

52

INQUIRY

As per office order No. **KP/PSC/Admn/PF-212/008797** dated **10/09/2020**, from honorable Secretary Khyber Pakhtunkhwa Public Service Commission. It is requested to provide the application file of accused Mr. Khalil Ullah, Junior clerk, Khyber Pakhtunkhwa PSC to the Inquiry officer.

Tanzil ur Rehman
Tanzil ur Rehman
Assistant Psychologist
KP PSC
(Inquiry Officer)
18-09-2020

A.D Admn. pl. parid.

mf
18/9

Attended
his
copy of PSC

Provided.
Dyca
18-09-2020

INQUIRY

As per office order No. *KP/PSC/Admn/PF-212/008797* dated **10/09/2020**, from honorable Secretary Khyber Pakhtunkhwa Public Service Commission. It is requested to provide the application file of accused Mr. Khalil Ullah, Junior clerk, Khyber Pakhtunkhwa PSC to the Inquiry officer.

Tanzil ur Rehman
Tanzil ur Rehman
Assistant Psychologist
KP PSC
(Inquiry Officer)
18-09-2020

AD Admn.

*Attached
with
no KPPSC*

Handwritten marks and numbers at the top right, including a circled '54' and other scribbles.

To,

The Secretary,
KPK Public Service Commission,
Peshawar.

Subject: APPLICATION FOR FIFTEEN DAYS EARNED LEAVE:

R/Madam,

With humble submission it is stated that my papers for the Diploma of Laboratory Technician are to be held w.e.f. 20-08-2020 in Medical Facility Karachi. Therefore, I am requested for fifteen (15) days earned leave from 18-08-2020 to 03-09-2020. (Date sheet and Roll number slip attached).

I shall be very thankful to you for this favors.

Handwritten note: Attached find complete

Yours Sincerely,

Signature: YUD 17/8/20
(KHALIL ULLAH)
J/C Exams(c)

Dated: 17-08-2020.

I will be perform duty in absence of Mr. Khalil Ullah J/C during his leave period.

Asst

He may be allowed plz.

Signature: 17/8/2020
Umar Farooq J/C

Secy

Signature: 17/08/2020

J/C

Signature: 17/08/2020

of other exam:

leave applied for may be allowed as Mr. Umar Farooq will look after his seat in his absence plz

Asst Putap on file *Signature:* 17/08/2020 17-8/20

(Signature)

PUC at page- 26 /C is an application submitted by Mr. Khalil Ullah Junior Clerk Examination Branch Conduct Section wherein he has stated that his papers of Diploma of Laboratory Technician are to be held w.e.f. 20.08.2020 in Medical Facility Karachi. He has requested for fifteen (15) days earned leave from 18.08.2020 to 03.09.2020. The applicant has attached roll number slip with his application (Flag-A).

17

14

The applicant has 553 days leave on his credit as per detail given below:-

PERIOD OF DUTY			Period of Leave		Total leave	Balance
From	To	D.M.Y	From	To	Days	
03/05/2008	07/07/2013	05/03/1905	08/07/2013	07/08/2013	31	217
08/08/2013	17/08/2020	09/01/1907				553

15

Submitted for approval of Honourable Secretary PSC please.

E.A. *(Signature)* 24.08.2020

AD (Admn) PSC:

May be forwarded to SE for comments P.

16

DD/A).

17.

Submitted for comments please. He is already availing leave from 18th Aug.

W.M.H

24.8

(Signature) 25/8/2020

18.

Out E.

Recommended

(Signature)

DD-A

12
26/8



13 PUC at page 26/c is an application submitted by Mr. Khalil Ullah Junior Clerk Examination Branch Conduct Section wherein he has stated that his papers of Diploma of Laboratory Technician are to be held w.e.f 20.08.2020 in Medical Facility Karachi. He has requested for fifteen (15) days earned leave from 18.08.2020 to 03.09.2020. The applicant has attached roll number slip with his application (Flag-A).

14 The applicant has 553 days leave on his credit as per detail given below:

PERIOD OF DUTY			Period of Leave		Total leave	Balance
From	To	D.M.Y	From	To	Days	
03/05/2008	07/07/2013	05/03/1905	08/07/2013	07/08/2013	31	217
08/08/2013	17/08/2020	09/01/1907				553

15 Submitted for approval of Honourable Secretary PSC Please.

-sd-

E.A.

AD (Admn)PSC:

16 May be forwarded to DE for comments pl.

-sd-

DD(A)

17 Submitted for comments please. He is already availing leave from 18th Aug.

-sd-

18 D.E. Recommended please.

-sd-

DD-A

-sd-

Reference Paras 13-18/H

(57)

19. Seventeen (17) days earned leave
w.e.f. 18/8/2020 to 3/9/2020 may
please be sanctioned in favour
of Mr Khalilullah Sr Clerk Exam.

Wing PSC

[Signature]
26/8/2020

Secretary

PSC

Did he apply with our permission?
When is the exam going to end?
Its 27/8 already - where is the
official lt. now?

27/8

[Signature]
27/8

20

WAPDA
DDA
ANA

21. The date sheet of Flag-A shows that
the start & end date is 20-08-2020 to 24-08-2020
However, the applicant is in Karachi for the
same reason & requested for earned leave upto
03-09-2020. As for the permission to apply for
the exam, the file is silent.

22 EA Enby
28-08-2020

AD(A)

DDA Exam

PROC.

[Signature]
28/8

58

Reference paras 13-18/N

19

Seventeen (17) days earned leave w.e.f 18/8/2020 to 03/09/2020 may please be sanctioned in favour of Mr. Khalilullah Junior Clerk Exam Wing PSC.

-sd-

26/8/2020

Secretary PSC

20

Did he apply with our permission? When is the exam going to end? Its 27/8 already- Where is the official st. now?

-sd-

27/8

DDA

AD(A)

21

The date sheet at Flag-A shows that the start and end date is 20.08.2020 & 24.08.2020. However, the applicant is in Karachi for the same reason and requested for earned leave upto 03.09.2020. As far the permission to apply for the exam, the file is silent.

EA

-sd-

28.08.2020

AD(A)

22

The applicant had not applied for exam NOC.

-sd-

28/8

(59) 30

Reference Para 20/14

23. Reply to the observation may please
be perused in para- 21/14.

Submitted for orders please.

YHS
31/8/2020

Secretary P&C

24.

Today is 31/8. Exams start on
20/8. Where is Khalidullah now?
Pl discuss this case with me. It
seems he is doing everything without
seeking permission and rendering
himself liable to be proceeded against
under the law/rules.

for

31/8

25

DDA

Discussed. Proceed against him
under the E & S Rules.

DDA

DDA

EA

26. Put up chargesheet

2/9

1/9

fo

Reference paras 20/N

23 Reply to the observation may please be perused in para 21/N

Submitted for orders please.

-sd-

31/8/2020

Secretary PSC

24 Today is 31/8. Exams start on 20/8. Where is Khalilullah now? Pl discuss this case with me. It seems he is doing everything without seeking permission and rendering himself permission and rendering himself liable to be proceeded against under the law /rules.

-sd-

31/8

DDA

25 Discussed. Proceed against under the E&D Rules.

-sd-

01/09

DDA

AD(A)

26 Put up Charge Sheet.

-sd-

01/09/2020

EA

-sd-

02/09

Reference para-26/N.

(61) ~~DDA~~ ~~DDA~~ ~~DDA~~

Charge sheet in v/o Mr. Khalilullah is placed on board for approval of Secretary. P.S.C please.

F.A. DDA 07.09.2020

AD (Admin)

28

Reference para 25/N one page

Draft charge sheet alongwith statement of allegations in respect of taking disciplinary action against Mr. Khalilullah. It is added for approval of relevant instruction dated 21.6.1960 may be seen at F/A -

DDA).

12 Jul
07/9

29.

With reference to Para - 25/N, draft charge sheet / statement of allegations in respect of Mr. Khalil Ullah To Clerk is placed on board for approval/ orders please.

Jud

Secretary P.S.C.

DDA
9/9/2020

30

Amend as slightly corrected and issue today

DDA

DDA
9/9/2020

62



Reference paras 26/N

27

Charge sheet in r/o Mr. Khalilullah is placed on board. For approval of Secretary P.S.C please.

E.A -sd-

07.09.2020

AD(Admn)

28

Reference Para 25/N Pre page

Draft of charge sheet alongwith statement & allegations in respect of taking disciplinary action against Mr. Khalilullah J/C is added for approval pl. Relevant instructions dated 26/6/1960 may be seen at F/A.

DD(A)

-sd-

07/09

29

With reference to Para 25/N, draft Charge sheet / statement of allegations in respect of Mr. Khalil Ullah J/Clerk is placed on board for approval / orders please.

-sd-

9/9/2020

Secretary PSC

30

Amend as slightly corrected and issue today.

-sd-

10/09/2020

DDA

rk

(63)

س کیا آپ نے مذکورہ ڈپلومہ میں باقاعدہ کلاسز میں پاس کی ہیں؟

:- نہیں جی میں نے کچھ کوئی کلاس نہیں لی ہے

تسلیم
کتاب

س :- کیا آپ نے اس سے پہلے مذکورہ ڈپلومہ کے کلاسز یا امتحان کیلئے کوئی دیکھی ہے؟

:- نہیں جی اس سے پہلے میں نے کوئی امتحان نہیں دیا ہے اور نہ امتحان کیلئے کوئی چھٹی ہے اور نہ کوئی کلاسز ہے یہ صرف لٹریچر امتحان تھا جو میں 2003/2004 کو اس کی بنیاد پر امتحان دیا ہے،

س :- کیا آپ کے اس ڈپلومہ میں ایڈمیشن سے اس سے پہلے آپ کے سرکاری کاموں سے کوئی اثر پڑا؟

:- نہیں جی میرے اس ڈپلومہ سے میرا کوئی بھی سرکاری کام لپ کوئی اثر نہیں پڑا ہے۔ میں ابھی یہ کام پورے اعتبار سے اور مکمل ہے کرتا ہوں۔

تسلیم
1/10/20

سے۔ کیا ایکویٹہ عطا یا جتہ ہے کہ کسی تعلیمی بطور ایک سمکاری
حلازم کسی تعلیمی ادارے میں داخلہ لینے یا کسی امتحان میں
بٹکنے لینے، مجاز اتحادی سے پیشگی اجازت دینی پڑتی ہے۔

:- میں جی اسکا مجھے بالکل یہی ٹوٹی ہے۔ میں تمہیں تمہا کرا امتحان لکھا دیتے
دفتر سے Noc لینی ہوگی۔ اگر مجھے ان باتوں کا علم ہوتا تو میں
فرور اپنے دفتر سے Noc لینے لکھا درخواست کرتا۔

نہی
11/10/20

Handwritten signature.

65



س: کیا اس امتحان کیلئے آپ نے مجاز اتھارٹی کو پیشگی اطلاع دی یا اجازت ملی؟

:- نہیں جی میں نے 2017 میں داخلہ لیا تھا تو ان باتوں کا مجھے کوئی علم نہیں تھا اور جب 2020 میں امتحان دینے کیلئے جا رہا تھا تو اپنے دفتر میں چھٹی کیلئے درخواست جمع کی تھی۔

نسب
1/10/20

نسب

66

- (iii) Government may convey its displeasure to officers who live beyond their means.
- (c) Miscellaneous-
 - (i) Expenditure in the Tiffin rooms of Secretariat Offices should be decreased to minimum.
 - (ii) Home products must be used and popularized.
- 3. Understanding of real values of life must result in discarding the ostentatious and superfluous. The obligation to make full contribution towards national development can be based only on fervent patriotism. The Government expect all Pakistanis to rise to this test of patriotism and to practice it to the limit that it merits. In the context of the greater obligation practicing of austerity in every sphere of life should be a small matter. Government hopes that Government servants who constitute the largest educated group in the country will set an example in this respect to their fellow-citizens and with sacrifice and determination make Pakistan strong, prosperous and respectable in the eyes of the world. It is requested that contents of this letter may be brought to the notice of all concerned and particularly Government servants working under you. The process in the case of the later should be repeated every quarter of the year until the object is achieved.

(Authority: West Pakistan S&GAD letter No.S.VIII-3-102/59, dated 15.7.59 & 29.7.59)

Government Servants – Attendance at evening classes.

In supersession of previous instructions on the above subject, the West Pakistan Government has decided as under:-

- (a) Government servants should not under any circumstances be allowed to attend any classes or courses during office hours.
- (b) Outside office hours, they may attend classes/courses. No formal permission is necessary in such cases. They may only inform the Head of their Department that they are attending such classes/courses. If, however, it is found that by attending such classes/courses, the work of the Government servant is suffering, the Head of the Department may, by an order, stop the Government servant from attending such classes/courses.
- (c) Administrative Secretaries/Heads of Attached Departments are requested to please report after a year the number of Government servants under their control who undertook such studies and how many of them left service after completing the course, and also whether the studies interfered with their efficiency. They may also suggest whether any modifications are necessary in this policy.

(Authority: West Pakistan S&GAD letter No.S(R)3571/26/58/SOXII, dated 21.6.60)

INQUIRY

67

As per office order No. **KP/PSC/Admn/PF-212/008797** dated **10/09/2020**, from honorable Secretary Khyber Pakhtunkhwa Public Service Commission. It is requested to provide the following information about the accused Khalil Ullah, Junior Clerk, PSC regarding his duty during your supervision. Please submit it on 02/10/2020 to the Inquiry Officer.

The accused said that he performed duty in your supervision during the period from **01/01/2017** to **21/02/2018**.

1. Did he ever mention his admission in Diploma of Laboratory Technician in Medical Faculty Karachi during his duty under your supervision?
2. Did he take permission for admission in the afore mentioned Diploma during his duty under your supervision?
3. Did he take any leave to attend classes or examination in the afore mentioned Diploma during his duty under your supervision?

Tanzil ur Rehman
Tanzil ur Rehman
Assistant Psychologist
KP PSC
(Inquiry Officer)

01-10-2020

Attended

AD Admin.

