

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

**Service Appeal No. 3976/2020**

**BEFORE:** SALAH UD DIN --- MEMBER(J)  
MIAN MUHAMMAD --- MEMBER(E)

**Engineer Muhammad Pervez, Executive Engineer (Rtd), C&W  
Department, Peshawar. .... (Appellant)**

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. Secretary C&W Department, Civil Secretariat, Peshawar.
3. Mr. Muhammad Uzair, Establishment Department, Civil Secretariat, Peshawar. .... **(Respondents)**

**Present:**

MR. YOUSAF KHAN,  
Advocate --- For Appellant.

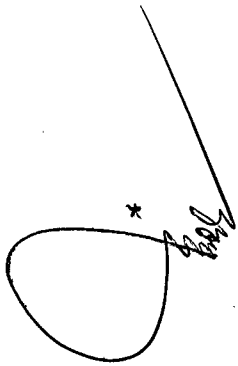
MUHAMMAD RIAZ KHAN PAINDAKHEL,  
Assistant Advocate General, --- For respondents

Date of Institution..... 22.04.2020  
Date of Hearing.....15.09.2022  
Date of Decision.....22.09.2022

**JUDGEMENT.**

**MIAN MUHAMMAD, MEMBER(E):-** The appellant has invoked jurisdiction of the Service Tribunal through the instant service appeal dated 22.04.2020 with the prayer that "On acceptance of this appeal this Honourable Tribunal may very graciously be pleased to grant proforma/notional promotion to the appellant with all back benefits or any other relief this Honourable Tribunal deem fit in the interest of justice may also be granted to the appellant".

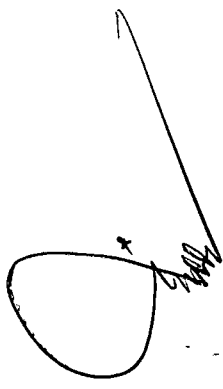
02. Brief facts of the case are that the appellant after having rendered 33 years service in the respondent department, was retired as Executive Engineer in BS-18 on attaining the age of superannuation w.e.f. 09.08.2018 vide notification dated 14.11.2019. The department issued Notification dated 11.11.2019 after his retirement whereby the proceedings against the appellant were abated without adversity on the ground of Show Cause Notice containing the penalty of "withholding of 10% for 03 years of the pension in terms of clause (a) of Rule 1.8 of the Pension Rules 1963." The appellant had been previously proceeded against and imposed the penalty of "compulsory retirement and recovery of Rs. 18,55,680/- vide order dated 12.01.2012 which he challenged through service appeal No. 370/2016. The Service Tribunal vide its judgement dated 30.09.2016 set aside the then impugned order, reinstated the appellant into service with further direction to conduct denovo enquiry within a period of sixty days leaving the matter of back benefits to the outcome of denovo enquiry. In pursuance of the judgement of Service Tribunal, denovo enquiry was conducted and on submission of the enquiry report, the appellant was exonerated of the charges vide order dated 28.02.2018. During the period of litigation, immediate junior of the appellant at Serial No. 29 of the seniority list of Executive Engineers (BS-18) (private respondent No. 3) was promoted as Superintending Engineer (BS-19) vide Notification dated 17.01.2013 and then promoted as Chief Engineer (BS-20) vide Notification dated 28.05.2018. The appellant is seeking proforma promotion in BS-19 as well as BS-20 from the date when his immediate junior (private respondent No. 3) was promoted.

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03. On admission of the service appeal in preliminary hearing on 08.10.2020, the respondents were put on notice to submit written defense through reply/para-wise comments. Reply/Parawise comments were submitted on 09.06.2021. We have heard learned counsel for the appellant as well as learned Assistant Advocate General for the respondents in Divisional Bench and gone through the record thoroughly with their valuable assistance today.

04. Learned counsel for the appellant contended that earlier the appellant was imposed the major penalty of "compulsory retirement from service alongwith recovery of Rs. 18,55,680/-" due to the allegations of over payment to the contractor, vide order dated 12.01.2012 which was challenged in the Service Tribunal. The Service Tribunal vide its judgement dated 30.09.2016 set aside the order, remanded the case to the department for denovo enquiry within sixty days beside reinstatement of the appellant in service. The appellant was reinstated in service as Assistant Engineer (BS -17) instead of Executive Engineer (BS-18) in continuation of earlier notification dated 08.03.2013, vide notification dated 17.09.2018. The denovo enquiry committee so constituted, submitted its report with recommendation of exoneration of the appellant from the charges who was thus, exonerated by the competent authority vide order dated 28.02.2018 but showing him in BS-17 as Assistant Engineer despite the fact that it was rectified by the department when shown as Executive Engineer (BS-18) on 17.09.2018. As the Service Tribunal judgement had specifically held the matter of back benefits subject to the outcome of denovo enquiry and in which he was exonerated

vide order dated 28.02.2018 therefore, he was not only entitled to all pensionary benefits but also to have been retired in BS-20 instead of BS-18. He further argued that depriving the appellant of his due rights by the department is violation of his fundamental rights guaranteed under Articles 4, 9, 14 and 25 of the Constitution. He has continuously been discriminated and never treated in accordance with law on the subject, facts and norms of justice. In support of his arguments, learned counsel for the appellant relied on 2017 PLC (C.S) Note 50, 2016 SCMR 1784, 2016 PLC (C.S) 408, 2018 PLC (C.S) 126, 2018 PLC (C.S) Note 170, 2021 SCMR 962 and 2021 PLC (C.S) 1226. The Service Tribunal may graciously accept the service appeal as prayed for, he concluded.




05. Learned Assistant Advocate General on the other hand, controverted assertions of the appellant contained in service appeal and negated the arguments of learned counsel for the appellant. He contended that the appellant was reinstated in BS-17 as Assistant Engineer because the Service Tribunal had clearly ordered his reinstatement in service and the appellant due to reduction to lower post for two years, was in BS- 17. Moreover, the case was remanded to the department for conducting denovo enquiry while the matter of back benefits was left to be subject to the outcome of the denovo enquiry. The order of his “compulsory retirement” dated 12.01.2012 had been issued while he was Assistant Engineer (BPS-17). He denied assertion of the appellant to have submitted departmental appeal because there is no diary number and date to show its authenticity and to establish to have been received in the department. The

appeal is not based on facts, may therefore be dismissed with costs, he requested.

06. Careful perusal of the record reveals that the appellant while posted as Executive Engineer (BS-18) Highway Division, Kurram was initially proceeded against under Khyber Pakhtunkhwa, Removal from Service (Special Powers) Ordinance, 2000 for "willful absence" and imposed major penalty of "reduction to lower post" on 16.09.2010. So, he was downgraded from the post of Executive Engineer (BS-18) to Assistant Engineer (BS-17). The appellant challenged it through service appeal No. 83/2011 and the Service Tribunal declared it in violation of FR 29, restricted the penalty to two years, vide judgement dated 26.07.2012. However, the period of two years was later on specified to be operative w.e.f 16.09.2010, vide subsequent order dated 08.03.2013. The period of that penalty therefore, expired on 15.09.2012. But no order of his restoration to the post of Executive Engineer (BS-18) was issued by the department at the relevant time. During this period, the appellant was jointly proceeded against yet in another case "Construction of pre-stressed and steel Bridges/causeways on existing roads in Kurram Agency ADP No. 473 (2009-10)" under the Khyber Pakhtunkhwa, Removal from Service (Special Powers) Ordinance, 2000 wherein charge sheet dated 30.06.2011 was served on the appellant and Engineer Kifayatullah XEN C&W Division Kohat was appointed as Enquiry Officer who completed the enquiry report and recommended imposition of minor penalty of "stoppage of 03 increments with accumulative effect." It is not only astonishing but beyond comprehension that Show Cause Notice alongwith

this enquiry report has been issued to the appellant on 30.07.2019 (after 8 years) when he had already attained the age of superannuation on 09.08.2018 duly notified by the department on 14.11.2019. The appellant was again proceeded against under the Khyber Pakhtunkhwa, Removal from Service (Special Powers) Ordinance, 2000 for alleged "irregularity by releasing the earnest money/security deposit amounting to Rs. 34,34,529/- to the contractor, prior to completion of the scheme." This time two members committee comprising Engineer Shahid Hussain Director (P&M) C&W Department and Mr. Zarif-ul-Mani (PCS GS) PPHI, FR Peshawar. Based on the enquiry report of the enquiry committee, the appellant was compulsorily retired besides recovery of Rs. 18,55,680/- vide order dated 12.01.2012 which the appellant challenged through service appeal No. 370/2016 in the Service Tribunal. The Service Tribunal vide its judgement dated 30.09.2016 set aside order dated 12.01.2012, reinstated the appellant in service and remanded the case to the respondent department with the direction to conduct denovo enquiry within a period of sixty days leaving the matter of back benefits to the outcome of denovo enquiry. The appellant was reinstated in service for the purpose of denovo enquiry, in pursuance of the judgement of Service Tribunal. Interestingly, the proceedings which had been initiated against him under the Khyber Pakhtunkhwa, Removal from Service (Special Powers) Ordinance, 2000 were now switched over to Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 as has been admitted in Para-4 of the reply/Parawise comments of respondents despite the fact that conclusion of the enquiry proceedings were required to have been made under the same law. The denovo enquiry

committee comprising Mr Fayaz Ali Shah AIG (Prisons) and Engineer Ahmad Nabi Sultan, Director (Construction) PKHA recommended the appellant for exoneration of the charges leveled against him. Based on the report of denovo enquiry, the appellant was exonerated of the charges vide order dated 28.02.2018 but still he was shown as Assistant Engineer (BS-17) despite the fact that the period of his earlier penalty of "reduction to lower post" in another case of "willful absence" had already completed on 15.09.2012. This rectification was however, made by the department vide notification dated 17.09.2018. His date of superannuation w.e.f. 09.08.2018 was also notified after one year, three months and five days on 14.11.2019. All these lapses, casual attitude and exhibited carelessness in disciplinary proceedings by the department speak volume of apathy, inefficiency and poor performance of the respondent department.




