

11.03.2015

Asif Iqbal vs Govt

Counsel for the appellant and Asst: AG for the respondents present. Learned counsel for the appellant argued that initially the appellant was awarded minor penalty in the year 2007 which, after protracted litigations, was set aside by this Tribunal ordering denovo enquiry to be conducted within two months which was, however, concluded by the department within two years and vide order dated 27.09.2010 the appellant was awarded major penalty against which service appeal was again preferred which was allowed by this Tribunal vide judgment dated 04.01.2012. That 15 junior officers were promoted in preference to the promotion of the appellant which was challenged by the appellant before the august Peshawar High Court, Peshawar in Writ Petition No. 1472-P/2013 which was allowed on 25.06.2013. That the Writ issued by the august High Court was not implemented and appellant constrained to submit contempt application for implementation of the same where-after the appellant was given another show cause notice dated 19.01.2014 requiring him to reply to the same within 14 days which notice was substituted by another notice requiring the appellant to answer to the said show cause notice within 3 days which was accordingly replied to but the appellant was compulsorily retired from service two days before his retirement which order was impugned in review petition before the competent authority which was not responded and hence the present service appeal on 24.07.2014.

Learned counsel for the appellant argued that the words "compulsory retirement" were not warranted as the show cause notice issued under Section-13 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 authorizes the competent authority to retire a person from service on completion of 20 years service. He further argued that the appellant would be satisfied if the words "compulsory retirement" are converted into retirement simpliciter. Orders accordingly. File be consigned to the record.

ANNOUNCED
11.03.2015

Chairman

11.03.15

27.10.2014

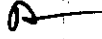
Clerk of counsel for the appellant present, and requested for adjournment. Request accepted. To come up for preliminary hearing on 12.01.2015.



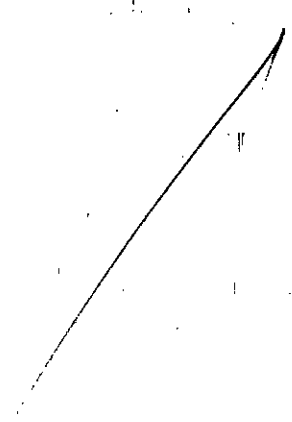
Member

12.01.2015

Clerk of counsel for the appellant present, and requested for adjournment due to pre-occupation of learned counsel for the appellant in the august Supreme Court of Pakistan. Request accepted. To come up for preliminary hearing on 11.03.2015.



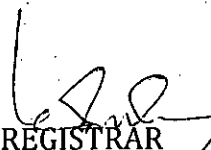
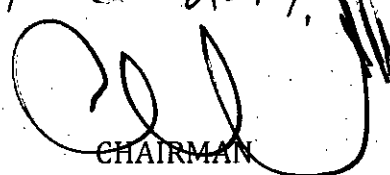
Member



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 980/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/07/2014	<p>The appeal of Mr. Asif Iqbal Engr. presented today by Mr. Khaled Rehman 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	11-8-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on 27-10-2014 27-10-2014.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 980 /2014

Engr. Asif Iqbal

.....Appellant

Versus

The Govt. of KPK and others

.....Respondents

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3.	Order of this Hon'ble Tribunal	06.11.2008	A	9-10
4.	Order of the Apex Court	08.04.2009	B	0-11
5.	Judgment of this Hon'ble Tribunal in Service Appeal No.3080/2010	04.01.2012	C	12-15
6.	Order of the Apex Court	11.02.2013	D	16-20
7.	Judgment of Hon'ble Peshawar High Court Peshawar in W.P.No.1472-P/2013	25.06.2013	E	21-24
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Through

Appellant

Khaled Rahman
Advocate, Peshawar
3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: 22/07/2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 980 /2014

Engr. Asif Iqbal,
Ex-Superintending Engineer (HQR:)
Central Wing, C&W Department, Peshawar ...Appellant

~~SECRET~~
10/19
24-7-2014

Versus

1. The Govt. of Khyber Pakhtunkhwa
through Chief Secretary,
Civil Secretariat, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa
Communication & Works Department,
Civil Secretariat, Peshawar
.....Respondents

**SERVICE APPEAL UNDER SECTION-4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNALS
ACT, 1974 AGAINST THE IMPUGNED ORDER
DATED 29.01.2014 WHEREBY APPELLANT WAS
IMPOSED MAJOR PENALTY OF COMPULSORY
RETIREMENT AGAINST WHICH APPELLANT FILED
DEPARTMENTAL APPEAL/REVIEW BUT THE SAME
WAS NOT DISPOSED OF WITHIN THE STATUTORY
PERIOD OF 90 DAYS.**

PRAYER:

On acceptance of the instant appeal, the impugned order dated 29.01.2014 may graciously be set aside and by reinstating the appellant w.e.f. 29.01.2014 and be declared retired on 02.02.2014 on superannuation alongwith all consequential back benefits.

~~SECRET~~
24/7/14

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That the appellant was one of the senior-most officers in the C&W Department and was lastly serving as Superintending Engineer (OPS). He had at his credit about 33/34 years service.
2. That way back in the year 2007, appellant was proceeded against for the so called irregularities and after an enquiry he was recommended for warning simpliciter by the Enquiry Committee, however, he was imposed upon the minor penalty of stoppage of two annual increments on 15.06.2007. The order was challenged before the Khyber Pakhtunkhwa Service Tribunal which was allowed on 06.11.2008 (*Annex:-A*) and by setting aside the impugned penalty, denovo enquiry was ordered to be conducted within two months on the same charges. Appeal was preferred before the Apex Court but the same was withdrawn vide order dated 08.04.2009 (*Annex:-B*).
3. That subsequently instead of two months the Department took 02 long years and finally vide order dated 27.09.2010 again imposed but rather major penalty of reduction to lower grade i.e. BPS-17 on the appellant with recovery of Rs.70,000,64/- on the same previous allegations.
4. That again the order was challenged before the Service Tribunal in Service Appeal No.3080/2010 which was finally allowed vide judgment dated 04.01.2012 (*Annex:-C*). The impugned penalty was set aside and appellant was restored to his

original grade with all consequential back benefits. The judgment was also challenged before the Apex Court but the appeal was dismissed vide judgment dated 11.02.2013 (*Annex:-D*).