Replies are as under.

(1)

Never mentioned admission in Medical Laboratory Karachi.

(2)

Did not take permission

(3)

Never applied for short leave of leave.

Asst Psychologist / 1. 0

Wakil
07/10


INQUIRY

68

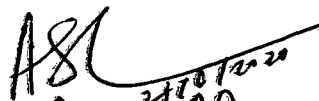
As per office order No. **KP/PSC/Admn/PF-212/008797** dated **10/09/2020**, from honorable Secretary Khyber Pakhtunkhwa Public Service Commission. It is requested to provide the following information about the accused Khalil Ullah, Junior Clerk, PSC regarding his duty during your supervision. Please submit it on 02/10/2020 to the Inquiry Officer.


The accused said that he performed duty in your supervision during the period from **22/02/2018** to **25/04/2019**.

1. Did he ever mention his admission in Diploma of Laboratory Technician in Medical Faculty Karachi during his duty under your supervision? No
2. Did he take permission for admission in the afore mentioned Diploma during his duty under your supervision? No
3. Did he take any leave to attend classes or examination in the afore mentioned Diploma during his duty under your supervision? No information about it


Tanzil ur Rehman
Assistant Psychologist
KP PSC
(Inquiry Officer)

01-10-2020


Aslam Mir
Suptd. Reett.


Aslam Mir
Suptd. Reett.

INQUIRY

69

As per office order No. *KP/PSC/Admn/PF-212/008797* dated **10/09/2020**, from honorable Secretary Khyber Pakhtunkhwa Public Service Commission. It is requested to provide the following information about the accused Khalil Ullah, Junior Clerk, PSC regarding his duty during your supervision. Please submit it on 02/10/2020 to the Inquiry Officer.

The accused said that he performed duty in your supervision during the period from **26/04/2019** till date.

1. Did he ever mention his admission in Diploma of Laboratory Technician in Medical Faculty Karachi during his duty under your supervision?
2. Did he take permission for admission in the afore mentioned Diploma during his duty under your supervision?
3. Did he take any leave to attend classes or examination in the afore mentioned Diploma during his duty under your supervision?

Tanzil ur Rehman
Tanzil ur Rehman
Assistant Psychologist
KP PSC
(Inquiry Officer)
01-10-2020.

Humayun Nigash Nizar
Suptd. Exam

Humayun Nigash Nizar
KP PSC

[Signature]
01-10-2020

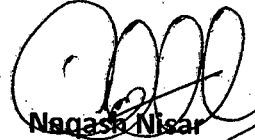
Inquiry

70

1. In response to note sheet received to the undersigned on 01.10.2020 at 3:15pm wherein the Honorable, Inquiry Officer requested for information about the accused **Mr. Khalil Ullah , Junior Clerk PSC**, in connection with the subject Inquiry, para-wise reply to the queries are noted below: -

1. There is nothing on record of the Examination Conduct Section about admission in Diploma in-question by the accused during his reported period.
2. Permission for admission is the subject of Admn Branch, as such the undersigned is unaware about it.
3. As per attendance record of the Section he attended office regularly. However, on 17.08.2020 he submitted an application requested wherein for 15 days' earned leaves for taking part in Examination at Medical Faculty Karachi, which was forwarded for approval of the authorities.

2. Submitted as desired please.



Nazam Nisar
Superintendent Exam/C-II

01-10-020

Inquiry Officer

Attended

*Hand
CO UPPSC*

71

- (iii) Government may convey its displeasure to officers who live beyond their means.
 - (c) Miscellaneous-
 - (i) Expenditure in the Tiffin rooms of Secretariat Offices should be decreased to minimum.
 - (ii) Home products must be used and popularized.
3. Understanding of real values of life must result in discarding the ostentatious and superfluous. The obligation to make full contribution towards national development can be based only on fervent patriotism. The Government expect all Pakistanis to rise to this test of patriotism and to practice it to the limit that it merits. In the context of the greater obligation practicing of austerity in every sphere of life should be a small matter. Government hopes that Government servants who constitute the largest educated group in the country will set an example in this respect to their fellow-citizens and with sacrifice and determination make Pakistan strong, prosperous and respectable in the eyes of the world. It is requested that contents of this letter may be brought to the notice of all concerned and particularly Government servants working under you. The process in the case of the later should be repeated every quarter of the year until the object is achieved.

(Authority: West Pakistan S&GAD letter No.S.VIII-3-102/59, dated 15.7.59 & 29.7.59)

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In supersession of previous instructions on the above subject, the West Pakistan Government has decided as under:-

- ✓ (a) Government servants should not under any circumstances be allowed to attend any classes or courses during office hours.
- ✓ (b) Outside office hours, they may attend classes/courses. No formal permission is necessary in such cases. They may only inform the Head of their Department that they are attending such classes/courses. If, however, it is found that by attending such classes/courses, the work of the Government servant is suffering, the Head of the Department may, by an order, stop the Government servant from attending such classes/courses. ✓
- (c) Administrative Secretaries/Heads of Attached Departments are requested to please report after a year the number of Government servants under their control who undertook such studies and how many of them left service after completing the course, and also whether the studies interfered with their efficiency. They may also suggest whether any modifications are necessary in this policy.

(Authority: West Pakistan S&GAD letter No.S(R)3571/26/58/SOXII, dated 21.6.60)

fing



KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

SHOW CAUSE

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. Khalilullah Junior Clerk, as follows:-

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer 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 officer, the material on record and other connected papers including your defence before the inquiry officer:-

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

- (i) You took admission in Medical Faculty, Karachi for Diploma of Laboratory without seeking permission / NOC from competent authority, which is violation of rules.
- (ii) You remained absent from official duty w.e.f. 18.08.2020 to 03.09.2020 without permission of competent authority.
- (iii) Guilty of misconduct.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of " _____ " under Rule 4 _____ 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.

Admitted
Said
to suppress
5. The copy of the findings of the inquiry report is enclosed.

SECRETARY P.S.C.

Mr. Khalilullah Junior Clerk,
Khyber Pakhtunkhwa PSC.



KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION No-010690

SHOW CAUSE

Dated: 16-10-2020

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. Khalilullah Junior Clerk, as follows:-

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer 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 officer, the material on record and other connected papers including your defence before the inquiry officer:-

I am satisfied that you have committed the following acts/omissions specified in Rule 3, Sub Rule (a) (b) & (d):

- (i) You took admission in Medical Faculty, Karachi for Diploma of Laboratory without seeking permission / NOC from competent authority, which is violation of rules.
- (ii) You remained absent from official duty w.e.f. 18.08.2020 to 03.09.2020 without permission of competent authority.
- (iii) Guilty of misconduct.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of "withholding promotion for three years" under Rule 4 (i) a-ii 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 report is enclosed.


SECRETARY P.S.C.

Mr. Khalilullah Junior Clerk,
Khyber Pakhtunkhwa PSC.

To

The Secretary
KP Public Service Commission

Subject: SHOW CAUSE

74
KPK Public Service Commission
22 OCT 2020
DIARY NO 4544

Dear Madam!

With reference to show cause notice issued to me vide No.010690 Dated: 16.10.2020 (Annex-A) wherein a penalty of "withholding promotion for three years" has been tentatively decided to be imposed upon me due to not availing NOC prior to my admission in medical faculty and appearing in exam thereafter without sanction of leaves from competent authority, my humble defence in your justice is as under:

During inquiry in the subject matter I submitted my detailed reply to the honorable Inquiry officer copy of which is attached for ready reference (Annex-B). Briefly, it is to state here that my admission in Medical Faculty Karachi for Diploma was incident of three years back in 2017, as a private candidate. My admission was made by my friends as I did not know the process and other requirements for the purpose and most importantly I was heartedly not interested in the said diploma at that time. After the said unfortunate admission I never attended classes rather I attended office regularly. Attendance register of my office or reports from my immediate seniors regarding my regular attendance in office can be called and checked for your entire satisfaction. It is also to mention here that since my entry into Govt; service in 2008 as a Junior Clerk in this office, I neither heard from my colleagues nor became educated by any mean that for taking admission as a private candidate NOC is must to be taken, therefore it did not come into my conscience.

Respected Madam! As far as allegation of "absent from duty w.e.f 18.08.2020 to 03.09.2020" is concerned, as your Excellency is well aware from the fact that after the lockdown due to COVID-19 pandemic, office re-opened on 17.08.2020. Madical Faculty Karachi scheduled the Exam w.e.f 20.08.2020. As I came to know about the exam through a telephonic call I submitted my application for 15 days' earned leaves just after opening the office on 17.08.2020. On the same day my application was recommended by head of my branch i.e Honorable Director Examination and forwarded to your kindself for approval. There were only two days left to reach at Karachi and to appear in the Exam. When Honorable Director Examination recommended my application I got sure that my request has been accepted, I rushed out for my exam on 18th August 2020. Unfortunately, I was not timely informed of the position of my application by Admn Section and therefore, remained unaware about the situation here in office.

Respected Madam! That was my first ever guilt which occurred by ignorance. I am an obedient fellow of this institute. I had never been reported by my senior officers as habitual absenter or leave seeker. There was neither corruption nor inefficiency charges against me. Currently I am at top of seniority list of the Junior Clerks and ambitiously waiting for my promotion; with holding my promotion for three years is too big penalty for me than my sin.

Therefore, I am to request you humbly to please pardon me Mam! Give me a chance to improve my self and obliged.

Yours faithfully

Khalil Ullah
Junior Clerk, KPPSC

Date:22.10.2020

Put up on file
BA
28/10
22/10

23/10

4-10
22-10-20

Attentive
Jawid
copy



KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

No. 010600

SHOW CAUSE

Dated. 16-10-20

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. Khalilullah Junior Clerk, as follows:-

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer 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 officer, the material on record and other connected papers including your defence before the inquiry officer:-

I am satisfied that you have committed the following acts/omissions specified in Rule 3, Sub Rule (a) (b) & (d):

- (i) You took admission in Medical Faculty, Karachi for Diploma of Laboratory without seeking permission / NOC from competent authority, which is violation of rules.
- (ii) You remained absent from official duty w.e.f. 18.08.2020 to 03.09.2020 without permission of competent authority.
- (iii) Guilty of misconduct.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of "withholding promotion for three years" under Rule 4 (1)(a-ii) 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 report is enclosed.


SECRETARY P.S.C.

Attested
Mr. Khalilullah Junior Clerk,
Khyber Pakhtunkhwa PSC.

Joint to up to 50

The Inquiry Officer,
Mr. Tanzeel ur Rehman, A Psychologist,
Khyber Pakhtunkhwa Public Service Commission Peshawar.

To
Subject:

REPLY TO CHARGE SHEET

Dear Sir,

76
14 SEP 2020
DIARY NO 3067

With due respect it is stated that the office has charge sheeted me by putting following allegations:

- d) You took admission in Medical Faculty, Karachi for Diploma of Laboratory without seeking permission / NOC from competent authority, which is violation of rules.
- e) You remained absent from official duty w.e.f 18.08.2020 to 03.09.2020 without permission of competent authority.
- f) Guilty of misconduct.

In response to above mentioned allegations my reply / justifications are as under:

- d) Back in 2003 I took certificate of Medical Technician from Pakistan Institute of Medical Technologies Peshawar (Annex-I). Later on it came into notice that the said institution has no more recognition with the Government. The institution offered the students to participate in exams from recognized institutions like Jinnah Medical College Peshawar for diploma purpose on their behalf but due to timely uniformed I could not avail the opportunity. In 2017, few of my friends enrolled themselves in Medical Faculty Karachi for Diploma on the basis of previous certificate and advised me to do so. Three years back, they took my certificate and enrolled me for the session 2017-18 (Annex-II). Being junior employee in the office, serving in the rank of Junior Clerk, I was unaware / uneducated about the process / rules for taking admissions anywhere.
 - e) After that unfortunate admission I forgot that I had any admission. On 12th August 2020 when Covid-19 Pandemic statistics came down I was informed through telephonic call that Exam is going to be held w.e.f 20th August 2020. On the same date i.e 12th August 2020 (Wednesday) the office has also issued circular to open office w.e.f 17.08.2020 (Monday) (Annex-III). On first day of my duty early in the morning I submitted my application for 15 days exam leave addressed to the Hon'ble Secretary KPPSC routed through my working Branch so as to get permission of my branch head before submitting to the competent authority. The head of my Section i.e Hon'ble Director Examination when forwarded my application with no objection to Admn Section then I got sure that it will be allowed by kind-self of Hon'ble Secretary KPPSC too and keeping in view very short time for my exam I left for Karachi to take part their-in. If the Admn Brach called me well in time I would be back without participating in Exam but I got call from Hon'ble DD Admn on 01.09.2020 which was too late. After the said call, I immediately travelled back to office without participating in my Viva which was scheduled on 02.09.2020.
- I have not been guilty of misconduct ever. My service record is not so bad. I always obeyed orders of my seniors and performed my official duties with devotions and commitment.

In charge sheet it is also mentioned that I am inefficient and remains habitually absent from duty which is totally wrong. Being Junior Clerk, I always completed my assigned tasks well in time and gave 100% outcome. As far as my attendance is concerned, I availed leaves only when necessarily required and after approval of the competent authority. My biometric attendance as well as attendance register of my branches where I served can also be checked for my regular presence in the office.

The mistakes where occurred were totally un-intentional and only due to less knowledge / unawareness of rules.

