ORDER
02.09.2021

Mr. Noor Muhammad Khattak, Advocate, for the appellant present. Mr. Mehtab Gul, Law Officer alongwith Mr. Riaz Ahmed Paindakheil, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today passed in Service Appeal bearing No. 1374/2019 titled "Zahoor Khan Versus Chairman Public Service Commission, Khyber Pakhtunkhwa, Peshawar and two others", the appeal in hand is allowed by setting aside the impugned order of dismissal of appellant and he is re-instated into service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.09.2021

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

25.05.2021 Mr. Afrasyab, junior counsel for the appellant present. Mr. Hamid Saleem, Law Officer alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Former request for adjournment on the ground that learned counsel for appellant is busy before the august Peshawar High Court. Adjourned. To come up for hearing before D.B on 14.09.2021.

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

03.08.2021 Counsel for the appellant present.

Mr. Riaz Ahmed Paindakheil, Assistant Advocate General alongwith Mehtab Gul Law Officer for respondents present.

As the arguments in a connected case were heard by the D.B comprising of Mr. Salah ud Din Member (J) and Mr. Atiq ur Rehman Wazir Member (E), therefore, it would be in fitness of things to adjourned the case for fixation before the said D.B on 02.09.2021 for arguments.

(Atiq-Ur-Rehman Wazir)
Member (E)

(Rozina Rehman)
Member (J)

14.09.2020 Junior to counsel for the appellant and Addl. AG alongwith Mehtab Gul, Litigation Officer for the respondents present.

Representative of the respondents has furnished parawise comments which are made part of the record. The appeal is assigned to D.B for arguments on 26.11.2020. The appellant may furnished rejoinder, within a fortnight, if so advised.

Chairman

26.11.2020 Junior to counsel for the appellant and Zara Tajwar, DDA alongwith Mehtab Gul, Litigation Officer for the respondents present.

Request for adjournment is made due to engagement of learned counsel for the appellant before Honourable High Court today. Adjourned to 18.02.2021 for hearing before the D.B.

(Mian Muhammad)
Member(E)

Chairman

Due to pandemic of Covid-19, the case is adjourned to 25.05.21

Reader

31.01.2020 Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Mehtab Gul Law Officer for the respondents present. Written reply not submitted. Representative of the respondents seeks time to furnish written reply/comments. Adjourned. To come up for written reply/comments on 10.03.2020 before S.B.

(Hussain Shah)
Member

10.03.2020 Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Iftikhar Bangash, Superintendent for the respondents present. Written reply on behalf of respondents not submitted. Representative of the department seeks further time to furnish written reply/comments. Adjourned to 16.04.2020 for written reply/comments before S.B.

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

16.04.2020 Due to public holiday on account of COVID-19, the case is adjourned to 13.07.2020 for the same. To come up for the same as before S.B.

Reader

13.07.2020 Counsel for the appellant and Addl: AG for respondents present.

Written reply not submitted. Notices be issued to the respondents for submission of written reply/comments. Last opportunity granted to them.

Adjourned to 14.09.2020 before S.B.

(Mian Muhammad)
Member(E)

05.12.2019 Counsel for the appellant present.

Contends that while deciding Appeal No. 608/2012 this Tribunal has clearly observed that the respondents had by passed the procedure mandated in E&D Rules 2011, as the appellant was not provided opportunity to cross examine the witnesses during the inquiry. On the other hand, the appellant was not provided opportunity of participation in the *de-novo* inquiry proceeding, therefore, the impugned office order dated 23.08.2019 and rejection order of his departmental appeal were not maintainable.

In view of the available record and arguments of learned counsel, instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 31.01.2020 before S.B.

Appellant Deposited Security & Process Fee

Chairman

[illegible] Additional Advocate General [illegible] Law Officer for the respondents present. [illegible] not submitted. Representative of the respondents [illegible] time to furnish written reply/comments [illegible]. To come up for written reply/comments on [illegible].2020 before S.[illegible]

[illegible]

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1375/**2019**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/10/2019	The appeal of Mr. Muslim Khan presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR 18/10/19
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on 05/12/19. CHAIRMAN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 1375 /2019

MUSLIM KHAN **V/S** **CHAIRMAN PSC & OTHERS**

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9	Vakalat nama	.....	23.

APPELLANT

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1375 /2019

Mr. Muslim Khan, Ex-Residence Orderly,
Khyber Pakhtunkhwa Public Service Commission, Peshawar
..... **Appellant**

VERSUS

1- The Chairman, Public Service Commission, Khyber Pakhtunkhwa, Peshawar.
2- The Secretary, Public Service Commission, Khyber Pakhtunkhwa, Peshawar.
3- The Director Administration, Public Service Commission, Khyber Pakhtunkhwa, Peshawar.
..... **Respondents**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 23.08.2019 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE APPELLATE ORDER DATED 24.09.2019 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 23.08.2019 and 24.09.2019 may very kindly be set aside and the appellant may be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Filedto-day
Registrar
18/10/19

R/SHEWETH:
ON FACTS:

1. That appellant while serving the respondents department was charge sheeted and through an ex-party inquiry dismissed from service vide order dated 01-03-2012. Copy of the order dated 01-03-2012 is attached as annexure .....**A.**

2. That feeling aggrieved from the order dated 01-03-2012, the appellant preferred departmental appeal which was regretted vide appellate order dated 25.04.2012. Copy of the appellate order is attached as annexure .....**B.**

3. That the mentioned dismissal and appellate orders were challenged before the Honorable Service Tribunal in Service Appeal No.608/2012 which was decided on 13.05.2019 with the observation that ***"the appeal is accepted, impugned order dated 25.04.2012 is set aside and the appellants are reinstated in to service. The respondents are directed to conduct de-novo enquiry within a period of ninety days from the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry"***. Copy of the judgment dated 13.05.2019 is attached as annexure ..... **C.**

4. That, thereafter, de-novo enquiry was conducted and the appellant was once again awarded major punishment of dismissal from service vide impugned order dated 23.08.2019 inspite of the fact that the appellant has been acquitted by the anti corruption Court vide judgment dated 14.2.2017 so much so the respondents without following the codal formalities as enshrined in the E&D Rules, 2011 issued the above mentioned impugned order of dismissal from service. Copies of the judgment and impugned order dated 23.08.2019 are attached as annexure ..... **D and E.**

5. That felling aggrieved from the impugned order dated 23.08.2019, the appellant preferred departmental appeal before the appellate authority on 04.09.2019. Copy of the departmental appeal is attached as annexure ..... **F.**

6. That the Departmental appeal of the appellant was rejected vide appellate order dated 24.09.2019 on no good grounds. Copy of the appellate order is attached as annexure.....**G.**

7. That having no other remedy, the appellant preferred the instant appeal on the following grounds amongst other.

GROUNDS:

A- That the impugned orders dated 23.08.2019 and 24.09.2019 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the concerned authorities violated article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That the impugned order dated 23.8.2019 has been issued in utter violation of Rule 8 of the E&D Rules, 2011 as well as FR-54 (b) of the Fundamental Rules.

D- That it is the consistent view of the Apex Court that "when there is no conviction there shall be no Departmental punishment. That as the appellant has honorable been acquitted by the anti corruption vide judgment dated 14.2.2017 therefore under the above the above quoted judgments of the apex Court the respondents are duty bound to re-instate the appellant with all back benefits.

E- That the respondents acted in arbitrary and malafide manner by issuing the impugned orders dated 23.08.2019 and 24.09.2019.

F- That no charge sheet and statement of allegation has been issued to the appellant before issuing the impugned order dated 23.08.2019.

G- That no show cause notice has been served on the appellant before the issuance of the impugned order dated 23.08.2019.

H- That no chance of personal hearing/defense has been provided to the appellant and as such the appellant has been condemned unheard.

I- That the appellant seeks permission to advance other 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 far.

Dated: 26.09.2019

APPELLANT

MUSLIM KHAN

THROUGH:

NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

&

MIR ZAMAN SAFI

ADVOCATES

~~Annexure M~~ A-(4)

KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

OFFICE ORDER

WHEREAS you, Mr. Muslim Khan Residence Orderly, Khyber Pakhtunkhwa Public Service Commission, was proceeded against under the Khyber Pakhtunkhwa Govt: Servants (Efficiency and Discipline) Rules 2011 for the charges mentioned in the charge sheet/ statement of allegations;

AND WHEREAS an inquiry committee consisting of Mr. Ghulam Dastagir Ahmed Controller Examination and Mr. Muhamamd Arshad Registrar Examinations was appointed to probe into the charges;

AND WHEREAS, the inquiry committee submitted its report wherein the charges mentioned in the statement of allegations have been declared as proved.

AND WHEREAS, Show cause notice was served on you and was asked to show if you desire to be heard in person.

AND WHEREAS, you did not desire for personal hearing and your written reply to the Show Cause Notice was also not satisfactory.

AND WHEREAS, your further stay in the Commission office is being considered prejudicial to the best interests of the institution and its prestige;

Now Therefore, the undersigned being competent authority impose upon Mr. Muslim Khan Residence Orderly (BPS-01) Khyber Pakhtunkhwa Public Service Commission the major penalty of "dismissal from service" as provided under Rule-4 of Govt: Servants (Efficiency and Discipline) Rules, 2011.

--Sd/--
SECRETARY
dated 4/12/2012

No. PSC/Admn/ 13180

Copy to:-

1. The Accountant General, Khyber Pakhtunkhwa Peshawar.
2. The Director Recruitment, Khyber Pakhtunkhwa PSC.
3. The Director Examination, Khyber Pakhtunkhwa PSC.
4. The Psychologist, Khyber Pakhtunkhwa PSC.
5. PS to Chairman, Khyber Pakhtunkhwa PSC.
6. Mr. Muslim Khan Residence Orderly, Moh: Qanday Ghazi Khel Pishta Khara Payan Tehsil & District Peshawar.
7. Personal File of the official concerned.
8. Office order file.

SECRETARY
PSC

Attested

(D) (5)

Phone No: 091-9212962

KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION
2 Fort Road Peshawar Cantt.

~~Annexure-C~~

No. 02130

Date: 25/4/12

From:
Secretary,
Public Service Commission,
Peshawar.