07. The appellant was finally exonerated of the charges leveled against him in the enquiry initiated on 30.06.2011, vide order dated 28.02.2018. He therefore, stood restored and regained the seniority position in service as Executive Engineer (BS-18). Reliance is placed on 2021 SCMR 962 which lays down the principle, "civil servant once exonerated of the charges would stand restored in service as if he was never out of it and would be entitled to back benefits." It is a matter of record and which is not disputed that the appellant's name appeared at Serial No. 27 whereas that of private respondent No. 3 was at service No. 29 of the seniority list of Executive Engineers (BS-18) notified by the respondent department on 11.06.2010. Had the appellant not been facing the enquiry proceedings which ultimately culminated in his exoneration

on 28.02.2018, he would have been considered and cleared for promotion by the PSB on 14.12.2012 when his immediate junior (private respondent No. 3) was promoted from the post of Executive Engineer (BS-18) to the post of Superintending Engineer (BS-19).

08. As a sequel to the above, we have arrived at the conclusion that the appellant has valid reasons based on facts, circumstances and material on record for proforma promotion. The instant service appeal is partially allowed and the appellant be given proforma promotion as Superintending Engineer (BS-19) with all consequential benefits from the due date when his immediate junior (private respondent No. 3) was promoted. Parties are left to bear their own costs. File be consigned to the record room.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 22<sup>nd</sup> day of September, 2022.*

  
(SALAH UD DIN)  
MEMBER (J)

  
(MIAN MUHAMMAD)  
MEMBER (E)



**ORDER**  
22.09.2022

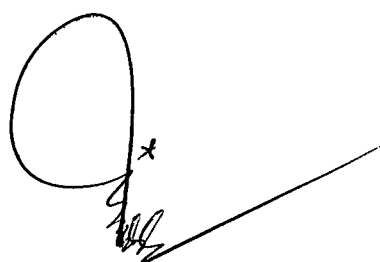
Mr. Yousaf Khan, Advocate for the appellant present.

Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard.

02. Vide our detailed judgement of today separately placed on file consisting (08) pages, we have arrived at the conclusion that the appellant has valid reasons based on facts, circumstances and material on record for proforma promotion. The instant service appeal is partially allowed and the appellant be given proforma promotion as Superintending Engineer (BS-19) with all consequential benefits from the due date when his immediate junior (private respondent No. 3) was promoted. Parties are left to bear their own costs. File be consigned to the record room.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 22<sup>nd</sup> day of September, 2022.*

  
(SALAH UD DIN)  
MEMBER (J)

  
(MIAN MUHAMMAD)  
MEMBER (E)

08.09.2022

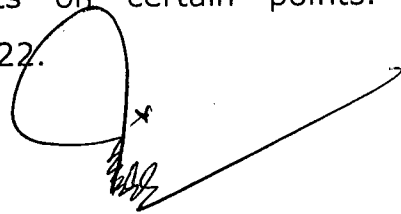
Bench is incomplete, therefore, case is adjourned to  
15 / 9 /2022 for the same as before.


  
Reader

15.09.2022

Appellant alongwith his counsel present. Mr. Riaz Ahmad Painsdakhel, Assistant Advocate General for the respondents present.

Learned counsel for the parties addressed further arguments on certain points. To come up order on 20.09.2022.

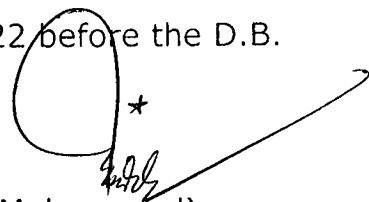
  
(Mian Muhammad)  
Member (Executive)

  
(Salah-Ud-Din)  
Member (Judicial)

20.09.2022

Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Painsdakhel, Assistant Advocate General for the respondents present.

Due to rush of work in D.B as well as S.B, order could not be announced. Adjourned. To come up for order on 22.09.2022 before the D.B.

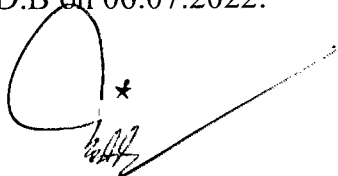
  
(Mian Muhammad)  
Member (Executive)

(Salah-Ud-Din)  
Member (Judicial)

05.07.2022

Appellant alongwith his counsel Mr. Yousaf Khan, Advocate present. Mr. Muhammad Abbas Khan, Assistant alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Partial arguments heard. To come up for remaining arguments before the D.B on 06.07.2022.



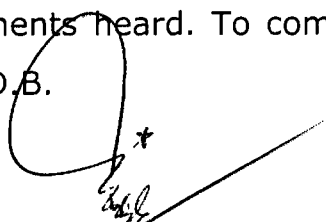
(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

06.07.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Arguments heard. To come up for order on 26.07.2022 before the D.B.



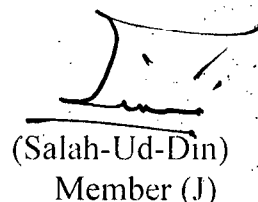
(Mian Muhammad)  
Member (E)

(Salah-ud-Din)  
Member (J)

26<sup>th</sup> July 2022

Appellant in person present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Since the learned Member (Executive) Mr. Mian Muhammad is on summer vacations, therefore, order could not be announced. Adjourned. To come up for order on 08.09.2022.



(Salah-Ud-Din)  
Member (J)

05.01.2022

Appellant in person present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Former made a request for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments before the D.B on 24.01.2022.



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



Chairman

24.01.2022

Appellant in person present. Mr. Muhammad Riaz Khan Paindakheil Assistant Advocate General for the respondents present.

Mrs. Rozina Rehman learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 28.03.2022 before D.B.

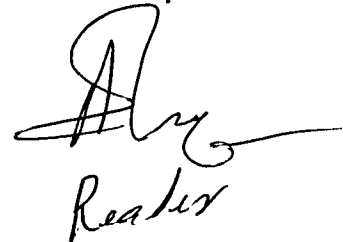


(Salah-Ud-Din)  
Member (J)

28-3-2022

*Proper DB not available*

*The case is adjourned to come up for the same as before on 5-7-2022*




*Reader*

30.03.2021

Counsel for appellant and Mr. Kabirullah Khattak, Additional Advocate General for official respondents present.

Neither written reply on behalf of official respondents as well as private respondent submitted nor any representative on their behalf is present, therefore, notices be issued to them for submission of written reply/comments for 09.06.2021 before S.B.

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

09.06.2021

Appellant with counsel and Mr. Kabirullah Khattak, Addl. AG alongwith Tauseef, Steno for the respondents present.

Representative of the respondents submitted reply on behalf of respondents. The appeal is entrusted to D.B for arguments on 1.11.2021.

  
Chairman

01.11.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

The learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 02.02.2022 before D.B.

  
Chairman

27.01.2021

Counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Neither written reply on behalf of respondent submitted nor representative of the department is present, therefore, notices be issued to the respondents for submission of written reply/comments. Adjourned to ~~30.03~~ 2021 on which date file to come up for written reply/comments before S.B.

(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

26.02.2021

Counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Neither written reply on behalf of respondents submitted nor representative of the department is present, therefore, learned Additional Advocate General is directed to contact the respondents and furnish written reply/comments on the next date of hearing. Adjourned to 30.03.2021 on which date file to come up for written reply/comments before S.B.

(Muhammad Jamal Khan)  
Member

08.10.2020

Counsel for the appellant present.

Learned counsel contends that the appellant was proceeded against departmentally. The proceedings culminated into imposition of major penalty of compulsory retirement and also recovery of Rs. 1855680/-. During the continuation of penalty juniors to the appellant were promoted by the respondents against posts in BPS-20. The punishment of appellant was, however, set aside by the Tribunal and the case was remanded to the respondents for denovo enquiry. The denovo enquiry resulted in exoneration of the appellant on 28.02.2018. Despite, the appellant was not considered for the requisite promotion/proforma promotion for no fault on his part.

Subject to all just exceptions, instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 07.12.2020 before S.B.


  
Chairman


07.12.2020

Junior counsel for appellant present.

An application for grant of permission to deposit security and process fee was submitted which is allowed with direction to deposit the same within 3 days positively, where-after, notices be issued to respondents.

Adjourned to 26.01.2021 for reply/comments, before S.B.

  
(Rozina Rehman)  
Member (J)





  
Appellant Deposited  
Security & Process Fee

9/12

## FORM OF ORDER SHEET

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

Case No.- 3976 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/05/2020	<p>The appeal of Muhammad Parvez resubmitted today by Mr. Yousaf Khan Advocate, may be entered in the institution registrar and put up to the learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 4/5/2020</p>
2-		<p>This case is entrusted to S.B for preliminary hearing to be put up there on <u>03-06-2020</u></p> <p style="text-align: right;"> MEMBER</p>
	03.06.2020	<p>Nemo for the appellant.</p> <p>Notices be issued to appellant/counsel for preliminary hearing on 11.08.2020 before S.B.</p> <p style="text-align: right;"> Chairman</p>
	11.08.2020	<p>Mr. Muhammad Usman Advocate on behalf of learned counsel for the appellant requests for adjournment as the learned counsel is attending his ailing wife at Islamabad.</p> <p>Adjourned to 08.10.2020 before S.B.</p> <p style="text-align: right;"> Chairman</p>




The appeal of Engineer Muhammad Pervaz received today i.e. 23.04.2020 by Mr. Yousaf Khan, Advocate is incomplete on the following score which is returned to his counsel for completion and resubmission within 15 days.