Yours faithfully,



KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

OFFICE ORDER

WHEREAS Mr. Khalilullah Junior Clerk (BPS-11), Khyber Pakhtunkhwa Public Service Commission (hereinafter referred to as Accused) was served with charge sheet under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the acts / omissions mentioned in statement of allegations;

AND WHEREAS, Mr. Tanzil ur Rehman Assistant Psychologist PSC was appointed as Inquiry Officer to probe into the charges;

AND WHEREAS, the Inquiry Officer submitted his report stating therein that accused took admission in Medical Faculty, Karachi for Diploma of Laboratory without seeking permission / NOC from competent authority, remained absent from official duty w.e.f 18.08.2020 to 03.09.2020 without permission of competent authority and guilty of misconduct, and he as such recommended for further action as deemed appropriate by the competent authority;

AND WHEREAS, the Competent Authority (Secretary PSC) while exercising powers conferred under Rule 14(4) of the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 served the accused with a Show Cause Notice bearing No. 010690 dated 16.10.2020, conveying therein award of tentative minor penalty of withholding promotion for three years as provided in Rule 4(1)(a)(ii) of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011;

AND WHEREAS, the accused submitted reply in writing to the Show Cause Notice on 22.10.2020 which was found unconvincing and whereas he did not request to be heard in person;

NOW THEREFORE the Secretary PSC being competent authority, in exercise of powers conferred upon her under Rule 14 (5)(ii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 is pleased to award minor penalty of "withholding promotion for three year" as provided in Rule 4(1)(a)(ii) of the rules ibid with immediate effect.

--sd/--

Secretary

Dated: 9/11/2020

No.KP/PSC/Admn/PF-212/

011694

Copy to: -

1. The Accountant General, Khyber Pakhtunkhwa.
2. Director Examination, Khyber Pakhtunkhwa PSC.
3. PS to Chairman, Khyber Pakhtunkhwa PSC.
4. PS to Secretary, Khyber Pakhtunkhwa PSC.
5. The Deputy Director (Admn), Khyber Pakhtunkhwa PSC.
6. The Cashier, Khyber Pakhtunkhwa PSC.
7. Official concerned.
8. Personal file of official.
9. Office Order file.
10. Master file.

Assistant Director (Admn)

To

The Secretary,
Khyber Pakhtunkhwa Public Service Commission, Peshawar.

71) 77
75
2020
4812

Subject: **DEMAND FOR PROVISION OF COPY OF APPLICATION OF LEAVE ALONGWITH NOTE PART AND COPY OF COMPLETE INQUIRY REPORT UNDER RTI ACT 2013**

Dear Madam!

With due respect it is stated that under RTI Act 2013 the following documents may be provided to the undersigned:

- i. Attested copy of **Application for Leave** dated: 17.08.2020 addressed to the Honr: Secretary PSC by the undersigned.
- ii. Attested copy of the **Note Part** on which leave application of the undersigned processed to the Honr: Secretary PSC.
- iii. Attested copy of the **complete inquiry report** submitted by Mr. Tanzeel ur Rehman (Inquiry Officer) along with all enclosures.
- iv. Attested copy of leave record.

I shall be very thankful to you please.

Yours faithfully,

Khalil Ullah
Jr./Clerk

Dated: 09.11.2020

Attested
10/11/20
10/11/20

10/11/20

ASCA

10/11/20
M. Zaman & P. ul. ul.
11/11



KHYBER PAKHTUNKWA
PUBLIC SERVICE COMMISSION

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

No.KP/PSC/Admn/GF-561/012364

Date: 18-11-2020

To

Mr. Khalilullah Junior Clerk,
Khyber Pakhtunkhwa PSC.

Subject:

**DEMAND FOR PROVISION OF COPY OF APPLICATION OF
LEAVE ALONGWITH NOTEPART AND COPY OF COMPLETE
REPORT UNDER RTI ACT, 2013**

I am directed to refer to your application dated 10.11.2020 and enclose inquiry report, leave record and leave application.

Assistant Director (Admn)

Received
Attended by Hand
18/11/20

For
18/11/20

Subject: **INQUIRY REPORT**

Handwritten initials and a circled '90' in the top right corner.

The undersigned was assigned to conduct an inquiry by the Competent Authority (Secretary Khyber Pakhtunkhwa Public Service Commission) through the Office Order No.KP/PSC/Admn/PF-212/008797 dated 10-09-2020 (Annex-A), against the accused Khalil Ullah, Junior Clerk, KP PSC.

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

- a) He took admission in Medical Faculty Karachi for the Diploma of Laboratory Technician without seeking permission / NOC from the Competent Authority which is a violation of the rules.
- b) He remained absent from official duty w.e.f. 18/08/2020 to 03/09/2020, without permission of the Competent Authority.
- c) Guilty of mis-conduct.

PROCEEDINGS

In compliance with order dated 10/09/2020 from Competent Authority, the accused was summoned to record his written statement. Administration PSC summoned the accused through a letter (11/09/2020) to submit his written statement and also appear before the Inquiry Officer on 15/09/2020 (Annex-B). Accused submitted his written statement on 14/09/2020 and appeared before the Inquiry Officer on 15/09/2020. Accused was given a questionnaire. The accused answered the questions in the questionnaire (Annex-C). On 18/09/2020, Assistant Director (Administration) PSC was requested to provide the Application file of the accused which was provided on the same day (Annex-D). On 01/10/2020, the accused was asked to appear before the Inquiry Officer to answer some questions. The accused appeared before the Inquiry Officer and submitted replies to the Questions (Annex E). On 01/10/2020, supervisors of the accused's were asked to provide some information regarding the accused. They provided the information to the Inquiry Officer (Annex-F).

Attended

Handwritten signature and initials 'WPPS' in the bottom left corner.

FINDINGS

From perusal of the written statements and answers of the accused and other documented evidences on record the Inquiry Officer found that on 17/08/2020, the accused gave an application for leave from 18/08/2020 to 03/09/2020 to the Competent Authority. The accused requested the leave for his examination of the Diploma of Laboratory Technician in Medical Faculty Karachi. Accused's application was recommended by the Head of his section i.e. Director Examination and was forwarded to administration PSC for approval on 17/08/2020 from the Competent Authority. Administration section PSC put up the file on 24/08/2020 to Assistant Director Administration and was forwarded to Director Examination for comments by the Deputy Director Administration on 25/08/2020. Director Examination wrote comments on the application file on 26/08/2020 and recommended leave for the accused and was forwarded to Secretary PSC.

The accused submitted his application on 17/08/2020 and left for Karachi on 18/08/2020, without the approval of his leave application from the Competent Authority. According to the statement of accused, he was informed by Deputy Director Administration on 01/09/2020, that his leave application has not been approved by the Competent Authority. The accused said that he returned to Peshawar without participating in the Viva which was scheduled on 02/09/2020. It was also found that the accused was having no permission / NOC for admission in Medical Faculty Karachi and also for attending the examination. According to the accused, he was unaware of the rules of taking NOC for admission or examination from the Competent Authority.

CONCLUSION

After thoroughly examining the statements and documented evidences, the Inquiry Officer came to the conclusion, that the accused is guilty of the charges of *not seeking permission / NOC from competent authority for admission in Medical Faculty Karachi, remained absent from 18/08/2020 to 03/09/2020 without the permission of Competent Authority and Guilty of mis-conduct. He was not having any permission (NOC) for admission in Medical Faculty Karachi and attending the*

(42) (45) 7

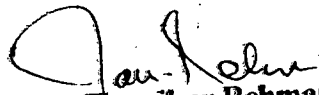
The Inquiry Officer also observed that processing procedure of leave application of the accused was slow due to which he was informed late (01/09/2020) about the refusal of his leave application.

It also came to the notice that the accused never took classes (*Annex-G, replies of the accused's supervisors, page 32-35*) for the Diploma of Laboratory Technician and never gave any examination before. According to the Khyber Pakhtunkhwa Government Servant (Conduct) Rules 1987, "*No formal permission is required if a government servant is attending classes / courses outside the office hours. The government servant may only inform the Head of his/her Department for taking such classes / courses. If, however it is found that by attending such classes / courses, the work of the government servant is suffering, the Head of the Department may, by an order, stop the government servant from attending such classes / courses.*" (*Annex-F, page-31*).

It is also evident from the application of the accused that the official responsibilities of the accused were taken over by Junior Clerk Mr. Umar Farooq, PSC and it was recommended by the Director Examinations but Competent Authority is the final authority for approval.

RECOMMENDATIONS

The Competent Authority may proceed as deem proper.


(Tanzil ur Rehman)
Assistant Psychologist
(Inquiry Officer)

08-10-2020


Secretary PSC

LEAVE RECORD OF MR. KHALIL ULLAH JUNIOR CLERK
EXAMINATION BRANCH CONDUCT SECTION

93
92

PERIOD OF DUTY			PERIOD OF LEAVE		TOTAL LEAVE	BALANCE
From	To	D.M.Y	From	To	Days	
03/05/2008	07/07/2013	05/03/1905	08/07/2013	07/08/2013	31	217
08/08/2013	17/08/2020	09/01/1907				553

M. J.

*Attested
J. J.
10/11/2020*

The Secretary,
KPK Public Service Commission,
Peshawar.

84

74
17/8/20

88

Subject: APPLICATION FOR FIFTEEN DAYS EARNED LEAVE:

R Madam,

With humble submission it is stated that my papers for the Diploma of Laboratory Technician are to be held w.e.f. 20-08-2020 in Medical Facility Karachi. Therefore, I am requested for fifteen (15) days earned leave from 18-08-2020 to 03-09-2020. (Date sheet and Roll number slip attached).

I shall be very thankful to you for this favors.

Yours Sincerely,

(Signature)
17/8/20
(KHALIL ULLAH)
J/C Exams(c)

Dated: 17-08-2020.

I will be perform duty in absence of Mr. Khalil Ullah J/C during his leave period.

(Signature)
17/8/2020
Imam Farooq J/C

Asst He may be allowed plz.

(Signature)
17/08/2020

SEC II
Khalid

(Signature)
17/8/20

... exam:
leave applied / may be allowed as
... Imam Farooq ... take over his seat in
his absence

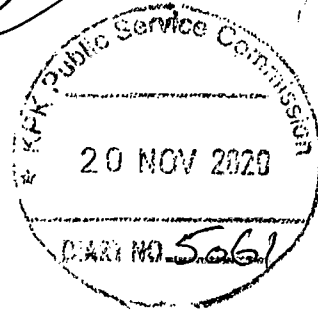
ADA Put up on file *(Signature)* 17-8/20

To

The Chairman,
KP Public Service Commission

Subject: **APPEAL FOR JUSTICE**

Dear Sir,



With due respect it is stated that the undersigned is working in this institution as Junior Clerk (BPS-11) since 2008. During this short tenure the undersigned performed his duties to the entire satisfaction of seniors so as never been complained for any misconduct or disobedience. I never availed unnecessary leaves so as 553 earned leaves are on my credit. My annual confidential reports of entire service of 12 years reveal all my satisfactory record and every time recommended for promotion by my reporting/ countersigning officers.

Two months ago just after COVID-19 pandemic when office opened on 17.08.2020 (Annex-I) the undersigned requested for 15 days earned leaves for appearing in exam which was duly recommended by Honorable Director Examination (Annex-II) as such the undersigned proceeded for exam which was to be held at Karachi w.e.f 20.08.2020. When my exam of Diploma ended, I was contacted by Dy; Director Admn that my application was not approved by the Worthy Secretary PSC, I was shocked and left for Peshawar on the same day without participating in my Viva which was expected in two days.

On arrival in office I was given 'Charge Sheet' on 10.09.2020 vide No. Nil dated: Nil (Annex-III) and summon for inquiry on very next day dated 11.09.2020 (Annex-IV). However, I replied and submitted my statement to the inquiry officer (Annex-V) wherein I explained my position. The inquiry officer submitted his report with favorable remarks (Annex-VI) but the Worthy Secretary PSC issued 'Show Cause' notice wherein minor penalty of 'withholding promotion for three years' was proposed (Annex-VII). The undersigned again replied and clarified the position (Annex-VIII) but the worthy Secretary imposed and confirmed the tentative penalty (Annex-IX).

The injustice has been done on the following grounds: -

- After 1st shock of COVID-19 the office opened on 17.08.2020 (Annex-I). I submitted application for leave on the same day which was duly recommended by Honr; Director Examination (Annex-II).
- After seven days on 24.08.2020 the Admin Branch processed my application for further approval of the Worthy Secretary PSC being competent authority which was un-necessarily marked again to the Hon; Director Examination for his comments, as he already recommended my leaves (Annex-II).

- (86)
- c) My exam was to start w.e.f 20.08.2020 at Karachi and I have to reach there before the date.
- d) As per Findings of the Inquiry report **(Annex-VI)** my application reached to the worthy Secretary PSC after 26.08.2020, till that my exam was to its end.
- e) Late processing of my application by Admin Section to the Worthy Secretary PSC made her angry and I was thereafter charge-sheeted with the allegations of **not availing NOC prior to Admission and availing leaves without approval of competent authority.**
- f) The slow processing of application by Admin Section reveals that if I would have been waiting for further approval of leaves then question of appearing in exam did not rise.
- g) My admission in diploma at Karachi for the session 2017-18 was as a private candidate. More importantly, I never attended classes, as I attended office regularly. My attendance at office and reports submitted by my immediate supervisors as reflected in conclusion of the Inquiry Report (Annex-) also reveal that I was present in office and did not avail long leaves, as without long leaves it was not possible to attend classes at Karachi, which also shows that I was not regular student.
- h) Before this case, the Admin Branch has not demanded NOC from any of the other officials who intended to appear in Exams, but to me it was especially made as ground to penalize.
- i) During my service period I have never been reported by my seniors with adverse remarks. My service record as well as ACRs are clear.
- j) I have **553** earned leaves on my credit but I was not given leaves for my exams contrary charge sheeted and awarded minor penalty.

It is also pertinent to mention that while confirming the minor penalty on the basis of the inquiry report **(Annex-VI)** the Competent Authority has totally ignored the facts mentioned by the Inquiry Officer i.e **"late / slow processing of my application by Admin Section", "my presence in office after my admission" , "recommendation of my leaves by Honr; Director Examination"** and **"leaves on my credit"**. The Inquiry Officer also quoted Khyber Pakhtunkhwa Government Servant (Conduct) Rules 1987 that **"No formal permission is required if a government servant is attending classes / courses outside the office hours. The government servant may only inform the Head of his / her Department for taking such classes / courses. If, however it is found that by attending such classes / courses the work of the government servant is suffering, the Head of the Department may by an order, stop the government servant from attending such classes / courses (Page # 3 of Annex-VI).** As such due to my admission, my office work has not been suffered. All the above things have been ignored by the competent authority while confirming the said penalty.