To

Mr. Muslim Khan Ex-Residence Orderly,
Mohallah: Qanday Ghazi Khel Pishta-Khara Payan
Tehsil & District Peshawar

Subject: - APPEAL AGAINST DISMISSAL FROM SERVICE

I am directed to refer to your appeal dated 10-03-2012 on the subject noted above and to state that the Honorable Chairman PSC (Appellate Authority) has turned down your appeal and is in agreement with the penalty of dismissal from service imposed by the competent authority.

(ATTA-UR-REHMAN)
SECRETARY
PSC

Attested

C-86

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 608/2012

Date of Institution ... 24.05.2012

Date of Decision ... 13.05.2019

Muslim Khan, Naib Qasid/Residence Orderly (BPS-01) S/o Sultan-e-Rum presently residing at Bara Road, Mohallah Bilal Masjid, Kand Bala, Peshawar.

... (Appellant)

VERSUS

Province of Khyber Pakhtunkhwa through Chairman Public Service Commission, Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

MR. MUHAMMAD FAROOQ MALIK, Advocate --- For appellant.

MR. M. RIAZ KHAN PAINDAKHEL, Assistant Advocate General --- For respondents.

MR. AHMAD HASSAN. --- MEMBER(Executive)

MR. MUHAMMAD AMIN KHAN KUNDI --- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 664/2012 titled Zahoor, who was awarded major penalty of dismissal from service and no. 610/2012 titled Taj Wali Shah on whom also penalty of dismissal from service was imposed, as similar question of law and facts are involved therein.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

2. Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

3. Learned counsel for the appellant argued that on false and fabricated charges, an FIR was lodged against him/others on 25.08.2011. That bail was granted to the concerned by Peshawar High Court, Peshawar vide judgment dated

25.09.2011. It was followed by departmental proceedings under E&D Rules 2011, which culminated in their dismissal from service vide impugned order dated 01.03.2012. He preferred departmental appeal on 10.03.2012, which was rejected on 25.04.2012, hence, the present service appeal. He further argued that the appellant earned acquittal in criminal case vide judgment dated 14.02.2017. The respondents acted in haste and awarded penalty to them. They should have waited for the final outcome of the criminal case. The statement of co-accused (Fazal-Ur-Rehman, Chowkidar) against him was of no evidentiary value being not admissible under the law. Neither statements of the concerned were recorded in the presence of the appellant, nor opportunity of cross examination was afforded to him. Defense offered by the appellant was not properly appreciated by the enquiry committee, rather he was made an escape goat. Involvement of high ups in the said incident could not be ruled out but they were not at all associated with the enquiry proceedings so as to meet the ends of justice.

4. On the other hand learned Assistant Advocate General argued that the Khyber Pakhtunkhwa, Public Service Commission conducted interviews for the post of Male Lecturer Botany in the Higher Education Department from 06.07.2011 to 12.08.2011. Upon compilation of result Mr. Zubair Shah the panel Chairman (Member PSC) noticed some tampering in the result sheets. The matter was reported to the Chairman and a fact finding enquiry was conducted into the matter. Thereafter formal enquiry was conducted and after observance of codal formalities major penalty was awarded to the appellant.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

CONCLUSION

5. The appellant was charged for tampering the result descriptive sheets/ attendance sheets of interviews for the post of Male Lecturer Botany (BPS-17) in

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the Higher Education Department. Wrong doings on the part of the appellants facilitated selection of non-deserving candidates during the course of interviews.

6. Scrutiny of formal enquiry report revealed that statements recorded during the fact finding enquiry were also made part of the enquiry proceedings. Instead of probing the mater afresh, the inquiry committee adopted easy way of basing their findings/recommendations on the stuff contained in the fact finding inquiry report. The net result was a superficial/slipshod inquiry report. Our observation is confirmed by para-6 of the enquiry report. It is quite astonishing that in the absence of statements of the complainants, how charges could be substantiated against the accused officials. It left serious question marks on the efficacy of the perfunctory/slipshod inquiry conducted by the inquiry committee. Mr. Zubair Shah, the then Member, Public Service Commission was the official complainant in this case. His statement could be very crucial/vital for fair/transparent probe. However, it was not recorded for reasons best known to the inquiry committee. We apprehend that inquiry committee comprising of junior officials could not muster courage to associate a sitting Member of PSC with inquiry proceedings.

7. The enquiry committee failed to record statements of the appellants /witnesses, if any. A questionnaire was given to the appellant to which he replied. Prima-facie, it appears that the above statements in the shape of questionnaire were not recorded in the presence of other accused which was against the procedure laid down in E&D Rules 2011. He out rightly denied the allegations and further stated that previous statement was given under duress/pressure from police. Other officials also denied the charges leveled against them. Though no solid documentary/oral evidence was collected/ examined by the inquiry committee.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.

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during the proceedings but charges were proved against them, perhaps with the help of magic wand. We have no hesitation in saying that in the absence of any incriminating evidence against the accused, charges could not be established by the enquiry committee. The owe an explanation for poor inquiry and failing to discharge their assigned duty. The co-accused leveled serious allegations against one another and could only be thrashed out by affording the opportunity of cross examination. Bypassing of invogue procedure referred to above was not only against Sub-rule(1) & (4) of Rule-11 of E&D Rules 2011 but also made the enquiry report disputed. Furthermore, as held by superiors courts in its various judgments, it cannot be termed as regular inquiry.

8. Moreover, vide judgment dated 14.02.2017 the accused were acquitted by the Special Judge, Anti-Corruption, Khyber Pakhtunkhwa. The charges on the basis of which criminal departmental proceedings were undertaken against the accused no more hold the field. Statements recorded by the concerned during the criminal proceedings are worth perusal. While recording his statement in the said court Mr. Zubair Shah, the then Member, PSC stated that he had not pinpointed any person of Public Service Commission as an accused for tampering of record. Post-mortem carried out by the Special Judge Anti-Corruption during the trial badly exposed tall/false hollowness of claims of Public Service Commission. The respondents without waiting for the final outcome of proceedings awarded penalties to the concerned on the basis of slipshod inquiry. We are fully cognizant that criminal and departmental proceedings can run parallel, but in the case in hand both were based on suppositions/conjectures and surmises.

9. As a sequel to above, the appeal is accepted, impugned order dated 25.04.2012 is set aside and the appellants are reinstated in service. The respondents are directed to conduct de-novo enquiry within a period of ninety days

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(10)

from the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
13.05.2019

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 17-10-2019
Number of Words 2000
Copying Fee 22
Urgent 4-
Total 26
Name of Copyiest
Date of Complection of Copy 17-10-19
Date of Delivery of Copy 17-10-19

In the Court of Special Judge, Anti-Corruption, (Provincial), Khyber Pukhtunkhwa, Peshawar.

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Case No.17 of 2013.

Date of Institution. 22.04.2013.

Date of Decision. 14.02.2017.

State Versus:-

1) Muslim khan Naib Qasid, Public Service Commission Peshawar.

2) Zahoor khan Naib Qasid, Public Service Commission Peshawar.

3) Fazalur Rehman Chowkidar, Public Service Commission Peshawar.

4) Taj Wali Driver, Public Service Commission Peshawar.

5) Zar Ali S/o Shah Jehan, R/o Dheri Zardad Charsadda.

6) Irfan Babar S/o Fida Muhammad, R/o Masma Kaley.

7) Hazrat Said S/o Muhammad Nawaz, R/o Timergara.

8) Riazuddin S/o Abdul Qahar, R/o Swat.

9) Munsif khan S/o Momeen khan, R/o Terai Bala.

ATTESTED

24/6/2017

EXAMINER
Court of Special Judge
Anti Corruption KPK Peshawar

Case FIR No.18 dated 25.08.2011 of P.S. ACE, Peshawar, u/s 419/420/468/471 of PPC read with Section 5 (2) of Prevention of Corruption Act.

O R D E R.

1) Vide FIR No.18 dated 25.08.2011, P.S. ACE, Peshawar, accused 1) Muslim khan, 2) Zahoor khan, 3) Fazalur Rehman, 4) Taj Wali, 5)Asmatullah, 6) Zar Ali, 7) Irfan Babar, 8) Hazrat Said, 9) Riazuddin, 10) Munsif khan, 11) Muhammad Iqbal and 12) Wahid Gul were charged and their case was forwarded to this court for trying them for the offences punishable u/s 419/420/468/471 of PPC read with section 5(2) of Prevention of Corruption Act.

14.2.2017

2) According to the contents of FIR, complainant (Atta-ur-Rehman), the Secretary Public Service Commission, Khyber Pakhtunkhwa (PSC KPK), lodged a written complaint against some officials of PSC, alleging that they had altered and forged the record of the Public Service Commission relating to the interview marks obtained by candidates of lectureship.

Pursuant to it an open inquiry No.32/2011 was conducted, and it was found during the inquiry that six accused 1)Asmatullah, 2) Zar Ali, 3) Irfan Babar, 4) Hazrat Said, 5) Riazuddin, 6) Munsif khan, in collusion with six officials of the PSC 7)Muslim khan, 8) Zahoor khan, 9) Fazalur Rehman, 10)Taj Wali, 11)Muhammad Iqbal and 12)Wahid Gul had tampered with the

said interview result and thus had deprived other candidates of their due rights. Similarly one civilian namely Asim was also named in the FIR for involvement in the occurrence. On the basis of conclusion of said inquiry the instant case was registered against thirteen accused namely 1) Muslim khan, 2) Zahoor khan, 3) Fazalur Rehman, 4) Taj Wali, 5) Asmatullah, 6) Zar Ali, 7) Irfan Babar, 8) Hazrat Said, 9) Riazuddin, 10) Munsif khan, 11) Muhammad Iqbal, 12) Wahid Gul and 13) Asim.

3) After completing investigation the challan was submitted only against the twelve accused for trial excluding Asim. Provisions of section 241-A of Cr.PC were complied with and the charge was framed against them to which they pleaded not guilty and claimed trial. During the trial one of the accused Wahid Gul was found to have absconded and therefore, he was proceeded against u/s 512 of Cr.PC by allowing the prosecution to produce its evidence against him in his absence.