- 1- Annexures of the appeal are not flagged which may be flagged.
- 2- Annexures of the appeal are not attested which may be attested.
- 3- Page -40 of the appeal is illegible which may be replaced by legible/better one.

No. 1029 /S.T,

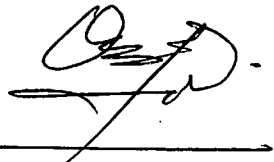
Dt. 23-04/2020

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Yousaf Khan Adv, Peshawar.

R/sir,

The file is resubmitted  
after doing the needful pl.

  
4/5/20

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER**  
**PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 3976/2020

**Engl Muhammad Pervez**

**Versus**

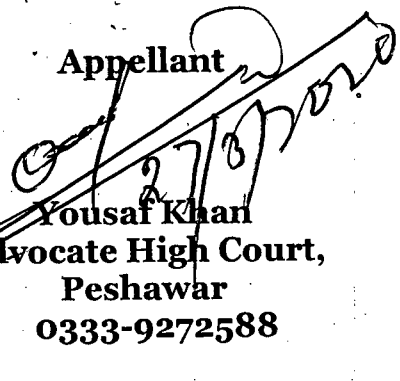
**Govt. of KPK etc**

**Index**

S.No.	Description of documents	Annexures	P. No.
1	Memo of appeal		1-6
2	Affidavit		7
3	Copies of order of retirement order dated 14-11-2019 and 10-12. 2019	A	8-9
4	Copy of compulsory retirement order and recovery letter No. SOE/C&W/8-21/2010 dated 12-01-2012	B	10
5	Copy of Service Tribunal order in service appeal No. 370/2016 decided on 30-09-2016 as well as Notification for reinstatement	C	11-29
6	Copy of Department letter No. SOE/C&WD/8-21/2010 dated 02-02-2017	D	30
7	Copy of letter dated 24-02-2017 etc and reply of the appellant	E	31-37
8	Copy of letter No. SOE/C&WD/8-21/2010 dated 28-02-2018 for exoneration	F	38
9	Copy of letter No. SOE/C&WD/4-53/2013 dated 17-01-2013 and No. SO(E-1) E&AD/9-232/2018 dated 28-05-2018 and No. SO(E-1) E&AD/9-232/2018 dated 31-08-2018 for promotion and posting	G	39-41
10	Copies of seniority	H	42-47
	Copy of Secretary C&W order No. SOE/C&WD/8-7/2011 dated 11.11.2019	I	48
11	Copy of departmental appeal	J	49-50
12	Wakalat Nama		

Through

Appellant

  
Yousaf Khan  
Advocate High Court,  
Peshawar  
0333-9272588

1

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER**  
**PAKHTUNKHWA, PESHAWAR**

Re-submitted to-day and filed.

Khyber Pakhtunkhwa  
Service Tribunal

Service Appeal No. 3976/2020

Diary No. 2645

Dated 22/4/2020

Registrar

**Engineer Muhammad Pervez**  
Executive Engineer (Rtd), C & W Department Peshawar.

..... Appellant

**Versus**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, office at Civil Secretariat, Peshawar.
2. Secretary C & W department, office at Civil Secretariat, Peshawar.
3. Mr. Muhammad Uzair, Establishment department, office at Civil Secretariat, Peshawar

..... Respondents

Filed to-day

Registrar

22/4/2020

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 WHEREBY A JUNIOR OFFICER HAS BEEN PROMOTED WHILE THE APPELLANT BEING DULY ENTITLED FOR PROMOTION HAS BEEN DENIED THE SAME.**

**PRAYER IN APPEAL.**

Re-submitted to-day and filed.

Registrar

4/5/2020

ON ACCEPTANCE OF THIS APPEAL THIS HON'BLE TRIBUNAL MAY VERY GRACIOUSLY BE PLEASED TO GRANT PROFORMA/ NOTIONAL PROMOTION TO THE APPELLANT WITH ALL BACK BENEFITS OR ANY OTHER RELIEF THIS HON'BLE TRIBUNAL DEEM FIT IN THE INTEREST OF JUSTICE MAY ALSO BE GRANTED TO THE APPELLANT.

Respectfully sheweth;

1. That the appellant rendered about 33 years service in the C & W department and got 60 years of age according to his service record as well his CNIC.  
**(Copies of order of retirement order dated 14-11-2019 and 10-12-2019 is annexed as Annexure-A)**
2. That earlier, the appellant was compulsorily retired from service by imposing upon him a major penalty along with a recovery of Rs. 18, 55, 680/- due to allegations of over payments to the contractor.  
**(Copy of compulsory retirement order and recovery letter No. SOE/C&W/8-21/2010 dated 12-01-2012 is annexed as Annexure-B)**
3. That against the above order, the appellant knocked at the door of this Hon'ble tribunal which tribunal remanded the case of the appellant to the department for De Novo Inquiry besides ordering the department for his reinstatement into government service.  
**(Copy of Service Tribunal order in service appeal No. 370/2016 decided on 30-09-2016 as well as Notification for reinstatement is annexed as Annexure-C).**
4. That with respect to back benefits for the period, the appellant approached the department, but the same was denied on the pretext of the outcome of de novo inquiry vide its letter No. SOE/C&WD/8-21/2010 dated 02-02-2017.  
**(Copy of Department letter No. SOE/C&WD/8-21/2010 dated 02-02-2017 is annexed as Annexure-D).**
5. That after reinstatement, there was constituted a high level inquiry, through which the appellant was served with charge sheet, statement of allegations. The appellant replied the same.  
**(Copy of letter dated 24-02-2017 etc and reply of the appellant are annexed as Annexure-E)**
6. That the two members inquiry committee, after a grilling and hours based proceedings, recommended the appellant for exoneration of the charges leveled against him which the department issued vide its notification.  
**(Copy of letter No. SOE/C&WD/8-21/2010 dated 28-02-2018 for exoneration is annexed as Annexure-F)**

7. That the appellant was reinstated in Grade-17 on 28-02-2018 and subsequently another order of reinstatement in BPS-18 in compliance of the order of this Hon'ble tribunal was issued after retirement on 17-09-2018 allowing him BPS-18 with effect from July 2012. Whereas, his immediate Junior Respondent No. 3 was promoted to BPS-19 in the year 2013. Later on, the same immediate Junior Respondent No. 3 was promoted to next higher scale of BPS-20 in the year 2018.

**(Copy of letter No. SOE/C&WD/4-53/2013 dated 17-01-2013 and No. SO(E-1) E&AD/9-232/2018 dated 28-05-2018 and No. SO(E-1) E&AD/9-232/2018 dated 31-08-2018 for promotion and posting are annexed as Annexure-G)**

8. That the appellant was retired on superannuation with effect from 09-08-2018 vide a belatedly issued Notification by the Secretary C & W KPK on 14-11-2019 in BPS-18 thus deprived the appellant from his due right of promotions in next higher scales of BPS -19 and BPS -20 from the due dates of promotion. Whereas the appellant with the passage of time was absolved from all charges and was proved as an innocent. But for no fault remained in BPS-18 till his retirement on 09.08.2018, despite the fact that all the ACRs pertaining to the appellant were submitted to the Secretary C & W KPK for all the relevant posting periods. The then seniority list is attached herewith in support of the right of the appellant's due promotion with reference to his immediate junior i.e. Respondent No. 3 by bypassing the appellant.

**(Copies of seniority list is annexed as Annexure-H)**

9. That the appellant feeling aggrieved being reinstated in BPS-17 and then in BPS-18, moved an application during service after reinstatement on 28-02-2018 to reinstate him in Grade-20 according to the above mentioned seniority list but he was kept in BPS -17 till superannuation (60 years). After superannuation on 09-08-2018, Secretary C&W implemented, partially the order of the tribunal vide Notification No. SOE/C&WD/1-8/85 dated 17-09-2018 restoring the appellant in BPS-18 instead of next higher grades of BPS-19 and BPS-20 as **Back Benefits** according to the orders of this Hon'ble Tribunal and which the appellant was strongly hopeful to get as back benefit as per the verdict of this Hon'ble tribunal. After receipt of preceding letter, he moved an application to grant

him next higher grades, as proforma/ notional promotion as back benefits ordered by the Hon'ble Tribunal. The response of the department is awaited till this day and time (filing of instant appeal).

10. That there has been mentioned nothing as adverse in all the orders of reinstatement/ restoration issued either by the Hon'ble Tribunal or department for promotion of the appellant to the higher scale etc. Similarly there is/ was any adverse effect upon the seniority or any other debarring, like censure etc, on the promotion of the appellant. The Secretary C&W order No. SOE/C&WD/8-7/2011 dated 11.11.2019 specifically mentioned this fact that inquiry stands abated without any **ADVERSITY**, but despite of all, the appellant has been retired in the lower scale without any prima facie and cogent reason and rationale.  
**(Copy of Secretary C&W order No. SOE/C&WD/8-7/2011 dated 11.11.2019 is annexed as Annexure-I).**
11. That feeling aggrieved, the appellant preferred a departmental appeal/ representation, on receipt of the above mentioned letter of abatement of proceedings and with clear narration of the inquires as without any adversity, to grant him next higher grades, as proforma/ notional promotion with all back benefits as ordered by the Hon'ble tribunal.  
**(Copy of appeal is annexed as Annexure-J)**
12. That the prescribed and statutory period of ninety days has been elapsed but the appeal aimed for the grant of proforma/ notional promotion has not been even responded, hence this appeal.
13. That the appellant being retired in lower grade and feeling aggrieved from the conduct of the respondents by not considering the appellant for promotion during and after service, the instant post retirement appeal for proforma/ notional promotion is herein filed on the following grounds inter alia.

