BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 519/2013

Muhammad Bakhsh Malik, Directorate of D.G Agriculture Extension Jamrud Road, Peshawar. ... (Appellant)

VERSUS

1. The Provincial Government through Chief Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar and 3 others. (Respondents).

S.No.	Date of Hearing	Order/other proceedings with signature of Judge/Magistrate
1	2	3
	02.06.2014	Counsel for the appellant and Mr. Muhammad Jan, GP with Rahat Shah, Administrative Officer for the respondents present. Arguments on main appeal heard and case file perused. 2. Through the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the appellant has impugned order dated 26.09.2012 vide which penalty of stoppage of promotion for one year was imposed upon him and against the order dated 08.02.2013 whereby the departmental appeal of the appellant was rejected. 3. The appellant averred in the memo: of appeal that while serving as EDO Agriculture Bannu, he was served with charge sheet on 16.1.2012 wherein it was alleged that he had appointed six persons without observing the codal formalities, terminated five officials without observing codal formalities and paid pay and allowances to illegal appointed person which caused loss to the government exchequer. That the appellant submitted reply to the charge sheet and statement of allegations and categorically denied all the charges levelled against him, however, an enquiry was conducted in the shape of questionnaire to which the appellant submitted reply. That on 29.2.2012, the enquiry officer submitted his findings to the competent authority and thereafter, the appellant was served with show cause notice to which he submitted reply and denied the allegations levelled against him. However, vide impugned order dated 26.09.2012 penalty of withholding of

promotion for one year was imposed upon the appellant. The appellant filed a review petition on 22.10.2012 but the same was rejected on 8.2.2013 without assigning any cogent reason.

4. The learned counsel for the appellant argued before the court that the enquiry was not conducted in accordance with the established principles of law and rules, rather it was conducted in the shape of questionnaire which was total violation of law. The learned counsel for the appellant further argued that neither statements of witnesses were recorded in presence of the appellant nor the appellant was allowed to cross examine the witnesses and the record, hence the appellant remained undefended and condemned unheard. The learned counsel for the appellant further argued that final rejection order is not a speaking order which is violation of Section 24-A of General Clauses Act, 1897. Therefore, by accepting the instant appeal, the impugned order be set aside.

5. The learned Government Pleader in rebuttal argued before the court that the appellant was rightly charged for irregularities and after proper enquiry, he was rightly awarded punishment of stoppage of promotion for one year; that the instant appeal is without any substance, hence be dismissed.

6. Perusal of the case file reveals that after issuance of the charge sheet and statement of allegations to the appellant, he submitted detailed reply. Afterward, enquiry officer was appointed to probe into the allegations levelled against the appellant, however, the enquiry officer inspite of summoning the appellant and recording his statement, furnished questionnaire to him and on the basis of the reply of appellant to the questionnaire, he was held guilty of the charges with the recommendations to either withheld two increments of the appellant for three years and promotion for one year or if the appellant had reached to the maximum of his pay scale, in that case his promotion may be withheld for three years. On the recommendations of the enquiry officer, the appellant was awarded penalty of withholding promotion for one year. Perusal of the impugned order dated 26.09.2012, vide which

519/13

22.1.2014

Counsel for the appellant, AAG with Rahat Shah, Administrative Officer on behalf of respondents present and reply filed. Copy handed over to counsel for the appellant. To come up for rejoinder on 3.3.2014.

MEMBER MEMBER

3.3.2014

Junior to counsel for the appellant, and Mr. Muhammad Jan, GP with Rahat Shah, Administrative Officer for the respondents present. Rejoinder received. Copy handed over to the learned GP. To come up for arguments on 2.6.2014.

MEMBER MEMBER

Appeal No. 519/2013
Mr. Muhammad Bakhsh Malik.

3. 24.4.2013 Counsel for the appellant present and heard. He contended that the appellant is the employee of Agriculture Department and has 32 years at his credit with good record throughout. While serving as EDO, Agriculture, Bannu, he was served with charge sheet on 16.1.2012 wherein the charges of appointment of 6 persons without observing codal formalities, terminated 5 officials without observing codal formalities and paid pay and allowances to illegal appointed persons which caused loss to the government exchequer. On 4.2.2012 the appellant submitted reply to the charge sheet and statement of allegations and categorically denied all the allegations levelled against him. Inquiry was conducted against him and inquiry officer submitted his findings to the competent authority based on the questionnaire and its reply on 29.2.2012.The penalty order was passed wherein the penalty of with-holding of promotion for one year was imposed upon him. He filed review petition under the rules on 22.10.2012 but the appeal was rejected on 8.2.2013, hence the present appeal. Points raised need consideration; therefore, the case is admitted for regular hearing. Subject to all legal objection. Security and process fee be deposited within 10 days. Thereafter, notices be issued to the respondents for written reply/comments on 28.6.2013.

Member

Note. The appellant deposited Security & Process fee Rs 2000/- Bank receipt attached on file

5. 24.4.2013 This case be put up before the Final Bench for further proceedings.

Chairman

28.6.2013 Junior to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. In pursuance of promolgation of Khyber Pakhtunkhwa Service Tribunal (Amendment) Ordinance 2013, the Tribunal is incomplete. To come up for the same on 24.7.2013.

READER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 519/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	07/03/2013	The appeal of Mr. Muhammad Bakhsh Malik presednted today by Mr. M. Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing. REGISTRAR
2	20-3-2013	This case is entrusted to primary Bench for preliminary hearing to be put up there on 24-4-2013. CHAIRMAN

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 519 /2013

Mr. Muhammad Bakhsh Malik V/S Agriculture Department

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APPELLANT
Muhammad Bakhsh Malik

THROUGH:

M. ASIF YOUSAFZAI
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 519 /2013

Mr. Muhammad Bakhsh Malik,
Directorate of DG Agriculture Extension,
Jamrud Road, Peshawar.

APPELLANT

VERSUS

1. The Provincial Government through Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

3. The Secretary, Government of Khyber Pakhtunkhwa, Agriculture, Livestock & Coop; Department, Civil Secretariat, Peshawar.

4. The Director General, Agriculture Extension, Khyber Pakhtunkhwa, Jamrud Road, Peshawar.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE NWFP SERVICE TRIBUNAL ACT 1974 READ WITH SECTION-9 OF THE E&D RULES, 2011 AGAINST THE ORDER DATED 26.09.2012 WHEREBY THE PENALTY OF STOPPAGE OF PROMOTION FOR ONE YEAR WAS IMPOSED UPON THE APPELLANT AND AGAINST THE ORDER DATED 08.2.2013 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 8.2.2013 AND 26.09.2012 MAY BE SET ASIDE AND THE APPELLANT'S PROMOTION MAY BE RESTORED FROM HIS DUES DATE WITH ALL CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant is the employee of the Agriculture Extension Department and has 32 years at his credit with good record throughout. The appellant also performed his duty as Executive District Officer Agriculture, Bannu and D.I.Khan.

2. That while serving as EDO Agriculture, Bannu, the appellant was served with charge sheet on 16.01.2012 wherein the charges of (a) appointment of 6 persons without observing codal formalities (b) terminated 5 officials without observing codal formalities (c) paid pay and allowances to illegal appointed person which caused loss to the government exchequer." The charge sheet was also accompanied with a statement of allegations in which one Mr. Zahir Shah, DMG was appointed as Enquiry Officer. Copies of Charge sheet and Statement of Allegations are attached as Annexure-A and B.

3. That on 4.2.2012 the appellant submitted reply to the charge sheet and statement of allegations and categorically denied all the allegations levelled against him. Copy of Reply to the Charge sheet is attached as Annexure-C.

4. That then the Enquiry was conducted in questionnaire form. The appellant and other related officials submitted their answers to the questionnaires. Copies of questionnaires and their reply are attached as Annexure-D.

5. That on 29.2.2012, the enquiry officer submitted his findings to the competent authority based on the questionnaire and its reply. Copies of Enquiry Report / Recommendations are attached as Annexure-E.

6. That after the recommendation of the enquiry officer, the appellant was served with show cause notice and the appellant again while denying all allegations submitted the details reply to the show cause notice in time. Copies of show cause notice and reply are attached as Annexure-F and G.

7. That on 26.9.2012, the penalty order was passed wherein the penalty of with-holding of promotion for one year was imposed upon the appellant. The said was conveyed to the appellant on 10.10.2012, where after the appellant filed review petition under the rules on 22.10.2012 but the appeal of the appellant was rejected on 8.2.2013. The appellant officially received the rejection order on 22.2.2013. Copies of Order, Appeal and Rejection Order are attached as Annexure-H, I, and J.

8. That now the appellant comes to this august Tribunal on the following grounds amongst the others:

GROUNDS:

A) That the impugned orders dated 26.09.2012 and 8.2.2013 are against the law, rules, material on record, and norms of justice, therefore, not tenable.

B) That the appellant has not been treated according to law and rules and has been penalized for no fault on his part.

C) That the appellant has done nothing illegal or misuse his authority which could amount to misconduct. Rather, the appellant did everything in accordance with the law and rules as clarified by the appellant to the reply in the charge sheet.

D) That the enquiry was not conducted in accordance with the established principle of law and rules, rather the enquiry was conducted in questionnaire form which was totally violation of law.

E) That neither any statement was recorded of the witnesses in the presence of appellant nor the appellant was allowed to cross examine the witnesses and other record due to which the appellant remained undefended which amounts to condemnation unheard.

F) That even the final rejection order is not a speaking order which is the violation of Section-24-A of the General Clauses Act and the Supreme Court's Judgment reported as 1991 SCMR Page-2330.

G) That even the penalty order is not signed by the competent authority and as such the order is illegal and wihtout lawful authorities.

H) That even the Rules-9 of the E&D Rules, 2011 has been violated while awarding punishment to the appellant.

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

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

APPELLANT

Muhammad Bakhsh Malik

THROUGH:

M. ASIF YOUSAFZAI
ADVOCATE

KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

A (5)

CHARGE SHEET.

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Malik Muhammad Bakhsh (BS-18), now working as Executive District Officer Agriculture, Bannu under suspension discharging his duties in Directorate General, Agriculture Extension Khyber Pakhtunkhwa, Peshawar as follow:-

That you, while posted as EDO (Agril:) (BS-19) DIKhan committed the following irregularities:-

a. Appointed six persons without observing codel formalities.
b. Terminated five officials without observing codel formalities, while one official is left in service.
c. Paid pay and allowances to the illegal appointed persons during their six months service, which cause loss to the Government exchequer.

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

3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the inquiry officer/committee, as the case may be.

4. Your written defense, if any, should reach the inquiry officer/committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case, exparte action shall follow against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.

10/1/15

(AMIR HAIDER KHAN HOTI)
CHIEF MINISTER,
KHYBER PAKHTUNKHWA.

(COMPETENT AUTHORITY)

ATTESTED

(8)

Endst. No.SOE(AD)20-77/2011 Dated Peshawar, the 16/01/2012.

A copy is forwarded for information and necessary action to:-

1. The Inquiry Officer of M/S Syed Zahir Shah (DMG BS-19), DCO, Bannu for initiating proceedings against the accused under the provision of the Khyber Pakhtunkhwa E&D Rules, 2011.

2. Malik Muhammad Bakhsh, ex- EDO Agril: DIKhan now Executive District Officer (Agriculture) Bannu, under suspension with the advice to appear before the Inquiry officer, on the date, time and place fixed by the Inquiry officer, for the purposes of the inquiry proceedings.

3. The Director General, On-Farm Water Management, Khyber Pakhtunkhwa, Peshawar, with the request to depute departmental representative who is well conversant with the facts of the case along with relevant record to assist the Inquiry Officer during the inquiry proceedings.

(MOHAMMAD ZAHID)
SECTION OFFICER-ESTT:

ATTESTED

C

(9)

No 39 /EDO Bannu (Camp Peshawar)
Dated 4/2 /2012

To

The Enquiry Officer
Syed Zahir Ali Shah, DMG (BPS 19)
DCO, Bannu

Subject: **Statement of Allegation/ Charge Sheet**

I acknowledge the receipt of charge sheet received on 01-02-2012 from your good office and clarify my position in the light of record and facts. My Para wise reply is as under.

1. I deny the charge on following grounds.
It is brought to your kind notice that instead of six persons five were appointed while all the codal formalities were observed. Appointment of class IV i.e. field workers BPS-1 was made through employment exchange and on the advice of DCO D.I.Khan as **"the applicant should be appointed on the vacant post dated 08-08-2009, forwarded for necessary action dated 28-02-2009"** by providing the NOC **(annexure 1).**

   As for as the appointment of junior clerk and driver cum operator is concerned proper procedure i.e. advertisement, test and interview was conducted through the departmental selection committee **(annexure 2).**
   Hence, none of the persons was appointed illegally.