4) In support of its case the prosecution produced and examined Attaur Rehman, Secretary Local Council Board, Peshawar as PW-1, Jehanzeb Khan Rtd: S.I. ACE Charsadda as PW-2, Muhammad Younas khan retired S.I.ACE, Peshawar as PW-3, Zubair Shah Ex-Member Public Service Commission, KPK as PW-4, Munawar khan Assistant Director Public Service Commission, KPK, Peshawar as PW-5 and Aslam Nawaz khan, ADC, ACE, Peshawar as PW-6. During the continuation of trial the two accused namely Muhammad Iqbal and Asmatullah were acquitted by this court on 15.11.2016 & 23.11.2016 respectively, u/s 249-A of Cr.PC. Hence now the numbers of accused facing trial has been reduced to Nine.

5) Later on 01.02.2017, PW-6 Aslam Nawaz khan, ADC, ACE, Peshawar was partially cross examined. Meanwhile on 05.10.2015 the learned counsel for the accused 1) Zar Ali, 2) Irfan Babar, 3) Hazrat Said, 4) Riazuddin, 5) Munsif khan also applied for acquittal of said accused u/s 249-A of Cr.PC and similar application was moved on 15.11.2016 by the learned counsel for accused 6)Fazalur Rehman and also by learned counsel for accused 7)Zahoor khan and 8)Taj Wali on 01.11.2016 and by learned counsel for accused 9)Muslim khan on 09.11.2016.

6) Learned Public Prosecutor was put to notice. Arguments of the Learned Public Prosecutor and of the learned counsel of nine accused mentioned above seeking their acquittal u/s 249-A of Cr.PC were heard and file perused with their assistance.

7) This single order is aimed at to dispose of all the said applications of the nine accused facing trial. It may be clarified here at the very outset that in the instant case there are two sets of accused. One set of accused consists of the officials of PSC herein after referred as "officials while the other set of the candidates consists of the candidates who have herein after been referred as "candidates".

8) The main allegations of the prosecution against the candidates is that in connivance with the officials, they had tampered with the questioned result of the PSC. In this regard letter No.048539 dated 24.08.2011 and letter No.48562-63 dated 24.08.2011 Ex.PW5/1 and the final inquiry report Ex.PW6/2 may be referred. According to the contents of final inquiry report the officials had manipulated access to the office of the member of PSC Zubair Shah and by taking out the relevant record regarding interview from cupboard, took the same into the basement and

JUDGE 4.2.17

EXAMINER Court of Special Judge Anti Corruption KPK Peshawar

ATTESTED

tampered the interview marks by using computer and affixed fake signature of the member PSC concerned.

9) It was contended by the learned counsel for the accused that though all the material witnesses of the prosecution had been examined, there was not even the slightest evidence coming to the fore to connect the accused facing trial with the commission of any offence in this case. They also claimed that no credible evidence worth the name was collected during the inquiry/investigation of the case to show that the official had either tampered with the list of the candidates containing the marks awarded to them as a result of their interview or had abetted or facilitated any other co-accused for the purpose. In this regard they specifically referred to the certain parts of the cross examination of PW-1, PW-4, PW-5 & PW-6. They, therefore claimed that there was no probability of the accused being convicted of any offence in this case, no matter what other evidence was lying in the stock with or to be produced by the prosecution. They thus concluded that keeping in view the facts and circumstances of the matter, it was a fit case for exercise of the powers available to the court u/s 249-A of Cr.PC.

10) Learned Public Prosecutor opposed the applications and contended that though the material witnesses had been examined by the prosecution but still a number of other witnesses were to be produced by the prosecution and there was no occasion for the court to decide the applications without recording the remaining evidence of the prosecution.

11) The record reflects that as many as six witnesses have already been produced by the prosecution who have been cross examined by the accused facing trial. Out of these six witnesses, PW-1, PW-4 & PW-6 being the complainant, the member Public Service Commission, and the inquiry/investigating officer, respectively can be termed as materially most important witnesses. The evidence of all the PWs can be summed up as follows:-

12) PW-1 Attaur Rehman, Secretary Local Council Board, Peshawar has stated that on the direction of the chairman vide his letter Ex.PW1/1 he and one other member Hafiz Matiullah had conducted inquiry regarding the result of the six candidates for Botany lecturers, who are all accused in this case. Consequently they submitted their report Ex.PW1/2 and thereafter on the direction of chairman he had written letter Ex.PW1/3 to the Director Anti-corruption. He also stated to have provided relevant record to the ACE on its demand.

13) PW-2 Jehanzeb Khan Rtd: S.I. ACE Charsadda has appeared as marginal witness of recovery memo Ex.PW2/1 vide which Munawar khan Admn: officer PSC had handed over to Aslam Nawaz khan C.O. ACE, some record regarding report of Zubair Shah, and the departmental inquiry alongwith covering letter. He verified his signature over the said memo as correct and also stated that his statement was recorded by the I.O. u/s 161 of Cr.PC.

14) PW-3 Muhammad Younas khan retired S.I.ACE, Peshawar has stated to have produced three accused for police custody which was refused and the accused were sent to judicial lock up. He also claimed to have signed the recovery memo Ex.PW3/1 as marginal witness and verified the signature over it.

15) PW-4 Zubair Shah Ex-Member Public Service Commission, KPK, being the member of Public Service Commission at the relevant time, his statement appears to be crucially important

ATTESTED

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and hence reproduced below:- He has stated that, "I was member public service commission at that time. I had conducted interviews for the post of lecturers in "botany" since 6.7.2011. The interviews had to be finalized on 8.12.2011. On 11.8.2011, I was going through the conducted interviews for preparing the final result sheet, while I observed that some of the sheet were tampered/ changed by over writing and changing of the pages. Some loose papers were also left by the cheater/ accused. I reported the matter same time to the chairman public service commission. My report is consist of five pages which is Ex.PW4/1(Original seen & returned) I have also annexed the tampered result sheets having cuttings, addition as well as added pages consisting of twenty nine pages Ex.Pw 4/2(Original seen & returned). In my complaint I have given the datewise details of the tampered/ changed sheets. The tampering/ change had been made on the sheets dated 13.7.201, 21.7.2011,26.7.2011,8.8.2011 & 10.8.2011. To-day I have seen my complaint which is in my own hand writing and correctly bears my signature".

16) PW-5 . Munawar khan Assistant Director Public Service Commission, KPK, Peshawar has stated that he had handed over report of Zubair Shah ex-member PSC consisting of five sheets Ex.P-1 with documents regarding the result consisting of 29 sheets Ex.PW4/2 and the office order dated 15.08.2011 already Ex.PW1/1 and covering letter Ex.PW5/1.

17) PW-6 Aslam Nawaz khan, ADC, ACE, Peshawar being the inquiry and investigating officer, his statement also carries important therefore is reproduced below:- He has stated that, "During the relevant days I was posted as C.O. ACE, Peshawar. An application already Ex.PW1/3 was made to Director ACE by Secretary PSC which was marked to me alongwith letter Ex.PW6/1 for inquiry. I recorded statement of the accused u/s 161 Cr.Pc. Vide recovery memo already Ex.PW2/1 Munawar khan Admn: Officer brought the record i.e. report of Zubair Shah (5 sheets) already Ex.PW4/1 alongwith record already Ex.PW4/2 in total 33 pages in the presence of marginal witnesses (already original seen and returned). Thereafter I submitted my final report Ex.PW6/2 consists of three sheets, seeking permission for registration of case, which was allowed vide Ex.PW6/3 and after that I registered the case vide FIR Ex.PA. I arrested the accused Muhammad Iqbal, Fazalur Rehman, Muslim khan and Wahid Gul, prepared their card of arrest Ex.PW6/4 to Ex.PW6/7 and vide my application Ex.PW6/8, I obtained their one day custody and recorded their statements u/s 161 Cr.Pc. I also arrested accused Zair Ali, Munsif khan and Hazrat Said. I vide my application Ex.PW6/9 all the accused were produced before the concerned court for police custody but the application was turned down and the accused were sent to judicial lock up. Zubair Shah member PSC submitted his written statement which I placed on file. I submitted a letter Ex.PW6/10 to all the C.Os for arrest of remaining accused. Similarly Ex.PW6/11, I requested to the Director ACE to inform all the CCPOs as well as the DPOs of all the districts for the arrest of remaining accused. Vide letter Ex.PW6/10, I requested to the Secretary PSC for provision of record which was provided vide letter Ex.PW6/11. I vide recovery memo already Ex.PW3/1 the Naib Qasid of PSC brought the record alongwith the letter which was sealed into parcel No.2. (At this stage the P.P. requested for the provision of parcel No.2.....request accorded and the P.P. is directed to produce parcel No.2 for exhibition). The record is Ex.PC. On 10.11.2011,I arrested Taj Wali Shah and prepared his card

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of arrest Ex.PW6/12. I vide my application Ex.PW6/13 got one day custody of accused Taj Wali Shah and interrogated him. I recorded his statement u/s 161 Cr.Pc. After the expiry of the police custody accused was sent to judicial lock up. I arrested accused Riazuddin and Irfan Babar on 12.12.2011 and prepared their card of arrest Ex.PW6/14 & Ex.PW6/15 respectively. I vide my application Ex.PW6/16 requested for sending the accused to judicial lock up which was allowed and they were sent to judicial lock up. As accused Zahoor and Asmatullah were avoiding their lawful arrest and I vide my application Ex.PW6/17 & Ex.PW6/18 obtained their warrants u/s 204 Cr.Pc. Similarly vide my application Ex.PW6/19, I obtained their proclamation notices u/s 87 Cr.Pc. I vide my application Ex.PW6/20 requested for submission of challan which was allowed and I submitted complete challan Ex.PW6/21, which is correct and correctly bears my signature".