**GROUND OF APPEAL**

- A. That acts and omissions of the respondents No. 1 and 2 are against the fundamental rights guaranteed under the Constitution of Islamic Republic of Pakistan, 1973.
- B. That the acts and omission of the respondents No. 1 and 2 are the utter violation of the law of the land, law on the subject and against the facts and norms of justice.
- C. That the lethargic acts and omissions of the respondents No. 1 and 2 are in violation of articles 4, 9, 14 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973.
- D. That the appellant has been continuously discriminated for the sins he has never committed as there has not incurred a penny loss to the national exchequer, hence on this score alone the baseless inquiries and denial to during service promotions to the appellant is liable to be declared as illegal.
- E. That the denial to in service promotions to the appellant is the utter violation of the rules and procedure of the service laws and verdicts of the superior courts of the land as enunciated vide judgment cited as 2013 SCMR page 752 of the Hon'ble Apex court .
- F. That the seniority list attached herewith speaks volumes in favour of the appellant, which fact has been ignored by the respondent department by victimizing him illegally and dragging him in baseless, false and frivolous which needs striking down by this Hon'ble tribunal.
- G. That the department badly failed to implement the orders of this Hon'ble tribunal regarding back benefits i.e. of Promotion to higher scales, as per seniority list relied upon herein and deliberately ignored the directives contained in the Hon'ble tribunal judgment to re-instate him with all back benefits.
- H. That the appellant has not been treated in accordance with law and very judgments of the superior courts as well as this Hon'ble tribunal which acts amounts contempt of court as well.

6


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

IT IS, THEREFORE, MOST HUMBLY PRAYED THAT ON ACCEPTANCE OF THIS APPEAL THIS HON'BLE TRIBUNAL MAY VERY GRACIOUSLY BE PLEASED TO GRANT PROFORMA/ NOTIONAL PROMOTION TO THE APPELLANT WITH ALL BACK BENEFITS OR ANY OTHER RELIEF THIS HON'BLE TRIBUNAL DEEM FIT IN THE INTEREST OF JUSTICE MAY ALSO BE GRANTED TO THE APPELLANT.



Appellant

Through

  
27/03/2020

Yousaf Khan  
Advocate High Court,  
Peshawar  
0333-9272588





7

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER**  
**PAKHTUNKHWA, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2020

**Eng. Muhammad Pervez**

**Versus**

**Govt. of KPK etc**

**Affidavit**

I, **Engineer Muhammad Pervez**, Ex-Executive Engineer (Rtd) , office of the Chief Engineer (North), C & W Department Peshawar do solemnly declare and affirm on oath that the contents of the accompanying appeal are true and correct and nothing has been concealed from this Hon'ble Tribunal.

*M Pervez*

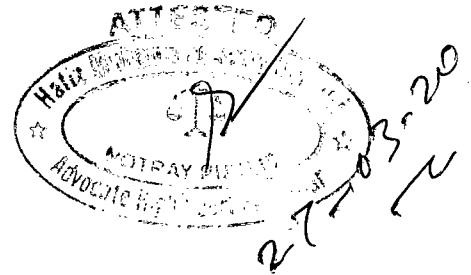
**Deponent**

Identified by:

*Yousaf Khan*  
**Yousaf Khan**  
**Advocate High Court,**  
**Peshawar.**

**0333-9272588**

*97/3/2020*





GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

9

No. SOE/C&WD/1-8/85  
Dated Peshawar, the Dec 10, 2019

TO

The Accountant General  
Khyber Pakhtunkhwa, Peshawar

Subject: PENSION PAPER IN RESPECT OF ENGR. MUHAMMAD PERVEZ EXECUTIVE ENGINEER (BS-18) RETIRED C&W DEPARTMENT

I am directed to refer to the subject noted above and to enclose herewith pension papers (2 sets) along-with the following documents dully signed/ countersigned by the Competent Authority in respect of Engr. Muhammad Pervez Executive Engineer (BS-18), while working as Design Engineer O/O Chief Engineer (North) C&W Peshawar, retired from Govt service w.e.f. 09.08.2018 (A.N) on attaining the age of superannuation i.e. 60 years, for favour of further necessary action at your end:

1. Pension Papers
2. Non-Involvement certificate
3. Option
4. Undertaking
5. Declaration
6. Qualifying Service certificate
7. Specimen Signature
8. Left Hand Thumb and Finger Impression
9. List of family members
10. Estate Officer NOC
11. Salary slip
12. L.P.C.
13. Photographs
14. C.N.I.C
15. Option form for Direct Credit
16. Statement showing detail of deductions
17. Income tax certificate
18. Challan cash paid certificate
19. Indemnity Bond
20. Retirement Notification

(ABDUR RASHID KHAN)  
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to the:

1. Engr. Muhammad Pervez Executive Engineer (retired) C&W Department village Jhangi, Tehsil and District Abbottabad
2. PS to Secretary C&W Department, Peshawar

  
SECTION OFFICER (Estb)


AMM: "B"

(10)

GOVT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the January 12, 2012

**ORDER:**

No.SOE/C&WD/8-21/2010: WHEREAS, Engr Muhammad Pervez, Assistant Engineer (BS-17) C&W Department was proceeded against under the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance 2000 for the the following irregularities committed in the "(i) Kirman-Sikaram Road and (ii) Surpakh to Star Patti Road".

2. AND WHEREAS, for the said act of misconduct, he was served with charge sheet/statement of allegations:

3. AND WHEREAS, Engr Shahid Hussain Director (P&M) C&W Department and Mr Zairful Mani, (PSC SG) PPHI, FR Peshawar was appointed as inquiry committee, who submitted inquiry report.

4. AND WHEREAS, show cause Notice for imposition of major penalty of "compulsory retirement besides recovery of Rs.18,55,680/-" was served upon the accused officer alongwith a copy of inquiry report, who submitted his reply.

5. NOW THEREFORE, the competent authority after having considered the charges, material on record, inquiry report of the inquiry committee, in exercise of the powers conferred by Section-3 of Khyber Pakhtunkhwa Removal from Services (special powers) Ordinance 2000, has been pleased to impose the major penalty of "compulsory retirement besides recovery of Rs.18,55,680/-" upon the aforementioned officer.

Secretary to  
Govt of Khyber Pakhtunkhwa  
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

- 1) Additional Chief Secretary FATA Secretariat, Warsak Road, Peshawar
- 2) Accountant General Khyber Pakhunkhwa, Peshawar
- 3) All Chief Engineers, C&W Peshawar
- 4) Chief Engineer (North) C&W Peshawar
- 5) Chief Engineer FATA C&W Peshawar
- 6) Secretary (Admn & Coordination) FATA Secretariat, Warsak Road, Peshawar
- 7) Executive Engineer Highway Division Kurram Agency at Parachinar
- 8) Agency Accounts Officer Kurram Agency at Parachinar
- 9) PS to Chief Secretary Khyber Pakhunkhwa, Peshawar
- 10) PS to Secretary Establishment Deptt, Khyber Pakhunkhwa, Peshawar
- 11) Incharge Computer Centre C&W Department, Peshawar
- 12) PS to Secretary C&W Peshawar
- 13) Officer concerned
- 14) Office order File/Personal File

(RAHIM BADSHAH)  
SECTION OFFICER (ESTT)

Ann: "C" (11)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 370/2016

Muhammad Pervez

*Versus*

The Govt. of KPK and Others

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APPELLANT

Through

Shumail Ahmad Butt,

H Bilal Khan

&

Zarshad Khan

Advocates, Peshawar

TF-39, Deans trade Center,

Cell#03018580077

Attentive  
[Signature]

(1) (12)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 370 /2016

Muhammad Pervez  
Ex-Assistant Engineer,  
Office of the Chief Engineer (North),  
C&W Secretariat, Peshawar,

.....Appellant

*Versus*

1. The Govt. of Khyber Pakhtunkhwa,  
Through Chief Secretary,  
Civil Secretariat, Peshawar.
2. The Secretary,  
To Govt. of Khyber Pakhtunkhwa,  
Communication and Works Department,  
Civil Secretariat, Peshawar.
3. Additional Chief Secretary FATA,  
FATA Secretariat,  
Warsak Road, Peshawar.

.....Respondents

**SERVICE APPEAL UNDER SECTION-10 OF THE KHYBER PAKHTUNKHWA REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE, 2000 READ WITH SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10/03/2016 WHEREBY THE MAJOR PENALTY OF COMPULSORY RETIRMENT AND RECOVERY OF RS.18,55,680/- REMAINED INTACT.**

*May it please this Honorable Court*

1. That while serving as Assistant Engineer (B&R) in the office of Chief Engineer (North) C&W Peshawar, appellant was served with a Charge Sheet and Statement of allegations dated 08/01/2011 alleging therein that irregularities have been committed in the Kirman-Sikaram Road and Surpakh to Star Patti Road when appellant was posted as Executive Engineer Highways Division, Kurram Agency and holding the Charge of SDO Highways Sub Division Kurram Agency. Appellant submitted a detailed reply dated 03/02/2011 in response of the Charge Sheet and Statement of allegations ibid,

*Attorney*

(13) (2)

wherein he with facts and figures clarified his position and vehemently denied the allegations leveled against him.

