%. He was appointed as PTC

Teacher accordingly and was posted at Qaziwala Markaz on 19-1-1996. He worked quite satisfactorily but on 17-10-1998 he was issued a show-cause notice indicating that his appointment was contrary to rules. He replied the notice but was reverted to his original position arbitrarily vide order dated 2-11-1998. He appealed against this order to the competent authority which was dismissed on 18-8-1999. In this background he had to file this appeal before the Tribunal seeking the quashment of the original as well as the appellate orders.

2. It is submitted by the learned counsel for the appellant that reversion has taken place allegedly on the following grounds:--

- (i) That he was 3rd divisioner in Matric;
- (ii) that the dispatch number allotted to his appointment order was in conflict with the office record; and
- (iii) the appointment order was signed by incompetent officer.

3. According to the learned counsel, the appellant was a 2nd divisioner in Matric. It was none of his business to ensure that the office record correct dispatch number in the relevant register and as for incompetency of the officer who allegedly signed the appointment order, he (appellant) cannot be held responsible for this remiss.

4. The department controverted the pleas taken by the appellant reiterating their grounds taken in the show-cause notice adding that there was no 1% quota for the promotion of departmental candidates.

5. Arguments have been heard and record has been perused.

6. As for the claim that he was 3rd divisioner in Matric, the appellant asserted in para.1 of the appeal:--

"That the appellant was appointed as Mali vide order, dated 9-10-1984, subsequently he joined the duty and started serving the department with devotion. During the service the appellant passed his Matriculation Examination in 2nd Division 1989. The appellant also passed his P.T.C. Examination in first division in 1991."

7. The reply to this paragraph given by the respondents is as follow:--

"Admitted as correct."

This means that the respondents conceded that the appellant was 2nd Divisioner in Matric and also P.T.C. in 1st Division. This shows that there is no cavil with his claim that he possessed the requisite qualification.

As for the wrong dispatch number assigned to this order in the

relevant register, it shows that this was not the responsibility of the appellant. As regards, the signing of the appointment order by incompetent officer that too is a fault of the department and they can be allowed to draw any advantage of their wrong in view of the law laid down by honourable Supreme Court in PLD 1964 SC 572.

9. During the course of the arguments reference was made by the learned counsel to certain identical appointments namely those of Zafar Iqbal in Tehsil Taunsa, Mukhtar Ahmad in D.G. Khan and Muhammad Ghafoor in Rajanpur against PTC quota. All these persons were in the first instance Class IV employees and after acquiring the requisite qualification were promoted as PTC Teachers in their respective circles and were still serving in capacity of the PTC Teachers. The education officials present in the Court could not controvert the assertion. Learned counsel also drew attention towards the judgment of this Tribunal in Appeal No.2229 of 1999 (Allah Bakhsh v. Director Education, Multan). In this case appellant had worked as PTC Teacher for quite some time and a valuable right had accrued to him and after a long period the department cannot be allowed to turn back and say that the order passed by the authority was incompetent in view of the principle of locus poenitentiae laid down by the honourable Supreme Court in PLD 1969 SC 407. The appellant has relied upon the existence of 1% quota and circular letter issued by the education authorities as back as 19-2-1977 (Page 48). The department has claimed that this policy was no longer extent. Even if the position was of doubtful nature benefit of such a doubt should have accrued to the appellant. In this view of the matter, the appeal is accepted and the appellant shall be allowed to continue as PTC Teacher. During the period he had not been performing his services as a PTC Teacher, he will be entitled to pay of his former posts.

H.B.T./34/Pb. (Sr.Trib.)

Appeal accepted.

2001 P L C (C.S.) 243

[Supreme Court (AJ&K)]

Present: Sardar Said Muhammad Khan C.J. and  
Muhammad Yunus Surakhvi, JJ

Kh. MUHAMMAD AHSAN

versus

MANZOOR ALI KHOKHAR and another

Civil Review Petition No.7 of 1998, decided on 15th August, 1998.

(In the matter of review from the judgment of the Supreme Court,  
dated 15-6-1998 in Civil Appal No.49 of 1998).

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 625 /ST Dated 30 / 3 / 2017


To

The Secretary Finance Department,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: - JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 27.3.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.