18) The perusal of statements of the PWs above would reflect that in the instant case PW-1 appears to be as important witness as it is he who has conducted preliminary inquiry with one other member namely Hafiz Matiullah in this case and has submitted his inquiry report which is Ex.PW1/2. In his cross examination he had inter alia made the following depositions:-

"I have performed as Secretary PSC for more than two years. It is correct that PSC is under heavy load of work therefore its employees used to sit late hours for work. It is also correct that various officials of PSC used to attend the court proceedings and different meetings and then they joined their duties at the commission office beyond the working hours... It is correct that accused facing trial has been performing his duty at the main gate of PSC and I have also mentioned this fact in my inquiry report. The record of the present case was lying in the office of member PSC namely Zubair Shah. It is correct that being Secretary PSC if I came late to my office (beyond working hours) then the chowkidar of the gate is bound to allow me to enter the premises of PSC. It is correct that no high official of the PSC has been arrayed as an accused in this case and all the accused are either chowkidar or peon or office orderly... It is incorrect to suggest that infact high officers of the PSC were involved in this case but they by using their official positions have made the accused facing trial as escape goat. It is also incorrect to suggest that I have conducted a dishonest inquiry and have tried to please my high ups. It is incorrect to suggest that as a secretary of PSC I have an active hand in the present case".

19) In the instant case Zubair Shah member of PSC is the most crucial and important witness of the case because it is allegedly his office record that has been allegedly tampered with. While appearing as PW-4 the said Zubair Shah has stated inter alia in his cross examination that:-

It is correct that I have just reported the matter to the Chairman Public Service Commission (PSC) and I have not pinpointed any person of the PSC as an accused for the same tampering. I cannot say that out of the present set of the accused, who was performing, where, nor say anything about the nature of their duty. I have also not fixed any responsibility on any of the accused. He had further stated in his cross examination that I was the one of the member and Chairman of the panel for the interview of the post of lecturer Botany. The interviews for the

14.2.2013

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said post were conducted on different dates. I do not remember the exact number of the other members however there were 2 or 3. I do not remember their names as the matter pertains to the year 2011. The marking procedure for interview was on the basis of consensus between the members as the subject specialist were members of the panel. It is correct that each member of the interview had his own marks for the candidates. The witness volunteer that if the member/members think so. I have seen Ex.PW4/1 i.e. my complaint and on the same my co-members for interview are not the signatory of Ex.PW4/1. Self stated that they have not the staff members of the PSC. It is correct that I have not consulted the other members while drafting the report Ex.PW4/1. Compilation of result means a calculation of different marks made on different dates. It is correct that as per my report Ex.PW4/1 I have not affixed any liability or responsibility either on the PSC official/officer or the candidates. It is correct that the PSC has its own secrecy branch and all the secret documents including papers and answer sheets remained in that branch. Till the compilation of the result the answer sheets/interview sheets were in the possession/custody of the concerned members. It is correct that no private person has any access to our office.... It is incorrect to suggest that I am concealing and suppressing the actual culprits. It is incorrect to suggest that there is no eye witness of the occurrence. It is correct that except Ex.PW4/1, I did nothing in the case.... It is correct that none of the above named accused officials were working with me in my office/section. It is correct that none of the above named officials were having daily/frequent visits to my office. It is correct that the above mentioned accused/officials were having no concern whatsoever with the interview process. It is correct that none of the PSC officials/accused were named by me in the complaint. It is correct that all the interview papers were kept by me in my office under my lock. Self stated that the lock can be broken or it can be opened by any other means. It is correct that I have not mentioned in my complaint as to whether the locks were opened through any means or were broken. I made my complaint to the chairman PSC. I have not mentioned the name of any official accused, subsequently to the I.O. It is correct that at the time of my complaint the result of the successful candidates were not declared. In my presence the I.O. has not investigated the matter from any of my officials working under me. Besides my complaint Ex.PW4/1 I have provided my written statement to the I.O. at the time of investigation. It is correct that the documents of interview were kept by me in my lock, the keys of which were in my custody. The I.O. has visited my office during investigation. In my presence the I.O. has not collected any finger prints from the spot or collected any other material. It is correct that I have not mentioned any mode and manner through which the locks were opened or were broken. A steno and peon were working with me in my office. I only made complaint and have not asked any question from my staff member or conducted any inquiry. It is correct that I had not recommended to the Chairman for taking departmental action against the staff working in my office. The Chairman PSC is the competent authority of the commission. It is correct that being member and custodian of the record the chairman has not taken any action against me. It is correct that I as well as my staff members were also not made accused by the I.O. in the instant case. It is incorrect to suggest that I myself for wrongful gain has manipulated the whole record and upon disclosure of the fact to other

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member I made the official accused as an escape goat to guard of the allegations. It is incorrect to suggest that the original record was destroyed due to the fact that there was no substance in the allegations made against the accused. It is incorrect to suggest that I know the actual culprits but have wrongly reported the matter against innocent persons.

Similarly PW-5 had stated in his cross examination that "It is correct that each individual member of the interview committee records their independent marks and then they compile the final result on completion of entire proceedings of interview. It is correct that we have not provided the individual assessment/mark sheets assessed by each member of the interview. It is correct that usually 3/4 members conduct interview. Self stated that after marking by each member of the interview it is handed over to the chairman of the panel who make compilation of all the result and the individual marks sheet is destroyed. It is correct that we provided only main sheet signed by the chairman and its member to the ACE staff and not provided the individual marks sheet. It is incorrect to suggest that I am concealing the facts regarding marks sheet of each member which is part and parcel of the record but we did not provide the same to ACE staff, whether any tampering was committed by any one or not, the whole suggestion is wrong

Similarly PW-6 had stated in his cross examination that "It is correct that at page-99 of the file the result was compiled and prepared by Iqbal Khan Assistant, checked by Fida Muhammad Superintendent and countersigned by Syed Ilyas Shah DS-II. It is correct that I have not recorded any statement from Fida Muhammad superintendent and Syed Ilyas Shah DS-II. Similarly I have not arrayed them as an accused in the instant case nor as witness. It is correct that at page 126 of the file letter from secretary KPK PSC was addressed to me which is Ex.PW6/D-1. It is correct that at serial No.3 of the above said letter names of the panel members/advisors were provided alongwith their cell numbers. It is correct that I have not recorded their statement. It is correct that I have not obtained/placed on file individual mark sheet, signed and prepared by panel members. It is correct that there is no mark sheet of the each individual who conducted interview for comparison. It is correct that the inquiry already Ex.PW1/2 is placed at page-146 of the file. It is correct that no penal recommendations were sanctioned by the inquiry against the candidates in the departmental inquiry".

PW-6 had further stated in his cross examination that "It is correct that there is no such allegation from PSC against the accused that they have entered into the office and broke the locks of the almerah of the office. It is correct that they have no access to the office of PSC. It is correct that the accused/candidates have not confessed their guilt before the Magistrate. It is correct that there is no ocular account/witnesses in whose presence the illegal gratification was handed over to the official accused". He had also deposed that:- "I have seen the FIR No.18 of 2011 of this case, the date of report is 24.08.2011 and the date of chalking of FIR is 25.08.2011. It is incorrect to suggest that codal formalities for registration of the FIR i.e. open inquiry, its sanction and then sanction for registration of FIR were obtained within 24 hours".

14.2.2017

24/6/19

ATTESTED

Court of [illegible] Judge
Anti Corruption [illegible] Peshawar

20) In these circumstances where no official of PSC was nominated in the complaint contained in the letter No.048539 dated 24.08.2011; where the proceeding of lodging the report, obtaining permission for open inquiry, recording the statements of a number of persons, seizing the relevant record, was all completed within short span of 24 hours after the report which creates doubt about the genuineness of entire said proceedings; where the custodian of the record was exonerated by the PSC; where PW-4 being the most important witness had clearly stated that the questioned interview sheet was in his possession under the lock and key and where he had not observed that lock to have been broken or to have been opened by other means; where PW-4 had stated that the official had no access to the official record; where no finger prints over the relevant almirah had been obtained for obtaining the FSL report about them, nor other solid and concrete evidence has been collected; where the marks sheet of individual member was not available to tally with the compiled result to ascertain as to whether any tampering had taken place; where PW-6 had disclosed in his cross examination that the result was compiled and prepared by Iqbal Khan Assistant, checked by Fida Muhammad Superintendent and countersigned by Syed Ilyas Shah DS-II, but he had not recorded any statement from Fida Muhammad superintendent and Syed Ilyas Shah DS-II, which were the material witnesses in this case; where though according to PW-6 the names of the panel members/advisors were provided alongwith their cell numbers, but he had not recorded their statements; where he had not obtained/placed on file individual mark sheet, signed and prepared by panel members, where he did not collect mark sheet of the each individual who conducted interview for comparison; where according to PW-4 PSC had its own secrecy branch and all the secret documents including papers and answer sheets remained in that branch and till the compilation of the result the answer sheets/interview sheets were in the possession/custody of the concerned members and where no private person had any access to his office; where PW-4 had admitted that accused officials were not working with him in his office/section and that none of the above named officials were having daily/frequent visits to his office; where he had admitted that the above mentioned accused/officials were having no concern whatsoever with the interview process and that none of the PSC officials/accused were named by him in the complaint; where all the interview papers were kept by him in his office under his lock; where according to PW-6 the accused/candidates had not confessed their guilt before the Magistrate nor there was any ocular account/witnesses in whose presence the illegal gratification, if any, was handed over to any of the official accused, nor even the relevant computer was taken into possession to retrieve its data in order to confirm the allegation of tampering in the interview sheets, this court feels no hesitation to hold that there is no probability of the accused being convicted of any offence, if the remaining evidence is recorded in this case.

21) In the circumstances, while invoking the provision of section 249-A Cr.PC, all the nine accused namely 1)Muslim khan, 2) Zahoor khan, 3) Fazalur Rehman, 4) Taj Wali, 5)Zar Ali, 6) Irfan Babar, 7) Hazrat Said, 8) Riazuddin, 9) Munsif khan are acquitted of the charges leveled against them. Being on bail they and their sureties are absolved of their liabilities under the bail bonds.

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Peshawar

ATTESTED

(19)

22) It may be added here that two other co-accused namely 10) Muhammad Iqbal and 11) Asmatullah have already been acquitted by this court on 15.11.2016 and 23.11.2016 respectively, u/s 249-A Cr.PC.

23) Their co-accused Wahid Gul Ex-Naib Qasid, Public Service Commission, Peshawar is declared proclaimed offender. Perpetual warrant of arrest be issued against him and the District Police Officer Peshawar is directed to enlist him in the register of proclaimed offenders, and proceed accordingly against him.