Respected Sir,


I am on top of the seniority list of Junior Clerks (BPS-11) and have been anxiously waiting for my promotion for the last seven years. I have no adverse remarks in my entire carrier but awarded with penalty of withholding my promotion for three years, although I have no fault on my part. I have no corruption charges but this minor penalty has been made hurdle in my promotion. The penalty has been imposed only as I spoke truth while requesting for leaves.

It is also to mention here that in Promotion Policy 2009, Part- VIII para (b) (Annex-X) it is clearly mentioned that "However, the CEI policy is not applicable to civil servants in BS-16 and below. In this case, the concerned assessing authorities will take into consideration the entire service record with weightage to be given for recent reports and any minor penalty will not be a bar to promotion of such Civil Servant". There are some judgments of Supreme Court and High Courts also available wherein it is mentioned that **minor penalty cannot be hurdle for promotion of a civil servant (Annex-XI)**.

Dear sir, My sin is not so big as the penalty has been given. The undersigned belongs to a poor family and cannot bear expenses of courts, eventually my future will be suffered for ever.

Therefore, it is a humble request to your courtesy that the justice may be extended to the undersigned and the minor penalty imposed by the worthy Secretary PSC **vide office order No.KP/PSC/Admn/PF-212/01168 dated: 09.11.2020 (Annex-IX)** may be withdrawn or may be relaxed and the undersigned may be considered for promotion in upcoming DPC.

The undersigned will be highly thankful if heard in person too.



Yours faithfully


Khalil Ullah
Junior Clerk, KPPSC

20-11-20



88



KHYBER PAKHUNKHWA PUBLIC SERVICE COMMISSION

CIRCULAR

The competent authority has been pleased to order that all Wings of Khyber Pakhtunkhwa Public Service Commission i.e. Administration, Examination, Recruitment, Psychology and Litigation shall start their office routine work with complete staff w.e.f. 17.08.2020. All officers / officials shall observe SOPs, wear face masks and keep necessary social distance to prevent the spread of COVID-19.

2. Wearing of face mask is compulsory. Whoever is violating this instruction would be proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

3. Moreover, the following office timing as notified by Administration Department vide Notification No.E&A(AD)/04(01)/2020 dated 03.08.2020 shall be strictly observed:-

I.	Monday to Thursday	<u>09:00 am to 05:00 pm</u> With 30 minutes break for prayer from 01:00 pm to 01:30 pm.
II.	Friday	<u>09:00 am to 05:00 pm</u> With one hour break for prayer from 12:30 pm to 01:30 pm.

--sd/--

Chairman PSC

No. KPK/PSC/Admn/007544

Dated: 12/08/2020

Copy to:-

1. PS to Chairman, Khyber Pakhtunkhwa PSC.
2. PS to Member-I, II, III, IV, V, VI, VII & VIII, Khyber Pakhtunkhwa PSC.
3. PS to Secretary, Khyber Pakhtunkhwa PSC.
4. All officers/officials, Khyber Pakhtunkhwa PSC.
5. Office Order file.

Assistant Director (Admn)

89
21.88

To:

The Secretary,
KPK Public Service Commission,
Peshawar.

Subject: APPLICATION FOR FIFTEEN DAYS EARNED LEAVE:

R Madam,

With humble submission it is stated that my papers for the Diploma of Laboratory Technician are to be held w.e.f. 20-08-2020 in Medical Faculty Karachi. Therefore, I am requested for fifteen (15) days earned leave from 18-08-2020 to 03-09-2020. (Date sheet and Roll number slip attached).

I shall be very thankful to you for this favors.

Yours Sincerely,

[Signature]
17/8/20
(KHALIL ULLAH)
J/C Exams(c)

Dated: 17-08-2020.

I will be perform duty in absence of Mr. Khalil Ullah J/C during his leave period.

Asst He may be allowed plz.

[Signature]
17/8/2020
Umar Farooq J/C

[Signature]
17/08/2020

[Signature]
17/08/2020

Sec II:
[Signature]

[Signature]
17/8/2020

leave applied / may be allowed as Mr. Umar Farooq will look after his secret in his absence.

ADA Put up on file *[Signature]* 17/8/2020 17-8/20

To,

The Secretary,
KPK Public Service Commission,
Peshawar.

90

17

Subject: **APPLICATION FOR FIFTEEN DAYS EARNED LEAVE:**

R/Madam,

With humble submission it is stated that my papers for the Diploma of Laboratory Technician are to be held w.e.f. 20-08-2020 in Medical Faculty Karachi. Therefore, I am requested for fifteen (15) days earned leave from 18-08-2020 to 03-09-2020. (Date sheet and Roll number slip attached).

I shall be very thankful to you for this favors.

Yours Sincerely,

Sd/-
(KHALIL ULLAH)
J/C Exams(c)

Dated: 17-08-2020

2. I will be perform duty in absence of Mr. Khalil Ullah J/C during his leave period.

Sd/-
Umar Farooq J/C

3 Asst. He may be allowed plz.

Sd/-
17/08/2020
Assistant

SEC II:

Sd/-
17/08/2020
Superintendent

C E / C

Sd/-
17/08/2020
Controller Exam Conduct

4 Dy Director Exam:-
Leave application may be allowed as Mr. Umar Farooq will look after his seat in his absence pls.

Sd/-
17/08/2020
Deputy Director Exam

DE

Sd/-
17/08/2020
Director Exam

DDA Put up on file

Sd/-
Deputy Director Admn

ADA



91

KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

CHARGE SHEET

1. Fareeha Paul, Secretary Khyber Pakhtunkhwa Public Service Commission, Competent Authority, hereby charge you, **Mr Khalilullah, Junior Clerk**, Khyber Pakhtunkhwa Public Service Commission as follows:-

2. That you, while working as Junior Clerk Khyber Pakhtunkhwa Public Service Commission committed the following irregularities:-

- a) You took admission in Medical Faculty, Karachi for Diploma of Laboratory without seeking permission / NOC from competent authority, which is violation of rules.
- b) You remained absent from official duty w.e.f. 18.08.2020 to 03.09.2020 without permission of competent authority.
- c) Guilty of misconduct.


3. By reasons of the above, you appear to be guilty of misconduct, inefficiency and habitually absenting from duty without prior approval as provided under Rule 3 (a) (b) (d) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Section-4 of the rules ibid.

3. You are, therefore, required to submit your written defence within seven (07) days of the receipt of this charge sheet to the Inquiry Committee.

4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

5. You must also intimate whether you desire to be heard in person or otherwise

6. A statement of allegations is enclosed.


(FAREEHA PAUL)
SECRETARY PSC/
COMPETENT AUTHORITY

Attended
Javed
10/09/2020



92



KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

CHARGE SHEET

I, Fareeha Paul, Secretary Khyber Pakhtunkhwa Public Service Commission, Competent Authority, hereby charge you, **Mr Khalilullah, Junior Clerk**, Khyber Pakhtunkhwa Public Service Commission as follows:-

2. That you, while working as Junior Clerk Khyber Pakhtunkhwa Public Service Commission committed the following irregularities:-

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4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

5. You must also intimate whether you desire to be heard in person or otherwise.

6. A statement of allegations is enclosed.

--sd--

**(FAREEHA PAUL)
SECRETARY PSC/
COMPETENT AUTHORITY**



**KHYBER PAKHTUNKWA
PUBLIC SERVICE COMMISSION**

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

No.KP/PSC/Admn/GF-561/008894

Date:11.09.2020



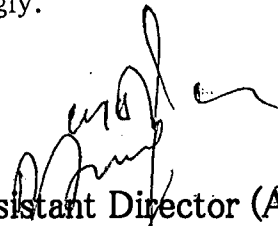
To

Mr. Khalil Ullah Junior Clerk,
Khyber Pakhtunkhwa Public Service Commission.

Subject: ENQUIRY PROCEEDINGS

I am directed to refer to subject noted above and state that you are required to appear before the inquiry Officer on **15.09.2020 at 11:00 A.M** in the office of Assistant Psychologist Khyber Pakhtunkhwa Public Service Commission for inquiry proceedings / personal hearing.

2. You are informed to join the inquiry proceedings on the date, time and venue given above, so as to proceed in the matter accordingly.


Assistant Director (Admn)

Copy to:

2. PS to Secretary, Khyber Pakhtunkhwa PSC for information please.
3. The Assistant Psychologist, Khyber Pakhtunkhwa PSC.

Assistant Director (Admn)

The Inquiry Officer,
Mr. Tanzeel ur Rehman, A Psychologist,
Khyber Pakhtunkhwa Public Service Commission Peshawar.

Subject: **REPLY TO CHARGE SHEET**

Dear Sir,

With due respect it is stated that the office has charge sheeted me by putting following allegations:

- d) You took admission in Medical Faculty, Karachi for Diploma of Laboratory without seeking permission / NOC from competent authority, which is violation of rules.
- e) You remained absent from official duty w.e.f 18.08.2020 to 03.09.2020 without permission of competent authority.
- f) Guilty of misconduct.

In response to above mentioned allegations my reply / justifications are as under:

- d) Back in 2003 I took certificate of Medical Technician from Pakistan Institute of Medical Technologies Peshawar (Annex-I). Later on it came into notice that the said institution has no more recognition with the Government. The institution offered the students to participate in exams from recognized institutions like Jinnah Medical College Peshawar for diploma purpose on their behalf but due to timely uniformed I could not avail the opportunity. In 2017, few of my friends enrolled themselves in Medical Faculty Karachi for Diploma on the basis of previous certificate and advised me to do so. Three years back, they took my certificate and enrolled me for the session 2017-18 (Annex-II). Being junior employee in the office, serving in the rank of Junior Clerk, I was unaware / uneducated about the process / rules for taking admissions anywhere.
- e) After that unfortunate admission I forgot that I had any admission. On 12th August 2020 when Covid-19 Pandemic statistics came down I was informed through telephonic call that Exam is going to be held w.e.f 20th August 2020. On the same date i.e 12th August 2020 (Wednesday) the office has also issued circular to open office w.e.f 17.08.2020 (Monday)(Annex-III). On first day of my duty early in the morning I submitted my application for 15 days exam leave addressed to the Hon'ble Secretary KPPSC routed through my working Branch so as to get permission of my branch head before submitting to the competent authority. The head of my Section i.e Hon'ble Director Examination when forwarded my application with no objection to Admn Section then I got sure that it will be allowed by kind-self of Hon'ble Secretary KPPSC too and keeping in view very short time for my exam I left for Karachi to take part their-in. If the Admn Brach called me well in time I would be back without participating in Exam but I got call from Hon'ble DD Admn on 01.09.2020 which was too late. After the said call, I immediately travelled back to office without participating in my Viva which was scheduled on 02.09.2020.
- f) I have not been guilty of misconduct ever. My service record is not so bad. I always obeyed orders of my seniors and performed my official duties with devotions and commitment.

In charge sheet it is also mentioned that I am inefficient and remains habitually absent from duty which is totally wrong. Being Junior Clerk, I always completed my assigned tasks well in time and gave 100% outcome. As far as my attendance is concerned, I availed leaves only when necessarily required and after approval of the competent authority. My biometric attendance as well as attendance register of my branches where I served can also be checked for my regular presence in the office.

The mistakes where occurred were totally un-intentional and only due to less knowledge / unawareness of rules.

Yours faithfully

WD - 9.2020

Attended

WD
10/09/2020

Subject:

INQUIRY REPORT

Inquiry
Report

25

The undersigned was assigned to conduct an inquiry by the Competent Authority (Secretary Khyber Pakhtunkhwa Public Service Commission) through the Office Order No.KP/PSC/Admn/PF-212/008797 dated 10-09-2020 (Annex-A), against the accused Khalil Ullah, Junior Clerk, KP PSC.

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

- a) He took admission in Medical Faculty Karachi for the Diploma of Laboratory Technician without seeking permission / NOC from the Competent Authority which is a violation of the rules.
- b) He remained absent from official duty w.e.f. 18/08/2020 to 03/09/2020, without permission of the Competent Authority.
- c) Guilty of mis-conduct.

PROCEEDINGS

In compliance with order dated 10/09/2020 from Competent Authority, the accused was summoned to record his written statement. Administration PSC summoned the accused through a letter (11/09/2020) to submit his written statement and also appear before the Inquiry Officer on 15/09/2020 (Annex-B). Accused submitted his written statement on 14/09/2020 and appeared before the Inquiry Officer on 15/09/2020. Accused was given a questionnaire. The accused answered the questions in the questionnaire (Annex-C). On 18/09/2020, Assistant Director (Administration) PSC was requested to provide the Application file of the accused which was provided on the same day (Annex-D). On 01/10/2020, the accused was asked to appear before the Inquiry Officer to answer some questions. The accused appeared before the Inquiry Officer and submitted replies to the Questions (Annex E). On 01/10/2020, supervisors of the accused's were asked to provide some information regarding the accused. They provided the information to the

Attended

Law
to upper

PESHAWAR HIGH COURT, PESHAWAR
ORDER SHEET

Date of Order of Proceedings	Order or other Proceedings with Signature of Judge(s).
1	2
29.09.2020	<p><u>Writ Petition No.4194-P/2019</u></p> <p>Present: Muhammad Irshad Mohmand, Advocate, for the petitioner.</p> <p>Mr. Rab Nawaz Khan, AAG, for the Provincial Government.</p> <p style="text-align: center;">*****</p> <p><u>IJAZ ANWAR, J.</u> Mst. Hina Farukh, petitioner herein, through the instant Constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has prayed for the following relief:-</p> <p style="text-align: center;"><i>"It is, therefore, humbly prayed that on acceptance of this writ petition, the impugned action & inaction/letter dated 24.07.2019 regarding non-inviting the petitioner for interview by the respondents be declared as illegal, unconstitutional, in violation of law, without jurisdiction, based on malafide, ulterior motive, discriminatory & against the fundamental rights being unreasonable, unjustified, unwarranted and the respondents be directed to call the petitioner for interview/appointment process being legible, qualified and has also passed the prescribe test".</i></p>

Attested
Hina
10/10/2020

ATTESTED
EXAMINER
Peshawar High Court

FINDINGS

From perusal of the written statements and answers of the accused and other documented evidences on record the Inquiry Officer found that on 17/08/2020, the accused gave an application for leave from 18/08/2020 to 03/09/2020 to the Competent Authority. The accused requested the leave for his examination of the Diploma of Laboratory Technician in Medical Faculty Karachi. Accused's application was recommended by the Head of his section i.e. Director Examination and was forwarded to administration PSC for approval on 17/08/2020 from the Competent Authority. Administration section PSC put up the file on 24/08/2020 to Assistant Director Administration and was forwarded to Director Examination for comments by the Deputy Director Administration on 25/08/2020. Director Examination wrote comments on the application file on 26/08/2020 and recommended leave for the accused and was forwarded to Secretary PSC.