5. That during the period of litigation as many as 15 junior officers in Grade-18 had been promoted to Grade-19 but even after the clear judgment of the Hon'ble Tribunal, appellant was denied the right for promotion to the next higher grade, therefore, he filed W.P.No.1472-P/2013 before the Hon'ble Peshawar High Court, Peshawar for directing the Respondents to promote the appellant to the next higher grade which was allowed vide judgment dated 25.06.2013 (*Annex:-E*).
6. That even then the Respondents were reluctant to implement the judgment of the Hon'ble Peshawar High Court, Peshawar *ibid*, therefore a Contempt of Court application (*Annex:-F*) was filed against them before the Hon'ble Court, wherein they were issued Show Cause Notices but in the meanwhile petitioner was issued another Show Cause Notice (*Annex:-G*) on 19.01.2014 alleging the same previous charges against him and requiring him to submit reply within 14 days but vide letter dated 23.01.2014 (*Annex:-H*) the appellant was directed to submit the reply within 3 days instead of 14 days and accordingly appellant submitted detailed Reply (*Annex:-I*) to the Show Cause Notice thereby denying the charges leveled against him and requested that appellant would retire on 02.02.2014, therefore, be exonerated and allowed to be retired.

7. That vide impugned order dated 29.01.2014 (*Annex:-I*) just after two days prior to the retirement of the appellant, he was imposed upon the major penalty of compulsory retirement with immediate effect.
8. That being aggrieved of the impugned order appellant preferred a Review (*Annex:-J*) before the competent authority, however, appellant was assured that the same would be favorably decided in his favour but after the period of limitation, appellant sensed that the Department is wasting the time of appellant, therefore, he is now filing the instant Service Appeal inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully the impugned order, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That the appellant has been imposed upon the major penalty without holding regular enquiry whereas it has now become a settled law that where major penalty is to be imposed then regular enquiry cannot be dispensed with.
- C. That a controversial question of facts was involved in the case which was denied by the appellant and therefore no prudent mind could have reached to a just conclusion without holding a proper and full-fledged enquiry into the matter. Thus appellant

was prejudiced by the impugned summary process wherein major penalty was imposed and no enquiry was held.

- D. That the entire action of the Respondents was based upon sheer malafide, biase, revenge and appellant was subjected to a clear and naked victimization for the only reason that he pursued his legal remedies before the Courts of law. The series of litigation and imposition of unjustified penalties would reflect the conduct of the Respondents that they have persecuted the appellant for no just and valid grounds.
- E. That all the charges mentioned in Show Cause Notice are old, flimsy and without any foundation. Moreover, the previous litigations on the same charges have ended in favour of the appellant, therefore, the charges are no more charges in the eye of law.
- F. That the appellant was due to retire on 02.02.2014 and revengefully the order of compulsory retirement was passed on 29.01.2014 so as to cause him huge loss at the end of his service. The impugned order is highly arbitrary, tyrannical because the appellant put a major portion of his life in the service of the Department but was kicked out with a bad name from the Department without any valid and justifiable grounds.
- G. That the appellant has been condemned unheard, he was not provided opportunity of personal hearing which is a mandatory requirement of law, therefore, the impugned order is violative of the principle of natural justice and hence void ab-

initio.

- H. That the appellant has been imposed upon the major penalty under a wrong law whereas the procedure provided by the disciplinary rules has been ignored, therefore, the impugned order on this particular ground is also not sustainable in the eye of law.
- I. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through


Appellant

Khaled Rahman,
Advocate, Peshawar.

Dated: 22 / 07/2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2014

Engr. Asif Iqbal.....Applicant

Versus

The Govt. of KPK and others.....Respondents

Application for condonation of delay (if any) in filing the accompanying Service Appeal.

Respectfully Sheweth,

1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
2. That the facts alleged and grounds taken in the body of main appeal may kindly be taken as an integral part of this application.
3. That the applicant has filed the Review Petition before the competent authority which is still pending before him without any final decision.
4. That after filing the appeal, the Department assured the applicant that the penalty will be reversed and that everything has been prepared for the same and thus under such assurance the appellant waited for the decision of the departmental Review Petition but it subsequently dawned upon the appellant that the Department is wasting the time of the appellant as already the time for filing the appeal had lapsed, therefore, some delay has occurred in filing the instant appeal which is condonable in the given facts and circumstances of the case.
5. That it is a settled law that the decision on merit and not technicalities are favoured by the law and it is also in interest of justice to condone the delay caused in filing the instant appeal.

It is, therefore, humbly prayed that on acceptance of this application, the delay caused in filing the accompanying Service Appeal may graciously be condoned in the interest of justice.

[Signature]
Applicant
[Signature]
Khaled Rahman,
Advocate, Peshawar

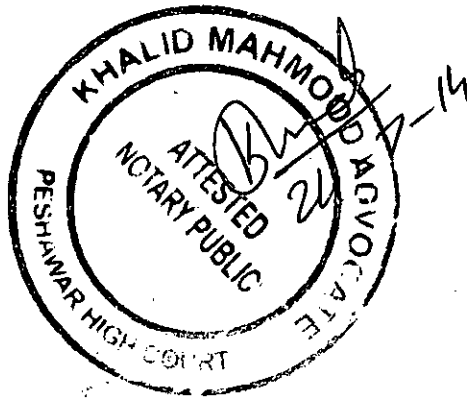
Through

Dated: 22 / 07 / 2014

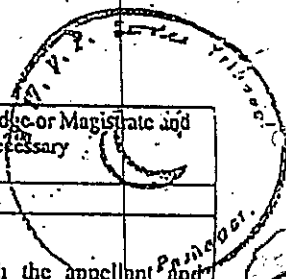
Affidavit

I, Engr. Asif Iqbal, Ex-Superintending Engineer (HQr:) Central Wing, C&W Department, Peshawar, do hereby affirm and declare on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

[Signature]
Deponent



Appeal No - 06/2008



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Serial No. of Proceedings	Date of Order or Proceedings	Order or other proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
12	06.11.2008	<p>Counsel for the appellant alongwith the appellant and Farhaj Sikandar, AGP alongwith Anwar-ul-Haq, S.O. and Farooq Azam, Director, for respondents present.</p> <p>We heard the arguments to some extent.</p> <p>It transpired that only fact finding enquiry was conducted by Mr. Farooq Azam, Director (P&M) Works & Services Department, who submitted his report. No detailed enquiry under the E&D Rules of the N.W.F.P. Removed from Service (Special Powers) Ordinance 2000 has ever been conducted. We asked the representatives time and again to show on record whether a Charge Sheet or Statement of allegations was ever issued to the appellant, but the A.G.P. could not find the same on the available official record. It appears that further proceedings were conducted on the basis of fact finding enquiry, without observing the formalities of Sub-section 4 of Section-5 of the N.W.F.P Removal from Service (Special Powers) Ordinance 2000. No fair chance of proper hearing has been provided to the appellant. In the mentioned circumstances, the departmental representation, even, of the appellant was retained from 26.06.2007 till October 2007. The legal formalities of the provision of Section 6(d) of the Appeal Rules 1986 were not observed. In the light of the above, we have come to the conclusion that fair chance of hearing has never been provided to the appellant which is his basic right, and the same can not be snatched from him in any circumstances.</p> <p>We, therefore, accept the present appeal to the extent that we set-aside the impugned order of imposition of penalty against the appellant vide order dated 15.06.2007 and the order of the rejection of departmental appeal dated 08.12.2007, with the direction to the official respondents, if the respondents opt to continue disciplinary proceedings against the appellant, to prepare a detailed charge sheet based on the original charges enumerated in the show cause notice, without further additions etc, and statement of allegations against the appellant, appoint an enquiry officer/ enquiry committee and provide fair chance of hearing to</p>