*(Charge Sheet and Statement of allegations is annexure "A")*  
*(Appellant detailed reply dated 03/02/2011 is annexure "B")*

2. That subsequently an irregular enquiry was conducted by the Enquiry Committee by issuing a questionnaire to the appellant which was duly answered vide reply to the questionnaire dated 01/04/2011 and after which the so called enquiry report was submitted to the competent authority on 02/04/2011 and subsequently much after statutory period vide letter dated 02/06/2011 an addition was also made to the recommendations of the Enquiry Report *ibid*.

*(Reply to questionnaire dated 01/04/2011 is annexure "C")*  
*(Enquiry report dated 02/04/2011 is annexure "D")*  
*(Recommendation of enquiry report dated 02/06/2011 is annexure "E")*

3. That the final Show Cause Notice was served upon the Appellant vide letter dated 09/06/2011 wherein Major Penalty of compulsory retirement besides recovery of Rs.18,55,680/- was proposed against the appellant to which he once again submitted a comprehensive reply thereby clarifying the entire position to the competent authority and denied the charges leveled against him.

*(Final Show Cause Notice is annexure "F")*  
*(Reply to the Final Show Cause is annexure "G")*

4. That without considering the reply of the appellant, the impugned order No.SOE/C&WD/8-21/2010 dated the Peshawar 12/01/2012 was passed whereby major penalty of compulsory retirement besides recovery of Rs. 18, 55,680/- were imposed upon the appellant.

*(Impugned order dated 12/01/2012 is annexure "H")*

5. That being aggrieved by the impugned order *ibid*, appellant preferred a departmental appeal to the appellate authority on 23/01/2012 who referred the matter to the Chief Engineer (FATA) Works & Services Department, who called for the Report of the Executive Engineer concerned who submitted his report back vide letter dated 07/03/2012 wherein the actual position was explained " *that structural works including retaining walls and removal of slips on both the roads were found completed and intact and at the moment no road slips were found. In short whatsoever been paid to the contractor under the AMO&R 2008-2009 AND 2009-2010 was found on the spot and even after lapse of more than three years, no slip was found and no pulverization of the structural work was observed. The roads were found*

*Attest*

(14) ~~(3)~~

*neat and clean*” but in spite of the same the appeal was rejected and communicated vide letter dated 11/05/2012.

*(Departmental Appeal dated 23/01/2012 is annexure “I”)*

*(Report of Executive Engineer is annexure “J”)*

*(Appeal rejected dated 11/05/2012 is annexure “K”)*

6. That then the appellant feeling aggrieved knocked the door of this Honorable Tribunal by way of Service Appeal No. 585 of 2012 under Section-10 of The Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 Read with Section-4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974.

*(Copy of the service Appeal No.585/2012 is annexure “L”)*

7. That this Honorable Tribunal was kind enough to remand the above mentioned service appeal on 11/09/2015 to the appellate authority with directions to examine the case in its entirety and to decide the appeal strictly in accordance with rule 5 *ibid*. Furthermore the appellate authority was also directed to decide the same within 60 days.

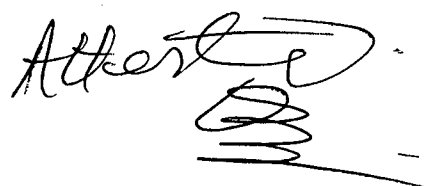
*(Copy of the Judgment dated 11/09/2015 is annexure “M”)*

8. That the Appellate Authority once again rejected the appeal of appellant ritualistically vide its judgment and order dated 10.03.2016 (hereinafter referred to as the “impugned appellate decision” for facility of reference) while ignoring altogether not only the judgment and order of this Honorable Tribunal and shutting eyes from the material available on record,

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

### **Grounds:**

- A. *Because* the Appellate authority was mandated not only by this Honorable Tribunal but the law applicable to the matter that the appeal must be decided fairly, objectively and in light of the directions of this Honorable Tribunal but instead of applying independent judicial mind, the Appellate authority has chosen to remain mechanical and ritualistic.
- B. *Because* the impugned appellate order is passed without any legal or plausible justification and is therefore liable to be reversed.

*Attested*  


- C. *Because* the impugned appellate decision is fraught with partiality and is scant and scrumpy in material particulars.
- D. *Because* the impugned appellate decision is based on misreading and non-reading of material available on record.
- E. *Because* the impugned appellate decision has ignored altogether the report of the XEN dated 07.03.2012, deputed by the Appellate Authority himself in previous round of litigation.
- F. *Because* in previous round, before this Honorable Tribunal, Government has absolved the Appellant of Charge No. 2 in view of the statement of Sr.G.P., yet the Appellate Authority chose to repeat earlier decision mechanically and ritualistically.
- G. *Because* even in the inquiry report, previously, the inquiry officer has opined that nobody can determine the age of the structure therefore charge No. 1 also becomes without basis or substantiation.
- H. *Because* so far as the charge No.3, is concerned, which has also been resounded in the impugned order of the appellate authority regarding slips, the same has not been supported by the XEN deputed by the appellate authority itself. Moreover there is self-contradiction between charge No.3 which states that "*all the roads were full of slips*" however appellate authority declared it improbable to happen and the relevant portion is reproduced as "*payment on slips shows that every inch of it was full of slips, which is rather improbable to happen*".
- I. *Because* charges are vague in nature as the Appellant has not been charged for any specific stretch or KM. He cannot be held liable for the entire stretch of road but can only be made answerable for the given stretch/reach/portion that was subject matter of work done during his tenure.
- J. *Because* Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders, which are unjust, unfair and hence not sustainable in the eyes of law.
- K. *Because* no regular enquiry, which is mandatory under Section-5 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was conducted into the allegations

Attorney



leveled against the appellant. No statement was recorded in the presence of the appellant nor any documentary evidence was collected in his presence nor was he provided any opportunity of cross-examination, thus the entire proceedings of the enquiry being violative of mandatory provision of law are void and hence the impugned penalty is not sustainable on the eye of law and liable to be set aside. Moreover, the Enquiry Report has been submitted after 84 days, whereas under the law, the same was to be completed within 25 days and even competent authority the same to be completed within the same statutory period.

- L. *Because* since there was factual controversy involved in the matter which necessitated the holding of a detailed regular enquiry into the allegations without which the controversy could not be resolved but unfortunately the regular enquiry was deliberately omitted which was prejudicially affected the appellant and as such has resulted in serious miscarriage of justice. It is a settled law enunciated by the Apex Court that in cases of factual controversies, regular enquiry is must otherwise no penalty much less major could legally be imposed. Viewed from this angle the impugned penalty is without lawful authority and hence of no legal effect.
- M. *Because* even the questionnaire was deliberately sent to XEN Parachinar despite the knowledge of the Enquiry Committee that appellant was posted at Peshawar which has resulted into some delay. This reflects the biased and partial attitude on the part of the Enquiry Committee to punish the appellant at all cost.
- N. *Because* the impugned order is against the principle of natural justice in as much as appellant has not been afforded a meaningful personal hearing by the Enquiry Committee. He was also not provided the same opportunity by the competent authority and by the appellate authority in spite of his repeated requests. Thus the impugned order is against the principle of natural justice and as such is not maintainable.
- O. *Because* the perusal of the Enquiry Report would reflect that the same is not based upon any solid proof and evidence rather the same has been based upon surmises, conjectures and only suspicions which, however, the strongest they might be cannot take the place of a proof. Moreover the Enquiry Committee has gone beyond the scope of the charges contained in the Charge Sheet and the Statement of allegations and it is also a settled

Attorney

principle of law that finding beyond the scope of Charge Sheet is nullity in the eye of law in as much as the accused is to be informed about the charges which he will be required to meet in advance.

P. *Because* recommendation No.2 of the Enquiry Committee provides that *"Sub-Engineer has signed the M.B Book; therefore, it cannot be proved that the site was not visited before the payments."* Thus the charge No.2 regarding the fudge payment to the contractor without visiting the Roads has not been proved by the Enquiry Committee but in spite of the same, the same charge has been included in the Show Cause Notice as proved, which signifies that the competent authority has neither gone through the Enquiry Report nor applied his independent judicious mind to the material on the record.

Q. *Because* in the recommendation No. 1 the Enquiry Committee has stated that *"it is very difficult to differentiate between the old structures with the new one after one and half years' time and floods affecting the structure."* Now the question arises that how the charge can be said to have been proved when the Enquiry Committee has categorically admitted that it was difficult to differentiate between old structures and the new ones because of the lapse of time and due to the impact of subsequent floods. It appears that the Enquiry Committee has not visited the spot but has prepared the Report while sitting at Peshawar. Moreover, in the remaining part of the recommendations, the Committee observed that *"it seems that irregularities have been made in payment"* whereby 'seems' cannot take the place of 'proves'.

R. *Because* the Enquiry Committee has failed to pinpoint any violation of rules, instructions and has not established any sort of misappropriation of public money on the part of the appellant. This particular charge is also beyond the scope of Charge Sheet and Statement of allegations and is therefore, bad in the eye of law. No one can be penalized on the basis of "seems, appears, etc."