24) The case property, if any, should be kept intact so as to be used during the trial of absconding accused, if he is arrested.

25) File of the case be consigned to the record room after putting it in order in accordance with rules.

Announced.
Peshawar.
14.02.2017.

14.2.2017

(Muhammad Bashir)
Special Judge,
Anti-Corruption (Provincial),
Khyber Pukhtunkhwa, Peshawar.

Certificate.

Certified that this order consists of nine pages; each page has been signed by me.

14.2.2017

Special Judge,
Anti-Corruption (Provincial),
Peshawar, Khyber Pakhtunkhwa.

ATTESTED

24/6/2019

EXAMINER
Court of Special Judge
Anti Corruption KPK Peshawar

E-(20)

KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

OFFICE ORDER

WHEREAS, Mr. Muslim Khan Residence Orderly PSC was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for allegations mentioned in statement of allegations and was dismissed from service;

AND WHEREAS, in compliance of Khyber Pakhtunkhwa Service Tribunal judgment dated 13.05.2019 received to PSC on 27.05.2019, he was reinstated into service and a *de-novo* enquiry was conducted by the Inquiry Committee, comprising Dr Asad Bano Senior Psychologist and Mr. Tanzil-ul-Rehman Assistant Psychologist Khyber Pakhtunkhwa Public Service Commission;

AND WHEREAS, the Inquiry Committee after having examined the charges, evidence on record and explanations of the accused officials, submitted its report to Secretary PSC (Competent Authority) reporting that the charges have been proved and recommending imposition of penalty by the competent authority;

AND WHEREAS, Show Cause Notice was accordingly served upon the accused officer under sub rule 4 of Rule-14 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 communicating the decision regarding imposition of the tentative penalty of dismissal from service. His reply to the show cause was found unsatisfactory;

AND WHEREAS, the accused official was provided an opportunity of personal hearing by the Competent Authority on 22.08.2019 in his defence. The accused official however, failed to produce any material evidence in his defence;

NOW THEREFORE, the Competent Authority, in exercise of powers conferred under sub rule 5(ii) of Rule-14 is pleased to impose upon Mr Muslim Khan Residence Orderly PSC the major penalty of **Dismissal from Service** on him as provided under Rule 4(1)(b)(iv) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

Attested

Secretary
Public Service Commission

No.KP/PSC/Admn/GF-310/ 017892

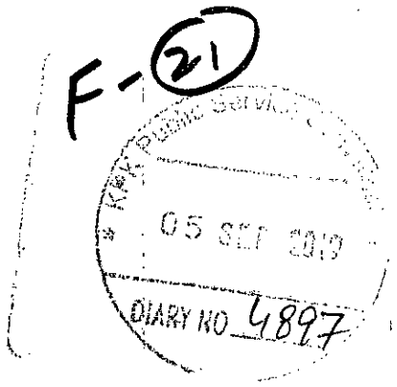
Dated: 23-8-2019

Copy forwarded to:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Mr. Muslim Khan Residence Orderly, Khyber Pakhtunkhwa PSC.
3. Personal file of official concerned.
4. Office Order file.

Deputy Director (Admn)

F-(21)



To

The Chairman,
Public Service Commission,
Khyber Pakhtunkhwa, Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 23.08.2019, WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED ON ME.**

Respected Sir,

With due respect it is stated that I was serving as /Naib Qasid/residence Orderly before your good self Department and right from my appointment I have served the Department efficiently and up to the entire satisfaction of my superiors. During service no any kind of complaint has been made against me but in the very matter the respondent department leveled serious and baseless allegations against me and due to such allegations I was dismissed from service vide order dated 01/03/2012. Feeling aggrieved from dismissal order dated 01/03/2012 I filed Departmental appeal but no heed was paid to the said Departmental appeal and then after I filed service appeal No. 608/2012 which was accepted in my favor vide judgment dated 13.05.2019 with the directions to conduct de-novo inquiry in the matter. That after de-novo proceedings the concerned authority has issued the impugned order dated 23.08.2019 whereby again major penalty of dismissal from service has been imposed on me, feeling aggrieved from the impugned order dated 23.08.2019 preferred this Departmental appeal before your good self for redressal of my grievance.

It is therefore, most humbly requested that on acceptance of this departmental appeal the impugned order dated 23.08.2019 may very kindly be set aside and I may very kindly be reinstated into service with all back benefits.

Dated.04.04.2019

Attested

Your sincerely

Muslim Khan (Naib Qasid)
KP Public Service Commission, Peshawar.

KHYBER PAKHTUNKWA
PUBLIC SERVICE COMMISSION

2-Fort Road Peshawar Cantt.
Tele No: 091-9214131

G-22

No.KP/PSC/Admn/GF-307/

Date: 24/9/19

To

Mr. Muslim Khan,
Ex-Residence Orderly PSC.

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 23.08.2019, WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED ON ME.

I am directed to refer to your appeal dated 04.09.2019 on the subject noted above and inform that the Chairman Khyber Pakhtunkhwa being Appellate Authority has been pleased to reject your appeal and has upheld the penalty conveyed to you vide this Office Order No. KP/PSC/Admn/GF-310/017893 dated 23.08.2019.

Assistant Director (Admn)

Attested

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

_____ OF 2019

Muslim Khan (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

Chairman Public Service Commission (RESPONDENT) (DEFENDANT)

I/We Muslim Khan

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, 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 cost. 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.

Dated. 19 / 10 /2019

Muslim

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

KAMRAN KHAN
&

MIR ZAMAN SAFI
ADVOCATES

OFFICE:
Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1375 / 2019.

Muslim, Ex Naib Qasid KP PSC..... Appellant

VERSUS

Chairman Public Service Commission & others..... Respondents

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Senior Law Officer
Public Service Commission

UMS88642661

27/7/2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1375 / 2019.

Muslim Khan, Ex Naib Qasid KP PSC..... Appellant

VERSUS

Chairman Public Service Commission & others..... Respondents

PARA-WISE COMMENTS OF (RESPONDENTS NO. 01 to 03).

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS

1. That the allegations of the appellant are baseless and misleading.
2. Appellant is not an '*aggrieved person*' under the law. He has not approached this honorable Tribunal with *clean hands.*
3. That no discrimination / injustice has been done to the appellant.
4. That the instant appeal is not based on facts and is unjustified and illegal demand against the lawful authority of the Commission.
5. That the instant appeal is bad in the eyes of Law.
6. That the instant appeal is an embodiment of *falsehood* and *misrepresentation / concealment* of material facts. It is based on *gross mis-statement*, hence *bad* in law and facts both.
7. That the appellant is *estopped* by his own act and / or conduct. He filed the instant appeal *dishonestly, by design / scheme* and *after thought* not only to malign the Commission but to get sympathy /dogged this honorable Tribunal.
8. That all the acts of the replying respondents are in line with the norms and principles of natural justice.
9. That the dismissal from service of the appellant is based on the proper procedure of law and that too on the directions of this honorable tribunal vide order dated 13.05.2019.

10. That departmental inquiry committee comprising the senior most members and reputable officers was constituted under the lawful authority by Khyber Pakhtunkhwa Public Service Commission.

On Facts:

1. Correct to the extent that the appellant was serving as Naib Qasid in the office of Khyber Pakhtunkhwa Public Service Commission Peshawar. He was awarded major penalty of removal from service by the competent authority on account of corrupt practices with due observance of all the codal formalities. It is incorrect that these were exparte proceedings.
2. Correct.
3. Correct.
4. Correct to the extent of dismissal of the appellant as a result of denovo inquiry which proceedings were conducted in compliance with the order of this Honorable Tribunal with due observation of all the codal formalities. It is settled, law that acquittal by a Criminal Court does not preclude a departmental inquiry against a delinquent official.
5. Needs no comments / reply.
6. Correct. However, good grounds existed for rejection of the departmental appeal.
7. The grounds mentioned are baseless as responded to as below..

Grounds:

A. Incorrect. The denovo inquiry was conducted keeping in view the principles of law, facts, natural justice and material available on record.

B. Incorrect. The appellant was treated in accordance with law and rules. No provision of Constitution was violated.

C. Incorrect. No violation of laws and rules was committed by Public Service Commission. The entire process of denovo inquiry was completed within the stipulated period per directions of this Honorable Tribunal according to law.

D. Incorrect. It is settled principle of law that disciplinary authority is not bound by the Judgment of criminal courts as the object of a departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service or not.

E. Incorrect. As replied above.

F-G. Incorrect. The whole process of denovo inquiry was carried out according to law.Charge sheet / show cause so issued to the appellant is **(Annex-A)**, Notice of inquiry **(Annex-B)** and reply of appellant at **(Annex-C).**

H. Incorrect. A proper time of personal hearing and written reply was given to the appellant which can be well justified from denovo inquiry report which is at **(Annex-D)** and furthermore, Annexures A, B and C suffice to rebut this para.

I. The respondent reserve the right to rebut any such grounds and proof, if advanced any at the time of hearing by the appellant before this Honorable Tribunal.

It is therefore humbly prayed that on acceptance of this reply/submissions made herein above the instant service appeal being void may kindly be dismissed.

CHAIRMAN
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
PESHAWAR
(RESPONDENT NO.01)

SECRETARY
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
PESHAWAR
(RESPONDENT NO.02)

DEPUTY DIRECTOR ADMIN
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
PESHAWAR
(RESPONDENT NO.03)

AFFIDAVIT

Stated on oath that the contents of this application are true and correct & nothing has been concealed from this Honorable tribunal.