ATTESTED
N.W.F.P. Tribunal
Peshawar

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the appellant by associating him with all stages of the enquiry proceedings. If other-wise the appellant shall stand exonerated of the charges against him. The enquiry proceedings, if initiated shall have to be completed within the next two months, without any fault or default of the appellant who shall make himself available for all stages of the enquiry proceedings. Parties are, however, left to bear their own costs.

10

Sd/-
Chairman

Announced:
06.11.2008

Sd/-
Member

Date of presentation of application	7.11.08
Number of words	1200
Copying fee	8
Stamp	8
Total	16
Time of copy	23-12-08
Date of completion of copy	23-12-08
Date of delivery of copy	23-12-08

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True Copy

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE CH. EJAZ YOUSAF
MR. JUSTICE SARDAR MUHAMMAD ASLAM

C.P.L.A. NO.41-P OF 2009

(on appeal from the judgment dated 6.11.2008
passed by the N.W.F.P. Service Tribunal,
Peshawar in Service Appeal No.06/2008)

Government of N.W.F.P. and others

.... Petitioners

Versus

Asif Iqbal.

.... Respondent

For the petitioners

Mr. Zia-ur-Rehman Khan, AG, NWFP.
Mr. Tasleem Hussain, A.O.R.

Respondent

N.R.

Date of hearing

08.04.2009

ORDER

Learned Advocate General, N.W.F.P. does not press
this petition which is accordingly dismissed as having not been
pressed.

-sd-

Mr. Justice Ch. Ejaz Yousof

-sd-

Mr. Justice Ch. Sardar Muhammad
Aslam

Peshawar
08.4.2009
(Zulfiqar)

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No: 3080/2010

Date of Institution. ... 07.12.2010
 Date of Decision ... 04.01.2012

Engr. Asif Iqbal,
 Assistant Design Engineer, O/O Chief Engineer (CDO)
 C & W, Peshawar. ...

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Secretary, Communication & Works Department, Khyber Pakhtunkhwa, Peshawar. ... (Respondents)

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974, R/W SECTION 10 OF THE REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000 AGAINST ORDER NO. SOE(C&WD)/2-6/2006 DATED 27.9.2010 WHEREBY PENALTY OF REDUCTION TO LOWER GRADE PLUS SRECOVERY OFRS. 70,00,064/- HAS BEEN IMPOSED AND APPELLATE AUTHORITY HAS REJECTED THE DEPARTMENTAL APPEAL VIDE IMPUGNED ORDER DATED 2.12.2010.

MR. KHALID RAHMAN,
 Advocate. ...

For appellant

MR. SHERAFGAN KHATTAK,
 Addl. Advocate General ...

For respondents.

SYED MANZOOR ALI SHAH,
 KHALID HUSSAIN, ...

MEMBER
MEMBER.

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER. - This appeal has been filed by Engr. Asif Iqbal, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with Section 10 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000, against the order dated 27.9.2010 whereby penalty of reduction to lower grade and recovery of Rs. 70,09,064/- has been imposed and against the order dated 2.12.2010, whereby his departmental appeal has been rejected.

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2. Brief facts of the case are that the appellant while posted as Deputy Director, Project Division, Works & Services Department, Swat received a charge sheet with statement of allegations dated 21.7.2009. The allegations against the appellant were that he while posted as Deputy Director, Works & Services Department, Lakki Marwat committed irregularities while issuing tenders for various works without prior administrative approval, issued work orders on the basis of estimated cost instead of issuing the work orders on the contractors tendered rates as per CSR-1999, and he also ignored the irregularities committed by the Head Clerk which included taking the official tender register home and not depositing the amount receipt from sale of tender forms in Government Revenue. The appellant submitted detailed reply to the charge sheet, denied the allegations leveled against him and clarified his position. An enquiry was conducted by the enquiry committee and after its findings, the appellant was issued show cause notice on 15.3.2010, wherein punishment of compulsory retirement & recovery of Rs. 70,00,064/- was proposed. The appellant submitted reply to the show cause notice on 1.4.2010. Vide impugned order dated 27.9.2010, major penalty of reduction to lower grade plus recovery of Rs. 70,00,064/- were imposed upon the appellant. Feeling aggrieved, the appellant filed departmental appeal, which was rejected on 2.12.2010, hence the present appeal on 7.12.2010.

3. The appeal was admitted to regular hearing on 4.1.2011 and notices were issued to the respondents for submission of written reply. The respondents have filed written reply and contested the appeal.

4. Arguments heard and record perused.

5. Counsel for the appellant argued that previously the appellant filed Service Appeal No. 6/2008, and vide order dated 6.11.2008, the appeal was accepted to the extent that the impugned orders were set aside with option to the respondents to continue disciplinary proceedings against the appellant if they so desired. The enquiry proceedings, if initiated had to be completed within the next two months. As per rules, if the department failed to complete departmental enquiry into the matter, within the stipulated period, then the orders of the Tribunal should have been implemented in letter and spirit. In the instant case, the respondents have not completed such enquiry within the stipulated period. The enquiry was completed on 28.9.2009 and its report provided to the appellant on 21.3.2010 and the impugned order has been passed on 27.9.2010, which is illegal and void ab-initio. He relied on 2009-PLC(CS) 477 and PLJ 2004 TrC 183. He further argued that the respondents had filed CPLA before the august Supreme Court