2. I deny the charge on following grounds.
It is submitted for your kind information that instead of five, four officials orders were cancelled/ withdrawn on the directive of DCO D.I.Khan.

i. Shams ur Rahman (field worker) with reference to DCO D.I.Khan letter No 719/DCO dated 25-01-2010 **"as per policy Mr Sadaqat Ali s/o Liaqat Ali has the right to be appointed. You are directed to consider the application of Mr Sadaqat Ali s/o Liaqat Ali for the post of deceased son quota under the rule" (annexure 3).**

   While in the subsequent letter No 1209/DCO dated 12-02-2010, I was directed as **" you are therefore directed to terminate the person appointed by you which is against the rule/ Govt. policy and appoint Mr Sadaqat Ali s/o Liaqat Ali under deceased son quota against the said post as per Govt. policy in vogue" (annexure 4).**

   So, in the light of clear direction by the DCO D.I.Khan I, being EDO Agriculture, cancelled the appointment of Shams ur Rahman and order of Sadaqat Ali s/o Liaqat Ali was placed on deceased son quota vide order No. 349-53/EDO dated 13-02-2010 **(annexure 5).**

ii. Mohibullah (field worker) It is clarified that Mohibullah neither reported arrival nor submitted medical fitness certificate. Hence, his appointment order was withdrawn on the direction of DCO D.I.Khan vide letter No. 9774/DCO dated 20-11-2009 as **"the office order bearing No. 2599-2602/EDO Agriculture dated 12-10-2009 issued by your office may be withdrawn"** which was further confirmed by the then Incharge EDO Agri; vide letter No 2944/EDO dated 21-11-2009 **(annexure 6,7).**

iii. Ghulam Mustafa (junior clerk) vide District Nazim letter No. 090/DN/PSO dated 07-01-2010 address to DCO D.I.Khan as **"you are therefore requested to please adjust two junior clerks out of the list of junior clerks lying in the district surplus pool D.I.Khan so that the surplus policy could be implemented in letter and spirit".**

ATTESTED

(10)

Further DCO D.I.Khan letter No. 521/DCO dated 16-01-2010 address to EDO Agriculture as **"the adjustment of two junior clerks from the surplus pool staff D.I.Khan against the post of the same cadre lying vacant in the Agri; department of D.I.Khan"** with the list of surplus pool staff **(annexure 8,9).**

So, in the light of above instruction, the order of Ghulam Mustafa was cancelled and junior clerk from the surplus pool was adjusted.

iv. Ilahi Bakhsh (driver cum operator etc) vide DCO D.I.Khan letter No. 10107-10/DCO dated 09-02-2010 accompanied the list of surplus pool staff by mentioning the names of three persons
1. One post of junior clerk BPS-7 (Syed Najaf Ali Shah s/o Ghulam Mustafa Shah)
2. One post of driver cum operator BPS-6 (Malik Ilahi Bakhsh s/o Malik Sona)
3. One post of vehicle driver BPS-4 (Muhammad Amir s/o Muhammad Ashiq)

and directed as **"you are hereby directed to cancel immediately the above orders and accommodate the senior most junior clerk of the surplus pool and the driver of district surplus pool as per the Govt. policy of NWFP" (annexure 10).**

So, in the light of above instructions it was complied as
a. No appointment order was made for Najaf Ali Shah
b. Order of Ilahi Bakhsh was not cancelled as no post for such cadre was available in the surplus pool list so requested for NOC which was granted later on.
c. Appointment order of Muhammad Amir was cancelled and driver from surplus pool was adjusted. Due to non availability of NOC, neither he reported arrival nor submitted medical fitness certificate. Hence, there was no need to give him prior notice as per rule **(annexure 11).**

In the light of above mentioned facts, it is quite clear that their appointment orders were not withdrawn illegally.

3. I deny the charge on following grounds.
None of the persons was given salary; therefore, no loss occurred to Govt. exchequer. Salaries to Ghulam Mustafa and Shams ur Rahman were made due to court cases as the honorable court has granted the status quo during the hearing and after the dismissal of the case, their salaries were stopped.
Therefore, my action was legal and under Govt. rules and regulations.

i. Shams ur Rahman. Case was filed with honorable Civil Judge III on 30-01-2010. Status quo was granted on 13-02-2010 by honorable court and decided on 13-07-2010 as **"the suit of the plaintiff is here by dismissed as withdrawn" (annexure 12).**

ii. Ghulam Mustafa. **"his application is here by dismissed, moreover the plaintiff has already receipt salary for the last ten month in the garb of present status quo"** after that his salary was stopped by District Officer D.I.Khan **(annexure 13).**

It is therefore requested that I may kindly be exonerated of the charges leveled against me.
At the end, I would request to allow me to be heard in person to clarify my position.

Muhammad Bakhsh Malik
Ex. EDO Agric. D.I.Khan
Now EDO Agric. Bannu

ATTESTED

D (11)

سوال نامہ برائے ایگزیکٹو EDO ایگریکلچر ڈی ائی خان ملک محمد بخش

1. کیا آپ نے شمس الرحمان فیلڈ ورکر، مجیب اللہ فیلڈ ورکر، غلام مصطفی جونیئر کلرک الہی بخش ڈرائیور / اپریٹر، محمد عامر ڈرائیور اور نجف علی شاہ ڈرائیور کو بھرتی کرتے وقت تمام قانونی ضابطے پورے کئے تھے؟

2. کیا مذکورہ پوسٹوں کو بھرنے سے پہلے آپ نے ضلعی سلیکشن بورڈ سے NOC لیا تھا؟

3. کیا آپ نے کلاس فور / چپڑاسی کے ذریعے مستقل کئے تھے؟ اور اسکا باقاعدہ Departmental Selection کمیٹی کے ذریعے تعیناتی کی تھی؟

4. کیا مذکورہ باقی پوسٹوں کو "Advertised" کیا تھا؟

اگر 2، 3، 4 کا جواب مثبت میں ہو تو جواب کے لیے ثبوت فراہم کریں؟

5. کیا آپ نے ان تمام اوپر ذکر کئے گئے بندوں کو "Termenate" کیا تھا؟ اگر ہاں تو کیوں؟

6. کیا مذکورہ لوگوں کو terminate کرنے سے پہلے آپ نے تمام قانونی ضابطے پورے کئے تھے؟ اگر ہاں تو ثبوت فراہم کیجئے۔

7. کیا بعض ملازمین جیسے شمس الرحمان اور غلام مصطفی وغیرہ کو "Termination" کے بعد بھی تنخواہ ملتی رہی کیوں؟ آپ نے کس قانون کے تحت اس کی تنخواہ جاری رکھی؟

8. کیا بعض پوسٹیں ایگریکلچر ڈیپارٹمنٹ [illegible]

ATTESTED

(12)

Detached ہوتے تھے؟ اگر ہاں تو انہی پوسٹوں پر بجلی کس طرح ملازمین کو دکھائی گئی اور وہ تنخواہ لیتے رہے؟

9۔ کیا detached پوسٹوں پر بجلی اور Adjesoment کی گئی؟ اگر ہاں تو کس قانون کے تحت؟

10. کیا آپ نے دوسرے ملازمین کو [illegible] کیا لیکن انہی بخشا، جو کہ ابھی [illegible] اس کو برقرار رکھا گیا ہے؟

11۔ آپ مزید اگر کچھ بتانا چاہیں۔

9/12/XII

انکوائری آفیسر / ڈی سی او بنوں

(13)

جوابات سوال نامہ برائے سابق ای ڈی او زراعت ڈیرہ اسماعیل خان

1. جی ہاں شمس الرحمٰن اور محب اللہ ایلڈور کر کو ایمپلائمنٹ ایکسچینج کے ذریعے اور ڈی سی او صاحب کی ایڈوائس پر بھرتی کیا گیا جبکہ غلام مصطفٰے جونیئر کلرک، الٰہی بخش ڈرائیور / آپریٹر اور محمد عامر ڈرائیور کو تمام قانونی تقاضے پورے کرتے ہوئے بھرتی کیا گیا جبکہ نجف علی شاہ نامی بندے کو سرے سے بھرتی ہی نہیں کیا۔
2. جی ہاں شمس الرحمٰن، محب اللہ اور غلام مصطفٰے کے لیے پہلے NOC لی گئی۔ جبکہ الٰہی بخش کے لیے NOC بعد میں ملی۔
3. جی ہاں کلاس فور یعنی فیلڈ ورکر کی تعیناتی ایمپلائمنٹ ایکسچینج کے ذریعے کی تھی۔
4. جی ہاں جونیئر کلرک، ڈرائیور / آپریٹر اور ڈرائیور کی پوسٹیں باقاعدہ مشتہر کی تھیں۔ (ایمپلائمنٹ کارڈز اور اشتہار کی کاپی لف ہیں)
5. میں نے صرف تین بندوں کے آرڈر کینسل کیے تھے۔ 1۔ شمس الرحمٰن 2۔ غلام مصطفٰے 3۔ محمد عامر۔ جبکہ محب اللہ کے آرڈر ڈی سی او صاحب کی ہدایت پر withdraw ہوئے تھے اور نجف علی شاہ کے تو سرے سے آرڈر ہی نہیں ہوئے تھے۔ جن تین آدمیوں کے آرڈر میں نے کینسل کیے تھے وہ بھی ڈی سی او صاحب کی واضح ہدایت پر کیے تھے۔ جیسا کہ انہوں نے شمس الرحمٰن کے لئے ہدایت دی کہ "اس کے آرڈر فوری طور پر کینسل کیے جائیں اور لیاقت علی ولد صداقت علی کے Decease son quota میں آرڈر کیے جائیں۔" بحوالہ لیٹر نمبر 719/DCO مورخہ 25-01-2010 اور لیٹر نمبر 1209/DCO مورخہ 12-02-2010۔ اسی طرح غلام مصطفٰے کے لئے ہدایت دی کہ چونکہ سرپلس پول میں جونیئر کلرک موجود ہیں اس لئے وہاں سے جونیئر کلرک کو ایڈجسٹ کیا جائے بحوالہ ضلع ناظم لیٹر نمبر 090/DN/PSO مورخہ 07-01-2010 و ڈی سی او لیٹر نمبر 521/DCO مورخہ 16-01-2010۔ مزید براں محمد عامر کے لئے انہوں نے کہا کہ "ان کے آرڈر فوری طور پر کینسل کیے جائیں اور سرپلس پول سے ڈرائیور ایڈجسٹ کیا جائے"۔ تو ڈی سی او صاحب کی واضح ہدایات کی روشنی میں محمد عامر کے آرڈر کینسل کر کے سرپلس پول سے ڈرائیور ایڈجسٹ کیا بحوالہ لیٹر نمبر 10107-10/DCO مورخہ 09-02-2010۔
6. چونکہ محب اللہ اور محمد عامر نے حاضری رپورٹ اور میڈیکل سرٹیفکیٹ جمع ہی نہیں کی تھی اس لئے ان کے آرڈر کینسل کرنے کے لئے باقاعدہ نوٹس دینے کی ضرورت نہیں تھی اور نجف علی شاہ تو بھرتی ہی نہیں ہوا تھا۔ جبکہ شمس الرحمٰن نے Decease son quota میں دوسرے کی حق تلفی کی کوشش کی تھی۔
7. صرف شمس الرحمٰن اور غلام مصطفٰے کو تنخواہ ملتی رہی۔ کیونکہ انھوں نے کورٹ سے Stay order لے لیا تھا۔ مگر جیسے ہی ان کے کیس خارج ہوئے ان کی تنخواہ بند کر دی گئی۔
8. یہ صحیح ہے کہ محکمہ زراعت سے آئی پوسٹیں علیحدہ کی گئیں تھیں۔ ان میں سے جن لوگوں کے آرڈر ان کے آبائی اضلاع میں ہوئے تھے وہ تو چلے گئے مگر ڈیرہ اسماعیل خان والے نہ گئے۔ ان میں سے کچھ تو عدالت بھی چلے گئے جبکہ اس کے برعکس ضلعی حکومت نے یہ پوسٹیں علیحدہ نہ کیں اور برابر پوسٹوں کی Sanction اور بجٹ دیتے رہے اور ابھی تک دے رہے ہیں۔ لہٰذا جو لوگ اپنے آبائی اضلاع میں چلے گئے اور واپس نہیں آئے ان پوسٹوں پر ملازمین کو بھرتی کیا۔
9. چونکہ ضلعی حکومت برابر پوسٹوں کی منظوری دے رہی ہے اسلئے ان پوسٹوں پر بھرتی اور ایڈجسٹمنٹ کی گئی۔
10. جن تین بندوں کا ذکر ڈی سی او صاحب نے بحوالہ لیٹر نمبر 10107-10/DCO مورخہ 09-02-2010 میں کیا تھا۔ اور ساتھ ہی واضح ہدایت کی تھی کہ ان کے آرڈر فوری طور پر کینسل کیے جائیں اور سرپلس پول سے ایڈجسٹمنٹ کی جائے۔ چونکہ سرپلس پول میں ڈرائیور / آپریٹر کے کیڈر کی پوسٹ نہیں تھی لہٰذا اس کے آرڈر کینسل نہ کیے۔ اور باقاعدہ NOC کے لئے Request کی۔ جو انھوں نے بعد میں دے دی۔
11. میں آخر میں یہ کہنا چاہتا ہوں کہ سوائے نجف علی شاہ کے جن کے سرے سے آرڈر ہی نہیں ہوئے تھے باقی تمام بندوں کے آرڈر باقاعدہ قوائد و ضوابط کے مطابق ہوئے تھے۔ دوسرا ان کے Appointment order ڈی سی او صاحب کی واضح ہدایت کی روشنی میں کینسل کیے تھے نہ کہ ان کو Terminate کیا گیا تھا کیونکہ کچھ نے تو ابھی تک حاضری رپورٹ اور میڈیکل فٹنس سرٹیفکیٹ ہی جمع نہ کی تھی اور نہ ہی تنخواہ لی تھی۔ البتہ کچھ بندوں نے کورٹ کے stay order کی وجہ سے تنخواہ لی۔ لہٰذا مہربانی فرما کر مجھے ان الزامات سے بری کیا جاوے۔