DEPONENTS

CHAIRMAN
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
PESHAWAR
(RESPONDENT NO.01)

SECRETARY
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
PESHAWAR
(RESPONDENT NO.02)

DEPUTY DIRECTOR ADMIN
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
PESHAWAR
(RESPONDENT NO.03)

KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

(5) Annex-A

No. 017320

Dated 09.08.2019

SHOW CAUSE NOTICE

I, Fareeha Paul, Secretary Khyber Pakhtunkhwa Public Service Commission as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you Mr. Muslim Khan Residence Orderly, as follows:-

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry committee consisting of Mrs. Asad Bano, Senior Psychologist PSC and Mr. Tanzil-ur-Rehman, Assistant Psychologist PSC for which you were given opportunity of hearing; and

   (ii) on going through the findings and recommendations of the inquiry committee, the material on record and other connected papers including your defence before the inquiry committee:-

I am satisfied that you have committed the following acts/omissions specified in Sub Rule (b) & (c) Rule 3 of the said rules:

a. You in connivance with other co-accused, committed the crime of tampering the result, descriptive sheets and attendance sheets of interviews held w.e.f 06/07/2011 to 12/08/2011 for the post of Male Lecturer Botany (BPS-17) in Higher Education Department for illegal selection of candidates against the posts.

b. You hoodwinked the candidates for bribe in return of illegal selection / appointment against the posts of Male Lecturer Botany.

c. You are believed to be corrupt.

d. You have publicly tarnished the image of Public Service Commission.

e. Misconduct.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of **"dismissal from service"** under Rule 4(1)(b)(iv) of the said rules.

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 desire to be heard in person.

4. If no reply to this notice is received within seven days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. The copy of the findings of the inquiry officers is enclosed.

SECRETARY P.S.C.

Mr. Muslim Khan Residence Orderly,
Khyber Pakhtunkhwa PSC.

09/08/2019

9/8/19

(6) Ann "B"

INQUIRY NOTICE

To,

1. Mr. Muslim Khan, Residence Orderly, Khyber Pakhtunkhwa PSC.

As per charge sheet through office order No. KP/PSC/Admn/GF-307/011895 dated 14/06/2019 from honourable Secretary Khyber Pakhtunkhwa Public Service Commission, regarding TAMPERING OF RESULTS for MALE LECTURER BOTANY w.e.f. 06/07/2011 to 12/08/2011. You are hereby directed to appear in front of the inquiry committee on Wednesday 31 July, 2019 at 10:00 am.

Dr. Mrs. Asad Bano
Senior Psychologist
KP PSC
(Chairperson Inquiry Committee)

Dated: 30/07/2019

(7)

KHYBER PAKHTUNKWA
PUBLIC SERVICE COMMISSION

2-FORT ROAD PESHAWAR CANTT.
Tel: No: 091-9214131

No.KP/PSC/Admn/GF-310/ 017717-20

Date: 21-8-19

To

1. Mr. Taj Wali Driver PSC,
2. Mr. Zahoor Ahmed Naib Qasid PSC,
3. Mr. Muslim Khan Residence Orderly PSC.

Subject: PERSONAL HEARING

With reference to your reply dated 20.08.2019 to show cause notice dated 09.08.2019, you are required to attend office of Secretary Public Service Commission (competent authority) on **22nd August, 2019 at 11.30** (a.m.) for personal hearing.

2. You are, therefore, directed to attend personal hearing on the date, time and venue given above.

Deputy Director (Admn)

Copy to:

1. PS to Secretary, Khyber Pakhtunkhwa PSC.

O/C

Deputy Director (Admn)

O/C

(8)

To

The Secretary,

Khyber Pakhtunkhwa Public Service Commission.

Subject: **EXTENSION IN TIME FOR SUBMITTING REPLY TO SHOW CAUSE NOTICES**

R/Sir,

With great reverence, it is submitted that we are served upon show cause notices bearing No. 017318, 017319, and 017320 dated 09.08.2019. The deadline for submitting reply is seven days. i.e. 15.08.2019. Our lawyer is on leave in lieu of Eid ul Adha.

2. It is therefore requested that deadline for submitting reply to show cause notice may be extended for 15 days after receipt of show cause notice enabling us to submit our replies with the help of our lawyers.

3. We shall be grateful.

Yours faithfully,

Taj Wali
Driver PSC 9/8/19

Zahoor Ahmed
Naib Qasid

Muslim Khan
Residence Orderly PSC

Dated: 09.08.2019.

(9)

KHYBER PAKHTUNKWA
PUBLIC SERVICE COMMISSION
2-Fort Road Peshawar Cantt.
Telephone No: 091-9214131

No.KP/PSC/Admn/017361-64
Date: 16-8-19

To

Mr. Taj Wali, Driver PSC,
Mr. Zahoor Ahmed, Naib Qasid PSC,
Mr. Muslim Khan, Residence Orderly PSC.

Subject: **EXTENSION IN TIME FOR SUBMITTING REPLY TO SHOW CAUSE NOTICES DATED 09.08.2019**

I am directed to refer to your application dated 09.08.2019 on the subject noted above and to inform that the Competent Authority is pleased to extend the last date for submission of reply to the show cause notice till 20th August, 2019.

Deputy Director (Admn)

O/C

Endst No. & Date as above.

Copy to:

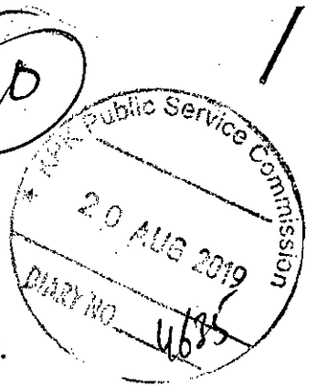
Received
16/8/19
PS to Secretary, Khyber Pakhtunkhwa PSC.

Deputy Director (Admn)

O/C

(1) Muslim Khan
19/08/19 O/C

Ann "C" (10)



To

THE SECRETARY,
Khyber Pakhtunkhwa,
Public Service Commission, Peshawar.

Subject: **REPLY TO SHOW CAUSE NOTICE ISSUED BY YOUR GOOD SELF ON DATED 09-08-2019**

Sir,

Reference to your show cause notice No. 017319 dated 09-08-2019 stated that, I had served the Khyber Pakhtunkhwa Service Commission as Naib Qasid quite efficiently and up to the entire satisfaction of my superiors including your good self. During service certain baseless allegations have been leveled against me and in result I was dismissed from service vide order dated 01.03.2012. Feeling aggrieved I knocked the door of august Service Tribunal and the august Service Tribunal vie judgment dated 13.05.2019 has re-instated me into service with the direction to conduct De-novo Inquiry.

It is pertinent to mention that during the pendency of my service appeal the Tribal Court has acquitted me from the charges leveled against me. That your good self inspite knowing the fact that I had been acquitted by the Trial Court has conducted De-novo proceedings by issuing me charge sheet and statement of allegations in which it is alleged that:

a- *You in connivance with other co-accused committed the crime of tampering the result, descriptive sheets and attendance sheets of interviews held w.e.f 06-07-2011 to 12-08-2011 for the post of male Lecturer Botany (BPS-17) in Higher Education Department for illegal selection of candidates against the posts.*
b- *You hoodwinked the candidates for bribe in return of illegal selection/appointment against the posts of male lecturer Botany.*
c- *You are believed to be corrupt.*
d- *You publically tarnished the image of Public Service Commission.*
e- *Misconduct.*

Respected Sir,

It is most humbly stated that I am serving as Naib Qasid and my duties only restricted to serving tea & water etc to the guests/visitors intending to meet the chairman while the results/descriptive were not under my control as well as I have no concerned with the same. That the Anti Corruption Court Honorable acquitted me vide judgment dated 14.02.2017 on the basis that the allegations leveled against me have not been proved as well as the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar re-instated me into service. That in light of Fundamental Rule-54 I am fully entitle for re-instatement into service because there is the consistent view of the apex court that **"where there is no conviction there would be no Departmental punishment"**.

(11)

In view of the above, it is therefore, most kindly requested that the illegalities are not on the part of the undersigned because the undersigned has no concern with the above mentioned activities, the undersigned may kindly be exonerated from the allegations mentioned in the charge sheet and statement of allegations.

We request you to provide us an opportunity of personal hearing.

Dated: 19.08.2019.

Your obediently

Muslim Khan
Naib Qasid,
Khyber Pakhtunkhwa
Public Service Commission,
Peshawar

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Annex D

➢ Subject: **INQUIRY REPORT**

The undersigned were assigned to conduct an inquiry by the Competent Authority (Secretary Khyber Pakhtunkhwa Public Service Commission) through the Office Order *Nos* *KP/PSC/Admn/GF-307/011895, KP/PSC/Admn/GF-307/011896 and KP/PSC/Admn/GF-307/011897* dated *14-06.2019* (**Annex-A**), against the following three accused,

1. Mr. Muslim Khan, Residence Orderly, KP PSC.
2. Mr. Zahoor Ahmed, Naib Qasid, KP PSC.
3. Mr. Taj Wali, Driver, KP PSC.

The Charges leveled against the three accused in the Charge Sheet are as follow:

a. That they in connivance with other co-accused, committed the crime of tampering the results, descriptive sheets and attendance sheets of interviews held w.e.f. 06/07/2011 to 12.08.2011 for the post of MALE LECTURER BOTANY (BPS-17) in Higher Education Department for illegal selection of candidates against these posts.
b. That they hoodwinked the candidates for bribe in return of illegal selection / appointment against the posts of Male Lecturer Botany.
c. That they are believed to be corrupt.
d. That they have publicly tarnished the image of Public Service Commission
e. Misconduct

BACKGROUND OF THE CASE

Khyber Pakhtunkhwa Public Service was conducting interviews for sixteen (16) posts of Male Lecturer Botany in Higher Education Department from 06/07/2011 to 12/08/2011. On the final day of the interviews i.e. 12/08/2011, Mr. Zubair Shah (the then Member-V of KP PSC) noticed that the results of some candidates have been tampered. Mr. Zubair Shah (the then Member-V of KP PSC) sent a complaint in this regard to the then Chairman KP PSC and reported the alleged tampering in results of Male Lecturer Botany along with the proofs. The results of total Seven (07) candidates namely IRFAN BABER s/o FIDA MUHAMMAD, ASMAT ULLAH s/o RAQIM, HAZRAT SAID s/o MUHAMMAD NAWAZ KHAN, RIAZ UDDIN s/o ABDUS SATTAR,

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ABDUL KHALIQ s/o MUHAMMAD KHALIQ, MUNSEF KHAN s/o MAMEN KHAN and ZER ALI JAN s/o SHAH JEHAN, in the dates 13/07/2011, 21/07/2011, 26/07/2011, 08/08/2011 and 10/08/2011. Apart from candidate ABDUL KHALIQ s/o MUHAMMAD KHALIQ, the remaining six candidates were involved in this case of tampering.