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of Pakistan, which was dismissed on 8.4.2009, having not been pressed. Record of the case was summoned from office of Deputy Director, ^{L/Munroch} Karak, the appellant not confronted with the record/evidence, nor statements of witnesses were recorded, nor he was given chance to cross examine-submit his defence against allegations in presence of record. The enquiry conducted can be termed only as a fact finding enquiry and not a regular enquiry. The counsel relied on PLJ 2005-113 and 2004-SCMR-316. Furthermore the appellant has been discriminated as no enquiry has been held or action taken against the Head Clerk & Divisional Accounts Officer, co-accused alongwith the appellant. Vide notification dated 23.6.2009, the Competent Authority withdraw the earlier punishment order in view of the Service Appeal No. 6/2008 un-conditionally and as such cannot initiate the denovo proceedings. Regarding the loss to the Government ex-echequer, it has been stated in the enquiry report that some contractors had offered rates below CSR 1999 and work order should have been issued to them, but work was awarded considering bids to be based on estimated cost. It was stated in reply to the committee that NIT was issued on approved cost (i.e. CSR 1999 +75% above) prior to appellant's arrival i.e. 23.2.2006. The Government of Khyber Pakhtunkhwa had allowed 75% premium on CSR 1999 on 30.12.2005 vide notification No.BOI/1-7/2005-06/FD(CSR). The loss has been calculated on the assumption that if 10% below rates on CSR 1999 i.e. (75+10% = 85% below on approved rates) had been accepted then the works would have been completed at decreased cost amounting to Rs. 70,00,064/-. This loss has also been termed as fictitious even by Secretary, C&W Department in summary submitted to the Chief Minister. Such rates are non-workable otherwise government would not have approved premium on CSR 1999 rates. Moreover, awarding of contract on rates 30% below estimated cost was questioned through Audit Paras and disallowed by PAC. The same was also confirmed by C&W Department vide its letter No.SO(A)VI/3-86/C&W/Vol-III dated 16.8.1990. The question of loss does not arise as rates below 30% on sanctioned approved cost could not have been accepted in any case and works executed at such low rates.

The learned AAG on the other hand, argued that departmental proceedings against the appellant was initiated after approval by the competent authority charge sheet alongwith statement of allegations was issued to the appellant, proper enquiry was conducted, the appellant was given chance of defence at every stage of enquiry proceedings. Show cause notice was issued to him and he was given full opportunity of personal hearing as per standing rules but he failed to prove his innocence and the punishment awarded to the appellant is in accordance with law. He further argued that irregularities in government fund were committed by the appellant and its recovery from

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him was strictly in accordance with the law after proper calculation. He requested that the appeal may be dismissed.

15

7. The perusal of record would reveal that in the findings of previous enquiry, the appellant was recommended only for issuing warning to him, whereas, the competent authority imposed minor penalty of stoppage of two annual increments. In the subsequent enquiry on the same allegations, the imposition of major penalty seems to be illegal and unjustified. The Tribunal vide its earlier order dated 6.11.2008, ordered that if the department opted to initiate denovo enquiry then the same should be completed within the next two months while the enquiry has been conducted and completed on 28.9.2009 and communicated to the appellant 21.3.2010 and the impugned order has been passed on 27.9.2010 i.e. after nearly two years, as per judgment of the august Supreme Court of Pakistan, reported in 2009-PLC(CS) 477 and PLJ 2004 Tr.C 183 once time is given by the court, then the department has no other alternative but to implement the judgment in letter and spirit. The impugned order is also defective as no period has been specified for the impugned penalty of reduction to lower grade, which is against Rule 29 of Fundamental Rules. The enquiry has also not been conducted as per Section-5 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. The loss to the Government Ex-chequer is based on presumption as work could not be awarded ^{at} 10% below CSR 1999 i.e. 85% below on approved cost in view of PAC/Government directions. The Tribunal agrees with the arguments advanced by the learned counsel for the appellant.

9. In view of the above, the appeal is accepted, the impugned orders dated 27.9.2010 and 2.12.2010 are set aside and the appellant is restored to his original grade with all consequential/back benefits. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
4.1.2012.

(Signature)
(KHALID HUSSAIN)
MEMBER
Certified to be a true copy
Khyber Pakhtunkhwa
Tribunal

(Signature)
Attested to be
True Copy

(Signature)
(SYED MANZOOR ALI SHAH)
MEMBER:
Date of ... 10-1-12
Name ... 1600
Copy ... 10-00
Urgent ...
Total ... 10-00
Name of ...
Date of ...
Date of ... 27-1-12
27-1-12

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE TASSADUQ HUSSAIN JILLANI
MR. JUSTICE ASIF SAEED KHAN KHOSA
MR. JUSTICE IJAZ AHMED CHAUDHRY

CIVIL APPEAL NO. 575 OF 2012

(On appeal from the judgment dated 4.1.2012
in Appeal No.3080/2010 passed by the
Khyber Pakhtunkhwa Service Tribunal,
Peshawar)

16

ANNEX D

Govt. of Khyber Pakhtunkhwa
through Chief Secretary & another

Appellants

Versus

Egn. Asif Iqbal

Respondent

For the Appellants

Mr. Lal Jan Khattak, Addl. AG KPK

For the Respondent

Qari Abdul Rashid, ASC
a/w respondent in person

Date of hearing

11.2.2013

JUDGMENT

IJAZ AHMED CHAUDHRY, J. Government of Khyber
Pakhtunkhwa through Chief Secretary has filed this appeal with
leave of the Court against the judgment dated 04.01.2012 through
which the penalty imposed by the appellants has been set-aside
and the respondent has been restored to his original grade with all
consequential/back benefits. Leave granted order dated 6.6.2012
is reproduced as under:

"We have gone through the impugned judgment. The
Service Tribunal on the one hand had found the
certain flaws in the order passed by the
Departmental Authority against the respondent,

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

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including his quantum of punishment, while on the other hand had set aside the departmental order and reinstated the respondent in service with all back benefits. The findings of the Service Tribunal are inconsistent with the final conclusion drawn by it. Further, no plausible reasons have been mentioned for exonerating the respondent of the charge against him.

2. Leave to appeal is therefore granted to examine whether the impugned judgment is sustainable in the law."

2. Brief facts of the case are that the respondent was serving as Deputy Director Project Division, Works & Services Department, Swat. The respondent was charge sheeted on 21.7.2009 as under:

"That you while posted as Deputy Director Works & Services Lakki Marwat committed irregularities while issuing tenders for various works without prior administrative approval. You have also issued work orders on the basis of estimated cost while you were required to issue the work orders on the contractors tendered and approved rates as per CSR-1999. You also ignored the irregularities committed by the Head Clerk which includes taking the official tender register home and not depositing the amount receipt from sale of tender forms in Govt. Revenue. By reason explained above, you are guilty misconduct and the Govt. has incurred loses due to your in-competency, irresponsible behaviour and dereliction of official duties"

After completion of enquiry respondent was found guilty. He filed Service Appeal No. 6/2008 and vide order dated 6.11.2008 it was accepted and the order against the respondent was set-aside and the appellants were at liberty to initiate the disciplinary proceedings against the respondent if they so desired. It was also directed by the Service Tribunal that the enquiry proceedings should be completed within two months. Case of the respondent

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

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is that the enquiry was to be completed within two months, however, it was completed after about two years. After conducting of enquiry, vide order dated 27.09.2010 the respondent was imposed the major penalty of 'reduction to lower grade' plus recovery of Rs.70,00,00+/-/. Against the said order the respondent filed an appeal which was rejected by the departmental authority on 02.12.2010. The respondent then preferred Service Appeal No. 3080/2010 before the KPK Service Tribunal, Peshawar which has been accepted through the impugned judgment dated 4.1.2012.