ملک محمد بخش
سابق ای ڈی او زراعت ڈیرہ اسماعیل خان
7/2/2012

سوال نامہ برائے نمائندہ ایگریکلچر ڈپارٹمنٹ

Nominated by DG on farm water Mangement

1۔ کیا ایکس ای ڈی او ملک محمد بخش نے شمس الرحمان فیلڈ ورکر محب اللہ فیلڈ ورکر، غلام مصطفیٰ ، الٰہی بخش ڈرائیور، ایڈیشنل ڈائریکٹر محمد عامر ڈرائیور اور لطف علی ڈرائیور کو بھرتی کرتے وقت تمام قانونی تقاضے پورے کئے تھے؟

2۔ کیا مذکورہ پوسٹوں پر تعیناتی سے پہلے ضلعی سرپلس پول سے ریکارڈ کے مطابق NOC، حاصل کی گئی تھی؟

3۔ کلاس فور ملازمین شمس الرحمان اور محب اللہ وغیرہ کی تعیناتی Employment ایکسچینج کے ذریعے کی گئی تھی؟ اور D.S.C بھی ہوئی تھی؟

4۔ کیا مذکورہ بالا باقی پوسٹوں کی تعیناتی سے پہلے اخبارات کے ذریعے مشتہر کی گئی؟ ریکارڈ سے ثبوت فراہم کریں؟

5۔ کیا مذکورہ بالا ملازمین کو برخاست کیا گیا؟ اگر ہاں تو کیا آفس ریکارڈ کے مطابق تمام قانونی تقاضے پورے کئے گئے تھے؟

6۔ کیا ریکارڈ کے مطابق شمس الرحمان اور غلام مصطفیٰ کو برخاستگی کے بعد بھی تنخواہ ملتی رہی؟

7۔ کیا باقی مذکورہ بالا ملازمین کو تو بغیر نوٹس اور قانونی تقاضوں کے برخاست کیا گیا لیکن ایک بندہ الٰہی بخش ملک کو چھوڑا گیا اور ملازمت پر برقرار رکھا گیا؟ کیوں؟

(16)

ی 8 کیا بہت سے اسامیاں ایگریکلچر ڈپارٹمنٹ سے Detached کو Crop Reporting Service ہوئے تھے اور کچھ بھی ان پوسٹوں پر تعیناتی عمل میں لائی گئی کیوں؟

ع 9 اگر واقعی مذکورہ پوسٹ محکمہ زراعت سے الگ ہو کر "Detached" ہوتے تھے تو اس کا مطلب ہے کہ محکمہ زراعت میں اس کا وجود نہیں تھا تو پھر کس طرح اس پر تعیناتیاں کی گئیں اور اسکا بجٹ کہاں سے منظور ہوا؟

ع ی 10 کیا بہت سے اسامیاں بمع ملازمین محکمہ زراعت سے Detached ہو کر مختلف اضلاع کو دیئے گئے اور ایگریکلچر ڈپارٹمنٹ ڈی آئی خان میں وہ پوسٹیں ختم کی گئیں لیکن ان میں سے کچھ تو کورٹ آرڈر پر چھوڑا گیا/بحال رکھا گیا لیکن بعض پوسٹیں جسمیں کوئی کورٹ آرڈر نہیں پر بھی بدستور Detached کئے گئے ملازمین بغیر کسی قانونی ضابطے کے کام کر رہے ہیں کیوں؟ جواب کیلئے ثبوت فراہم کریں اگر کوئی کورٹ کا آرڈر ہو تو اسے بھی منسلک کریں۔

عبرالا. کیا شفیع اللہ JIC کو برخاستگی کے بعد D.G صاحب نے اسکی تبدیلی کی مروت تبدیل کیا؟ کیا 2. اگر وہ برخاست ہوا تھا تو پھر کس طرح وہ ڈائریکٹر تعینات ہوا تھا؟

Abdul Haq
ایگریکلچر آفیسر / ڈی سی او بنوں

(16) جواب نامہ از غلام مرتضیٰ ایگزیکٹو ڈیپارٹمنٹ

1. سابق (ای۔ڈی۔او) مگسی نے شمس الرحمٰن فیلڈ ورکر اور عبداللہ فیلڈ ورکر کو ایمپلائمنٹ ایکسچینج کارڈ کے ذریعے اور باقی تمام افراد کو پوسٹیں مشتہر کر کے باقاعدہ DSC کے ذریعے بھرتی کیا تھا

2. جی ہاں۔ سوائے ایک بندے کے باقی تمام کے لئے NOC ضلعی سپرنٹنڈنٹ پولیس سے پہلے حاصل کی گئی تھی

3. کلاس فور ملازمین شمس الرحمٰن اور عبداللہ وغیرہ کی تعیناتی کیلئے Employment Exchange کارڈ موجود ہے لیکن DSC کی بجائے D.C.O صاحب کی ایڈوائس پر تعیناتی ہوئی تھی

4. مذکورہ بالا پوسٹوں کی تعیناتی سے پہلے اخبارات میں مشتہر کی گئی تھی جسکی کاپی ساتھ لف ہے

5. مذکورہ بالا تمام ملازمین کے Appointment orders منسوخ کئے گئے تھے چونکہ انہوں نے نہ حاضری کی تھی نہ میڈیکل اور نہ انہوں نے کوئی تنخواہ لی تھی لہذا کوئی نوٹیفکیشن وغیرہ issue کرنے کی ضرورت نہیں تھی

6. ریکارڈ کے مطابق شمس الرحمٰن اور غلام مصطفیٰ کو برخاستگی کے بعد بھی تنخواہ ملتی رہی کیونکہ عدالت نے stay دیا تھا

7. یہ غلط ہے کہ مذکورہ بالا ملازمین کو بغیر نوٹیفکیشن اور قانونی تقاضوں کے برخاست کیا گیا۔ ان میں سے کچھ نے تو نہ حاضری جوائن کی۔ اور نہ میڈیکل فٹنس سرٹیفکیٹ اور کچھ کو DCO صاحب کی واضح ہدایات کی روشنی میں Appointment orders صرف کینسل کئے نہ کہ ان کو Terminate کیا

ایسی بخشش کو اس لئے چھوڑا گیا کیونکہ جب D.C.O صاحب نے تین بندوں کے آرڈرز کینسل کرنے اور سپرنٹنڈنٹ پولیس سے ایڈوائس کے لئے لکھا۔ تو ان سے کہا گیا کہ کیونکہ لسٹ میں اس کیڈر

Deputy Commissioner
Qila Saifullah
05/12/2012

کی پوسٹ نہیں تھی لہذا انہیں NOC دی گئی جو کہ
D.C.O صاحب نے تعینات دے دی

5. تمام پوسٹیں Detached & Crop Reporting Service
ہوئی تھیں اور ان پوسٹوں پر تعیناتی بھی کر دی گئی کیونکہ
ضلع ناظم اور D.C.O صاحب نے پوسٹیں Detached کرنے
سے انکار کر دیا تھا اس لیے جو بندے اپنے ابائی اضلاع
کو چلے گئے تھے اور ضلعی حکومت کی طرف سے پوسٹیں
نہ کرنے کی وجہ سے خالی تھیں۔ اس لیے ان
پوسٹوں پر تعیناتی کی گئی

6. ڈسٹرکٹ فنانس اینڈ پلاننگ ڈیپارٹمنٹ باقاعدہ
پوسٹوں کی منظوری اور بجٹ دیتے رہے اور دے رہے
ہیں (پوسٹوں کی Sanction اور بجٹ کی کاپی لف ہے)

10. واقعی اپریل سے آسامیاں علیحدہ ملازمین محکمہ زراعت سے
Detached ہو کر مختلف اضلاع کو چلے گئے تھے اور محکمہ
زراعت سے وہ پوسٹیں ختم کی گئی مگر کچھ لوگ عدالت
کے آرڈر پر اور کچھ بغیر آرڈر کے ابھی تک تنخواہ لے
رہے ہیں کیونکہ ضلعی فنانس ڈیپارٹمنٹ ہر ماہ
پوسٹیں اور بجٹ دے رہا ہے

11. تنفیذ الامر جوڈیشل فلک کے آرڈر مورخہ 5/2/10 کو ہوئے تھے
جبکہ D.G صاحب نے 26/2/10 کو اس کو دوسری
پوسٹ پر ٹرانسفر کر دیا تھا میں DEO نے
D.C.O صاحب کی واضح ہدایت پر تمام آرڈر ملتوی کر دیے
اور بعد مورخہ 30/3/10 کو پوسٹ خالی کرنے والے D.G
صاحب کے آرڈر کے تحت اس کو بھی صورت التوا میں رکھا گیا
رپورٹ ہذا از مورخہ جمعہ 06/02/2011

ڈسٹرکٹ آفیسر فنانس اینڈ پلاننگ
ڈسٹرکٹ آفیسر ڈائریکٹر جنرل
فریدہ اسماعیل خان

District Officer
Finance & Planning
D.I.Khan

سوال نامہ برائے نامزد ایگزیکٹو ڈائریکٹر

Nominated by DG on farm water Mangement

1۔ کیا ایکس ای ڈی او ملک محمد بخش نے شمس الرحمان فیلڈ ورکر محب اللہ فیلڈ ورکر، غلام مصطفیٰ ٹرالی، الٰہی بخش ڈرائیور، ایریگیٹر محمد عامر ڈرائیور اور نجف علی ڈرائیور کو بھرتی کرتے وقت تمام قانونی تقاضے پورے کئے تھے؟

2۔ کیا مذکورہ پوسٹوں پر تعیناتی سے پہلے ضلعی سپرنٹنڈنٹ پولیس سے ریکارڈ کے مطابق NOC حاصل کی گئی تھی؟

3۔ کلاس فور ملازمین شمس الرحمان اور محب اللہ وغیرہ کی تعیناتی Employment ایکسچینج کے ذریعے کی گئی تھی؟ اور D.S.C بھی ہوئی تھی؟

4۔ کیا مذکورہ بالا باقی پوسٹوں کے تعیناتی سے پہلے اخبارات کے ذریعے مشتہر کی گئی؟ ریکارڈ سے ثبوت فراہم کریں؟

5۔ کیا مذکورہ بالا ملازمین کو برخاست کیا گیا؟ اگر ہاں تو کیا آفس ریکارڈ کے مطابق تمام قانونی تقاضے پورے کئے گئے تھے؟

6۔ کیا ریکارڈ کے مطابق شمس الرحمان اور غلام مصطفیٰ کو برخاستگی کے بعد بھی تنخواہ ملتی رہی؟

7۔ کیا باقی مذکورہ بالا ملازمین کو تو بغیر نوٹس اور قانونی تقاضوں کے برخاست کیا گیا لیکن ایک بندہ الٰہی بخش ملک کو چھوڑا گیا اور ملازمت پر برقرار رکھا گیا؟ کیوں؟

کی پوسٹ نہیں تھی لہذا انہیں NOC دی گئی۔ جو کہ D.C.O صاحب نے لگا کر دے دی۔

8. تمام پوسٹیں Detached & Coop. Reporting Service ہوئی تھیں اور ان پوسٹوں پر تعیناتی بھی کر دی گئی کیونکہ ضلع ناظم اور D.C.O صاحب نے پوسٹیں Detached کرنے سے انکار کر دیا تھا۔ اس لئے صوبہ سے اپنے اپنی اضلاع کو چلے گئے تھے۔ اور ضلعی حکومت کی طرف سے پوسٹیں Detached نہ کرنے کی وجہ سے خالی تھیں۔ اس لئے ان پوسٹوں پر تعیناتی کی گئی

9. ڈسٹرکٹ فنانس اینڈ پلاننگ ڈیپارٹمنٹ باقاعدہ پوسٹوں کی منظوری اور بجٹ دیتے رہے اور دے رہے ہیں (پوسٹوں کی Sanction اور بجٹ کی کاپی لف ہے)

10. واقعی اور سچی آسامیاں محکمہ ملازمین محکمہ زراعت سے Detached ہو کر مختلف اضلاع کو چلے گئے تھے۔ اور محکمہ زراعت سے وہ پوسٹیں ختم کی گئی۔ مگر کچھ لوگ عدالت کے آرڈر پر اور کچھ بغیر آرڈر کے ابھی تک تنخواہ لے رہے ہیں۔ کیونکہ ضلعی فنانس ڈیپارٹمنٹ برابر پوسٹیں اور بجٹ دے رہا ہے

11. تنفیذی الاٹ حوزہ ڈیرہ کے آرڈر موصولہ 5/1/2010 کو ہوئے تھے جس D.G صاحب نے 28/1/2010 کو اپنی دوسری پوسٹ پر ٹرانسفر کر دیا۔ بعد میں E.D.O نے D.C.O صاحب کی واضح ہدایت پر تمام آرڈر منسوخ کر دیئے اور بعد موصولہ 30/3/2010 کو پوسٹ خالی کرنے والے D.G صاحب کے آرڈر کے تحت اس کو تبدیل کروا کر ٹرانسفر کر دیا گیا

رپورٹ ہذا انہ فرمودہ صحیح ہے

06/02/2012

ڈسٹرکٹ آفیسر فنانس اینڈ پلاننگ
ڈیرہ اسماعیل خان

District Officer
Finance & Planning
D.I. Khan

سوال نامہ برائے الٰہی بخش ڈرائیور / ایپرنٹس

1۔ کیا آپ کی تعیناتی باقاعدہ ایمپلائمنٹ ایکسچینج کے ذریعے کی گئی ؟

2۔ کیا آپ کی تعیناتی باقاعدہ میرٹ اور انٹرویو کے ذریعے کی گئی؟

3۔ کیا آپ نے باقاعدہ درخواست برائے بھرتی جمع کی تھی ؟

4۔ کیا آپ اس پوسٹ کیلئے بالکل کوالیفائڈ Qualified ہے؟ اگر ہاں تو ثبوت فراہم کیجئے ؟