Two Departmental inquiries were held to investigate this matter and determine the culprits.

INQUIRY No. 1: An inquiry committee consisted of the then Member-X KP PSC (Mr. Hafiz Mathiullah) and the then Secretary KP PSC (Mr. Atta ur Rehman) headed by the then Member-X KP PSC (Mr. Hafiz Mathiullah) was formed. The first inquiry was held from 17/08/2011 to 16/09/2011.

The first Inquiry Committee accused six (6) officials of KP PSC namely Muhammad Iqbal (Assistant), Wahid Gul (Naib Qasid), Taj Wali (Driver), Zahoor Ahmed (Naib Qasid), Muslim Khan (Residence Orderly) and Fazal Rehman (watchman) were involved in this case of tampering in interview marking along with the above mentioned six candidates.

INQUIRY No. 2: The second inquiry committee consisted of Mr. Ghulam Dastageer Ahmad (the then Controller Examination Secrecy) and Mr. Muhammad Arshad (the then Registrar Examination) headed by Ghulam Dastageer Ahmad ((the then controller Examination secrecy) was formed. The second inquiry was held from 23/09/2011 to 09/01/2012.

The 2nd inquiry committee found that five of the accused namely Wahid Gul (Naib Qasid), Taj Wali (Driver), Zahoor Ahmed (Naib Qasid), Muslim Khan (Residence Orderly) and Fazal Rehman (watchman) were guilty of the crime of tampering and defalcation of the results while one accused Mr. Muhammad Iqbal (Assistant) was not involved in the case. The guilty officials were given major penalty of dismissal from service while Mr. Muhammad Iqbal (Assistant) was exonerated from the charges.

On 14/02/2017, Court of Special Judge, Anti-corruption (Provincial), Khyber Pakhtunkhwa, Peshawar, acquitted all the above mentioned accused from charges. On 13/05/2019, Khyber Pakhtunkhwa Service Tribunal (Peshawar) reinstated the above three accused in service with the order to conduct a de-novo inquiry against the above mentioned three accused to fulfill the deficiencies in the previous inquiries.

Obeying the court orders, Khyber Pakhtunkhwa Public Service Commission constituted an inquiry committee composed of Dr. Mrs. Asad Bano

(Senior Psychologist) and Mr. Tanzil ur Rehman (Assistant Psychologist) who were assisted by Mr. Kashif Adnan (Assistant, Administration Wing, KP PSC). The inquiry committee was headed by Dr. Mrs. Asad Bano (Senior Psychologist).

PROCEEDINGS

After receiving order from the Competent Authority (Secretary PSC), the Inquiry Committee framed a detailed inquiry for a free and fair probe into the matter.

Notices were issued to the three (3) accused to submit their written statements regarding the charges leveled against them in the Charge Sheet dated 14.06.2019 to the Inquiry Committee till Monday 24th June 2019 (**Annex-B**). The three accused submitted their statements (**Annex-C**) along with the written decision of Court of Special judge, Anti-corruption (Provincial), Khyber Pakhtunkhwa, Peshawar and Khyber Pakhtunkhwa Service Tribunal (Peshawar) (**Annex-D**).

On 28 June 2019, Mr. Ilyas Shah, Director Recruitment, KP PSC (the then Deputy Secretary Recruitment) and Mr. Fida Muhammad, Deputy Director Examination, KP PSC (the then dealing Superintendent) were requested to furnish their replies on questionnaire. Mr. Hayat Hussain (Deputy Director, Administration) was also requested to provide some information needed in the proceedings (**Annex-E**). They submitted their replies on Monday, 1st July 2019 (**Annex-F**).

On July 2nd, 2019, Dr. Mrs. Asad Bano (Chairperson inquiry committee) contacted the complainant Mr. Zubair Shah (Former Member KP PSC) on his cell phone and briefly mentioned him about the current situation of case. He was requested to visit the KP PSC office for recording his personal statement. Mr. Zubair Shah (Former Member KP PSC and complainant) gracefully accepted the request and promised to visit the KP PSC office on 10th July 2019.

On 3rd July 2019, the Inquiry Committee issued notices along with a questionnaire to the personal staff of the complainant at that time. It includes Mr. Muhammad Raza (Personal Secretary) and Mr. Noor Zada (his official driver) (**Annex-G**). They were asked to submit their replies till 5th July 2019. Their replies are at (**Annex-H**).

On the same day i.e. 3rd July 2019, all the six (6) candidates involved in the case were called to appear before the inquiry committee for their personal

statement through registered mail, SMS and phone calls on their cell numbers (**Annex-I**). None of the candidate appeared before the Inquiry Committee on the schedule date, i.e. 8th July 2019.

Meanwhile, on 5th July 2019, Muhammad Iqbal (dealing assistant of the branch at the time of case) was called by the Inquiry Committee to answer the questionnaire. Mr. Inam (watchman KP PSC) also appeared and recorded his statement. Their statements are at (**Annex-J**).

Mr. Fazal ur Rehman (the accused watchman of KP PSC) was contacted through his son, Mr. Tariq, for personal hearing. Mr. Tariq told the Inquiry Committee that his father (Mr. Fazal ur Rehman) has been paralyzed so unable to attend the office. Both the members of Inquiry Committee visited at his home address and recorded his statement (**Annex-K**).

The candidates involved in the case were contacted again and again, i.e. on 10th , 17th , 24th and 29th July 2019 for their appearance before the Inquiry Committee. In this regard police department was also asked for their assistance (**Annex-L**). Except Mr. Asmat Ullah (one of the required/involved candidate) who appeared before the Inquiry Committee for his personal statement on 12th July 2019 (**Annex-M**), none of the candidate pay heed to the Commission`s notices.

As Mr. Zubair Shah (Former Member KP PSC and complainant of the case) could not come to the proceedings on the schedule date so he was contacted again. On 22nd July 2019, Mr. Zubair Shah visited KP PSC office and stated that as the case is very old and he is not in the position to give fresh statement so his complaint/report may be considered as his statement. (**Annex-N**)

Lastly The three accused, Mr. Muslim Khan(R/O), Mr. Zahoor Khan (N/Q) and Mr. Taj Wali (Driver) were called and their statements were recorded under oath. Their Statement are placed at (**Annex-O**)

FINDINGS

It is evident from the interview sheets (Assessment and Descriptive Sheets) that results of certain candidates have been tampered (**Annex-P**) and it came into the notice of Member concerned on 12/08/2011, which was positively reported by the member, Mr. Zubair Shah, on the same date to the Chairman of KP Public Service Commission. *The accused involvement in the tampering of results is inferred from the statements of Ex-watchman, Mr. Fazal ur Rehman*

(16)

*(Annex-K) and the candidates who were pointed out by the complainant Mr. Zubair Shah in his report to the chairman (**Annex-N**).*

*Statements of Mr. Fazal ur Rehman (the watchman) were found same to his earlier statement given in the previous inquiries (**Annex-Q**). While the accused, reported as involved in tampering the interview marks sheets, has changed their narrative. Mr. Muslim Khan (R/O) had accepted the allegation in the previous enquiry No. 1 and under police custody (**Annex-Q**), while completely denied about the happening in the present enquiry.*

*All the accused have stated that there is no enmity among them and the watchman Mr. Fazal ur Rehman and candidates (**Annex-O**).* Answer to Question No. 10 of Mr. Muslim Khan. Answer to question No.5 of Mr. Taj Wali show that they had no enmity with watchman Mr. Fazal ur Rehman. Mr. Zahoor Khan also told that he had no enmity with Mr. Fazal ur Rehman. *So, Mr. Fazal ur Rehman statements about the involvement of the accused, carry weight.*

The accused Mr. Zahoor Khan have stated that he has no enmity with the candidates. Answer to question No. 10 of Zahoor Khan highlight the worthiness of candidates pointing toward him (Zahoor Khan) in Previous inquiries *(**Annex-Q**)*. Mr. Wahid Gul and Muslim Khan took name of Mr. Taj Wali as the master mind of this case in the previous inquiry *(**Annex-Q**)*. Then both of them refused their first statement. Mr. Taj Wali said that he had no enmity with Mr. Muslim Khan and Mr. Wahid Gul. Answer to questions No. 9 and 10 of Mr. Taj Wali shows the importance of Mr. Muslim Khan and Wahid Gul statements against Taj Wali.

Producing of affidavit by Mr. Wahid Gul on stamp paper is itself a manipulative act of the accused and proves that Mr. Wahid Gul is not a man of words so could not be entertained.

Despite repeated calls from the Commission`s office, the reluctance of the involved candidates to appear before the Inquiry Committee shows that they are either approached by the accused or directed by the lawyers. It fortifies the value of their statements in the previous inquiry and hence the alleged involvement of accused in tampering. Denial from knowing accused by Mr. Asmat Ullah (involved candidate) in his statement dated 12 July 2019 is mala fide.

The Narratives of the Ex-watchman, Mr. Fazal ur Rahman in the previous two inquiries as well as in the present inquiry states that four (4) persons namely Mr. Taj Wali (Driver), Mr. Zahoor Ahmed (N/Q), Mr. Muslim (R/O) and Mr. Asim (reported by Mr. Taj Wali as his cousin) entered the KP PSC office at about 7 pm and remained there till 11 pm.

(17)

Now question arises:

- Why in the month of Ramadhan, the accused entered the KP PSC office at the crucial time of Iftar?
- What made them busy from 7 pm to 11 pm there?
- Timing of the incidence i.e. their illegal entry into the KP PSC office at the night of 11/08/2011 and the report of tampering into the interview papers (results) for the post of Male Lecturer Botany (BS-17) by the honorable member Mr. Zubair Shah on the morning of 12/08/2011 leaves no doubt that their untimely presence into the KP PSC office was based on mala fide intentions.
- Their unauthorized entry into the KP PSC office is itself contrary to the law and hence unacceptable.
- Instead of huge number of KP PSC staff, the candidates only mentioned the names of accused at police station which verify their acquaintance to each other (**Annex-Q**).
- Not only the watchman, Mr. Fazal ur Rahman but the candidates had also pointed out that the accused were involved in the fraudulent act of their unauthorized selection (**Annex-Q**).
- If they were innocent then what made them to fled away on the reporting day of the incident and appeared after securing Bail Before Arrest (BBA).
- Inter alia changing of statements by the accused in inquiry from the statements given in previous inquiries is questionable, depicting them unstable, deceitful and liar.