3. Learned Additional Advocate General KPK has contended that the judgment of the Service Tribunal is not sustainable as the respondent was responsible for causing huge loss of Rs.70 lacs to the department; that the respondent had accepted a bid causing a loss of Rs.10 million to the government exchequer; that the respondent did not accept the bid offer of a bidder who offered 10% below the rates on CSR as such the loss has been calculated as Rs.3,703,731/-; and that the impugned judgment is based on surmises and conjectures and no valid reasons have been given by the KPK Service Tribunal, therefore, it may be set-aside.

4. Learned counsel for the respondent has opposed this appeal on the ground that vide notification dated 30.12.2005 Government of KPK has allowed 75% premium on CSR 1999 and also issued instructions on 16.8.1990 that contract cannot be awarded on below estimated cost; that the Government of KPK would not have approved the said premium of the said bidder; that the loss has been calculated on surmises and conjectures;

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

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that the Head Clerk has not been proceeded against and there is no allegation against the respondent for receiving of any amount for personal gain or entering into illegal gratification and only the charge of negligence has been leveled against the respondent which has not been proved; that the enquiry has not been conducted in a prescribed manner and the respondent was not allowed to cross-examine the witnesses; and that the judgment of the Service Tribunal is based on sound reasoning and needs no interference.

5. We have heard the arguments of the learned counsel for the parties and have perused the impugned judgment and the documents attached therewith.

6. The allegation against the respondent is that being Deputy Director Works & Services Lakki Marwat he had accepted the tender for issuing work orders on the basis of estimated cost ignoring the approved rates as per CSR-1999 and has not accepted the bid of the participants who were ready and willing to carry the work on 10% below the rates on CSR 1999. Learned counsel for the respondent has placed on record the Government of NWFP Communication & Works Department's Instructions dated 13.5.1989 which are based on the Minutes of the Departmental Accounts Committee Meeting held on 9th, 11th & 14th March, 1989. The relevant para is reproduced as under:

"PARA NO:12/86-87 RS 22.69 MILLION.

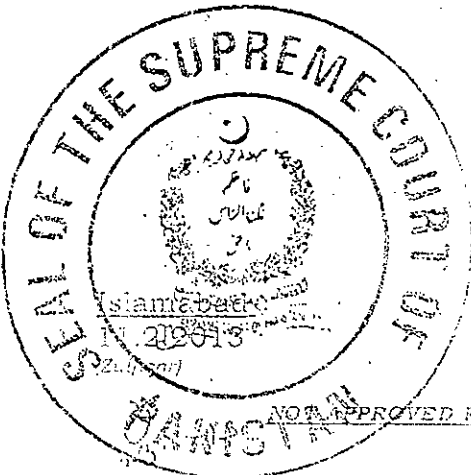
Para was recommended to be dropped. But it was decided that in future only premium/rebate may be allowed and tenders should not be accepted if the rates quoted are more than 10% above or 30% below the rates approved in the technically sanctioned estimate."

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Supreme Court of Pakistan
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From the bare perusal of the above para it is crystal clear that the instructions of the Government of KBEK which was binding on the respondent that the contract should be awarded 10% above and 30% below the rates approved and it was also confirmed by the C&W Department vide its letter No.SO(A)VI/3-86/C&W/701-III dated 16.08.1990 so, the calculation based on offer of less than 10% could not be accepted by the respondent. The action of the respondent does not suffer from misconstruction of law and violation of instructions of the Government. Even otherwise, the estimation of the loss is presumptive and other allegations have also not been proved. The Head Clerk was not proceeded against having the main allegation of irregularities inasmuch as the respondent cannot be made responsible for the shortcomings of the subordinate official and against this allegation the respondent has not been found guilty as well. The Service Tribunal has given valid reasons for acceptance of the service appeal filed by the respondent and the learned Additional Advocate General has failed to point out any irregularity or improbability in the impugned judgment warranting interference by this Court. This appeal is, therefore, dismissed.



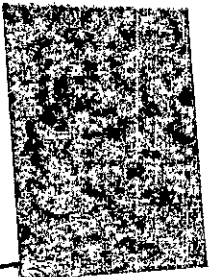
Sd/- Tassaduq Hussain Jilani, J
 Sd/- Asif Saeed Khan Khosa, J
 Sd/- Ijaz Ahmed Chaudhry, J
 Certified to be True Copy

[Signature]
 Superintendent
 Supreme Court of Pakistan
 ISLAMABAD

[Signature]
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(5)

IN THE PESHAWAR HIGH COURT PESHAWAR



WRIT PETITION No. 1472 P 2013

21

Engr. Asif Iqbal,
Executive Engineer Presently posted as
Superintending Engineer (OPS),
Headquarters, O/o of the Chief Engineer (Center), *C & W Secretariate*
Peshawar.Petitioner *near Civil Complex Peshawar*

ANNEX E

Versus

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Communication & Works Department, C&W Secretariat, Peshawar.....Respondents.

WRIT PETITION UNDER ARTICLE, 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Kms
2062/13

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That petitioner is one of the senior-most officers in the Communication & Works Department, presently serving as Superintending Engineer (OPS). He has at his credit 32 years service and going to retire on 02.02.2014.
2. That way back in the year 2007, petitioner was proceeded against for the so-called irregularities and after the inquiry he was recommended for warning simplicitor by the Enquiry Officer,

FILED TODAY
Deputy Registrar
29 MAY 2013

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PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Court of.....

Case No.....of.....