5۔ کیا یہ الزام صحیح ہے۔ کہ آپ EDO Agr: کے بھائی ہے اور اس وجہ سے تمام قانونی تقاضوں کو بالائے طاق رکھ کر آپکو بھرتی کیا گیا ؟

6۔ کیا آپکی تعیناتی باقاعدہ ڈیپارٹمنٹل کمیٹی کے ذریعے کی گئی ؟

Tanveer
11/2/91
انکوائری آفیسر / اضلع ایگریکلچر آفیسر

جوابات سوالنامہ الٰہی بخش ڈرائیور/اپریٹر

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① جی ہاں میری تعیناتی باقاعدہ اشتہار کے ذریعے ہوئی۔

② جی ہاں میری تعیناتی باقاعدہ انٹرویو اور ٹیسٹ کے ذریعے کی گئی۔

③ جی ہاں میں نے بھرتی ہونے باقاعدہ درخواست دی تھی۔ (کاپی لف ہے)

④ جی ہاں میں اس پوسٹ کیلئے اشتہار میں دی گئی تعلیمی قابلیت اور HTV لائسنس ہولڈر کی وجہ سے کوالیفائیڈ ہوں۔

تعلیمی قابلیت : میٹرک
اضافی کورسز : پی ٹی سی اور ٹائپنگ کورس
تجربہ : لینڈ لیولنگ ڈرلنگ
عمر : 38 سال 6 ماہ
لائسنس : HTV (کاپیاں لف ہیں)

⑤ جی ہاں میں سابق ای ڈی او ایگریکلچر کا بھائی ہوں۔ یہ غلط ہے کہ مجھے عام قانونی تقاضے بالائے طاق رکھ کر بھرتی کیا گیا ہے۔

⑥ جی ہاں میری تعیناتی باقاعدہ ڈیپارٹمنٹل سلیکشن کمیٹی کے ذریعے ہوئی۔ (کاپی لف ہے)

A Ballach

الٰہی بخش ولد خلک سونا
ڈرائیور کم اپریٹر دفتر ڈسٹرکٹ ڈائریکٹر زراعت
ڈیرہ اسماعیل خان
03-02-2012

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خدمت جناب ایگزیکٹو ڈسٹرکٹ آفیسر راولپنڈی ڈیرہ اسماعیل خان

عنوان:- درخواست برائے وسیع ڈسپوزل ڈسپوزل ایریا

جناب عالی!

گذارش ہے کہ بذریعہ اخبار آج مورخہ 8 دسمبر 2009ء کو معلوم ہوا ہے کہ آپ نے دھرمسالہ کے قریب عدد وسیع ڈسپوزل ڈسپوزل ایریا کی نشاندہی کی ہے۔ جس سلسلے میں اپنے آپ کو پیش کرتا ہوں۔ میرے کوائف مندرجہ ذیل ہیں۔

1) میرے میرے کا افتخار کتابوں پر ڈگری حاصل کیا ہے۔
2) میں ضلع ڈیرہ اسماعیل خان کا مستقل سکونتی ہوں
3) میں پیشہ کا ڈسپوزل کنٹریکٹر ہوں

میرے حق میں فیصلہ کرنے کی آسانی پر احسانات فرمائیں گے

مدعی محمد الٰہی بخش ولد محمد مسکنہ ڈیرہ اسماعیل خان

Bakhsh

(25)

سوال نامہ برائے ڈرائیور محمد عامر

1. کیا آپ کی تعیناتی باقاعدہ اپائنٹمنٹ لیٹر دیکھ کی گئی؟
2. کیا آپ کی تعیناتی باقاعدہ ٹیسٹ اور انٹرویو کے ذریعے کی گئی؟
3. کیا آپ اس پوسٹ کے لیے بالکل کوالیفائڈ تھے؟
4. آپ کو کیوں برخاست کیا گیا؟
5. کیا آپ کو غلط طریقے سے ملازمت سے نکالا گیا؟ اگر ہاں تو وضاحت کیجئے؟

Zaman 1/2/XII

اکاؤنٹری افیسر / DCO نوں

(26) جوابات سوال نامہ محمد عامر ڈرائیور

1) جی ہاں میری تعیناتی باقاعدہ منظور ہوئی تھی۔
2) جی ہاں میری تعیناتی باقاعدہ انڈو پو اور ٹیسٹ کے ذریعے کی گئی۔
3) جی ہاں تعلیمی قابلیت میٹرک ہے اور ڈرائیونگ کا لرننگ لائسنس ہے۔
4) DCO صاحب نے ای ڈی او صاحب کو لیٹر لکھا کہ چونکہ سرپلس پول میں کافی ڈرائیور نہیں اسلئے ان کے آرڈر فوری طور پر کینسل کرکے سرپلس پول سے ڈرائیور اپڈجسٹ کیا جائے۔ جس پر ای ڈی او صاحب نے میرے آرڈر کینسل کرکے سرپلس پول سے ڈرائیور کو اپڈجسٹ کیا۔
5) DCO صاحب چونکہ ای ڈی او صاحب کے ضلعی سربراہ نہیں اسلئے ان کے آرڈر کی تعمیل ضروری تھی۔

محمد عامر تعلیم خود

محمد عامر ولد محمد عاشق
تھہیم آباد ڈیرہ اسماعیل خان

Attested
Signature
District ... Officer
On Farm ... Management
...

F

(27)

OFFICE OF THE
DISTRICT COORDINATION OFFICER
BANNU

No. 783 /DCO/AE
Dated Bannu the: 29/02/2012.

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Agriculture, Livestock & Cooperative Department,
Peshawar.

Subject: **ENQUIRY AGAINST MALIK MUHAMMAD BAKHSH BPS-18 EX-EXECUTIVE DISTRICT OFFICER AGRICULTURE D. I. KHAN.**

Memo:

Reference your department endorsement No. SOE(AD)20-77/2011 dated 16-01-2012.

The subject enquiry was conducted/carried out by the undersigned and completed accordingly. The enquiry report (6 pages) along with relevant record of the case containing 137 pages is forwarded for further necessary action.

Enquiry Officer/
District Coordination Officer
Bannu

2296
03.03.12

ATTESTED

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OFFICE OF THE
DISTRICT COORDINATION OFFICER
BANNU

ENQUIRY REPORT REGARDING ILLEGALAPPOINTMENTS/TERMINATIONS AND PAYING OF SALARIED AND ALLOWANCES TO ILLEGALLY APPOINTED PERSONS BY MALIK MUHAMMAD BAKHSH BPS-18 EX-EDO AGRICULTURE D.I. KHAN

ORDER OF ENQUIRY:

The undersigned was appointed as Enquiry Officer to probe into the allegations under the provision of Khyber Pakhtunkhwa E&D Rules 2011 against Mr. Malik Muhammad Bakhsh BPS-18 Ex-Executive District Officer Agriculture D.I. Khan vide Agriculture Department endorsement No. SOE(AD) 20-77/2011.

BRIEF FACTS OF THE CASE:

Malik Muhammad Bakhsh BPS-18 Ex-Executive District Officer Agriculture D.I. Khan had appointed five persons (Not Six) i.e (**Two** class-IV employees, **One** Junior Clerk, **One** Driver cum Operator BPS-06 and **one** Driver BPS-04). On **12-01-2009** Finance Department Khyber Pakhtunkhwa had detached 13 posts along with incumbents of different cadres from Agriculture Department D. I. Khan and attached it to Crop Reporting Services (CRS) at various districts of the province vide Finance Department letter at annexure "**A**" and in pursuance of Finance Department instructions, the EDO Agriculture D. I. Khan transferred the services of the detached officials from Agriculture Department D. I. Khan and placed at Crop Reporting Center at different districts vide their letter dated **21-07-2009** at annexure "**B**". Some officials who affected due to the said order challenged the detachment order of Finance Department in Peshawar High Court Bench D. I. Khan vide Writ Petition No. **165/2010** at annexure "**C**". The honorable court apparently suspended the operation of Finance Department order dated **12-01-2009** for ten days vide the court's order sheet dated **25-03-2010** at annexure "**D**". Moreover, the District Nazim D. I. Khan addressed a letter to the Secretary to Govt. of Khyber Pakhtunkhwa Agriculture Department as well as Finance Department in which he declined to detach the said posts from Agriculture Department in District D. I. Khan vide his letter No. **1177-78/DW/PSO** dated **08-07-2009** which is annexed as "**E**". Therefore, the then EDO Agriculture (Malik Muhammad Bakhsh) made fresh appointments of one Junior Clerk, one Driver cum Operator BPS-06 and one Driver BPS-04 against the said post whereas two others class-IV employees were recruited on others vacant posts, but due to direction of District Coordination Officer D. I. Khan he withdrew all the

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appointments orders except that of Elahi Bakhsh Driver cum Operator. Later on, he adjusted surplus employees on the posts of Junior Clerk, Driver and one post of Field Worker whereas Diseased Employee Son was adjusted against on the 2nd post of Field Worker. Two employees namely Shams-u-Rehman Field Worker and Ghulam Mustafa Junior Clerk aggrieving by withdrawal orders filed Petition into the Civil Court and got order of injunction in their favour, therefore, they received salary for sometimes. No sooner did their cases were rejected from courts, their salaries were stopped.

Hence one person namely, Roshan Zameer has leveled various allegations against Ex-Executive District Officer Agriculture D. I. Khan resulting in the instant inquiry.

CHARGES/ALLEGATIONS:

There are three charges against Mr. Malik Muhammad Bakhsh Ex-Executive District Officer Agriculture D. I. Khan. According to charge sheet and statement of allegations i.e:-

a. Appointment of Six persons without observing codal formalities.
b. Termination of Five officials without observing codal formalities while one official left in service untouched.
c. Paying of salaries and allowances to the illegally appointed persons during the six months service. As such causing great loss to the Govt. exchequer.

PROCEEDINGS/PROCEDURES:

The charge sheet and statement of allegations were handed over to accused officer by hand with the direction to submit reply to the charge sheet/statement of allegations. After that, the Departmental Representative, the complainant, six appointed/terminated persons, Executive District Officer (F&P) D. I. Khan and the accused officer were formally summoned. The Ex-Executive District Officer Agriculture D. I. Khan (Malik Muhammad Bakhsh), the Departmental Representative Dr. Allah Bakhsh Malik (District Officer On Farm Water Management D. I. Khan), representative of Executive District Officer (F&P) D. I. Khan, Muhammad Aamir Ex-driver and Mr. Elahi Bakhsh Driver cum Operator attended this office accordingly whereas the complainant Mr. Roshan Zameer, Shams-ur-Rehman (Field Worker) Muhib Ullah (Field Worker) and Ghulam Mustafa Shah (Junior Clerk) did not attend the enquiry proceedings. They were once again summoned through District Coordination Officer D. I. Khan as well as Executive District Officer Agriculture D. I. Khan vide this office letter No. 310/DCO dated 11-02-2012 annexed as **"F"** but they did not turn up to join the enquiry proceedings.

Separate questionnaires were prepared for the accused officer (Malik Muhammad Bakhsh), Departmental Representative, EDO (F&P) D. I.

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Khan, Mr. Elahi Bakhsh Driver cum Operator and Muhammd Aamir Ex-Driver which are annexed as **"G"**, **"H"**, **"I"**, **"J"** and **"K"** respectively. The statement of accused officer is annexed as **"L"**, and his reply to questionnaire is annexed as **"M"**, while replies to questionnaires from Departmental Representative, EDO (F&P) D. I. Khan, Elahi Bakhsh Driver cum Operator and Muhammad Aamir are annexed as **"N"**, **"O"**, **"P"** and **"Q"**. respectively.

The Ex-EDO Agriculture D. I. Khan (accused officer) was given an opportunity of personal hearing. He totally denied the charges leveled against him and vehemently defended his stance. He contended that he had appointed all the employees after fulfillment of all codal formalities. He argued that Shams-ur-Rehman and Muhib Ullah Field Worker were appointed on the direction of the District Coordination Officer D. I. Khan through Employment Exchange. Moreover, proper NOC were also obtained from district surplus pool. However, he could not produce any proof regarding appointment of the above persons through Departmental Selection Committee.

So far the posts of Junior Clerk, Driver BPS-04 and Driver cum Operator BPS-06 are concerned; he added that Ghulam Mustafa, Muhammad Aamir and Elahi Bakhsh Malik were appointed respectively against the said post after advertising the post and conducting Departmental Selection Committee meeting. He provided copy of advertisement annexed as **"R"** and that of **minutes of DPC** at annexure **"S"**. But he had not obtained NOC from District Surplus Pool before-appointment, however, later on he obtained NOC in respect of the post of Junior Clerk (Ghulam Mustafa) and Driver cum Operator (Elahi Bakhsh). He further informed that he had appointed only five persons as explained above and not six as Mr. Najaf Ali Shah that is the 6th person had never been appointed by him.