S. *Because* Charge No.3 says that fudge payment of Rs.27, 83,520/- for removal of heavy slips was made but the roads were found full of heavy slips. As per the Show Cause the charges have been proved, which reflects that the competent authority has blindly relied upon the ipse dixit of the Enquiry Committee. As earlier submitted the Enquiry Committee has never visited the spot for confirmation/verification, otherwise it

*Albert*

would have collected evidence of local witnesses in support of the charge. Since there is no verbal and documentary evidence to this effect therefore the charge has not been established.

- T. *Because* the Report of the Enquiry Committee is also clearly belied by the letter of the incumbent Executive Engineer dated 14/01/2011 wherein he has confirmed that *he has inspected all those M&R works in Para Chamkain area of Central Kurram on 30/12/2010 which were under enquiry and payments made thereon during 2008-2009 and 2009-2010 and that the respective M&R contractor has completed all the works pointed out by the Enquiry Committee in their report according to the standard specification and payment made thereon during 2008-2009 and 2009-2010.* Thus this is a certificate to the fact that the charge was false and the Government sustained no loss.
- U. *Because* even the appellate authority enquired into the actual facts on the spot by referring the matter to the Chief Engineer (FATA) who directed the Executive Engineer C&W Division Battagram concerned for the needful who has reported back the matter vide his letter dated 07/03/2012 and thus has elucidated the correct position in favor of the appellant but even then strange enough that the appeal of the appellant has been rejected. That the appellate authority(Chief Minister) has not given any weight to the report of Executive Engineer
- V. *Because* the findings of the Enquiry Committee in Para-1 of the observations are also the result of the going beyond the scope of the Charge Sheet. The condition introduced by the Chief Engineer is the creation of his own mind unconcerned with the facts and not supported by any law and rules that same was meant for black topped roads and cannot be applied to the shingled roads which do not involve resurfacing. The release letters say that the expenditure should be incurred judiciously with consultation and approval of the concerned Political Agent and the appellant has followed it being meant for shingled roads approved and decided by the Political Agent as is evident from the list approved by the Political Agent, thus no irregularity has been committed.
- W. *Because* the Competent Authority (Chief Minister) while re-examining the appeal of the appellant has rejected the appeal without following the requirements of rule-5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986.

- X. *Because* the appellate authority was directed by the Honorable Tribunal to decide the same within **60 days** however it was decided after almost **180 days** which is a clear violation of the Court order.
- Y. *Because* the Appellant was not given chance of being heard by the appellate authority in spite of several requests.
- Z. *Because* all the Executive Engineers were directed through a letter dated 18/08/2010 to submit the report of damages occurred during the ongoing flood catastrophe.
- AA. *Because* after completion of work on site traffic remained flowing smoothly and no complaint has been made from public in duration of **18 months** since its opening till floods however Suddenly after floods in the mid of 2010 roads were inspected and reported to be full of slips.
- BB. *Because* no members of the enquiry Committee bothered to visit the site in person and carry out the spot inspection to verify the facts on grounds.
- CC. *Because* appellant will raise other grounds at the time of arguments with the prior permission of the Court.

**It is therefore** most humbly prayed that on acceptance of the instant appeal, the impugned order of the appellate authority dated 10/03/2016 as well as the impugned orders dated 12/01/2012 and 11/05/2012 may graciously be set aside and appellant be reinstated into service with all back benefits.

Any other relief not specifically asked for may also be granted to the appellant if deemed fit, just and appropriate.

Appellant

Through

Shumail Ahmad Butt,  
Advocate Supreme Court  
of Pakistan,

H Bilal Khan

&

Zarshad Khan  
Advocates, Peshawar.

Dated: 31/03/2016

Attested

17/6/016

REPLY OF DEPTT

SA #370

20

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**  
**SERVICE APPEAL NO. 370 OF 2016**

Engr Muhammad Parvez  
Ex-Assistant Engineer  
C&W Department

----

Appellant

**VERSUS**

1. Govt of Khyber Pakhtunkhwa  
Through Chief Secretary, Peshawar. ----- Respondents
2. Secretary to Govt of Khyber Pakhtunkhwa  
C&W Department, Peshawar
3. Additional Chief Secretary FATA  
FATA Sectt: Warsak Road, Peshawar

**PARAWISE REPLY ON BEHALF OF RESPONDENT NO. 1, 2 & 3**

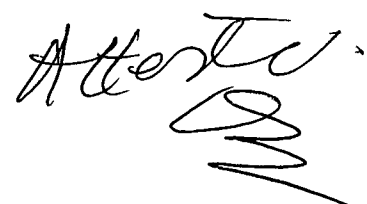
Respectfully Sheweth:

Preliminary Objections

- i. That the Appellant has got no cause of action
- ii. The appeal is badly time barred
- iii. That the appeal is not maintainable in its present form
- iv. That the appeal is bed for mis-joinder and non-joinder of necessary parties
- v. That the appellant has not come to this Hon'able Tribunal with clean hands

FACTS:


1. Correct to the extent, that appellant while posted as XEN Highway Division Kurram Agency and holding the charge of SDO Highway Division Kurram Agency was found involved in massive irregularities committed by him, as reported by FATA Sectt. Charge sheet and statement of allegations was served upon him, with the approval of competent authority and formal inquiry was conducted under RSO 2000, in which the charges were found proved against him, and the competent authority after fulfillment of all codal formalities, imposed major penalty of "Compulsory retirement, besides recovery of Rs.18,55,680/-" upon him.
2. Not correct, as stated in para-1 of the facts, a formal inquiry under RSO 2000 was conducted for the massive irregularities committed by appellant. The inquiry report was processed and proper show cause notice was served upon him in light of the recommendations of the inquiry committee. In this regard, all the codal formalities were completed and rules were followed, proper opportunity of defence was given to him. He replied to the show cause notice, which was examined by the Department and placed before the competent authority.

Attested  


3. Correct to the extent, that after observing the codal formalities with regard to inquiry proceedings, a show cause notice was served upon the appellant with tentative decision for imposition of major penalty of "compulsory retirement, besides recovery of Rs.18,55,680/-". The appellant replied to the show cause notice, reply to the show notice was processed by respondent No.2 and the case was placed before the competent authority for final decision.
4. Not correct, the appellant was given proper opportunity of defence, i.e. he replied to the charge sheet, reply to the show cause notice and granted personal hearing by the competent authority, however, he could not defend himself satisfactory, therefore, the tentative major penalty communicated through show cause notice, confirmed by the competent authority, and subsequently the order was issued on 12.01.2012, based on facts of the case.
5. Correct to the extent, that the appellant refer departmental appeal against the impugned order to the appellate authority on 23.01.2012, his appeal was processed and placed before appellate authority. Since plausible grounds for considering appeal were not found, therefore, the appeal was rejected by the appellate authority, and was communicated to him on 11.05.2012.
6. No comments
7. No comments
8. Correct to the extent that on the direction of Hon'able Service Tribunal order dated 11.09.2015, the Chief Minister Khyber Pakhtunkhwa in terms of Rule-17(2) of Khyber Pakhtunkhwa Govt Servants (E&D) Rules, 2011, rejected the appeal after observing all codal formalities.

**GROUND**

- A. Not correct, the whole process of the inquiry in respect of appellant was processed and completed by the respondents purely in light of the rules/law in the subject, no violation of constitution of Islamic Republic of Pakistan 1973 was made. The penalty imposed upon the appellant is justified, fair and correctly according to law/regulation.
- B. Not correct, on receipt of FATA Sectt report, formal inquiry under Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 was conducted by constituting an inquiry committee to probe allegations leveled against the appellant, proper charge sheet and statement of allegation was served upon him, to which he replied. Proper opportunity of defence was given to the appellant by the inquiry committee, after fulfillment of all codal formalities, personal hearing as prescribed in the rules, the competent authority imposed major penalty as per provision of law upon the appellant, which is purely in line with rules/law, hence cannot be set-aside. The inquiry report after due completion was submitted by the inquiry committee and placed before the competent authority for appropriate orders.

*Attested*  


- C. Not correct. As explained in Para A & B of the Grounds.
- D. Not correct. The inquiry committee after due consideration, processed the inquiry proceedings in light of the prevailing rules/regulations by giving proper opportunity of defence to the appellant as evident from the questionnaire to enable the appellant to explain his position in a better way thus the inquiry committee proceedings are not required to be challenged in the court of law. The inquiry committee correctly completed the inquiry proceedings under the rules, which was completed and submitted to the competent authority for appropriate orders and finally the appellant who was responsible for massive irregularities committed by him while posted as XEN Highway Division Kurram Agency holding charge of SDO Highway Sub Division Kurram Agency.
- E. Not correct. The order is in accordance with rules/law and justice and the appellant was given sufficient time/opportunity to prove his innocence, but he failed and in light of recommendations of the inquiry committee, the penalty awarded to the appellant is justified.
- F. Not correct. Since the charges against the appellant were proved after thorough probe by inquiry committee, therefore, the plea taken by the appellant is to misguide the Hon'able Tribunal, as he remained involved in the massive irregularities due to which he was penalized by the competent authority after fulfillment of codal formalities.
- G. Not correct. The inquiry report reveals that the charges leveled against the officer is established with solid proof/evidence. Moreover, the inquiry committee probed the matter as per charge sheet and statement of allegations which were found established against him, therefore, the penalty imposed is clearly in accordance with rules/laws and need not to be reversed.
- H. Not correct. As per recommendations of the inquiry committee the charges leveled against him were found proved, therefore, mentioning it in the show cause notice, as no excuse, proper opportunity of defence was given to the appellant to provide proof of his innocence but he badly failed and could not present any proof to satisfy the inquiry committee. Charges No. 3 & 4 as per inquiry report are sufficient grounds for imposition of major penalty upon the appellant, thus the inquiry committee correctly recommended the penalty.
- I. Not correct. The appellant should have explained his position of his innocence before the inquiry committee. Since the charges were found established against him for the massive irregularities/illegal payments, the Govt exchequer occurred financial loss on the act of the appellant as he was found guilty of the charges and the punishment awarded to him is in line with the rules/law.