The accused submitted his application on 17/08/2020 and left for Karachi on 18/08/2020, without the approval of his leave application from the Competent Authority. According to the statement of accused, he was informed by Deputy Director Administration on 01/09/2020, that his leave application has not been approved by the Competent Authority. The accused said that he returned to Peshawar without participating in the Viva which was scheduled on 02/09/2020. It was also found that the accused was having no permission / NOC for admission in Medical Faculty Karachi and also for attending the examination. According to the accused, he was unaware of the rules of taking NOC for admission or examination from the Competent Authority.

CONCLUSION

After thoroughly examining the statements and documented evidences, the Inquiry Officer came to the conclusion, that the accused is guilty of the charges of *not seeking permission / NOC from competent authority for admission in Medical Faculty Karachi, remained absent from 18/08/2020 to 03/09/2020 without the permission of Competent Authority and Guilty of mis-conduct.* He was not having any permission (NOC) for admission in Medical Faculty Karachi and attending the

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3

The Inquiry Officer also observed that processing procedure of leave application of the accused was slow due to which he was informed late (01/09/2020) about the refusal of his leave application.

It also came to the notice that the accused never took classes (*Annex-G, replies of the accused's supervisors, page 32-35*) for the Diploma of Laboratory Technician and never gave any examination before. According to the Khyber Pakhtunkhwa Government Servant (Conduct) Rules 1987, "*No formal permission is required if a government servant is attending classes / courses outside the office hours. The government servant may only inform the Head of his/her Department for taking such classes / courses. If, however it is found that by attending such classes / courses, the work of the government servant is suffering, the Head of the Department may, by an order, stop the government servant from attending such classes / courses.*" (*Annex-F, page-31*).

It is also evident from the application of the accused that the official responsibilities of the accused were took over by Junior Clerk Mr. Umar Farooq, PSC and it was recommended by the Director Examinations but Competent Authority is the final authority for approval.

RECOMMENDATIONS

The Competent Authority may proceed as deem proper.

Handwritten signature

Tanzil ur Rehman
(Tanzil ur Rehman)
Assistant Psychologist
(Inquiry Officer)

08-10-2020

Secretary PSC



KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

No. 010690

SHOW CAUSE

Dated: 16-10-20

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. Khalilullah Junior Clerk, as follows:-

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer 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 officer, the material on record and other connected papers including your defence before the inquiry officer:-

I am satisfied that you have committed the following acts/omissions specified in Rule 3, Sub Rule (a) (b) & (d):

- (i) You took admission in Medical Faculty, Karachi for Diploma of Laboratory without seeking permission / NOC from competent authority, which is violation of rules.
- (ii) You remained absent from official duty w.e.f. 18.08.2020 to 03.09.2020 without permission of competent authority.
- (iii) Guilty of misconduct.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of "withholding promotion for three year" under Rule 4 (1) a-ii 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 report is enclosed.

5
Handwritten signature and initials

Handwritten signature
SECRETARY P.S.C.

The Secretary
KP Public Service Commission

Subject:

SHOW CAUSE

Dear Madam!

With reference to show cause notice issued to me vide No.010690 Dated: 16.10.2020 (Annex-A) wherein a penalty of "withholding promotion for three years" has been tentatively decided to be imposed upon me due to not availing NOC prior to my admission in medical faculty and appearing in exam thereafter without sanction of leaves from competent authority, my humble defence in your justice is as under:

During inquiry in the subject matter I submitted my detailed reply to the honorable Inquiry officer copy of which is attached for ready reference (Annex-B). Briefly, it is to state here that my admission in Medical Faculty Karachi for Diploma was incident of three years back in 2017, as a private candidate. My admission was made by my friends as I did not know the process and other requirements for the purpose and most importantly I was heartedly not interested in the said diploma at that time. After the said unfortunate admission I never attended classes rather I attended office regularly. Attendance register of my office or reports from my immediate seniors regarding my regular attendance in office can be called and checked for your entire satisfaction. It is also to mention here that since my entry into Govt; service in 2008 as a Junior Clerk in this office, I neither heard from my colleagues nor became educated by any mean that for taking admission as a private candidate NOC is must to be taken, therefore it did not come into my conscience.

Respected Madam! As far as allegation of "absent from duty w.e.f 18.08.2020 to 03.09.2020" is concerned, as your Excellency is well aware from the fact that after the lockdown due to COVID-19 pandemic, office re-opened on 17.08.2020. Madical Faculty Karachi scheduled the Exam w.e.f 20.08.2020. As I came to know about the exam through a telephonic call I submitted my application for 15 days' earned leaves just after opening the office on 17.08.2020. On the same day my application was recommended by head of my branch i.e Honorable Director Examination and farwarded to your kindself for approval. There were only two days left to reach at Karachi and to appear in the Exam. When Honorable Director Examination recommended my application I got sure that my request has been accepted, I rushed out for my exam on 18th August 2020. Unfortunately, I was not timely informed of the position of my application by Admn Section and therefore, remained unaware about the situation here in office.

Respected Madam! That was my first ever guilt which occurred by ignorance. I am an obedient fellow of this institute. I had never been reported by my senior officers as habitual absenter or leave seeker. There was neither corruption nor inefficiency charges against me. Currently I am at top of seniority list of the Junior Clerks and ambitiously waiting for my promotion; with holding my promotion for three years is too big penalty for me than my sin.

Therefore, I am to request you humbly to please pardon me Mam! Give me a chance to improve my self and...

Handwritten signature and initials

100
22 OCT 2020
DIARY NO 4544
KP Public Service Commission



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KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

OFFICE ORDER

WHEREAS Mr. Khalilullah Junior Clerk (BPS-11), Khyber Pakhtunkhwa Public Service Commission (hereinafter referred to as Accused) was served with charge sheet under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the acts / omissions mentioned in statement of allegations;

AND WHEREAS, Mr. Tanzil ur Rehman Assistant Psychologist PSC was appointed as Inquiry Officer to probe into the charges;

AND WHEREAS, the Inquiry Officer submitted his report stating therein that accused took admission in Medical Faculty, Karachi for Diploma of Laboratory without seeking permission / NOC from competent authority, remained absent from official duty w.e.f 18.08.2020 to 03.09.2020 without permission of competent authority and guilty of misconduct, and he as such recommended for further action as deemed appropriate by the competent authority;

AND WHEREAS, the Competent Authority (Secretary PSC) while exercising powers conferred under Rule 14(4) of the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 served the accused with a Show Cause Notice bearing No. 010690 dated 16.10.2020, conveying therein award of tentative minor penalty of withholding promotion for three years as provided in Rule 4(1)(a)(ii) of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011;

AND WHEREAS, the accused submitted reply in writing to the Show Cause Notice on 22.10.2020 which was found unconvincing and whereas he did not request to be heard in person;

NOW THEREFORE the Secretary PSC being competent authority, in exercise of powers conferred upon her under Rule 14 (5)(ii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 is pleased to award minor penalty of **"withholding promotion for three year"** as provided in Rule 4(1)(a)(ii) of the rules ibid with immediate effect.

--sd/--

Secretary

Dated:09/11/2020

No.KP/PSC/Admn/PF-212/ 11694

Copy to: -

1. The Accountant General, Khyber Pakhtunkhwa.
2. Director Examination, Khyber Pakhtunkhwa PSC.
3. PS to Chairman, Khyber Pakhtunkhwa PSC.
4. PS to Secretary, Khyber Pakhtunkhwa PSC.
5. The Deputy Director (Admn), Khyber Pakhtunkhwa PSC.
6. The Cashier, Khyber Pakhtunkhwa PSC.
7. Official concerned.
8. Personal file of official.
9. Office Order file.
10. Master file.

Assistant Director (Admn)

within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

VI. Date of Promotion:

Promotion will always be notified with immediate effect.

VII. Notional Promotion:

In respect of civil servants who retire (or expire) after recommendation of their promotion by the PSB/DPC, but before its approval by the competent authority, their promotion shall be deemed to have taken effect from the date of recommendation of the PSB/DPC, as the case may be, and their pension shall be calculated as per pay which they would have received had they not retired/expired.

VIII. Promotion of Civil Servants who are awarded minor penalties.

(a) The question of promotion to BS-18 and above in case of civil servants who have been awarded minor penalties has been settled by the adoption of quantification of PERs and CEI which allows consideration of such cases for promotion subject to deduction of 5 marks for each major penalty, 3 marks for each minor penalty and 1 mark for each adverse PER from the quantified score and recommendation for promotion on attaining the relevant qualifying threshold.

(b) However, the CEI policy is not applicable to civil servants in BS-16 and below. In this case, the concerned assessing authorities will take into consideration the entire service record with weightage to be given for recent reports and any minor penalty will not be a bar to promotion of such a civil servant.

IX. Promotion in case of pending investigations by NAB:

If there are any NAB investigations being conducted against an officer, the fact of such investigations needs to be placed before the relevant promotion fora which may take a considered decision on merits of the case.

2. All the existing instructions on the subject shall stand superseded to the above extent, with immediate effect.



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2013 P L C (C.S.) 223

[Peshawar High Court]

Before Khalid Mahmood, J

MUNSIF SHAH

Versus

PEPCO through Managing Director, Lahore and 4 others

Writ Petition No.546 of 2010, decided on 29th February, 2012.

(a) Civil Servants Act (LXXI of 1973)---

---S. 9---Promotion Policy of Establishment Division dated 24-10-2007---Promotion---Features of the Promotion Policy (2007)---Eligibility criteria for consideration for promotion were fulfillment of prescribed minimum length of service for promotion to various respective higher scales; satisfactory completion of mandatory training; possessing qualification/experience and other conditions prescribed in the relevant Recruitment Rules; officer superseded earlier shall be considered after earning Annual Confidential Report for one full year---Officer may be superseded for not conforming at least any of the reasons to the effect that: officer did not qualify the aggregate score prescribed for promotion; officer had not passed Departmental Promotion Examination in due chances; superseded officer would not lose eligibility for consideration, no matter how many times officer was superseded; officer superseded for want of passing Departmental Promotion Examination in due chances would be considered as a normal candidate in the next Promotion Board after passing Departmental Promotion Examination without prejudice to the reason that officer has not passed Departmental Promotion Examination in due chances and in case of supersession, officer would lose seniority vis-a-vis his/her juniors, approved for promotion in the same Board---Officer may be deferred for confirmation for any of the reasons that if officer had not undergone the prescribed training (where applicable); non-submission of ACRs by the concerned officer to his Reporting Officer(s); where the Board considers the record as incomplete, or wants to further watch the performance of the officer or for any other reason to be recorded in writing; if disciplinary or departmental proceedings were pending against the officer; if the officer was on deputation abroad with a foreign government, private organization or international agency; where the inter se seniority of the officer was sub judice; in case officer is deferred for promotion, but subsequently approved for promotion, the officer will regain his/her seniority with his/her original batch, however, date of promotion will remain the same on which officer was actually promoted.

(b) Civil Servants Act (LXXI of 1973)---

---S. 9---Promotion---Entitlement---Employee, being qualified and eligible, joined department as Junior Engineer Electrical, on open merit basis and was promoted as DMG/Xen in PESCO under the administrative control of respondent/PEPCO---Numerous Xen/Senior Engineers were promoted to the post of Superintending Engineer, but the employee despite being senior most and qualified and having completed all codal formalities and requirements mandatory for promotion, had been deprived from such promotion---Penalty imposed on employee vide order through which increment for one year was withheld/stopped, was set aside on acceptance of appeal of the employee---Even otherwise, censure and minor penalty, was not a hurdle in the way of promotion of employee---Employee, in circumstances, had wrongly been superseded by ignoring the criteria laid down for promotion, which was void ab initio---Promotion of employee to the higher post being a matter of legal right, employee was entitled for award of up-gradation and promotion from the date when his very first junior, was promoted and back benefits---Authorities were directed to consider the case of employee for the purpose of upgradation/promotion

from such date accordingly.

Abdul Majeed v. Government of Pakistan and others 2006 SCMR 1415; Fida Hussain Javed and 3 others v. Director Food, Punjab and others 2004 SCMR 62; Muhammad Afzal Khan v. Government of Punjab and others 2009 PLC (C.S.) 40; Hammad Raza Qureshi v. Departmental Promotion Committee, Punjab Lahore and others 2008 PLC (C.S.) 551; Muhammad Saifullah v. Chief Secretary, Government of Sindh and 2 others 1985 PLC (C.S.) 1108; Maj. Ziaul Hassan v. Mrs. Naseem Chaudhry 2000 SCMR 645; Javed Hussain Shah v. Government of the Punjab and others 2005 PLC (C.S.) 974 and Pakistan International Airlines Corporation (PIAC) through Chairman and others v. Nasir Jamal Malik and others 2001 SCMR 934 rel.