He was asked about the detachment of various posts from Agriculture Department D. I. Khan and later on making appointment on three posts i.e. Junior Clerk, Driver and Driver cum Operator by him. He defended his case and stated that though the posts were detached but due to order of injunction by honorable High Court and provision of budget by Finance & Planning Department D. I. Khan, the posts were actually available and thus appointments were made thereon. As regards the allegations regarding termination of the employee, he took the plea that all appointments orders were withdrawn on the clear direction of District Nazim as well as DCO D. I. Khan and employees from Surplus Pool were adjusted against one post of Field Worker, post of Junior Clerk and Driver whereas a Deceased Employee Son was appointed against the second post of Field Worker. He added that since no employee of the cadre of Driver cum Operator BPS-06 was available at District Surplus Pool, therefore, the order of Elahi Bakhsh Malik was not withdrawn for which the DCO D. I. Khan has formally issued No Objection Certificate later on vide No. **2651 dated 29-03-2010** annexed as **"T"**. The accused officer also denied the allegations regarding paying of illegal salaries to the appointed persons as he affirmed that except Shams-ur-Rehman Field Worker and

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Ghulam Mustafa Junior Clerk to whom court has granted status quo, non of other persons was given salary. He added that after the dismissal of court cases of the above two employees, their salaries were stopped.

The Departmental Representative Dr. Allah Bakhsh Malik (District Officer On Farm Water Management D. I. Khan) supported the stance of the accused officer (Malik Muhammad Bakhsh). He, during the course of hearing, informed that all persons were appointed after fulfillment of codal formalities and their orders were withdrawn on the direction of DCO D. I. Khan. He added that since various appointed officials have not yet obtained any salaries etc hence there was no need to issue them proper notice. He also concurred with the plea taken by the accused officer regarding paying of salaries to two employees for some months due to order of injunction by the court.

The EDO (F&P) D. I. Khan was summoned. He sent his representative (Programmer BPS-17). A separate questionnaire was prepared and handed over to the representative of EDO (F & P) D. I. Khan in which it was specially enquired as once the Finance Department had detached the 13 posts from the strength of EDO Agriculture D. I. Khan, therefore, instead of providing budget to the said post every year, he should have deleted the said posts from the District Budget Book. He forwarded para wise reply to the questionnaire in which he has taken the plea that since the High Court Bench D. I. Khan has given status quo in the case, therefore, he has been giving budget to the said posts every year. He provided copy of order sheet dated 25-03-2010 of the said court which reveals that operation of Finance Department letter dated 06-06-2010 regarding detachment of posts was suspended by the court for ten days.

FINDINGS.

From the perusal of the record, preliminary enquiry, reply of the Departmental Representative, EDO (F&P) D. I. Khan and others to questionnaire as well as replies of the accused officer to charge sheet/statement of allegations and questionnaire, we may conclude the following points:-

1. The 13 posts were detached along with incumbents from the strength of Agriculture Department D. I. Khan (District Govt) and attached with Crop Reporting Center (CRS) at various districts. The order sheet of the honorable High Court clearly depicts that the order of injunction was issued only for ten days which has never been extended nor the defendants could produce any proof regarding the extension of order of injunction by the court. The District Nazim D. I. Khan had sent a letter to Secretary Finance and Secretary Agriculture Department in which he declined to detach the said posts from District Govt: (Agriculture Department) but the record does not provide any proof that Finance Department agreed with the contention of District Nazim D. I. Khan as such it is very clear that the order of detachment of Finance Department still stands and the provision of budget to the said posts by EDO (F&P)

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D. I. Khan tantamounts to non-compliance and transgression of the instructions of Finance Department Peshawar. The appointments as well as adjustment of surplus staff against the said posts is also contravening to the said order of the Finance Department Peshawar.

2. The then EDO Agriculture D. I. Khan (accused officer) had appointed Two Field Workers without Departmental Selection Committee which is also a violation and transgression from Rules and Policy. His contention that he had appointed the said person on the direction of DCO D. I. Khan has no weight in the eyes of law; rather he was supposed to fill the said posts through Employment Exchange and holding of proper Departmental Selection Committee meeting. However, since the appointments were though illegal but the same were withdrawal/cancelled later on.

3. The codal formalities regarding the post of Junior Clerk, Driver cum Operator BPS-06 and Driver BPS-04 i.e. advertisement and Departmental Selection Committee meeting were fulfilled but prior NOC for the said posts were not obtained from DCO D. I. Khan. However, after appointments against the said posts, the accused officer obtained NOC for the post of Junior Clerk and Driver cum Operator which is also a deviation from the policy in vogue.

4. On the direction of DCO D. I. Khan, the accused officer withdrew/cancelled the order of Two Field Workers, One Junior Clerk and One Driver but he did not withdrew the order of Driver cum Operator (Elahi Bakhsh) who is his real brother on the plea that no corresponding cadre scale and qualified official was available in surplus pool. The record of the case supports the plea taken by him as no surplus employee of BPS-06 having the requisite qualification for the post i.e. HTV license was available at District Surplus Pool vide list of surplus employee at annexure **"U"**. Moreover, he adjusted official/employee from surplus pool on a post of Field Worker (BPS-01), post of Driver (BPS-04) and the post of Junior Clerk (BPS-06) whereas a Deceased Son Employee was appointed against another post of Field Worker (BPS-01). Hence we may conclude that if he, under the policy, had obtained NOC from surplus pool prior to appointment, this awkward situation would have not been created.

5. The employee namely Shams-ur-Rehman Field Worker and Ghulam Mustafa Junior Clerk had received salaries for some months after withdrawal of their appointment orders but they had obtained stay orders from the court that is why the department paid salaries to them. However, their salaries were stopped after rejection/disposal of their cases by the court. Hence the charge of paying illegal salaries could not be proved.

cases by the court. Hence the charge of paying illegal salaries could not be proved.

6. The case which was lodged in the honorable High Court Bench D. I. Khan against the order of detachment by Finance Department is still pending for adjudication.

RECOMMENDATIONS:

1. Since the Ex-EDO Agriculture D. I. Khan Malik Muhammad Bakhsh had transgressed and deviated from laid down rules and procedures in appointment of employees, therefore, his **two increments** may be withheld for **three years** and **promotion for one year**.

OR

2. If the accused officer has reached the maximum of his pay scale, in that case his promotion may be withheld for **three years**

3. The EDO (F&P) D. I. Khan may be directed to take up the case with Finance Department Khyber Pakhtunkhwa Peshawar in light of the present status of the case for permanent solution of the issue of detachment of the posts. He may be issued warning for non-compliance of the order of the Finance Department, Peshawar.

Zahir Shah,
Enquiry Officer/
District Coordination Officer
Bannu

GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

F.
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SHOW CAUSE NOTICE

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa as competent authority, under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011, do hereby serve you Malik Muhammad Bakhsh (BS-18) (accused officer), Ex-Executive District Officer Agriculture (BS-19) D.I.Khan now EDO Agriculture Bannu (in his own pay & scale) (BS-19) as follows:-

1.

(i) that consequent upon the completion of inquiry conducted against you by the Inquiry Officer for which you were given opportunity of hearing vide communication No.SOE(AD)20-77/2011 dated 16.01.2012; and

(ii) on going through the findings and recommendations of the Inquiry Officer, the materials on record and other connected papers including your defense before the Inquiry Officer,-

I am satisfied that you have committed the following acts/omissions specified in section 3 of the said rule:-

i. Since the Ex-EDO Agriculture D.I.Khan, you had transgressed and deviated from laid down rules and procedures in appointment of employees.

ii. Did not comply with the order of the Finance Department wherein 13 posts alongwith the incumbents of different cadres were detached from Agriculture Department DIKhan (District Government) and attached to the Crop Reporting Services at various districts. The adjustment of surplus staff against the said posts in DIKhan is contradicting to the orders of Finance Department.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of with holding of promotion for three years under rule 4 of the said rule.

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

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

5. A copy of the findings of the Inquiry Officer is enclosed.

(AMIR HAIDER KHAN HOTI)
CHIEF MINISTER, KHYBER PAKHTUNKHWA,

(COMPETENT AUTHORITY)

ATTESTED

No 42 /DO Bannu (Camp Peshawar)
Dated 10 / 7 / 2012

(35)

The Director General,
On-Farm Water Management,
Khyber Pakhtunkhwa, Peshawar

Subject: **Show Cause Notice**

Sir,

Please refer to your letter No 2774/DG OF WM dated 03-07-2012.
The reply to show cause notice received on 03.07.2012 is enclosed herewith for favour of your good self information and further submission to the competent authority

Your truly,

Niz
Muhammad Bakhsh Malik
EX EDO Agriculture Bannu
Now DO WM Bannu

ATTESTED

36

The Chief Secretary
Govt of Khyber Pakhtunkhwa
Peshawar

Through: Proper channel

Subject: SHOW CAUSE NOTICE

Sir,

With due respect I submit my reply to the show cause notice in order to bring true facts and figures before your good honour:

1. Being EDO Agriculture, I was supposed to coordinate and assist the District as well as Provincial Govt, so on the instruction of Provincial Finance Department 13 posts from Agriculture Extension Department were detached and as per direction their transfer order were placed. Prior to this, District Nazim D.I.Khan sent a letter to the Secretary Agriculture not to detach the said post from District Govt.D.I.Khan However after that District Nazim cancelled the said transfer order issued by EDO Agriculture being the District Govt Staff and DCO D.I.Khan asked Accounts Office to release their pay vide letter no 1299-5 dated 27-07-2009 and 6917-20 dated 01-08-2009 respectively (Copies attached), which was not taken into consideration during the enquiry proceeding.Hence District Finance Department is continuously providing sanction for budget as well as posts i.e. 272 posts.

2. (a) Mr.Shamsur Rehman was appointed on the recommendation of DCO D.I.Khan on his application remarks by DCO (should be appointed) and NOC was also issued by name (in the name of Shamsur Rehman) being the head of District Govt: by conducting the DSC.

   (b) Moreover Mr.Mohibullah was appointed through Departmental Selection Committee headed by the under signed and NOC was also obtained from DCO D.I.Khan as per policy (copies of list attached).

3. The NOC for Ghulam Mustafa was also obtained before the recruitment i.e. NOC dated 02-01-2010 while order No 36-29 dated 06-01-2010 but NOC for Driver cum Operator was provided later on as DCO D.I.Khan was requested that such cadre post is not available in the surplus pool (it was also clarified in the questionnaire). Hence there is no deviation from rules and policy.

4. It is to be clarified that no field worker from the surplus pool was adjusted; however Driver BPS-4 and Junior clerk BPS-7 from surplus pool were adjusted.

ATTE

It was also clarified in the questionnaire that NOC for Shamsur Rehman and Mohibullah (field workers) and Ghulam Mustafa (junior clerk) was granted by DCO D.I.Khan prior to their recruitment as per policy (copies attached) but later on DCO D.I.Khan himself by setting aside the NOC and asked for the adjustment of junior clerk from surplus pool staff while an other field worker was adjusted against deceased son quota. So this situation was not created by me.

5. Payment of illegal salaries was not proved.

6. As for as order of Honorable High Court for detachment of posts is concerned that is still under hearing and I again brought to your kind notice that on the cancellation of transfer order by District Nazim and pay was released by DCO D.I.Khan.Moreover District Finance Department is regularly releasing the budget and sanctioning posts as well.

In support of my above claim a number of evidences can also be produced.

It is therefore requested that I may be acquitted from the imposition of with holding of 3 Years promotion and I also request to be heard in person.

Yours faithfully

Muhammad Bakhsh Malik
Ex EDO Agriculture, Bannu

ATTESTED

H (38)

GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

Dated Peshawar; the September 26, 2012

ORDER:

NO. SOE (AD)20-77/2011.- WHEREAS, Malik Muhammad Bakhsh, (BS-18) Ex-Executive District Officer (Agriculture) (BS-19) DIKhan now Executive District Officer (Agriculture) Bannu was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for the charges mentioned in the charge sheet and statement of allegations dated 10.01.2012.

AND WHEREAS, Syed Zahir Shah, DMG-(BS-19), DCO, Bannu was appointed as Inquiry Officer to conduct inquiry against the said officer for the charges leveled against him.

AND WHEREAS, the Inquiry Officer after considering the allegations, evidence on record, explanation of the officer submitted its report, and pointed out that the allegations mentioned in the Charge Sheet and Statement of Allegations have partially been proved.

NOW THEREFORE, the Competent Authority, after having considered the charges, evidence on record, the explanation of the accused officer, finding of the inquiry officer and in exercising his powers under Section 3 read with Section 8 of the Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011 has been pleased to impose the minor penalty of "withholding promotion for one year" on the officer.

Sd/-XXX
SECRETARY AGRICULTURE

Endst. of even No. & Date.

Copy to:-

1. The Director General, Agricultural Extension, Khyber Pakhtunkhwa, Peshawar.
2. The Director General, On Farm Water Management, Khyber Pakhtunkhwa Peshawar.
3. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. The District Accounts Officers at Bannu and DIKhan.
5. Officer concerned.
6. PS to Secretary Agriculture, Khyber Pakhtunkhwa, Peshawar.

(DR.MIR AHMAD KHAN)
SECTION OFFICER-ESTT:

NO. 4152 / DG /OFWM/ dated 10-10 2012.

Copy of the above is forwarded to Malik Muhammad Bakhsh (BS-18) Ex- Executive Distt; Officer Now District Officer Bannu for information and necessary action .

Director General
On-Farm Water Management
Khyber Pakhtunkhwa, Peshawar

ATTESTED

I (39)

No. 43 / Ex-EDO (Camp Peshawar)
Dated Peshawar, the 22 / 10 / 2012

To

The Director General,
On Farm Water Management,
Khyber Pakhtunkhwa, Peshawar.