Wrong doers share the same tradition of denial from their acts as Allah says in Quran,

"On the Day when their tongues, and their hands, and their feet will testify against them about their actions. On that Day Allah will pay them back their just dues, and they will realize that Allah is the Truth that makes all things manifest." (Qur'an, 24:24-25)

"This Day shall We set a seal on their mouths; and their hands will speak to us and their feet will bear witness to all that they did." (Qur'an, 36:65)

"Their hearings, and their sights, and their skins will bear witness against them as to their deeds. They will say to their skins; 'Why bear you witness against us?' The (limbs) will say: 'Allah gave us speech - He who gives speech to everything. He created you for the first time, and unto Him you were to return. You did not seek to hide yourselves, lest your hearing and your eyes and your

skins should bear witness against you! But you did think that Allah knew not many of the things that you used to do! And that thought of yours which you did entertain concerning your Lord, has brought you to destruction, and now you have become of those utterly lost." (Qur'an, 41:20-23)

CONCLUSION

After thoroughly examining all evidences and statements, the Inquiry Committee have reached to the conclusion that the charges leveled against the three accused in the charge sheet are valid and their own manoeuvres leave no doubt in their involvement.

RECOMMENDATIONS

In light of the facts and findings, the Competent Authority (Secretary PSC) may impose penalties on the responsible persons.

8/8/2019

(Tanzil ur Rehman)
Assistant Psychologist
KP Public Service Commission
(Member Inquiry Committee)

8/8/19

(Dr. Mrs. Asad Bano)
Senior Psychologist
KP Public Service Commission
(Chairperson Inquiry Committee)

Secretary PSC

KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

OFFICE ORDER

WHEREAS, Mr. Muslim Khan Residence Orderly PSC was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for allegations mentioned in statement of allegations and was dismissed from service;

AND WHEREAS, in compliance of Khyber Pakhtunkhwa Service Tribunal judgment dated 13.05.2019 received to PSC on 27.05.2019, he was reinstated into service and a *de-novo* enquiry was conducted by the Inquiry Committee, comprising Dr Asad Bano Senior Psychologist and Mr. Tanzil-ul-Rehman Assistant Psychologist Khyber Pakhtunkhwa Public Service Commission;

AND WHEREAS, the Inquiry Committee after having examined the charges, evidence on record and explanations of the accused officials, submitted its report to Secretary PSC (Competent Authority) reporting that the charges have been proved and recommending imposition of penalty by the competent authority;

AND WHEREAS, Show Cause Notice was accordingly served upon the accused officer under sub rule 4 of Rule-14 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 communicating the decision regarding imposition of the tentative penalty of dismissal from service. His reply to the show cause was found unsatisfactory;

AND WHEREAS, the accused official was provided an opportunity of personal hearing by the Competent Authority on 22.08.2019 in his defence. The accused official however, failed to produce any material evidence in his defence;

NOW THEREFORE, the Competent Authority, in exercise of powers conferred under sub rule 5(ii) of Rule-14 is pleased to impose upon Mr Muslim Khan Residence Orderly PSC the major penalty of **Dismissal from Service** on him as provided under Rule 4(1)(b)(iv) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

Secretary
Public Service Commission

No.KP/PSC/Admn/GF-310/ 017893

Dated: 23-8-2019

Copy forwarded to:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Mr. Muslim Khan Residence Orderly, Khyber Pakhtunkhwa PSC.
3. Personal file of official concerned.
4. Office Order file.

Deputy Director (Admn)

سوالنامہ برائے ملزم (مسلم خان)

(146)

1 سوال: آپ کا نام کیا ہے؟ مسلم خان

2 سوال: مذکورہ کیس سے آپ کا کیا تعلق تھا؟

جواب: میرا اس کیس سے کوئی تعلق نہیں اور نہ اس سے کچھ غرض تھی

3 سوال: جس وقت یہ واقع ہوا تھا، آپ کہاں تھے؟

جواب: میں گھر پہ تھا۔

4 سوال: آپ اس کیس کے بارے میں جو جانتے ہیں وہ تفصیل سے بیان کریں؟

جواب: میں چیرمین صاحب کے ساتھ چپڑاسی تھا اور میرا چائے پانی صاحب کو دینے کا علاوہ کوئی کام نہیں تھا۔ میں ان پڑھ بندہ ہوں۔ اور اس کمرے میں جو کچھ ہوا اس سے لاعلم ہوں۔

Muslim
31-07-19

5 سوال: سابقہ چوکیدار فضل الرحمن نے اپنے بیان میں آپ کا نام لیا ہے۔ آپ اِس بارے میں کیا کہتے ہیں؟

جواب: اُسے میرے سامنے لے آئیں اور اُس سے میرے سامنے پوچھیں کہ میں کس دن، کس وقت آیا تھا؟

6 سوال: آپ تینوں نے آپ پر لگے الزامات کا ایک جیسا جواب دیا ہے۔ کیوں؟

جواب: وکیل کے ذریعے ہی کیس کیا تھا۔

7 سوال: آپ کا عاصم نام کے بندے سے کیا تعلق ہے؟

جواب: میں نہیں جانتا اُسے

Nauman Ali
31-07-2021

(146)
8

سوال: آپ نے پچھلے انکوائری میں بیان دیا تھا کہ آپ واقعہ کے شام کمیشن آفس آئے تھے اور دیگر ملزمان نے آپکو رشوت کی پیشکش کی تھی۔ آپ اِس بارے میں کیا کہتے ہیں؟

جواب :۔ مجھے ہتھکڑی میں لایا گیا اور جو بیان بھی دیا وہ دباؤ میں آکر دیا۔ ہمیں پولیس نے مارا بھی۔ اور کبھی ایک جگہ اور کبھی دوسری جگہ رکھا گیا۔

9

سوال: آپ اپنے پچھلے بیان سے کیوں مکر گئے؟

جواب: میں ان پڑھ بندہ ہوں اور جو کچھ اپچھلی رپورٹ میں لکھا گیا تھا اُس پر ہم سے دستخط لیا گیا۔ چونکہ میں ان پڑھ ہوں اس وجہ سے میں وہ رپورٹ نہیں پڑھ سکتا تھا کہ اُس میں کیا لکھا ہے۔

31-07-2019

(3)

سوال نمبر ۱۵:- اگر سابقہ چوکیدار فضل الرحمٰن اپنی بیان آپ کے سامنے دیں
پھر آپ اپنا جرم مان لینگے ؟

جواب :- میری کسی کے ساتھ کوئی دشمنی نہیں اور میں نہیں جانتا کہ وہ میرا نام کیوں
لے رہا ہے ۔ اور گل نے تھانہ میں سب کے نام لیئے پولیس کے دباؤ میں آکر
اور تو، تو تیار ہوں کے اس معاملے میں میرا کوئی کردار نہیں
ہے کہ مجھے کچھ خبر نہیں کہ تاج ولی یا طیبو / یا واحد گل نے میرا نام کیوں لیا
اور گل میری بے گناہی کے لیئے ایک سٹامپ پیپر دیا ہے ۔

Muslim Khan
31-07-2018

(۱۱۱۲)

سوال ۱۱ ... [illegible] کو پڑھ کر سنایا گیا تھا اور آپ نے سمجھ
لیا تھا تو دستخط کیے تھے؟

جواب: نہ تو کسی نے پڑھ کر سنایا اور نہ میں خود پڑھ سکتا تھا۔ بس دستخط
لیے گئے

MuzSaq
21-07-19

(5)

(149) (مسلم خان)

سوال 12 کیا ماں باپ کا [redacted] حرام تسلیم کرنا اچھی بات ہے؟

جواب ماں باپ نے اپنی جان چھڑوانے کیلئے اور مزید مار پیٹ سے بچنے کیلئے حرام تسلیم کیا۔

31-07-2019

(150) مسمی بیان

سوال: اگر آپ نے کچھ نہیں کہا تھا تو غلط بیان کیوں دیا؟

جواب: بس ایک کاغذ دیا گیا اور اس پہ دستخط لیے گئے۔ باقی اس میں کیا لکھا ہے پتہ نہیں جانتا۔

31-07-2019

(7)

(151)

سوال :- اگر واحد گل نے آپکے خلاف جو بیان دیا اور بعد میں آپکو سامنے [redacted] یہ بیان دیا تھا کہ اُس نے آپکے خلاف جو بیان دیا تھا وہ دباؤ میں دیا تھا وہ غلط تھا؟ یہ بیان واحد گل نے اکتوبر 2012 میں دیا تھا اور آپکو 2019 میں واپس بحال کیا گیا۔ اس سب میں اتنا طویل وقفہ کیوں ہے؟

جواب : عدالت میں ٹائم لگا۔ کبھی وکیل نہیں ہوتا تھا اور کبھی جج۔ اور ہمارے کیس کی تاریخوں کی وجہ سے زیادہ ٹائم لگ گیا۔

31-07-2019

(1526)

(مسلم خان)

(15) سوال:- واحد کمل آفس وقت چھٹی پر کیا یا ڈیوٹی پر تھا؟

جواب:- واحد کمل چھٹی پہ تھا اور یہ پس منظر کہ کتنی چھٹی پہ ہے۔ اس کی جگہ عصمت اللہ کام کرتا تھا۔

(16) سوال:- کیا عصمت اللہ جو واحد کمل کا کزن تھا، اُس وقت آفس میں کام کر رہا تھا؟ اور کس کے ساتھ کام کر رہا تھا؟

جواب:- جی عصمت اللہ کام کر رہا تھا لیکن یہ صحیح نہیں کہ کس کے ساتھ کام کر رہا تھا۔

Mumtaz Ali
31-07-19.

(15.5) (مسمات)

(17) سوال:۔ آپ نے اور گواہ سے اپنے گواہان کا جو بیان لیا ہے سادہ پیپر پر وہ کس کے کہنے پر لیا تھا؟

جواب:۔ وکیل کے کہنے پر لیا۔

31-07-2019