Abdur Rehman Qadir for Petitioner.

Rana Asif Saeed along with A.D. PEPCO for Respondents.

Date of hearing: 29th February, 2012.

JUDGMENT

KHALID MAHMOOD, J.--- Munsif Shah petitioner seeks the constitutional jurisdiction of this Court praying for :---

"that on acceptance of this writ petition, a direction may graciously be issued to the respondents to promote and upgrade the petitioner w.e.f. the date first Junior Officers / respondent No.5 was promoted."

2. The facts, as mentioned in the petition, are that petitioner being qualified and eligible joined WAPDA on 2-2-1978 as Junior Engineer Electrical, on open merit basis, and presently working as DMG/Xen in PESCO under the administrative Control of PEPCO. A number of Xen/Senior Engineers were promoted to the post of Superintending Engineer in 2007, 2008 and 2009 but petitioner has illegally, unlawfully and malafidely been ignored for promotion. Hence, this writ petition.

3. Learned counsel for petitioner argued that although the petitioner was served with show causes notices and minor penalties were awarded time and again and petitioner being senior most and qualified has completed all codal formalities and requirements mandatory for promotion and stood at S.No.129 of the seniority list of Senior Engineers/Xens. Respondents have illegally and unlawfully deprived him from such promotion. It was argued that he is entitled to be given preference over all other candidates in view of his qualifications but respondents have wrongly and illegally ignored the petitioner. It was also argued that a number of Xens/Senior Engineers were promoted to the posts of Superintending Engineers upto Serial No.358 but petitioner was deprived of the promotion, illegally, malafidely and unlawfully.

4. On the other hand, learned counsel for respondents opposed the petition and contended that petitioner's conduct throughout the service remained not upto the mark, therefore, he was rightly dropped time and again by the respondents.

5. Arguments heard and record perused.

6. The following questions crop up in mind, rather which would be essential for just decision of the case:---

(1) Whether on the basis of censure promotion can be dropped?

(2) Whether petitioner was wrongly and illegally not considered for promotion on the ground of penalty imposed?

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(3) Whether the petitioner was correctly deferred from promotion by the Promotion Committee in the year 2007 for not producing A.C.Rs. for two years i.e. 2003-2004?

7. Petitioner was deferred from promotion by the respondent department on the grounds that the PEPCO Management adopted the promotion policy of Establishment Division, Government of Pakistan issued vide O.M.No.1/3/2007-CP-II dated 24-10-2007, mutatis mutandis; that as per the threshold prescribed for promotion from BPS-18 to BPS-19 aggregate marks of Efficiency Index is fixed as 60; that the policy further provides that for censure 1-1/2 marks are to be deducted and similarly for recovery due to negligence 2 marks are to be deducted and on account of stoppage of one increment 3 marks are to be deducted and respondents furnished details of penalties imposed upon the petitioner from time to time owing to which the petitioner was denied promotion in the year 2007, 2008 and 2009. Further, as per contention of respondents, petitioner secured less than 60 net marks, which were aggregate for promotion. The criteria laid down is as under:---

FEATURES OF THE PROMOTION POLICY.

(1) Eligibility criteria for consideration for promotion.

(a) The eligibility criteria for consideration for promotion shall be as under:---

(i) Fulfillment of prescribed minimum length of service for promotion to various respective higher scales.

(ii) Satisfactory completion of mandatory training(s).

(iii) Possessing qualification / experience and other conditions prescribed in the relevant Recruitment Rules.

(iv) An officer superseded earlier shall be considered after earning Annual Confidential Report (ACR) for one full year. For example, an officer superseded on the basis of his ACR(s) upto 2007, will become eligible for consideration after earning ACRs for 2008.

(b) CONDITIONS FOR SUPERSESSION

An officer may be superseded for not conforming to at least any of the following reasons:---

(1) The officers does not qualify the aggregate score prescribed for promotion.

(2) The officer has not passed Departmental Promotion Examination (wherever applicable) in due chances as per SOP (Training Courses and Promotion Exams) March, 2005 as amended from time to time.

(3) A superseded officer will not lose eligibility for consideration, no matter how many times officer is superseded.

(4) The officer superseded for want of passing Departmental Promotion Examination (DPE) in due chances will be considered as a normal candidate in the next promotion board after passing DPE without prejudice of the rason that officer has not passed DPE in due chances.

(5) In case of supersession officer will lose seniority vis-a-vis his/her juniors, approved for promotion in the same board.

(c) CONDITIONS FOR DEFERMENT.

An officer may be deferred for not conforming to at-least any of the following reasons:

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- (i) If officer has not undergone the prescribed training (where applicable).
- (ii) Non submission of ACRs by the concerned officer to his Reporting Officer(s).
- (iii) Where the Board considers the record as incomplete, or wants to further watch the performance of the officer or for any other reason to be recorded in writing.
- (iv) If disciplinary or departmental proceedings are pending against the Officer.
- (v) If the Officer is on deputation abroad to a foreign government, private organization or international agency,
- (vi) Where the inter se seniority of the Office is subjudice.
- (vii) In case an officer is deferred from promotion but subsequently approved for promotion, the officer will regain his/her seniority with his/her original batch, however, date of promotion will remain the same on which officer was actually promoted.

6. Development of Comprehensive Efficiency Index for promotion/deferment/supersession:

- (a) The minimum threshold marks of Efficiency for promotion to various scales/posts are prescribed as under:---

Basic Scale	Aggregate Marks of efficiency index
For promotion from BS-17 to BS-18	50
For promotion from BS-18 to BS-19	60
For promotion from BS-19 to BS-20	70
For promotion from CEs/DGs/Equivalent officers to the positions of GMs.	75

For promotion from BS-18 to BS-19

All ACRs earned in previous and present grade i.e. in BS-17 and BS-18 will be quantified. For officers directly recruited in BS-18, all ACRs earned in BS-18 will be quantified.

For promotion from BS-18 to BS-19:

- (a) Training Evaluation Score will be calculated out of 15 marks. Nine (9) marks for Management Development/Middle/Mid Career Management Course and six (6) marks for Basic/Junior Management Course/Sector Specific Trainings, where mandatory.

8. The policy regarding assigning marks per ability, capability, deficiency, adverse entries in service record are laid down as under:---

(a) Major penalty

(Reduction to lower post/time scale/Lower stage in time scale) 5 marks

(b) Minor Penalty

(i) Censure 1-1/2 marks

- (ii) Recovery due to negligence breach of orders other than fraud or embezzlement 2 marks
- (iii) Recovery due to fraud or embezzlement etc. 3 marks
- (iv) Withholding promotion or increment 3 marks
- (c) For adverse remarks (deductions be made for such remarks only as were duly conveyed CR containing to the concerned Officer and where not expunged adverse on his representation or the Officer did not remarks represent 1/2 marks per(sic)
- (3) For securing less than 45% marks i.e. minimum passing score in any mandatory training 3 marks

9. Petitioner was considered for promotion but was deferred, superseded and declared unfit during the period of 2007 to 2009 by the Selection Board meeting for promotion/upgradation. The table of the said period is as under:---

Sr. No.	Date of promotion/upgradation Board	Graded marks	Deduction	Net marks	Marks required for Promotion	Decision of the Board
1.	2007	66.6	9.5	57.1	60	Deferred
2.	17-7-2008	66.7	8	58.7	60	Superseded
3.	7-3-2009	67.3	8	59.3	60	Unfit

10. The detail table and reasons argued by the respondents are as under:---

(a) Since ACR record of the officer was not complete. His ACRs for the years 2003 and 2004 were pending for which letters were also sent as mentioned in para-3 above. He was considered by the Selection Board and he was deferred for promotion.

(b) The officer was considered by the Selection Board during its meeting held on 17-7-2008 but did not achieve minimum threshold score for promotion, therefore, he was superseded.

(c) The officer was once again considered by the Selection Board during its meeting held on 7-3-2009 but he did not achieve minimum threshold score, therefore, he was not recommended fit for promotion and superseded.

(d) That the main reason of less threshold (graded marks) is that the officer during entire service from 1978 to 2009 has mostly been graded as "Good to Average".

Hence, on the aforementioned reasons, petitioner was deprived from promotion.

11. The first meeting held in 2007 out of graded marks 9.5 marks were deducted on the following ground:---

- (i) less recovery --2 marks deducted
- (ii) Stoppage of increment for one year without further effect --deducted 1.5 mark
- (iii) censure on the basis of office order dated 21-9-2006 --deducted 1.5 mark.
- (iv) censure vide letter No.6720-26 dated 4-10-2007 --1.5 mark deducted,
- (v) censure vide letter No.8358-61 dated 13-8-2008 --1.5 mark deducted

12. The petitioner was deferred in 2007 on the ground that the said deduction of marks and non-production of ACRs for the year 2003-2004. It is also on record that penalty imposed vide order dated (sic)112-2-2002 through which increment for one year was withheld/ stopped but same penalty was set aside in 2008 on acceptance of appeal of petitioner, even then 3 marks were deducted. On the basis of censure 4.5 marks were also deducted.

13. Petitioner was graded marks with 66.6, 66.7 and 67.3 by the Promotion/Up-gradation Board in the years 2007, 2008 and 2009 respectively, however, he refuted the deductions allegedly made by respondents which have been shown as 9.5, 8 and 8 during the years 2007, 2008 and 2009 respectively, the details of which have been fully mentioned in Annexure-B. According to petitioner 2 marks were deducted on account of imposition of minor penalty inflicted in the year 2002, thus illegally accounted for in the years 2007, 2008 and 2009. If the imposition of penalty in the year 2002 be account for even then in the year 2007 the aggregate of deductions comes to five or even if the penalty imposed in the year 2006, which was set aside in the year 2008, be taken into account, the aggregate comes to 6.1, as the fourth penalty imposed on 4-10-2007 was inflicted later in time in the year 2007 because the promotion committee meeting was held in that particular year in the month of March/April, 2007. Thus the net marks of petitioner secured in the year 2007 comes to 62.1 i.e. more than the marks required for promotion i.e. 60. Further in the year 2007 respondents deducted 08 marks whereas only 6.5 marks were to be deducted, thus the secured / net marks comes to 60.2 whereas the required marks for promotion was 60. Apart from the above, in the year 2009, 8 marks were deducted by the respondents whereas according to law at the most 06 marks may be deducted, thus leaving the net secured marks 61.3 which are over and the required marks for promotion.

14. Mere censure and minor penalty is not a hurdle in the way of petitioner. In this respect reference is made to case reported as "Abdul Majeed v. Government of Pakistan and others (2006 SCMR 1415), wherein it was held as under:---

"Censure is minor penalty, a sort of warning which may not have a serious stigma affecting the service career of a person and in any case the single penalty of censure cannot be considered sufficient for invoking the provisions of S.13(1)(i) of Civil Servants Act, 1973".

15. The performance of an individual could not be assessed only on the basis of ACRs, even adverse remarks of ACRs not communicated to the employee are ineffective and not to be considered at the time of promotion. Reliance is placed on Fida Hussain Javed and 3 others v. Director Food, Punjab and others (2004 SCMR 62), wherein it was held:----

"The contention of the learned Advocate Supreme Court on behalf of petitioner that their performance could only be assessed on the basis of ACR is not correct as a serious case of embezzlement of huge misappropriation of wheat was also got registered against the petitioners which aspect of the matter could have been taken into consideration by the competent authority."

16. The consideration for promotion would mean just and fair consideration and not as a matter of routine. Reliance is placed on Muhammad Afzal Khan v. Government of Punjab and others (2009 PLC (C.S.) 40), wherein it was held:---

"Consideration for promotion would mean a just and fair consideration and not as a matter of routine. High Court directed authority to place petitioner's case before Selection Board within specified time, which would consider his case fairly, justly and independent of pendency of enquiry, if not finalized on day of consideration of his case for promotion."

17. As mentioned above, the marks have illegally and wrongly been deducted, which caused out of turn promotion to the junior to petitioner. Out of turn promotion granted to juniors by ignoring the seniority would be illegal and mala fide and reliance is placed on Hammad Raza Qureshi v. Departmental Promotion Committee, Punjab Lahore etc. (2008 PLC (C.S.) 551), wherein it was held as under:---

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"Out of turn promotion granted to juniors by ignoring the seniority of seniors would be illegal and mala fide. High Court setting aside such out of turn promotion by accepting the writ petition of senior and directing departmental promotion committee to hold a fresh meeting for promotion according to the seniority."

18. In the case of petitioner penalty imposed was later on set aside, hence, 3 marks deducted have no nexus in case of petitioner. Further no one can be vexed twice for same cause. It was held in the case of Muhammad Saifullah v. Chief Secretary, Government of Sindh and 2 others (1985 PLC (C.S.) 1108) :---

"Successor-in-office deciding to proceed afresh, cancelling acquittal order, subjecting accused to fresh enquiry and passing order of minor penalty---Held, (1) action of successor was violative of principle of natural justice that no one can be vexed twice for same cause (ii) successor had no powers of review or revision and could not cancel acquittal order passed by his predecessor."

19. Petitioner in the light of above, has wrongly been superseded by ignoring the criteria laid down for promotion, which is void ab initio. The promotion of employee to a higher post is a matter of legal right and petitioner is found entitled for award of up-gradation and promotion from the date when his very first junior was promoted. Reliance is placed on Maj. Ziaul Hassan v. Mrs. Naseem Chaudhry (2000 SCMR 645) wherein it was held:---

" Promotion---Supreme Court had found that civil servant had not been promoted by superseding any officer senior to her; she was entitled to be promoted from the date her juniors were promoted and there was no valid reason not to consider her for the promotion. Mere fact that some disciplinary proceedings were pending against the civil servant was not a sufficient ground to disregard the order passed by the Supreme Court".