Subject: **REVIEW PETITION FOR EXPUNCTION OF WITHHOLDING ONE YEAR PROMOTION.**

Sir,

Please refer to Order No. SOE (AD) 20-77/2011 dated 26-09-2012.

The review petition to expunge the minor penalty of withholding one year promotion is enclosed herewith for favour of your good self information and further submission to competent authority.

Yours truly,

(Muhammad Bakhsh Malik)
Ex-EDO Agriculture, Bannu

ATTESTED

(40)

To

The Chief Minister,
Govt of Khyber Pakhtunkhwa,
Peshawar.

Through: Proper Channel

Subject: **Review petition for expunction of withholding one year promotion**

Please refer to Order No. SOE (AD) 20-77/2011 dated 26-09-2012 (copy attached for ready reference).

Respected sir,

It is submitted that I, Muhammad Bakhsh Malik, Ex-Executive District Officer Agriculture, Bannu (BPS-18) have been imposed the penalty of with holding one year promotion vide Office Order No. referred to above.

As far as the detachment of 13 posts from Agriculture (Extension) Department is concerned, being District Government staff, District Government did not agree to detach these posts and ultimately cancelled the detachment order (**copies attached**).

On the other hand, consequent upon the cancellation of detachment order, from 2008-09 onward District Government is regularly sanctioning the budget as well as posts upto total strength as it was in 2007-08 (**copies attached**).

I have already explained in my reply that out of 6 persons, one has neither applied nor posted, however, remaining 5 persons were posted after conducting the proper DSC.

As per policy, DCO was requested for NOC before placing the recruitment order, for which 3 NOCs were provided before, one after the order (as this cadre post was not available in the surplus pool) and one NOC was not provided and directed for adjustment from surplus pool, so his appointment order was cancelled.

As far as illegal cancellation of the order is concerned, in spite of providing NOC and even some NOCs were by name, the then DCO directed to cancel the appointment order and to adjust from surplus pool.

Sir, I have completed 32 years of Government service and my whole service record is fair and satisfactory, only 3 year service is left and also due for promotion.

I was suspended without the approval of the competent authority and in spite of even after lapse of 15 months, I have not been reinstated in service as yet.

Keeping in view the above facts, as I was not involved in any illegal appointment, it is very humbly requested that the withholding of one year promotion may please be expunged due to my unblemished and previous satisfactory record.

I shall remain ever thankful to you for this act of kindness and pray for your health and long life.

Yours obedient servant,

(Muhammad Bakhsh Malik)
Ex-EDO Agriculture, Bannu

No. 44 / Ex-EDO (Camp Peshawar)
Dated Peshawar, the 22/10/2012

Copy forwarded to:
The Chief Minister, Government of Khyber Pakhtunkhwa, Peshawar in advance

(Muhammad Bakhsh Malik)
Ex-EDO Agriculture, Bannu

ATTESTED

J (41)

GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK, FISHERIES & COOPERATIVE
DEPARTMENT

NO.SOE(AD)20-77/2011
Dated Peshawar, the February 8, 2013

To

The Director General,
On-Farm Water Management,
Khyber Pakhtunkhwa Peshawar

SUBJECT:- REVIEW PETITION FOR EXPUNCTION OF WITHHOLDING ONE YEAR PROMOTION

I am directed to refer to your letter No.4454 dated 22.10.2013 on the subject noted above and to state that the appeal of Mr. Muhammad Bakhsh Malik was considered and rejected by the competent authority.

(MUHAMMAD SHERAZ)
SECTION OFFICER-ESTT:

Endst, of even No. & Date.

P.S to Secretary Agriculture department.

SECTION OFFICER-ESTT:

ATTESTED

Dispatcher 12/2/13
Dated .....
Agri. Livestock & Coop

(42)

VAKALAT NAMA

NO._____/20

IN THE COURT OF Service Tribunal Peshawar.

Malik Mohammad Bakhsh (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Agriculture Deptt. (Respondent)
(Defendant)

I/We Malik Mohammad Bakhsh (Appellant).

Do hereby appoint and constitute ***M.Asif Yousafzai, Advocate, Peshawar***, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/ Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

(CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No.519/2013

Mr. Muhammad Bakish ……..**Appellant**
Ex-Executive District Officer,
Dera Ismail Khan

VERSUS

Chief Secretary, Govt. of KPK ……..**Respondents**
And Others

COMMENTS ON BEHALF OF RESPONDENTS NO 4

The Appellant claims in his appeal that the appellant is employee of the Agriculture Extension Department, which is incorrect. In fact the appellant does not belong to cadre of Agriculture Extension. Furthermore, neither the Agriculture Extension Department has the authority to frame any charges against the appellant nor the Agriculture Extension Department has the service record of the appellant on the basis of which penalty was imposed against the appellant. The available record in the Agriculture Extension Department reveals that the appellant made correspondence regarding his case with the administrative Agriculture Department through his parent department of On-Farm Water Management, which has its own Director General.

It is also pertinent to mentioned that by the time when the district government was framed, the post of Executive District Officer Agriculture were under the control of the Director General Agriculture Extension. The different attached department of Agriculture Livestock and Cooperation Department have its quota in the position of the Executive District Officers. As such, the On-Farm Water Management also has its quota and the appellant was posted as Executive District Officer amongst those quotas. And after winding up of the district government, the post of the

Executive District Officer Agriculture also winded-up. In present scenario, the authority of the Agriculture Extension Department does not subsist upon the appellant. As such, any comment / para-wise reply as Respondent No. 4 will not be appropriate.

Keeping in view the above facts, it is, therefore, humbly prayed that the Director General, Agriculture Extension Department (Respondent No. 4), may be deleted and the appellant may be directed to either withdraw or correct his claim.

Director General,
Agriculture Extension
Khyber Pakhtunkhwa, Peshawar
Respondent No. 4

1-10-13

Ph: # 091 9216370 ATI Campus, Jamrud Road, PO Peshawar University, Peshawar Fax # 091 9216372

DIRECTORATE GENERAL AGRICULTURE (EXTENSION) KHYBER PAKHTUNKHWA, PESHAWAR

Principal ATI	091-9216375	Director BADP	091-9216377	Statistician	091-9216376
Plant Protection Officer	091-9216374	Project Director MFSCs	091-9218274	Dy. Director BAI	091-9216378
Dy. Director E&M	091-9216774	Horticulturist	091-9216373	Asst. Acct. Officer	091-9216373

No. Lit / _____ / DGAE,
Dated, Peshawar, the 02nd September 2013

To

The Section Officer Litigation,
Agriculture, Livestock and Cooperation Department,
Government of Khyber Pakhtunkhwa, Peshawar

[redacted] 6917 4/9/13

Subject: - Appeal No. 519 of 2013 Muhammad Bakish Malik VS Government of Khyber Pakhtunkhwa:

With reference to the Section Officer Litigation letter No. SO Lit (AD) / 3–83 / 2013, dated 16th July 2013 and letter No. SO Lit (AD) / 3–83 / 2013, dated 20th June 2013, it is stated that this department, while going through the record observed that Mr. Muhammad Bakish Malik is not the employee of the Department of Agriculture Extension rather than employee of the On-Farm Water Management Department.

Puting to the Court with relevant appeal Reader dealing concerned 5/9/13

The Appellant claims in his appeal that the appellant is employee of the Agriculture Extension Department, which is incorrect. In fact the appellant does not belong to cadre of Agriculture Extension. Furthermore, neither the Agriculture Extension Department has the authority to frame any charges against the appellant nor the Agriculture Extension Department has the service record of the appellant on the basis of which penalty was imposed against the appellant. The available record in the Agriculture Extension Department reveals that the appellant made correspondence regarding his case with the administrative Department through his parent department of On-Farm Water Management Department.

It is also pertinent to mentioned that after winding up of the district government, the post of the Executive District Officer also winded-up. In present scenario, the authority of the Agriculture Extension Department does not subsist upon the appellant. As such, any comment / para-wise reply as Respondent No. 4 will not be appropriate.

Keeping in view the above facts, the Department of Agriculture Extension prayed the honorable Khyber Pakhtunkhwa Services Tribunal, Peshawar that the Director General, Agriculture Extension Department (Respondent No. 4), may be deleted and the appellant may be directed to either withdraw or correct his claim.

DIRECTOR GENERAL

No. Lit / 13786–87 / DGAE, dated, Peshawar, the 02nd September 2013

Copy forwarded for information to:

1. Muhammad Bakish Malik office of the Director General On-Farm Water Management, Peshawar.
2. Registrar, Khyber Pakhunkhwa Services Tribunal, Pehsawar with reference to above mentioned appeal.

DIRECTOR GENERAL

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No.519/2013

Mr. Muhammad Bakish .....**Appellant**
Ex-Executive District Officer,
Dera Ismail Khan

VERSUS

Chief Secretary, Govt. of KPK .....**Respondents**
And Others

COMMENTS ON BEHALF OF RESPONDENTS NO 4

The Appellant claims in his appeal that the appellant is employee of the Agriculture Extension Department, which is incorrect. In fact the appellant does not belong to cadre of Agriculture Extension. Furthermore, neither the Agriculture Extension Department has the authority to frame any charges against the appellant nor the Agriculture Extension Department has the service record of the appellant on the basis of which penalty was imposed against the appellant. The available record in the Agriculture Extension Department reveals that the appellant made correspondence regarding his case with the administrative Agriculture Department through his parent department of On-Farm Water Management, which has its own Director General.

It is also pertinent to mentioned that by the time when the district government was framed, the post of Executive District Officer Agriculture were under the control of the Director General Agriculture Extension. The different attached department of Agriculture Livestock and Cooperation Department have its quota in the position of the Executive District Officers. As such, the On-Farm Water Management also has its quota and the appellant was posted as Executive District Officer amongst those quotas. And after winding up of the district government, the post of the

Executive District Officer Agriculture also winded-up. In present scenario, the authority of the Agriculture Extension Department does not subsist upon the appellant. As such, any comment / para-wise reply as Respondent No. 4 will not be appropriate.

Keeping in view the above facts, it is, therefore, humbly prayed that the Director General, Agriculture Extension Department (Respondent No. 4), may be deleted and the appellant may be directed to either withdraw or correct his claim.

Director General,
Agriculture Extension
Khyber Pakhtunkhwa, Peshawar
Respondent No. 4

OFFICE OF
THE SENIOR GOVERNMENT PLEADER
KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR

NO (Sr.GP)E&AD/1-5/Lit/Appeal/2013._____

Date:

To

The Secretary to Government of Khyber Pakhtunkhwa, Agriculture,
Live Stock, Coop; Department, Peshawar.

SUBJECT:- **SUBMISSION OF WRITTEN REPLY IN APPEAL TITLED Mr.MUHAMMAD BAKHSH MALIK VS GOVERMENT.**

Sir,

Reference to the subject noted above and to state that the above mentioned appeal was fixed for reply on 3/09/2013 before the Hon'ble Service Tribunal Peshawar. You were duly served but today neither reply was submitted nor did any one attend the Tribunal on your behalf. The undersigned sought time and was directed to submit reply on 01-10-2013positively.

It is, therefore, requested that reply in the subject case duly vetted by this office may please be submitted and also well conversant departmental representative not below the rank of BPS-17 be deputed on next date 01-10-2013 to pursue the appeal properly.

GOVERNMENT PLEADER
KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
PESHAWAR.

NO (Sr.GP)E&AD/1-5/Lit/Appeal/2013. 2769-71 Dated: 3.09.2013

Copy forwarded to:

1. The Deputy Solicitor Law Parliamentary Affairs & Human Rights Department.
2. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
3. Appeal File.

GOVERNMENT PLEADER
KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
PESHAWAR

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Appeal No. 519/2013

Mr. Muhammad Bakhsh
Ex-Executive District Officer,
Dera Ismail Khan

.....Appellant

VERSUS

1. Chief Secretary Govt. of Khyber Pakhtunkhwa
   And Others

.....Respondents

Reply/Comments on behalf of respondent No. 2,3 & 4

Preliminary objection

1. That the appellant has got no cause of action.
2. That the appellant has got no locus standi to file the appeal.
3. This Tribunal has got no jurisdiction to entertain the appeal.
4. The appeal is bared by time.
5. That the appeal is liable to be dismissed on the ground of non joinder and misjoinder of necessary parties.
6. That the appellant is estoped by his own conduct to file the instant appeal.
7. That the appellant has not came to this Hon'ble Tribunal with clean Hands.
8. That the appeal is not maintainable in its present form.

Respectfully Sheweth

1. Pertains to record hence needs no comments.
2. Needs no comments.
3. In correct proper inquiry was conducted, charge sheet and statement of allegations were handed over to the accused officer. Afterwards, the departmental representative and the complainant and the accused officer were summoned by the inquiry officer, separate questioners were prepared for all the related persons/officials. The enquiry was conducted in presence of the appellant, the charges leveled against the appellant was partially been proved as the appellant transgressed and deviate from the laid down rules and procedures in appointment of employees. **(Copy of Charge Sheet "A" reply of the charge sheet Annex "B" and inquiry report is attached as Annex-C).**

4. As explained above in Para 3 above.
5. Pertains to record.
6. The appellant was served with a show cause notice by the competent authority on findings and recommendations of the inquiry officer.
7. Correct to the extent that the competent authority after having considered the charges, evidence on record, and explanation of the accused officer and findings of the inquiry officer a penalty of with holding promotion for one year was imposed on the appellant and rejection of departmental appeal the rest of Para is denied.