22

2/8/13

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
25.06.2013	<p><u>W.P.No.1472-P/2013</u></p> <p>Present: Mr. Khaled Rahman, Advocate for the petitioner.</p> <p>_____</p> <p><u>QAISER RASHID KHAN, J:-</u> Through this Constitutional petition, the petitioner has prayed "to declare the acts and actions of respondents and their ignoring the petitioner's promotion to the next higher grade as without lawful authority and hence of no legal effect and consequently issue direction to the respondents to act in the matter in accordance with law and to promote him to the next higher grade with effect from the date juniors to the petitioner were promoted to the next higher grade".</p> <p>2. Precise facts leading to the instant petition are that petitioner has to his credit 32 years of service and is due for retirement on 02.02.2014; that in 2007 the petitioner was proceeded against through an inquiry whereafter a minor penalty was imposed on him which was challenged by him before the learned Provincial Service Tribunal, whereby his appeal was accepted on 06.11.2008, setting aside the impugned penalty and ordering <u>de novo inquiry to be completed within two months,</u></p>

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which was challenged by the respondents before the August Supreme Court but the appeal was then withdrawn vide order dated 08.04.2009; that thereafter vide impugned order dated 27.9.2010, major penalty for reduction to lower grade i.e. BPS-17 alongwith a recovery of substantial amount was imposed upon him which was again challenged by the petitioner before the learned Service Tribunal, KPK and the appeal was allowed vide judgment dated 04.01.2012, whereby the impugned orders were set aside and the petitioner was directed to be restored to his original grade with all consequential back benefits. The said judgment was again challenged before the Hon'ble apex Court but the appeal was dismissed on 11.2.2013 and the judgment of the learned Service Tribunal KPK was upheld; that during the course of years long litigation, many officers junior to the petitioner were promoted to grade-19 and despite the fact that the position of the petitioner stands redeemed firstly through the judgment of the learned Service Tribunal and finally through the dismissal of the appeal of the respondents by the Hon'ble apex Court, still the petitioner is being denied his due right of promotion for no good reasons.

3. Mr. Obaid Razzaq Khan, learned AAG present in the court in some other case accepts notice on behalf of the respondents and when confronted with the grievance of the petitioner, he was not able to rebut the assertion of the learned counsel for the petitioner as such.

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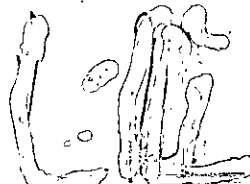
4. Having listened to the arguments of the learned counsel for the petitioner and the learned AAG and after perusal of the available record, we are at a loss to understand the rationale of the respondents for denying the petitioner the right to be considered for promotion in accordance within the mandate of law.

5. Having no good ground to rebut the said right of the petitioner, we on acceptance of this writ petition, direct the respondents to consider the case of the petitioner for promotion in accordance with the relevant rules and his case be positively placed in the next available meeting of the Provincial Selection Board.

This petition is disposed of accordingly.

25-6-2013


JUDGE


JUDGE

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①

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

C.O.C _____/2014
In Re
W.P. No. 1472-P/2012

ANNEX F

①
25

Asif Iqbal, Ex-Superintendent Engineer Head Quarter C& W department Peshawar.
Petitioner

Versus

1. Arbab Shahzad, Ex-Chief Secretary KPK, Peshawar.
2. Sahibzada Ahmad Haneef, Secretary C&W Govt of KPK, Peshawar.

Respondents

**APPLICATION U/S-3 CONTEMPT OF COURT ORDINANCE,
2003 READ WITH ARTICLE 204 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN 1973, FOR INITIATING
CONTEMPT OF COURT PROCEEDING AGAINST THE
RESPONDENTS FOR VOILATION OF THE ORDER DATED
25.6.2013 PASSED BY THIS HON'BLE COURT.**

Respectfully Sheweth:

The applicant humbly submits as under:-

1. That in the year 2007 a minor penalty was imposed upon the applicant which was challenged in the learned provincial Service Tribunal K.P.K whereby appeal filed by the present applicant was accepted on 6.11.2008 set aside the impugned penalty with the direction to start de-novo inquiry but the same should be completed within 2 months.
2. The said order was challenged by the Govt of KPK before the august supreme court of Pakistan but the appeal was withdrawn vide order dated 8.4.2009.
3. That thereafter vide order dated 27.9.2010 major penalty for reduction to lower grade i.e BPS-17 with recovery of huge amount was imposed upon him which again was challenged by the petitioner before the Learned Service Tribunal KPK and the appeal was allowed vide judgment dated 4.1.2012 set aside the impugned order and the department was ordered to restore the present applicant to his original grade with all consequential back benefits.
4. That the said judgment was again challenged by the department before the apex court but its appeal was dismissed on 11.2.2013 and the judgment of Learned Service Tribunal KPK was upheld.
5. That after dismissal of the appeal of the department on 11.2.2013 the judgment was produced with representation but with no response hence disappointed there from the captioned Writ Petition was filed which was disposed off vide judgment dated 25.6.2013 with the direction to the respondents to consider the case of the petitioner for promotion in accordance with the relevant rules and his case be positively placed in the next available meeting of the provincial selection board. (copy of the Writ petition and judgment is annexed as Annexure "A").

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- 6. That in spite of the clear cut direction passed by this Hon'ble court the matter of restoration and promotion of the petitioner was delayed for one reason or the other rather inviolation of the judgment passed by this Hon'ble Court a fresh show cause notice was issued to the petitioner wherein at para 5 reply has been sought within 14 days of its delivery but keeping in view the retirement of the petitioner on superannuation on 2.2.2014 the petitioner was served with a covering letter alongwith show cause notice to submit his reply within 3 days. (copy of the show cause notice covering letter, departmental appeal and reply are annexed as annexure "B").
- 7. That on forceful receipt of the reply to the show cause notice from the applicant on 26.1.2014 a major penalty of compulsory retirement was imposed upon the applicant (copy of the order dated 29.1.2014 is annexed as annexure "C").
- 8. That in consequence of the judgment/direction passed by this Hon'ble Court on 25.6.2013 "to consider the case of the petitioner for promotion in accordance with the relevant rules and his case be positively placed in the next available meeting of the provincial selection board", the respondents instead of compliance with the direction ibid imposed major penalty of compulsory retirement 2 days prior to the retirement of the petitioner on superannuation without even waiting for the period given in the show cause notice.
- 9. That the said expeditious action taken by the respondents and non compliance of the judgment/direction dated 25.6.2013 passed by this Hon'ble Court speaks malafide of the respondents and as encounter to the direction made by this Hon'ble Court further imposition of major penalty speaks volume of the denial made by respondents in a hurry just to frustrate the judgment of this august Court which totally come within the ambit of contempt of this Hon'ble Court and provision of contempt of court ordinance attracted to.

It is therefore humbly prayed that on acceptance of this application contempt of court proceedings may graciously be initiated against the respondents for non compliance and ignoring clear order passed by this Hon'ble Court and they be dealt with in accordance to law, the subsequent order of compulsory retirement 2 days prior routine retirement be also done away with.

Any other order deemed fit in the circumstances of the case may also be passed.

Petitioners
 Through
 Muzammil Khan,
 Advocate
 & Abid
 Abid Ali Khan,
 Advocate.

CERTIFICATE:

It is certified that no such petition on the subject has earlier been filed before this Hon'ble Court.

Through
 Muzammil Khan,
 Advocate
 & Abid
 Abid Ali Khan,
 Advocate.

Attested
 T. S. P. S.