20. In case of Javed Hussain Shah v. Government of the Punjab and others reported as 2005 PLC (C.S.) 974, it was held that "High Court had ample powers to give direction to public functionaries to act in accordance with law in spite of the bar contained in Art. 212 of the Constitution read with S.4 of Service Tribunals Act, 1973, and action based on malice was required to be struck down---Constitutional petition before High Court was maintained in circumstances". Further the August Supreme Court in the case of "Pakistan International Airlines Corporation (PIAC) through Chairman and others v. Nasir Jamal Malik and others" reported as 2001 SCMR 934, it was held as under:---

"Maxim "audi alteram partem"---Applicability---Employer, who itself had framed Rules as well as Regulations for its domestic purposes, was bound to strictly follow/adhere to the same---Deviation from such Rules and Regulations is bound to violate principles of natural justice enshrined in the maxim "audi alteram partem" i.e. no one is to be condemned unheard---Where adverse action is being contemplated to be taken against the person/persons, he/they would have at least right to defend such action."

21. PEPCO/PESCO are substantially owned, controlled, managed and financed by the Government of Pakistan and performing functions with regard to the affairs of the Federation i.e. the Generation, Formation, Distribution and Supply of Electricity and even otherwise on the strength of Constitutional Guarantees enshrined in the Constitution, as a Fundamental Rights i.e. the right, to be dealt with in accordance with law and the equal protection of law as stipulated in Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, the writ petition is maintainable. Respondents have violated the Promotion Policy as well as the rules governing the subject-matter. Further, respondents have adopted the Promotion Policy of the Establishment Division Government of Pakistan, therefore, writ can be issued.

22. The crux of the case is that admittedly, petitioner being qualified and eligible joined WAPDA on 2-2-1978 as Junior Engineer Electrical, on open merit basis, was promoted and is working as DMG/Xcn in PESCO under the administrative control of PEPCO. A number of Xen/Senior Engineers were promoted to the post of Superintending Engineer in 2007, 2008 and 2009. Although the petitioner was served with

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various show cause notices and minor penalties were awarded time and again such minor penalties do not create hurdle in the way of petitioner for the purpose of promotion/up-gradation. The petitioner seems to be senior most and qualified having completed all codal formalities and requirements mandatory for promotion but respondents have illegally and unlawfully did not consider him from the purpose of upgradation/promotion, which act amount to discrimination.

23. In the light of the above, this petition is allowed and respondents are directed to consider the petitioner for the purpose of upgradation/promotions from the date when first junior respondent No.5 was promoted with all back-benefits.

HBT/174/P

Petition allowed.

2016 P L C (C.S.) 1099

[Lahore High Court]

Before Shahid Mubeen, J

ABDUL RAUF

Versus

GOVERNMENT OF THE PUNJAB through Secretary (Food), Civil Secretariat, Lahore and another

W.P.No.7261 of 2009, decided on 27th July, 2015.

(a) Civil Service---

---Promotion---Withholding of promotion due to pendency of enquiry---Scope---Promotion of employee was deferred due to pendency of enquiry against him---Validity---Pendency of enquiry and even minor penalty could not come in the way of promotion---Department was directed by High Court to place the matter before the departmental promotion committee within two months---Departmental promotion committee should consider the employee's case fairly, justly and in accordance with law, rules and regulations---Constitutional petition was accepted in circumstances.

2003 PLC (CS) 1496; 2008 PLC (CS) 1019 and 2009 PLC (CS) 40 rel.

(b) Punjab Service Tribunals Act (IX of 1974)---

---S. 4---Promotion---Denial of promotion---Appeal before Service Tribunal---Competency---When a civil servant was deferred for promotion, the case would fall within the ambit of fitness and against that order appeal before Service Tribunal was not competent.

2003 PLC (CS) 1496 rel.

Bilal Bashir Mian and Raja Tasawar Iqbal for Petitioner.

Asim Aziz Butt, Asstt. A.G. for the State along with Muhammad Asad SO (Estt.)

ORDER

SHAHID MUBEEN, J.--- Through this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has prayed that the respondents may very kindly be directed to promote the petitioner to the post of Assistant Director (Food) BPS-17 right from the date of occurring of the vacancies i.e. 2003 when he took over the charge of the post of Assistant Director (Food), with all consequential back benefits.

2. Briefly the facts of the case are that the petitioner was appointed as Assistant Accounts Officer in the Food Department through Punjab Public Service Commission. It is further asserted in the writ petition that he became eligible for promotion to the post of Assistant Director (Food) BPS-17 in the year 2006 which post is lying vacant with the department since 2003 and the petitioner is holding the post of Assistant Director (Food) since 04.08.2003. However, the petitioner was considered by the Department Promotion Committee (DPC) but he was deferred on the following grounds:--

"His qualification is M.Com. He joined Food Department in 1999 as Assistant Accounts Officer through Punjab Public Service Commission against initial requirement quota. He has more than seven years experience at his credit. His ACRs upto the year 2008 are complete and satisfactory. The ACR for the period 04.03.2008 to 13.08.2008 is pending with C.O. At present one enquiry on account of criminal negligence for non-ensuring safety of Govt. wheat in D. G. Khan District is pending against him. No recovery/printed draft para is pending against him. He is not clear for promotion due to pending enquiry."

3. It is contended by the learned counsel for the petitioner that pending enquiry is no ground for deferment of promotion. On the other hand learned Assistant Advocate General contends that he is a civil servant, hence writ is not competent. In reply to this contention of the learned Assistant Advocate General, learned counsel for the petitioner contends that when a person is deferred for promotion on account of some pending enquiry then it becomes a case of fitness against which appeal before the Punjab Service Tribunal is not competent.

4. Arguments heard. Record perused.

5. It is an established law laid down by the Apex Court that pendency of enquiry and even minor penalty cannot come in the way of promotion. In the present case the departmental representative who produced the record did not disclose any penalty available in the petitioner's record except pendency of inquiry. Reference may be made to 2003 PLC (CS) 1496, 2008 PLC (CS) 1019 and 2009 PLC (CS) 40. When a civil servant is deferred for promotion due to pendency of some enquiry the case does fall within the ambit of fitness and against that order appeal before the Punjab Service Tribunal is not competent.

6. In the attending facts and circumstances of the case, this Court has no option but to accept the writ petition. The respondents are directed to place the petitioner's promotion case before the Departmental Promotion Committee within a period of two months positively from the receipt of certified copy of this order. The Departmental Promotion Committee shall consider the petitioner's case fairly, justly and in accordance with law, rules and regulations. This exercise must be concluded within two months and result thereof be conveyed to the Deputy Registrar (Judicial) of this Court. This writ petition is disposed off in the above terms.

ZC/A-69/L

Petition accepted.

002 P.C (C.S.) 1375

[Punjab Service Tribunal]

Before Riaz Kayani, Chairman

MUHAMMAD AKRAM

versus

THE INSPECTOR-GENERAL OF POLICE, PUNJAB, LAHROE and 12 others

Appeal No.55 of 1998, decided on 30th October, 2001.

Civil Service

Police Service—Admission to List 'F' and pro forma promotion—Civil servant was refused admission to List 'F' with effect from 1-1-1981 and pro forma promotion as officiating Inspector of Police with effect from 9-4-1981 on ground that he had earned two minor penalties—Alleged two minor penalties or adverse entries were earned by civil servant in 1991 and 1992—Validity—Police circular letter, dated 7-11-1984, provided that while considering a civil servant for pro forma promotion assessment of his fitness for such promotion should be determined on the basis of his A.C.Rs. upto the date from which pro forma promotion was proposed to be allowed or total record upto the date of consideration of his case, should be examined—Only such record should be considered as would be available upto the date of pro forma promotion and subsequent record should not prejudice said assessment—Two minor penalties having been earned by the civil servant subsequently, the civil servant was entitled to be considered for admission to List 'F' and for pro forma promotion and said two subsequent adverse entries in A.C.R. of the civil servant would not be a hurdle in his way to secure his promotion.

Ch. Yar Muhammad Durraiana v. Government of the Punjab and another 1992 PLC (C.S.) 95 and Captain Sarfaraz Ahmed Mufti v. Government of Punjab and others 1991 SCMR 1637.ref. Masud Ahmad Riaz for Appellant.

Khadim Hussain Sindhu, District Attorney for Respondents.

Date of hearing: 17th October, 2001.

JUDGMENT

Muhammad Akram, has brought the present appeal whereby he has challenged orders dated 4-8-1999 by Deputy Inspector-General of Police, Rawalpindi Range, Rawalpindi, and subsequent orders dated 5-12-1997, 11-3-1999 and 4-8-1999 whereby he was refused admission to List 'F' w.e.f. 1-1-1984, pro forma promotion as Officiating Inspector w.e.f. 9-4-1981 and prayed for a direction to be given to respondent No.1 to consider the case of the appellant for promotion as D.S.P. from the date respondent No.2 was promoted.

2. Learned counsel for the appellant contended that appellant was directly recruited as Sub-Inspector in Pakistan Rangers on 13-10-1965 and on the dissolution of One Unit, he was transferred from Baluchistan. Police and, repatriated to Punjab Police in 1972 where after he was confirmed as Sub-Inspector in Rawalpindi Range w.e.f. 31-3-1978 and admitted to List 'F' on 1-10-1999 and promoted as Inspector on 7-10-1990. Grievance of the appellant is his claim to promotion as Inspector w.e.f. 1-1-1981, the date on E which his batch mates and juniors were promoted. His representation dated 28-11-1990 for ante dating his promotion and admission to List 'F' was rejected by Inspector-General of Police, Punjab, Lahore, on 4-8-1993 on the ground that he had earned two minor penalties.

3. Learned counsel drew my attention to para. 6 of the reply submitted by the Inspector-General of Police, Punjab, which is reproduced as under,—

"The appellant joined as Sepoy in Pakistan Rangers alongwith Dildar Ali, Asad Ullah Khan and Muhammad Tufail (now DSPs) one after the other in the month of October, November and December, 1965. Again their date of appointment as S.I. in Pakistan Rangers in the same (12-11-1965) whereas D.S.P. Dildar Ali and Muhammad Tufail were appointed as S.Is. on 12-2-1966 respectively. Similarly, the date of absorption of the petitioner in Striking Force Kalat, is the same as that of all the three DSPs i.e. 20-7-1966. The appellant alongwith Asad Ullah Khan and Muhammad Tufail DSPs reported their arrival in Punjab Police on 15-9-1972 whereas DSP Dildar Ali joined Punjab Police on 31-12-1982, three and half months after the petitioner and DSP Asad Ullah and Muhammad Tufail. Thereafter, all of them went to F.S.F. on deputation on one and the same date i.e. 1-1-1973 and transferred back to Rawalpindi Range on 25-9-73 (Asad Ullah Khan and Muhammad Tufail) and 29-9-1973 (Dildar Ali) and 30-9-1973, petitioner. However, all of them passed the Inter Class Course in the term ending 31-3-1975. Thereafter, they qualified the Upper Class Course in March, 1978. The date of confirmation as S.I. of Dildar Ali, DSP, Asad Ullah and the appellant is one and the same which was, however, ante dated as 12-10-1965, 31-3-1978, and 12-2-1966, respectively. However, the ante dated confirmation as S.Is. of the appellant and DSP Dildar Ali are being withdrawn by the competent Authority as it was given by misapplication of rules. Subsequently, the date of admission to list 'F' of Dildar Ali, Asad Ullah and Muhammad Tufail DSPs. was ante dated by CPO as 1-1-1981 while the date of admission to list 'F' of petitioner Inspector Muhammad Akram remained the same as 1-1-1981. All the three DSPs were promoted as Officiating Inspector from 9-4-1981 while the date of promotion of the appellant is 7-10-1990. The date of promotion as Inspector of DSP Dildar Ali was further ante dated as 23-1-1974 on the basis of judgment of the Punjab Service Tribunal. Although the petitioner has a good case for bringing him at par with all the three DSPs coming together from the Rangers and joining the Punjab Police on 15-9-1972, yet the adverse entries pertain to 1982 which are still intact and all these punishments have not been set aside in appeal by the next competent Authority so far. Similarly, his earlier representation for seniority/ante dating admission to list 'F' has already been considered and rejected by the Additional I-G. Police vide order dated 4-8-1993. In this situation, when there is no improvement in the service record, he has no case for ante dated seniority."

4. Argument as it emerges from the reply submitted by respondent No.1 in para. 6 of his comments is that appellant earned two adverse entries for the years

Atticus
1/11/20
20/11/2001

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1991 and 1992 which are the main hurdles in his way to secure his promotion claimed in the appeal. To be in line with the reasoning given in the ensuing paragraphs, promotion is being claimed as Inspector w.e.f. 9-4-81 and admission to list 'F' w.e.f. 1-1-1981. In this regard, learned counsel has drawn my attention to Police Circular letter dated 7-11-1984 where the following policy was laid down:-

"A question has arisen whether while considering a Government servant for pro forma promotion assessment of his fitness for promotion should be determined on the basis of his A.C.Rs. upto the date from which pro forma promotion is proposed to be allowed or total record upto the date of consideration of the case should be examined.

The matter has been examined and it has been decided that in order to be fair only such record should be considered as would have been available upto the date of pro forma promotion because in such case that fact which needs determination is whether the employee was fit for promotion on the given previous date. Subsequent record should not prejudice such assessment. The question of any anomalies arising out of this should not rather cannot arise because first of all the concerned Government servant has to be promoted with immediate effect on the basis of total record. If he is not so promoted, the question of pro forma promotion would not arise."

5. While interpreting this policy letter, Hon'ble Lahore High Court, in the case of Ch. Yan Muhammad Durraiana v. Government of the Punjab and another reported in 1992 PLC (C.S.) 95, held as under:-

1991 and 1992 which are the main hurdles in his way to secure his promotion claimed in the appeal. To be in line with the reasoning given in the ensuing paragraphs, promotion is being claimed as Inspector w.e.f. 9-4-81 and admission to list 'F' w.e.f. 1-1-1981. In this regard, learned counsel has drawn my attention to Police Circular letter dated 7-11-1984 where the following policy was laid down:-

"The pro forma promotion, as is clear from the policy letter of the Government, is granted to the civil servants, who were ignored for promotion on account of pendency of some enquiry, adverse remarks etc. which are to be operative later on. The net result is that it is presumed as if these adverse remarks, enquiry etc. were non-existent and the national promotion was to be granted to the civil servant from due date."