Grounds

a. Incorrect. The order dated 29th September, 2013 and 8th February, 2013 are according to the law, facts, norms of justice and materials on record.
b. Incorrect, the appellant was treated according to law, rules and has been penalized in light of recommendations of inquiry officer.
c. In correct. As explained above.
d. Incorrect the inquiry was conducted by the inquiry officer as per law & rules and the appellant was found guilty as he transgressed and deviate from the laid down rules and procedures in appointment of employees.
e. In correct all the codel formalities were fulfilled by the inquiry officer.
f. In correct no illegality can be found in the order.
g. Not correct, the penalty order was issued by the competent authority.
h. In correct.

In light of the above facts, it is prayed that appeal of the appellant may please be dismissed.

Chief Secretary
Government of Khyber Pakhtunkhwa
Peshawar

(Respondent No. 2)

Secretary,
Government of Khyber Pakhtunkhwa
Agriculture, Livestock & Coop: Deptt:
Peshawar
(Respondent No. 3)

Director General
Agriculture Extension
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 4)

Annex-A

13

KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

CHARGE SHEET.

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Malik Muhammad Bakhsh (BS-18), now working as Executive District Officer Agriculture, Bannu under suspension discharging the duties in Directorate General, Agriculture Extension Khyber Pakhtunkhwa, Peshawar as follow:-

That you, while posted as EDO (Agril:) (BS-19) DIKhan committed the following irregularities:-

a. Appointed six persons without observing codel formalities.
b. Terminated five officials without observing codel formalities, while one official is left in service.
c. Paid pay and allowances to the illegal appointed persons during their six months service, which cause loss to the Government exchequer.

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

You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the inquiry officer/committee, as the case may be.

Your written defense, if any, should reach the inquiry officer/committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case, exparte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegations is enclosed.

(AMIR HAIDER KHAN HOTI)
CHIEF MINISTER,
KHYBER PAKHTUNKHWA.

(COMPETENT AUTHORITY)

Annex-A

GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

B
(77) 15

DISCIPLINARY ACTION

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, am of the opinion that Malik Muhammad Bakhsh (BS-18), now working as Executive District Officer Agriculture, Bannu under suspension discharging his duties in Directorate General, Agriculture Extension Khyber Pakhtunkhwa, Peshawar has rendered himself liable to be proceeded against, as he committed the following acts / omissions within the meaning of rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATION

a. Appointed six persons without observing codel formalities.
b. Terminated five officials without observing codel formalities, while one official is left in service.
c. Paid pay and allowances to the illegally appointed persons during their six months service, which cause loss to the Government exchequer.

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

i. Syed Zahir Shah, DME (BS-19), DCO Bannu.
ii. _____

The inquiry officer/committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make within thirty days of the receipt of this order, recommendations as to punishment or other appropriate against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry officer/committee.

(AMIR HAIDER KHAN HOTI)
CHIEF MINISTER
KHYBER PAKHTUNKHWA.

(COMPETENT AUTHORITY)

(8) (17)

Endst. No.SOE(AD)20-77/2011 Dated Peshawar, the 16/01/2012.

A copy is forwarded for information and necessary action to:-

1. The Inquiry Officer of M/S Syed Zahir Shah (DMG BS-19), DCO, Bannu for initiating proceedings against the accused under the provision of the Khyber Pakhtunkhwa E&D Rules, 2011.

2. Malik Muhammad Bakhsh, ex- EDO Agril: DIKhan now Executive District Officer (Agriculture) Bannu, under suspension with the advice to appear before the Inquiry officer, on the date, time and place fixed by the Inquiry officer, for the purposes of the inquiry proceedings.

3. The Director General, On-Farm Water Management, Khyber Pakhtunkhwa, Peshawar, with the request to depute departmental representative who is well conversant with the facts of the case along with relevant record to assist the Inquiry Officer during the inquiry proceedings.

(MOHAMMAD ZAHID)
SECTION OFFICER-ESTT:

Annex-B

No 39 /EDO Bannu (Camp Peshawar)
Dated 4/2 /2012

The Enquiry Officer
Syed Zahir Ali Shah. DMG (BPS 19)
DCO, Bannu

Subject: Statement of Allegation/ Charge Sheet

I acknowledge the receipt of charge sheet received on 01-02-2012 from your good office and clarify my position in the light of record and facts. My Para wise reply is as under.

1. I deny the charge on following grounds.
It is brought to your kind notice that instead of six persons five were appointed while all the codal formalities were observed. Appointment of class IV i.e. field workers BPS-1 was made through employment exchange and on the advice of DCO D.I.Khan as **"the applicant should be appointed on the vacant post dated 08-08-2009, forwarded for necessary action dated 28-02-2009"** by providing the NOC **(annexure 1)**.

As for as the appointment of junior clerk and driver cum operator is concerned proper procedure i.e. advertisement, test and interview was conducted through the departmental selection committee **(annexure 2)**.
Hence, none of the persons was appointed illegally.

2. I deny the charge on following grounds.
It is submitted for your kind information that instead of five, four officials orders were cancelled/ withdrawn on the directive of DCO D.I.Khan.

i. Shams ur Rahman (field worker) with reference to DCO D.I.Khan letter No 719/DCO dated 25-01-2010 **"as per policy Mr Sadaqat Ali s/o Liaqat Ali has the right to be appointed. You are directed to consider the application of Mr Sadaqat Ali s/o Liaqat Ali for the post of deceased son quota under the rule" (annexure 3).**

While in the subsequent letter No 1209/DCO dated 12-02-2010, I was directed as " you are therefore directed to terminate the person appointed by you which is against the rule/ Govt. policy and appoint Mr Sadaqat Ali s/o Liaqat Ali under deceased son quota against the said post as per Govt. policy in vogue" (annexure 4).

So, in the light of clear direction by the DCO D.I.Khan I, being EDO Agriculture, cancelled the appointment of Shams ur Rahman and order of Sadaqat Ali s/o Liaqat Ali was placed on deceased son quota vide order No. 349-53/EDO dated 13-02-2010 (annexure 5).

ii. Mohibullah (field worker) It is clarified that Mohibullah neither reported arrival nor submitted medical fitness certificate. Hence, his appointment order was withdrawn on the direction of DCO D.I.Khan vide letter No. 9774/DCO dated 20-11-2009 as **"the office order bearing No. 2599-2602/EDO Agriculture dated 12-10-2009 issued by your office may be withdrawn"** which was further confirmed by the then Incharge EDO Agri; vide letter No 2944/EDO dated 21-11-2009 **(annexure 6,7)**.

iii. Ghulam Mustafa (junior clerk) vide District Nazim letter No. 090/DN/PSO dated 07-01-2010 address to DCO D.I.Khan as **"you are therefore requested to please adjust two junior clerks out of the list of junior clerks lying in the district surplus pool D.I.Khan so that the surplus policy could be implemented in letter and spirit".**

Further DCO D.I.Khan letter No. 521/DCO dated 16-01-2010 address to EDO Agriculture as "the adjustment of two junior clerks from the surplus pool staff D.I.Khan against the post of the same cadre lying vacant in the Agri; department of D.I.Khan" with the list of surplus pool staff (annexure 8,9).

So, in the light of above instruction, the order of Ghulam Mustafa was cancelled and junior clerk from the surplus pool was adjusted.

iv. Ilahi Bakhsh (driver cum operator etc) vide DCO D.I.Khan letter No. 10107-10/DCO dated 09-02-2010 accompanied the list of surplus pool staff by mentioning the names of three persons

1. One post of junior clerk BPS-7 (Syed Najaf Ali Shah s/o Ghulam Mustafa Shah)
2. One post of driver cum operator BPS-6 (Malik Ilahi Bakhsh s/o Malik Sona)
3. One post of vehicle driver BPS-4 (Muhammad Amir s/o Muhammad Ashiq)

and directed as "you are hereby directed to cancel immediately the above orders and accommodate the senior most junior clerk of the surplus pool and the driver of district surplus pool as per the Govt. policy of NWFP" (annexure 10).

So, in the light of above instructions it was complied as

a. No appointment order was made for Najaf Ali Shah
b. Order of Ilahi Bakhsh was not cancelled as no post for such cadre was available in the surplus pool list so requested for NOC which was granted later on.
c. Appointment order of Muhammad Amir was cancelled and driver from surplus pool was adjusted. Due to non availability of NOC, neither he reported arrival nor submitted medical fitness certificate. Hence, there was no need to give him prior notice as per rule (annexure 11).

In the light of above mentioned facts, it is quite clear that their appointment orders were not withdrawn illegally.

3. I deny the charge on following grounds.
None of the persons was given salary; therefore, no loss occurred to Govt. exchequer. Salaries to Ghulam Mustafa and Shams ur Rahman were made due to court cases as the honorable court has granted the status quo during the hearing and after the dismissal of the case, their salaries were stopped.
Therefore, my action was legal and under Govt. rules and regulations.

i. Shams ur Rahman. Case was filed with honorable Civil Judge III on 30-01-2010. Status quo was granted on 13-02-2010 by honorable court and decided on 13-07-2010 as "the suit of the plaintiff is here by dismissed as withdrawn" (annexure 12).

ii. Ghulam Mustafa. "his application is here by dismissed, moreover the plaintiff has already receipt salary for the last ten month in the garb of present status quo" after that his salary was stopped by District Officer D.I.Khan (annexure 13).

It is therefore requested that I may kindly be exonerated of the charges leveled against me.
At the end, I would request to allow me to be heard in person to clarify my position.

Muhammad Bakhsh Malik
Ex. EDO Agric. D.I.Khan
Now EDO Agric. Bannu

D (41)

سوال نامہ برائے ایکس EDO ایگریکلچر ڈی آئی خان ڈاکٹر محمد نعیم

1. کیا آپ نے شمس الرحمان فیلڈ ورکر، محب اللہ فیلڈ ورکر، غلام مصطفیٰ سپرنٹنڈنٹ الٰہی بخش ڈرائیور، اسپرنٹنڈنٹ، محمد عامر ڈرائیور اور نجف علی شاہ ڈرائیور کو بھرتی کرتے وقت تمام قانونی ضابطے پورے کئے تھے؟

2. کیا مذکورہ پوسٹوں کو بھرنے سے پہلے آپ نے ضلعی سلیکشن بورڈ سے NOC لیا تھا؟

3. کیا آپ نے کلاس فور / اپلائنس ایکسٹینشن ایجنٹ کے درجے کے مشتہر کئے تھے؟

4. اور اسکا باقاعدہ Departmental Selection کمیٹی کے ذریعے تعین کی گئی؟

5. کیا مذکورہ باقی پوسٹوں کو "Advertised" کیا تھا؟

اگر 2، 3، 4 کا جواب مثبت میں ہو تو جواب کے لیے ثبوت فراہم کریں؟

6. کیا آپ نے ان تمام اوپر ذکر کئے گئے بندوں کو "Terminate" کیا تھا؟ اگر ہاں تو کیوں؟

7. کیا مذکورہ لوگوں کو terminate کرنے سے پہلے آپ نے تمام قانونی ضابطے پورے کئے تھے؟ اگر ہاں تو ثبوت فراہم کیجئے۔

8. کیا بعض ملازمین جیسے شمس الرحمان اور غلام مصطفیٰ وغیرہ کو "Termination" کے بعد بھی تنخواہ ملتی رہی کیوں؟ آپ نے کس قانون کے تحت اس کی تنخواہ جاری رکھی؟

9. کیا بعض پوسٹیں ایگریکلچر ڈیپارٹمنٹ

P.T.O

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Detached ہوتے تھے؟ اگر ہاں تو انہی پوسٹوں پر بجلی کس طرح ملازمین کو فراہم کیا جارہا تھا؟

۹۔ کیا Detached پوسٹوں پر بجلی کی Adjesment کی گئی؟ اگر ہاں تو کس قانون کے تحت؟

۱۰۔ کیا آپ نے دوسرے ملازمین کی طرح کوئی درخواست کی لیکن ابھی تک آپ کا بل ادا نہیں ہے اس کو برقرار رکھا گیا ہے؟

جواب آپ مزید اگر کچھ لکھنا چاہیں۔

11/2/XII

انکوائری آفیسر / ڈی سی او بنوں

(27)

OFFICE OF THE
DISTRICT COORDINATION OFFICER
BANNU

No. 783 /DCO/AE
Dated Bannu the: 29/02/2012.

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Agriculture, Livestock & Cooperative Department,
Peshawar.

Subject: **ENQUIRY AGAINST MALIK MUHAMMAD BAKHSH BPS-18 EX-EXECUTIVE DISTRICT OFFICER AGRICULTURE D. I. KHAN.**

Memo:

Reference your department endorsement No. SOE(AD)20-77/2011 dated 16-01-2012.

The subject enquiry was conducted/carried out by the undersigned and completed accordingly. The enquiry report (6 pages) along with relevant record of the case containing 137 pages is forwarded for further necessary action.

Enquiry Officer/
District Coordination Officer
Bannu

2296
03.03.12

(28) Annex-C

OFFICE OF THE
DISTRICT COORDINATION OFFICER
BANNU

ENQUIRY REPORT REGARDING ILLEGALAPPOINTMENTS/TERMINATIONS AND PAYING OF SALARIED AND ALLOWANCES TO ILLEGALLY APPOINTED PERSONS BY MALIK MUHAMMAD BAKHSH BPS-18 EX-EDO AGRICULTURE D.I. KHAN

ORDER OF ENQUIRY:

The undersigned was appointed as Enquiry Officer to probe into the allegations under the provision of Khyber Pakhtunkhwa E&D Rules 2011 against Mr. Malik Muhammad Bakhsh BPS-18 Ex-Executive District Officer Agriculture D.I. Khan vide Agriculture Department endorsement No. SOE(AD) 20-77/2011.