*Attested*  


- J. Not correct. The inquiry committee has correctly pointed out the gross irregularity committed by the appellant while posted as XEN Highway Division Kurram Agency holding charge of the post of SDO Kurram, badly failed to perform official duties and due to his irresponsible attitude, a great financial loss was caused to the Govt exchequer, the charges mentioned in the charge sheet were found proved, therefore, the penalty imposed is in line with law/rules and justice, if Govt servants are allowed to carry on such like financial irregularities, the working atmosphere of the Deptt will ultimately be badly affected.
- K. Incorrect. As explained in para-2 of the facts
- L. Not correct. The appellant while posted as XEN Highway Division Kurram Agency holding charge of SDO was found incompetent, involvement in massive irregularities was proved and a fudge payment of millions of rupees was paid to the contractor causes huge losses to the Govt exchequer, therefore, all the charges proved against him and the penalty imposed is justified.
- M. As explained in Ground-L.
- N. Not correct. The findings of the inquiry committee read with the recommendations of inquiry committee from the charges mentioned in the charge sheet leveled against the appellant is fact that the appellant involved in committing massive financial irregularities, the charge probed by the inquiry committee proved and he could not provide proper proof of his innocence to the inquiry committee and now justifying his innocence with reference to the routine correspondence of local Administration, he was supposed to clarify his position to the inquiry committee to which he badly failed and the Respondent No. 1 & 2 after fulfillment of all codal formalities processed (the inquiry report, show cause notice served, the opportunity of personal hearing given to him and) finally imposed the major penalty of "compulsory retirement beside recovery of Rs.18,55,680/-" which is based on facts and was not mala-fide intention as he badly failed to perform official duties as XEN Highway Division Kurram Agency holding charge of SDO Kurram.
- O. Not correct. Although the appellant has more than 26 years service at his credit, during his service, he remained involved in the following more financial massive irregularities, some of which have been finalized and in some cases inquiry is pending due to his compulsory retirement:
  - a. The appellant was proceeded against under RSO 2000 for alleged "willful absence from official duty", the competent authority imposed major penalty of "reduction to lower post" upon the appellant.
  - b. The appellant was also proceeded in other inquiry case for the alleged irregularity by releasing earnest money/security deposit amounting to Rs.34,34,529/- to the contractor, prior to completion of the scheme". The charges were proved against the appellant; however, the approved minor penalty of "stoppage of 03 annual increments" could not be imposed as the competent authority imposed a major penalty of "compulsory retirement" upon him.

From perusal of the above position of inquiry in respect of the appellant, he was habitual for committing irregularities though not taking responsibility, as the charges in the inquiry were established against him, therefore, penalty imposed upon him by the competent authority is in line in the eye of law and needs not to be reversed in any court, so that in future no one commit such like massive financial irregularities.

*Albert*



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- P. Incorrect. As explained in para-F of the grounds  
Q. Incorrect. As explained in para-J of the grounds  
R. Incorrect. As explained in para-2 of the facts  
S. Incorrect. As explained in para-H of the grounds  
T. Incorrect. As explained in para-L of the grounds  
U. Incorrect. As explained in para-L of the grounds  
V. Incorrect. As explained in para-N of the grounds  
W. Incorrect. As explained in para-8 of the facts  
X. Incorrect. As explained in para-8 of the facts  
Y. As replied in para-8 of the facts  
Z. No comments  
AA. Incorrect. As explained in para 1 & 2 of the facts  
BB. Incorrect. As explained in para 2 & 3 of the facts  
CC. The respondents seek permission of this Hon'able Tribunal to relay additional grounds at the time of arguments.

In view of the above, it is humbly prayed that the instant appeal which is not based on facts may please be dismissed with cost.

*T. Waris*

Additional Chief Secretary  
FATA Secretariat  
Warsak Road, Peshawar  
(Respondent No.3)

*M. J. Khan*  
SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department  
(Respondent No. 1 & 2)

*Attorney*

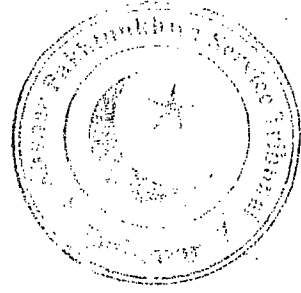
TRIBUNAL ORDER FOR  
DENOVO INQUIRY

25

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEAL NO. 370/2016

Date of institution ... 06.04.2016  
Date of judgment ... 30.09.2016



Muhammad Pervez  
Ex-Assistant Engineer,  
Officer of the Chief Engineer (North)  
C&W Secretariat, Peshawar.

... (Appellant)

VERSUS

1. **The Government of Khyber Pakhtunkhwa,**  
through Chief Secretary, Civil Secretariat, Peshawar.
2. **The Secretary,** to Government of Khyber Pakhtunkhwa,  
Communication and Work Department, Civil Secretariat, Peshawar.
3. **Additional Chief Secretary FATA,** FATA Secretariat,  
Warsak Road, Peshawar.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED  
10.03.2016 WHEREBY THE MAJOR PENALTY OF COMPULSORY  
RETIREMENT AND RECOVERY OF RS. 18,55,680/- REMAINED INTACT.

Mr. Shumail Ahmad Butt, Advocate.  
Mr. Muhammad Jan, Government Pleader

.. For appellant.  
.. For respondents.

MR. ABDUL LATIF  
MR. PIR BAKHSH SHAH

.. MEMBER (EXECUTIVE)  
.. MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:- We intend to dispose of the instant service appeal of the appellant Muhammad Pervez and the connected Service Appeal No. 373/2016 of the appellant Sayed Iftikhar Hussain who lodged their separate appeals against the impugned order dated 10.03.2016 passed by the appellate authority.

2. Brief stated facts of the case are that the above two appellants who were posted in Highway Division Kurram Agency were proceeded against for the charges contained in the

47

*Attested.*

charge-sheet and statement of allegations on the basis of findings of a fact finding inquiry by a three members committee. A formal inquiry was conducted by a committee comprising of two officers who submitted their reports and based on the findings of the inquiry report the competent authority imposed major penalty of compulsory retirement besides recovery of Rs. 18,55,680/- upon Engineer Muhammad Pervez and major penalty of compulsory retirement and recovery of Rs. 9,27,840 was imposed on Sayed Iftikhar Hussain Sub-Engineer.

3. The appellants then approached this Service Tribunal against the impugned orders in separate Service Appeals which were decided through a single judgment on 11.09.2015 the relevant paras whereof are reproduced as under:-

“Report of the departmental enquiry committee shows that the committee has not physically inspected the spot. When in response to departmental appeal of the appellant then XEN Rattagram was directed to report who reported vide his letter No. 1565/PF, dated 07.03.2012 (copy available on file as annexure-J) that all is well. The Tribunal does not find any reason in the order of the appellate authority as to why and for what reasons this report was ignored. Similarly, the record shows that then XEN Kurram vide his letter dated 14.1.2011, after inspection of the spot reported that all works was complete; the same also seems to have not been taken into account by the appellate authority. This being so, we have carefully gone through order of the appellate authority dated 11.5.2012 by way of which the appeal of the appellant has been rejected but we are unable to find it having any reason for such rejection in contemplation of Section 24-A of the General Clauses Act. Further this rejection order is also not in accordance with the requirements of rule-5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 which is here below reproduced for facilitation of reference:-

“5. Action by the appellate authority --- (1) The appellate authority, after making such further inquiry or calling for such information or record or giving the appellant an opportunity of being heard, as it may consider necessary, shall determine-

ATTACHED

Albert

8. The order passed in pursuance of the above directions of the Tribunal however does not appear a speaking/reasoned order because rejection of the departmental appeals of the appellants were attributed to the recommendations of the inquiry committee wherein the committee stated "it seems irregularities have been made in the payment". Moreover instead of producing credible evidence against the appellants, it was stated that the accused could not present any proof of innocence in their support which is not fair as the burden of proof rests with the respondents. In the above scenario, we are constrained to set-aside the impugned orders dated 10.03.2016, 12.01.2012 and 11.05.2012, reinstate the appellants in service and remand the case to the respondent-department with direction to conduct de-novo inquiry in the case within a period of sixty days after receipt of this judgment strictly in accordance with law and rules providing full opportunity of defence and cross-examination to the appellants before passing of appropriate order by the competent authority. The matter of back benefits shall be subject to the outcome of the de-novo inquiry. The appeals are disposed of in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
30.09.2016

*Sd/- Abdul Latif, Member*  
*Sd/- Pir Bakhtish Shah, Member*

*Confidential*  
*Not to be used for any purpose*  
*without the permission of the*  
*competent authority*

Date: 07-10-2016  
No: 14/2400  
14/2400  
14/2400  
17-10-2016  
17-10-2016

*Albert*  
*[Signature]*

28



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the Sept 17, 2018

**NOTIFICATION:**

No.SOE/C&WD/1-8/85: In continuation of this Departments' Notification dated 08.03,2013, the Competent Authority, in pursuance of Service Tribunal order dated 30.09.2016 in Service Appeal No.370/2016, is pleased to reinstate Engr. Muhammad Pervez as Executive Engineer (BS-18) instead of Assistant Engineer (BS-17) w.e.f. 15.09.2012, the date on which the period of two years, pertaining to the imposition of major penalty i.e. reduction to lower post has been expired.