(15) 27

SHOW CAUSE NOTICE

I, Pervez Khattak Chief Minister Khyber Pakhtunkhwa as competent authority, do hereby serve you Engr. Asif Iqbal XEN (BS-18) SE Headquarter (OPS) O/O CE (Centre) C&W Peshawar with the show cause notice under Section-13(1)A of the Civil Servants Act, 1973 read with para-6(a) of Guide lines for review of cases of civil servants.

2. That the review committee examined your case under the above rules based on the disciplinary proceedings and penalties awarded as under:

- i. Penalty of reduction to lower grade plus recovery of Rs.70,00,064/- on 27.09.2010. Later on, same was withdrawn in light of Court orders.
- ii. Penalty of stoppage of two annual increments was imposed on him on 31.10.2011 which was subsequently reduced to censure by the Governor Khyber Pakhtunkhwa.
- iii. Penalty of censure plus recovery of loss amounting to Rs.8,589/- was imposed on him on 28.01.2012. which was reduced to censure by the Governor Khyber Pakhtunkhwa.
- iv. Penalty of stoppage of five annual increments was imposed on him on 08.11.2012.
- v. You tried to deceive the Department providing a fake order sheet of Service Tribunal. Matter was inquired by Engr. Saif-ur-Rehman, Principal Design Engineer C&W Department and warning was issued to you.
- vi. You committed serious irregularities in the "Construction of Matta Fazal Banda Road" and disciplinary proceedings are under way.
- vii. The Provincial Selection Board superseded him in its meeting held on 14.12.2012 for his poor performance & efficiency index below the threshold required for promotion.

3. That as a result thereof, I, as competent authority, have tentatively decided to impose upon you the major penalty of "Compulsory Retirement" under sub-section (2) of Section 13 of the Civil Servants Act, 1973.

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

5. If no reply to this notice is received within 14 days of its delivery, it shall be presumed that you have no defence to make in which case exparte action will be taken against you.

6. A copy of the review committee recommendations is enclosed.

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa
19/1/2014

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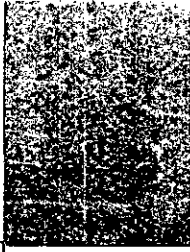
19-1-2014

14 days

To be received on 2-2-2014

hence a covering letter with direct
to submit reply within 3 days

14



GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/4-9/2013
Dated Peshawar, the January 23, 2014

28

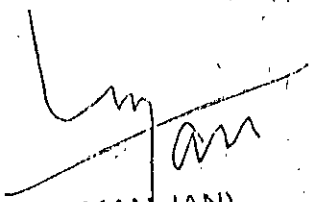
Answer HV

TO
Engr: Asif Iqbal ✓
Executive Engineer (BS-18)
Now working as SE HQ (OPS) O/O
Chief Engineer (Centre)
C&W Peshawar

Subject: Review Committee Meeting under Section-13(1)(a) of the Civil Servant Act, 1973 read with Para (6)(a) of the Guidelines for review of cases of Civil Servants


I am directed to refer to the subject noted above and to enclose herewith two copies of the show cause Notice containing tentative major penalty of "Compulsory Retirement" in light of the minutes of Review Committee meeting held on 09.12.2013 under the chairmanship of Chief Secretary Khyber Pakhtunkhwa and to state that the 2ND copy of the show cause Notice may be returned to this Department after having signed as a token of receipt immediately.

2. You are directed to submit your reply, if any, within 03 days of the delivery of this letter, otherwise, it will be presumed that you have nothing to put in your defence and ex-parte action will follow.


(USMAN JAN)
SECTION OFFICER (ESTT)

Endst even No. & date
Copy forwarded to PS to Secretary C&W Department, Peshawar

SECTION OFFICER (ESTT)


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ANNEX I

To

The Honorable Chief Minister
Government of Khyber Pukhtun Khwa

Subject: - Review committee Meeting under Section 13(1) a of Civil servant Act 1973 read with Para (6)a of Guidelines for review of Cases of Civil Servants

Reference: - SOE/C&WD/9/2013 Dated January 23, 2014

Respected Sir,

I have the honors to state that I have served this department for last 33yaer and never involved in any irregularity, but I have been victimized in the previous regime specially by the then political secretary Syed Masoom shah for his ulterior motives, all the cases and penalties mentioned are related to this specific period to allow their own favorites and promoted them from grade 17 to grade 20 with in a period of less than 4 years also convicted by NAB and kept me under consistent mental torture. Since I have been exonerated from charge No- i by the honorable Services Tribunal and the Supreme Court of Pakistan with **consequential back benefits**, therefore an application was moved to consider my case sympathetically under the apex Court decision and its logical end should have been accepted or otherwise. The charge sheet is beyond comprehension.

My parawise submissions are as under please.

i-This inquiry was conducted on an anonymous application against my Head clerk but was materialized against me instead of him. The secretary C&W wrote 37 paras comments that the penalty proposed is factitious and imaginary and harsh yet these Major Penalties were realized against me. I file a suit in the Hon. Services tribunal after rejection of departmental appeal and after 2and half years of rigorous investigation I was exonerated, the department applied to the Honorable Supreme court and after one year the decision of the services tribunal was upheld. This shows my innocence. (Construction of Lakki Jail) The decisions are annexed please. I have adopted the course of law and the penalties have been withdrawn by the department. hence the charge does not exist.

ii-This penalty was continuation of the same charges as charge No-I and on my appeal to the appellat authority the penalty was converted into Censure after hearing both parties.(Lakki Jail)The charge is not existing

iii- It was similar case and after hearing both parties the penalty was relaxed by appellat authority.(Lakki Jail) The charge is not existing.

iv-This penalty relates to charge No-I and I was directed by SOE that departmental appeal shall be addressed to the Hon. Chief minister as directed by establishment division which is yet to be decided where as the inquiry committee concluded that there are no any defects in the work. (Lakki Jail) The charge is against the clause-17(A) of Islamic Republic of Pakistan and not decided by competent authority, further it is minor penalty as well .I am hopeful that your honor will exonerate me as no loss has been occurred to the Government per inquiry report.

v- I never submitted the fake latter as there was no advantage to me, further it is a piece of paper without court attestation and such papers are never accepted. The inquiry officer was

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also astonished that non attested piece of paper was made an issue, however the same is not in my knowledge and since court had decreed the case in my favor. There was no need for such adventurism on my part. *The paper is not attested by court.*

vi-I was posted in Swat from 2008 to 2010 where the Taliban insurgency was at peak, the army authorities insisted for Road work which was base camp for them, where as the Premix plant was looted by Taliban, The Army authority wanted bitmac and half Km was carried out but due to its deterioration the payment was recovered from contractor the bill is annexed please. There has been no loss to Government, the situation in swat was not in favor of works. *I have been included as incumbent officer.*

vii-The PSB did not consider my case due to appeal of the department in the supreme court ,where as the department had promised in the court of Services Tribunal that his case will be processed but they did not, however when I prayed for the stay order the department gave statement in the court that he has been superseded. All of my ACRs are A1. Established C&W laboratory. Wrote a book of 200 pages on Highways construction and quality control and is guide lines to young engineers. wrote research paper on the uses of natural gravel instead of crush in premix to economize the works, completed LLB on the desire of MD FHA and completed my Master degree in civil Engineering. These efforts were lauded by the department, the certificates of appreciation are enclosed please. (Annex-C) *This charge*

was not mentioned during hearing of writ petition in this High court and is false and fabricated
Respected Sir,

I will attain superannuation on 2/2/2014 and will retire from services having less than 14 days.