BRIEF FACTS OF THE CASE:

Malik Muhammad Bakhsh BPS-18 Ex-Executive District Officer Agriculture D.I. Khan had appointed five persons (Not Six) i.e (Two class-IV employees, One Junior Clerk, One Driver cum Operator BPS-06 and one Driver BPS-04). On **12-01-2009** Finance Department Khyber Pakhtunkhwa had detached 13 posts along with incumbents of different cadres from Agriculture Department D. I. Khan and attached it to Crop Reporting Services (CRS) at various districts of the province vide Finance Department letter at annexure "**A**" and in pursuance of Finance Department instructions, the EDO Agriculture D. I. Khan transferred the services of the detached officials from Agriculture Department D. I. Khan and placed at Crop Reporting Center at different districts vide their letter dated **21-07-2009** at annexure "**B**". Some officials who affected due to the said order challenged the detachment order of Finance Department in Peshawar High Court Bench D. I. Khan vide Writ Petition No. **165/2010** at annexure "**C**". The honorable court apparently suspended the operation of Finance Department order dated **12-01-2009** for ten days vide the court's order sheet dated **25-03-2010** at annexure "**D**". Moreover, the District Nazim D. I. Khan addressed a letter to the Secretary to Govt. of Khyber Pakhtunkhwa Agriculture Department as well as Finance Department in which he declined to detach the said posts from Agriculture Department in District D. I. Khan vide his letter No. **1177-78/DW/PSO** dated 08-07-2009 which is annexed as "**E**". Therefore, the then EDO Agriculture (Malik Muhammad Bakhsh) made fresh appointments of one Junior Clerk, one Driver cum Operator BPS-06 and one Driver BPS-04 against the said post whereas two others class-IV employees were recruited on others vacant posts, but due to direction of District Coordination Officer D. I. Khan he withdrew all the

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appointments orders except that of Elahi Bakhsh Driver cum Operator. Later on, he adjusted surplus employees on the posts of Junior Clerk, Driver and one post of Field Worker whereas Diseased Employee Son was adjusted against on the 2nd post of Field Worker. Two employees namely Shams-u-Rehman Field Worker and Ghulam Mustafa Junior Clerk aggrieving by withdrawal orders filed Petition into the Civil Court and got order of injunction in their favour, therefore, they received salary for sometimes. No sooner did their cases were rejected from courts, their salaries were stopped.

Hence one person namely, Roshan Zameer has leveled various allegations against Ex-Executive District Officer Agriculture D. I. Khan resulting in the instant inquiry.

CHARGES/ALLEGATIONS:

There are three charges against Mr. Malik Muhammad Bakhsh Ex-Executive District Officer Agriculture D. I. Khan. According to charge sheet and statement of allegations i.e:-

a. Appointment of Six persons without observing codal formalities.
b. Termination of Five officials without observing codal formalities while one official left in service untouched.
c. Paying of salaries and allowances to the illegally appointed persons during the six months service. As such causing great loss to the Govt. exchequer.

PROCEEDINGS/PROCEDURES:

The charge sheet and statement of allegations were handed over to accused officer by hand with the direction to submit reply to the charge sheet/statement of allegations. After that, the Departmental Representative, the complainant, six appointed/terminated persons, Executive District Officer (F&P) D. I. Khan and the accused officer were formally summoned. The Ex-Executive District Officer Agriculture D. I. Khan (Malik Muhammad Bakhsh), the Departmental Representative Dr. Allah Bakhsh Malik (District Officer On Farm Water Management D. I. Khan), representative of Executive District Officer (F&P) D. I. Khan, Muhammad Aamir Ex-driver and Mr. Elahi Bakhsh Driver cum Operator attended this office accordingly whereas the complainant Mr. Roshan Zameer, Shams-ur-Rehman (Field Worker) Muhib Ullah (Field Worker) and Ghulam Mustafa Shah (Junior Clerk) did not attend the enquiry proceedings. They were once again summoned through District Coordination Officer D. I. Khan as well as Executive District Officer Agriculture D. I. Khan vide this office letter No. 310/DCO dated 11-02-2012 annexed as "**F**" but they did not turn up to join the enquiry proceedings.

Separate questionnaires were prepared for the accused officer (Malik Muhammad Bakhsh), Departmental Representative, EDO (F&P) D. I.

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Khan, Mr. Elahi Bakhsh Driver cum Operator and Muhammd Aamir Ex-Driver which are annexed as "G", "H", "I", "J" and "K" respectively. The statement of accused officer is annexed as "L", and his reply to questionnaire is annexed as "M", while replies to questionnaires from Departmental Representative, EDO (F&P) D. I. Khan, Elahi Bakhsh Driver cum Operator and Muhammad Aamir are annexed as "N", "O", "P" and "Q". respectively.

The Ex-EDO Agriculture D. I. Khan (accused officer) was given an opportunity of personal hearing. He totally denied the charges leveled against him and vehemently defended his stance. He contended that he had appointed all the employees after fulfillment of all codal formalities. He argued that Shams-ur-Rehman and Muhib Ullah Field Worker were appointed on the direction of the District Coordination Officer D. I. Khan through Employment Exchange. Moreover, proper NOC were also obtained from district surplus pool. However, he could not produce any proof regarding appointment of the above persons through Departmental Selection Committee.

So far the posts of Junior Clerk, Driver BPS-04 and Driver cum Operator BPS-06 are concerned; he added that Ghulam Mustafa, Muhammad Aamir and Elahi Bakhsh Malik were appointed respectively against the said post after advertising the post and conducting Departmental Selection Committee meeting. He provided copy of advertisement annexed as "R" and that of minutes of DPC at annexure "S". But he had not obtained NOC from District Surplus Pool before-appointment, however, later on he obtained NOC in respect of the post of Junior Clerk (Ghulam Mustafa) and Driver cum Operator (Elahi Bakhsh). He further informed that he had appointed only five persons as explained above and not six as Mr. Najaf Ali Shah that is the 6th person had never been appointed by him.

He was asked about the detachment of various posts from Agriculture Department D. I. Khan and later on making appointment on three posts i.e. Junior Clerk, Driver and Driver cum Operator by him. He defended his case and stated that though the posts were detached but due to order of injunction by honorable High Court and provision of budget by Finance & Planning Department D. I. Khan, the posts were actually available and thus appointments were made thereon. As regards the allegations regarding termination of the employee, he took the plea that all appointments orders were withdrawn on the clear direction of District Nazim as well as DCO D. I. Khan and employees from Surplus Pool were adjusted against one post of Field Worker, post of Junior Clerk and Driver whereas a Deceased Employee Shah was appointed against the second post of Field Worker. He added that since no employee of the cadre of Driver cum Operator BPS-06 was available at District Surplus Pool, therefore, the order of Elahi Bakhsh Malik was not withdrawn for which the DCO D. I. Khan has formally issued No Objection Certificate later on vide No. **2651 dated 29-03-2010** annexed as "T". The accused officer also denied the allegations regarding paying of illegal salaries to the appointed persons as he affirmed that except Shams-ur-Rehman Field Worker and

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Ghulam Mustafa Junior Clerk to whom court has granted status quo, non of other persons was given salary. He added that after the dismissal of court case of the above two employees, their salaries were stopped.

The Departmental Representative Dr. Allah Bakhsh Malik (District Officer On Farm Water Management D. I. Khan) supported the stance of the accused officer (Malik Muhammad Bakhsh). He, during the course of hearing, informed that all persons were appointed after fulfillment of codal formalities and their orders were withdrawn on the direction of DCO D. I. Khan. He added that since various appointed officials have not yet obtained any salaries etc hence there was no need to issue them proper notice. He also concurred with the plea taken by the accused officer regarding paying of salaries to two employees for some months due to order of injunction by the court.

The EDO (F&P) D. I. Khan was summoned. He sent his representative (Programmer BPS-17). A separate questionnaire was prepared and handed over to the representative of EDO (F & P) D. I. Khan in which it was specially enquired as once the Finance Department had detached the 13 posts from the strength of EDO Agriculture D. I. Khan, therefore, instead of providing budget to the said post every year, he should have deleted the said posts from the District Budget Book. He forwarded para wise reply to the questionnaire in which he has taken the plea that since the High Court Bench D. I. Khan has given status quo in the case, therefore, he has been giving budget to the said posts every year. He provided copy of order sheet dated 25-03-2010 of the said court which reveals that operation of Finance Department letter dated 06-06-2010 regarding detachment of posts was suspended by the court for ten days.

FINDINGS:

From the perusal of the record, preliminary enquiry, reply of the Departmental Representative, EDO (F&P) D. I. Khan and others to questionnaire as well as replies of the accused officer to charge sheet/statement of allegations and questionnaire, we may conclude the following points:-

1. The 13 posts were detached along with incumbents from the strength of Agriculture Department D. I. Khan (District Govt) and attached with Crop Reporting Center (CRS) at various districts. The order sheet of the honorable High Court clearly depicts that the order of injunction was issued only for ten days which has never been extended nor the defendants could produce any proof regarding the extension of order of injunction by the court. The District Nazim D. I. Khan had sent a letter to Secretary Finance and Secretary Agriculture Department in which he declined to detach the said posts from District Govt: (Agriculture Department) but the record does not provide any proof that Finance Department agreed with the contention of District Nazim D. I. Khan as such it is very clear that the order of detachment of Finance Department still stands and the provision of budget to the said posts by EDO (F&P)

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D. I. Khan tantamounts to non-compliance and transgression of the instructions of Finance Department Peshawar. The appointments as well as adjustment of surplus staff against the said posts is also contravening to the said order of the Finance Department Peshawar.

2. The then EDO Agriculture D. I. Khan (accused officer) had appointed Two Field Workers without Departmental Selection Committee which is also a violation and transgression from Rules and Policy. His contention that he had appointed the said person on the direction of DCO D. I. Khan has no weight in the eyes of law; rather he was supposed to fill the said posts through Employment Exchange and holding of proper Departmental Selection Committee meeting. However, since the appointments were though illegal but the same were withdrawn/cancelled later on.

3. The codal formalities regarding the post of Junior Clerk Driver cum Operator BPS-06 and Driver BPS-04 i.e. advertisement and Departmental Selection Committee meeting were fulfilled but prior NOC for the said posts were not obtained from DCO D. I. Khan. However, after appointments against the said posts, the accused officer obtained NOC for the post of Junior Clerk and Driver cum Operator which is also a deviation from the policy in vogue.

On the directions of DCO D. I. Khan, the accused officer withdrew/cancelled the order of Two Field Workers, One Junior Clerk and One Driver but he did not withdrew the order of Driver cum Operator (Elahi Bakhsh) who is his real brother-in-law (his wife's real sister) corresponding grade scale and qualified official was available in surplus pool. The record of the case supports the plea taken by him as no surplus employee of BPS-06 having the requisite qualification for the post i.e. HTV license was available at District Surplus Pool vide list of surplus employee at annexure "U". Moreover, he adjusted official/employee from surplus pool on a post of Field Worker (BPS-01), post of Driver (BPS-04) and the post of Junior Clerk (BPS-06) whereas a Deceased Son Employee was appointed against another post of Field Worker (BPS-01). Hence we may conclude that if he under the policy, hired obtained NOC from surplus pool prior to appointment, this situation would have not been created.

5. The employee namely Shams-ur-Rehman Field Worker and (Final) Mustafa Junior Clerk had received salaries for some month, after withdrawal of their appointment orders but they had obtained stay order from the court that is why the department paid salaries to them. However, their salaries were stopped after rejection/dispossal of the cases by the court. Hence the charge of paying illegal salaries can be proved.

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cases by the court. Hence the charge of paying illegal salaries could not be proved.

6. The case which was lodged in the honorable High Court Bench D. I. Khan against the order of detachment by Finance Department is still pending for adjudication.

RECOMMENDATIONS:

1. Since the Ex-EDO Agriculture D. I. Khan Malik Muhammad Bakhsh had transgressed and deviated from laid down rules and procedures in appointment of employees, therefore, his two increments may be withheld for three years and promotion for one year.

OR

2. If the accused officer has reached the maximum of his pay scale, in that case his promotion may be withheld for three years

3. The EDO (F&P) D. I. Khan may be directed to take up the case with Finance Department Khyber Pakhtunkhwa Peshawar in light of the present status of the case for permanent solution of the issue of detachment of the posts. He may be issued warning for non-compliance of the order of the Finance Department, Peshawar.

Zahir Shah,
Enquiry Officer/
District Coordination Officer
Bannu

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 519/2013.

M. Bakhash Malik. VS Agriculture Deptt:

REJOINDER ON BEHALF OF APPELLANT.

R.SHEWETH.

PRELIMINARY OBJECTIONS:

1-8:- all objections raised by respondents are incorrect and baseless. Rather the respondents are stopped to raise any objection.

FACTS;

1- Admitted correct by respondent so no comments.

2- Admitted correct by respondent so no comments.

3- Partially admitted correct by the respondents, however the enquiry was conducted in questionnaire form which is not permitted under the law.

4- Admitted correct by the respondent.

5- Not denied by respondents and also admitted by them.

6- Admitted correct by the respondents.

7- Partially admitted correct by respondents while the rest of para of appeal is correct.

GROUNDS:

A- Incorrect while para- A of appeal is correct.

B- Incorrect while para- B of appeal is correct.