6. The end result was that the appeal was accepted and the impugned orders were declared unlawful and the appropriate pro forma Promotion Committee/Provincial Selection Board were directed to consider to grant of pro forma promotion to the appellant in that case. The said rule of law was upheld by the Hon'ble Supreme Court in the case of Captain Sarfraz Ahmad Mufi v. Government of Punjab and others (1991 SCMR 1637)

7. Under the Constitution of Islamic Republic of Pakistan, 1973, this Tribunal is bound under Article 189 to following the dictum of the Supreme Court. I, therefore, hold that the order dated 4-8-1993, 5-12-1997, 11-3-1999 and 4-8-1999 passed by the respondents from time to time denying relief to the appellant are illegal and resultantly set aside. Respondent No. 1 shall now convene, without further loss of time, D.P.C./Pro forma Promotion Committee to consider the grant of pro forma promotion to the appellant in accordance with law from the dates claimed by him.

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Case Judgment

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The matter has been examined and it has been decided that in order to be fair only such record should be considered as would have been available upto the date of pro forma promotion because in such case that fact which needs determination is whether the employee was fit for promotion on the given previous date. Subsequent record should not prejudice such assessment. The question of any anomalies arising out of this should not rather cannot arise because first of all the concerned Government servant has to be promoted with immediate effect on the basis of total record. If he is not so promoted, the question of pro forma promotion would not arise."

5. While interpreting this policy letter, Hon'ble Lahore High Court, in the case of Ch. Yar Muhammad Durraina .v. Government of the Punjab and another reported in 1992 PLC (C.S.) 95, held as under:--

"It is, therefore, clear that petitioner was entitled to be considered for pro forma promotion and his case for promotion was wrongly and illegally deferred on 17-2-1982 and the service record of the petitioner only upto the date was required to be considered and the subsequent events cannot furnish basis for turning down his claim for pro forma promotion.

The pro forma promotion, as is clear from the policy letter of the Government, is granted to the civil servants, who were ignored for promotion on account of pendency of some enquiry, adverse remarks etc. which are to be operative later on. The net result is that it is presumed as if these adverse remarks, enquiry etc. were nonexistent and the national promotion was to be granted to the civil servant from due date.

6. The end result was that the appeal was accepted and the impugned orders were declared without lawful authority and the appropriate pro forma Promotion Committee/ Provincial Selection-Board were directed to consider to grant of pro forma promotion to the appellant in that case. The said rule of law was upheld by the Hon'ble Supreme Court in the case of Captain Sarfaraz Ahmad Mufti v. Government of Punjab and others (1991 SCMR1637)

7. Under the Constitution of Islamic Republic of Pakistan, 1973, this Tribunal is bound under Article 189 to following the dictum of the Supreme Court. I, therefore, hold that the order dated 4-8-1993, 5-12-1997, 11-3-1999 and 4-8-1999 passed by the respondents from time to time denying relief to the appellant are illegal and resultantly set aside. Respondent No. 1 shall now convene, without further loss of time, D.P.C/ Pro forma Promotion Committee to consider the grant of pro forma promotion to the appellant in accordance with law from the dates claimed by him.

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(17)

**GOVERNMENT OF THE KHYBER PAKHTUNKHWA ESTABLISHMENT AND
ADMINISTRATION DEPARTMENT.**

NOTIFICATION

Peshawar dated the 16th September, 2011.

NO.SO(REG-VI) E&AD/2-6/2010.-In exercise of the powers conferred by section 26, of the Khyber Pakhtunkhwa Civil Servants Act. 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

1. **Short title, application and commencement.**—(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

(3) These shall come into force at once.

2. **Definitions.**—(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "accused" means a person in Government service against whom action is initiated under these rules;
- (b) "appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;
- (c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made thereunder or an authority as notified under the specific laws/rules of Government;
- (d) "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;
- (e) "Chief Minister" means the Chief Minister of the Khyber Pakhtunkhwa;
- (f) "competent authority" means-
 - (i) the respective appointing authority;
 - (ii) in relation to a Government servant of a tribunal or court functioning under Government, the appointing authority or the Chairman or presiding officer of such tribunal or court, as the case may be, authorized by the appointing authority to exercise the powers of the competent authority under these rules;

Provided that where two or more Government servants are to be proceeded against jointly, the competent authority in relation to the accused Government servant senior most shall be the competent authority in respect of all the accused.

- (g) "corruption" means-
 - (i) accepting or obtaining or offering any gratification or valuable thing, directly or indirectly, other than legal remuneration, as a reward for doing or for bearing to do any official act; or
 - (ii) dishonestly or fraudulently misappropriating, or indulging in embezzlement or misusing Government property or resources; or
 - (iii) entering into plea bargain under any law for the time being in force and returning the assets or gains acquired through corruption or corrupt practices voluntarily; or
 - (iv) possession of pecuniary sources or property by a Government servant or any of his dependents or any other person, through his or on his behalf,

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17. **Departmental appeal and review.**—(1) An accused who has been awarded any penalty under these rules may, within thirty days from the date of communication of the order, prefer departmental appeal to the appellate authority:

Provided that where the order has been passed by the Chief Minister, the accused may, within the aforesaid period, submit a review petition directly to the Chief Minister.

(2) The authority empowered under sub-rule (1) shall call for the record of the case and comments on the points raised in the appeal from the concerned department or office, and on consideration of the appeal or the review petition, as the case may be, by an order in writing-

- (a) uphold the order of penalty and reject the appeal or review petition; or
- (b) set aside the orders and exonerate the accused; or
- (c) modify the orders or reduce the penalty.

(3) An appeal or review petition preferred under these rules shall be made in the form of a petition, in writing, and shall set forth concisely the grounds of objection in impugned order in a proper and temperate language.

18. **Appearance of counsel.**—No party to any proceedings under these rules at any stage of the proceedings, except proceedings under rule 19, shall be represented by an advocate.

19. **Appeal before Khyber Pakhtunkhwa Province Service Tribunal.**—(1) Notwithstanding anything contained in any other law or rules for the time being in force, any Government servant aggrieved by any final order passed under rule 17 may, within thirty days from the date of communication of the order, prefer an appeal to the Khyber Pakhtunkhwa Province Service Tribunal established under the Khyber Pakhtunkhwa Province Service Tribunals Act, 1974 (Khyber Pakhtunkhwa Act No. I of 1974).

(2) If a decision on a departmental appeal or review petition, as the case may be, filed under rule 17 is not communicated within period of sixty days of filing thereof, the affected Government servant may file an appeal in the Khyber Pakhtunkhwa Province Service Tribunal within a period of ⁴[ninety] days of the expiry of the aforesaid period, whereafter, the authority with whom the departmental appeal or review petition is pending, shall not take any further action.

20. **Exception.**—Notwithstanding anything to the contrary contained in these rules, in cases where Government servants collectively strike work, wilfully absent themselves from duty or abandon their official work, the competent authority in respect of senior most accused may serve upon them through newspapers or any other mean, such notice as may be deemed appropriate to resume duty and in the event of failure or refusal to comply with the directive contained in the notice, impose upon the defaulting Government servants any of the major penalties prescribed in these rules.

21. **Indemnity.**—No suit, prosecution or other legal proceedings shall lie against the competent authority or any other authority for anything done or intended to be done in good faith under these rules or the instructions or directions made or issued there-under.

⁵[.....]

23. **Repeal.**—(1) The Khyber Pakhtunkhwa government servants (Efficiency & Discipline) Rules, 1973 are hereby repealed.

(2) Notwithstanding the repeal of the aforesaid rules, all proceedings pending immediately before the commencement of these rules against any Government servant under repealed rules shall continue under these rules.

(3) Notwithstanding the repeal of the aforesaid rules, all proceedings pending immediately before the commencement of these rules against any employee under the said repealed rules or under the Khyber Pakhtunkhwa Civil Servants Act, 1973 and rules made thereunder, or any other law and rules shall continue under that law and rules, in the manner provided thereunder.

⁴ Subs. by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.

⁵ Deleted by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.



KHYBER PAKHTUNKWA
PUBLIC SERVICE COMMISSION

2-Fort Road Peshawar Cantt.

Tele No: 091-9214131

No.KP/PSC/Admn/LF-1174/ **014938**

Date: 31-12-2020

119
Handwritten notes and signatures in the top right corner.

To

Mr. Khalilullah Junior Clerk,
Examination Branch PSC.

Subject: WRIT PETITION (CONVERTED INTO DEPARTMENTAL APPEAL) FILED BY MR. KHALILULLAH JUNIOR CLERK AGAINST THE ORDER OF SECRETARY PSC DATED 09.11.2020

I am directed to refer to your appeal dated 20.11.2020 and Writ Petition No.5315-P/20 (converted into Departmental appeal) on the subject noted above and inform that the Chairman Khyber Pakhtunkhwa Public Service Commission being Appellate Authority in exercise of powers conferred upon him under Rule 17 2(c) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has been pleased to convert minor penalty of "withholding promotion for three years" into "withholding promotion for one year".

Assistant Director (Admn)

1. PS to Chairman, Khyber Pakhtunkhwa PSC.
2. PS to Secretary, Khyber Pakhtunkhwa PSC.
3. PA to Senior Law Officer, Khyber Pakhtunkhwa PSC.

Assistant Director (Admn)

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Handwritten signature and initials over the typed name "Assistant Director (Admn)".



KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

OFFICE ORDER

WHEREAS Mr. Khalilullah Junior Clerk (BPS-11), Khyber Pakhtunkhwa Public Service Commission (hereinafter referred to as Accused) was served with charge sheet under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the acts / omissions mentioned in statement of allegations;

AND WHEREAS, Mr. Tanzil ur Rehman Assistant Psychologist PSC was appointed as Inquiry Officer to probe into the charges;

AND WHEREAS, the Inquiry Officer submitted his report stating therein that accused took admission in Medical Faculty, Karachi for Diploma of Laboratory without seeking permission / NOC from competent authority, remained absent from official duty w.e.f 18.08.2020 to 03.09.2020 without permission of competent authority and guilty of misconduct, and he as such recommended for further action as deemed appropriate by the competent authority;

AND WHEREAS, the Competent Authority (Secretary PSC) while exercising powers conferred under Rule 14(4) of the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 served the accused with a Show Cause Notice bearing No. 010690 dated 16.10.2020, conveying therein award of tentative minor penalty of withholding promotion for three years as provided in Rule 4(1)(a)(ii) of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011;

AND WHEREAS, the accused submitted reply in writing to the Show Cause Notice on 22.10.2020 which was found unconvincing and whereas he did not request to be heard in person;

NOW THEREFORE the Secretary PSC being competent authority, in exercise of powers conferred upon her under Rule 14 (5)(ii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 is pleased to award minor penalty of "withholding promotion for three year" as provided in Rule 4(1)(a)(ii) of the rules ibid with immediate effect.

--sd/--

Secretary

Dated: 9/11/2020

No.KP/PSC/Admn/PF-212/

011694

Copy to: -

1. The Accountant General, Khyber Pakhtunkhwa.
2. Director Examination, Khyber Pakhtunkhwa PSC.
3. PS to Chairman, Khyber Pakhtunkhwa PSC.
4. PS to Secretary, Khyber Pakhtunkhwa PSC.
5. The Deputy Director (Admn), Khyber Pakhtunkhwa PSC.
6. The Cashier, Khyber Pakhtunkhwa PSC.
7. Official concerned.
8. Personal file of official.
9. Office Order file.
10. Master file.

*Approved
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[Signature]
Assistant Director (Admn)



KHYBER PAKHTUNKWA
PUBLIC SERVICE COMMISSION

2-Fort Road Peshawar Cantt.

Tele No: 091-9214131

No.KP/PSC/Admn/LF-1174/

Date: 31-12-2020

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Assistant Director (Admn)

1. PS to Chairman, Khyber Pakhtunkhwa PSC.
2. PS to Secretary, Khyber Pakhtunkhwa PSC.
3. PA to Senior Law Officer, Khyber Pakhtunkhwa PSC.

Assistant Director (Admn)

Attended
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[Handwritten signature]
Assistant Director (Admn)

Telephone No. 091-9222516



KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
2-FORT ROAD, PESHAWAR CANTT
(NEAR GOVERNOR HOUSE)

AUTHORITY LETTER

Mr. Mehtab Gul Law Officer-II (BS-17), Khyber Pakhtunkhwa Public Service Commission is hereby nominated / authorized to get the comments vetted and submit on behalf of, Khyber Pakhtunkhwa Public Service Commission.

Secretary
Khyber Pakhtunkhwa
Public Service Commission

BC-10-7924

وکالت نامہ

بعدالت: پشاور ہائی کورٹ پشاور
بنام خلیل اللہ KPPSC، علیہ
مخانب Petitioner دعویٰ w.o.p
تاریخ 02-01-21

باعث تحریر آنکہ مقدمہ مندرجہ بالا عنوان اپنی طرف سے واسطے پیروی و جوابدہی بمقام خلیل اللہ کیلئے جاوید اقبال گل بیلہ لٹڈ و کیٹ ہائی کورٹ کو بذریعہ شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشی کا خود یا بزرگیہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا، اگر پیشی پر من مظر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کی کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کوکل ساختہ پر داختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپروٹاشی و راضی نامہ فیصلہ برخلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و براڈگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا ترقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا بینگی علیحدہ مختار نہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہر امر دہی اور ویسے ہی اختیارات حاصل ہوں گے جیسے کے صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا کہ سند رہے۔ مورخہ 02-01-2020 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

FILED TODAY

Deputy Registrar

04 JAN 2021

Accepted
Accepted
Accepted

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Accepted