In the light of above explanation I humbly request that only one minor penalty exits for not processed at yours kind level, therefore to allow me to retire on 2/2/2014, I shall remain oblige and pray for yours prosperous life, your kindness will save me and my family from torture further no punishment are awarded on application to Competent Authority.

Thanking your honors and pray for your long prosperous life of your honor and family.
With regards

Yours obediently
ASIF IQBAL
S E(HQR)Centre wing
C&W Department Peshawar

[Signature]
26/11/2014

Copy to.

Honorable secretary C&W department for similar request please and to very kindly provide the record to the honorable Chief Minister for perusal please.

Yours obediently
ASIF IQBAL
SE(HQT) centre wing
C&W Department Peshawar

[Signature]
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GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the January 29, 2014

ORDER:

No. SOE/C&WD/4-9/2013: WHEREAS, the case of Engr. Asif Iqbal XEN (BS-18), presently working as SE HQ (OPS) O/O CE (Centre) C&W Peshawar examined by the Review Committee under Section-13(1)(a) of the Civil Servant Act, 1973 read with para (6)(a) of guidelines.

2. AND WHEREAS, the Review Committee recommended his retirement from service on compulsory ground on immediate basis.

3. AND WHEREAS, show cause Notice for imposition of major penalty of "compulsory retirement" was served upon the officer alongwith a copy of recommendations of Review Committee, who submitted his reply.

4. NOW THEREFORE, the Competent Authority after having considered the material on record, recommendations of the Review Committee, in exercise of the powers conferred under Section-13(1)(a) of the Civil Servant Act, 1973 read with para-7 of guidelines has been pleased to impose the major penalty of "Compulsory retirement" upon Engr. Asif Iqbal XEN (BS-18), presently working as SE HQ (OPS) O/O CE (Centre) C&W Peshawar with immediate effect.

Secretary to
Govt of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

- 1) Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar
- 2) Accountant General Khyber Pakhtunkhwa, Peshawar
- 3) Chief Engineer (Centre) C&W Peshawar
- 4) PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
- 5) PS to Additional Chief Secretary P&D Deptt, Khyber Pakhtunkhwa, Peshawar
- 6) PS to Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar
- 7) PS to Secretary Establishment Deptt, Khyber Pakhtunkhwa, Peshawar
- 8) PS to Additional Secretary (Regulation) Establishment Deptt, Khyber Pakhtunkhwa, Peshawar
- 9) Incharge Computer Centre C&W Department, Peshawar
- 10) PS to Secretary C&W Peshawar
- 11) Engr. Asif Iqbal Superintending Engineer HQ (OPS) O/O CE (Centre) C&W Peshawar
- 12) Office order File/Personal File

(USMAN JAN)
SECTION OFFICER (ESTT)

29-1-2014

To be retired on superannuation on 2-2-2014
in accordance with expedited compulsory
retirement.
Arrested to be

Review Petition

32

To

The Honorable Chief Minister
Government of Khyber Pukhtun Khuwa .
KPK House Peshawar.

ANNEX K

Subject:- Review Petition against Compulsory Retirement .

Please refer SOE/ C&WD/ 4-9/ 2012 dated 29/1/2014
(copy enclosed)

R/Sir,

I have the honor to state that I have been victimized in the previous Regime for their ulterior motive and implicated me in continuous series of inquiries, beside thee minor penalties and one major penalty of reduction to lower grade and losses of seven million, were imposed upon me. Having no alternatives I adopted the legal course and was exonerated by honorable Services Tribunal and later on by the august Supreme Court with in three and half years, dated 4/1/2012 and 11/2/2013 respectively from major penalties. When the political scenario changed and I found bearthening space, I applied your honor to kindly grant me justice as envisages from the above decision under **Consequential back benefits**. It is worth mentioning that I belong to a lower Middle class **with no inherited property or any other source of income**, with no option except to serve in private sector or any Government job of my experience for my family. Your honor have been retired me compulsory (Major penalty) **two days** earlier on 29/01/2014 than my routine retirement on 01/02/2014. I feel that the Committee has not been considered my application sympathetically and judiciary without lisling me and reported all charges settled, by the **courts or applent authority**; as such I could not get justice. Presently there is only one minor penalty against me which is before your honor for decision (copy enclosed) directed by establishment department.

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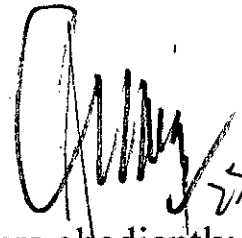
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R/sir,

I have destinations of LLB, MS Geotechnical engineering, wrote a book of 200 pages on Highways construction and quality control and all my ACRs are A1, wrote research paper on Asphalt concrete, my efforts were lauded by Head of department (copy enclosed)

In the light of above explanation/ submissions I humbly request that my services of 33 year may be saved from this major penalty against one proposed minor penalty on my credit. My case may be very kindly reconsider on humanitarian and sympathetic basis as that all the charges pertain to the tenure of previous regime, and I never involved in any irregularity for the rest of my career and clear indication of victimization. Once again your honor is requested to save my career from devastation and provide me a chance to earn livelihood for my poor family. I shall remain oblige and pray for yours honor's prosperity. May Allah Almighty increase your reverences, Amin.



25/2/2014

Yours obediently
Engr. ASIF IQBAL.
Ex-SE (HQr) central wing.
C&W department Peshawar
Cell # 0333 9505906



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WAKALAT NAMA

IN THE COURT OF

C.P.E. Service Tribunal

Rsu

Eng. Asif Ubal

Appellant(s)/Petitioner(s)

Govt etc

VERSUS

Respondent(s)

I/We Eng. Asif Ubal

do hereby appoint Mr. Khaled Rehman, Advocate in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this

Attested & Accepted by

Khaled Rehman, Advocate, Peshawar.

Signature of Executants

[Handwritten signature of executants]