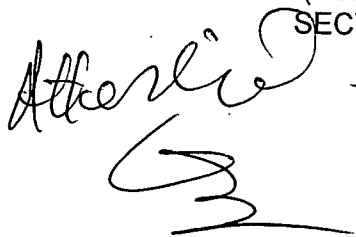
SECRETARY TO  
Government of Khyber Pakhtunkhwa  
**Communication & Works Department**

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. Accountant General PR (sub office) Peshawar
3. Secretary Admn, Infrastructure & Coord Department FATA Sectt: Warsak Road, Pesh:
4. All Chief Engineers C&W Department Peshawar
5. Chief Engineer FATA W&S Peshawar
6. Executive Engineer Highway Division Kurram Agency at Parachinar
7. Agency Accounts Officer Kurram Agency at Parachinar
8. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar
9. PS to Chief Secretary Khyber Pakhtunkhwa Peshawar
10. PS to Secretary Establishment Department Peshawar
11. PS to Secretary C&W Department Peshawar
12. PA to Addl: Secretary, C&W Department Peshawar
13. PA to Deputy Secretary (Admn), C&W Department Peshawar
14. Engr. Muhammad Pervez Executive Engineer (rtd) C&W Department, Peshawar
15. Office order File/Personal File

  
(ABDUR RASHID KHAN)  
SECTION OFFICER (Estb)



Reg

29



GOVT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the March 08, 2013

## ORDER

No.SOE/C&WD/1-8/85: In pursuance of the Khyber Pakhtunkhwa Services Tribunal order dated 26.07.2012 and in supersession of this Deptt's Notification of even number dated 16.09.2010, the competent authority is pleased to substitute, the major penalty of "Reduction to lower post" imposed upon Engr: Muhammad Pervez (BS-17), the then XEN Highway Division Kurram Agency, now compulsory retired from Govt service, shall be operative the said penalty for two years w.e.f. 16.09.2010.

Secretary to  
Govt of Khyber Pakhtunkhwa  
Communication & Works Department

### Endst of even number and date

Copy is forwarded to the:-

- 1) Accountant General Khyber Pakhtunkhwa, Peshawar
- 2) Accountant General PR (sub office), Peshawar
- 3) Secretary, Admn, Infrastructure & Coord Deptt FATA Sectt, Warsak Road, Peshawar
- 4) All Chief Engineers, C&W Peshawar
- 5) Chief Engineer FATA C&W Peshawar
- 6) Executive Engineer Highway Division Kurram Agency at Parachinar
- 7) Agency Accounts Officer Kurram Agency at Parachinar
- 8) PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
- 9) PS to Secretary Establishment Deptt, Khyber Pakhtunkhwa, Peshawar
- 10) Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar
- 11) PS to Secretary C&W Peshawar
- 12) Engr. Muhammad Pervez ex-Assistant Engineer C/O CE (North) C&W Peshawar
- 13) Office order File/Personal File

Attended  
[Signature]

[Signature]  
(RAHIM BADSHAH)  
SECTION OFFICER (ESTT)

Ann: "A"

(8)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the Nov 14, 2019

**NOTIFICATION:**

No.SOE/C&WD/1-8/85: In terms of Section-13 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, Engr. Muhammad Pervez Executive Engineer (BS-18) C&W Department, while working as Design Engineer O/O Chief Engineer (North) C&W Peshawar stand retired from Government Service with effect from 09.08.2018 (A.N) on attaining the age of superannuation i.e. 60 years, as his date of birth according to the record is 10.08.1958.


SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

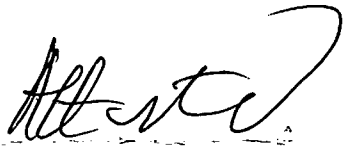

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Chief Engineer (North) C&W Peshawar
3. PS to Secretary, C&W Department Peshawar
4. Officer concerned
5. Office order File/Personal File

  
(ABDUR RASHID KHAN)  
SECTION OFFICER (Estb)

C E (North, & W Deptt):
Dairy No: 2436
Date: 15/11/19
Case NO:
C E (North) C&W
SE (North)
D.E (R & H)
D.E (Tech)
A.O
B & AO
C.D
Dairyes: 



Ann: "D" 30 30  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the February 02, 2017

**ORDER:**

No.SOE/C&WD/8-21/2010: In pursuance of the Service Tribunal Khyber Pakhtunkhwa order dated 30.09.2016 in service appeal No.370/2016, the Competent Authority is pleased to withdraw this Department letter No.SOE/C&WD/13-9/2012 dated 10.03.2016 and order No.SOE/C&WD/8-21/2010 dated 12.01.2012 regarding Compulsory Retirement in respect of Engr. Muhammad Pervaz Assistant Engineer/SDO (BS-17).

2. Consequent upon the above, the aforesaid officer of C&W Department is hereby reinstated into service and directed to report to C&W Secretariat. The matter of back benefits shall be subject to the outcome of the de-novo inquiry.

SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

Copy is forwarded for information to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Accountant General PR (sub office), Peshawar
3. Secretary Admn, Infrastructure & Coord Deptt, FATA Sectt Warsak Road, Peshawar
4. Chief Engineers (North) C&W Peshawar
5. Chief Engineer FATA W&S Peshawar
6. Executive Engineer Highway FATA Division Kurram Agency
7. Agency Accounts Officer Kurram Agency
8. PS to Chief Secretary Khyber Pakhtunkhwa Peshawar
9. PS to Secretary Establishment Department Peshawar
10. PS to Secretary C&W Department Peshawar
11. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar
12. Officer concerned
13. Office order File/Personal File

Attended  
30

U  
(USMAN JAN)  
SECTION OFFICER (Estb)





*DE NOVO - CTIAK - AMT, 'E'*

(31)

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
PAKHTUNKHWA HIGHWAYS AUTHORITY**

Tele: # 091-9213272, Fax # 091-9210434, E-mail: info@pkha.gov.pk  
Attached Department Complex, Near Treasury Office, Khyber Road Peshawar.

No. 47724 13-PKHA

Date Peshawar the 24 / 02 / 2017

To

1) Engr: Muhammad Parvez  
Assistant Engineer C&W (B&R).  
O/O Chief Engineer (North) C&W,  
Peshawar.

*MP*  
Received 27/2/017

2) Mr. Iftikhar Hussain  
Sub Engineer C&W Highway Division,  
Kurram Agency.

Subject: - **INQUIRY REGARDING MIS-APPROPRIATION IN PUBLIC CHEQUER**

Reference:- Section Officer (Estb) letter No.SOE/C&WD/8-21/2010 dated 02/02/2017

Pursuant to the letter under reference, the charge sheet and statement of allegations duly signed by the competent authority (Chief Secretary) are served upon you as a step to initiate proceedings against you under provision of the Khyber Pakhtunkhwa government servants (E&D) Rules, 2011.

You are, therefore, required to submit your written defence to the charge sheet/ statement of allegations duly supported with the relevant record within (7) days of the receipt of this letter failing which it shall be presumed that you have nothing to offer in your defence. You shall also be given an opportunity to be heard in person after receipt of your written defence.

**D.A**  
Charge Sheet/Statement of Allegation

*A. Sultan*  
(Engr: Ahmad Nabi Sultan)  
DIRECTOR (CONSTRUCTION)

Copy forwarded to the :-

- 1) Mr. Fayyaz Ali Shah AIG Prisons Khyber Pakhtunkhwa Peshawar Member Inquiry Committee, for information please.
- 2) Section Officer (Estb) C&W-Department Peshawar for information with reference to his letter under reference.

*Received*  
*on - 27/2/2017*

*A. Sultan*  
DIRECTOR (CONSTRUCTION)

*Attended*  
*[Signature]*

## CHARGE SHEET

32

I, Abid Saeed, Chief Secretary Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Muhammad Pervez Assistant Engineer (BS-17) C&W Department, as follows:

That you, while posted as Executive Engineer Highway Division Kurram Agency and holding the charge of SDO Highway Sub Division Kurram Agency (reverted as Assistant Engineer BS-17), committed the following irregularities in the (i) Kirman-Sikaram Road and (ii) Surpakh to Star Patti Road:

- i. You have made fudge payment amounting to Rs.23,86,863/- to the contractor on old structures i.e. retaining walls, toe walls etc, on the above noted schemes constructed in 2006-07 as an ADP scheme and none of the fresh structures taken in MB were at site.
  - ii. You have made fudge payment out of AOM&R funds during 2009-10 to the contractor but not visited these roads for verification/inspection and the measurements have been supplied by the Munshi of the contractor.
  - iii. You have made fudge payment amounting to Rs.27,83,520/- on removal of heavy slips but all the roads were found full of heavy slips.
2. By reason of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the rules ibid.
3. You are, therefore, required to submit your written defence within seven (07) days of the receipt of this charge sheet to the Inquiry Officer/Committee, as the case may be.
4. Your written defence, if any, should reach the Inquiry Officer/ Committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case exparte action shall be taken against you.
5. Intimate whether you desire to be heard in person
6. A Statement of Allegations is enclosed.

*Abid Saeed*  
18-1-2017

(Abid Saeed)  
Chief Secretary  
Khyber Pakhtunkhwa

*Abid Saeed*  
*GS*



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/8-21/2010  
Dated Peshawar, the February 02, 2017

33

*Imp*  
*PA:*  
*to my inquiry file.*  
*3*  
*DL*  
*08-02-17*

To

1. Mr. Fayyaz Ali Shah (PMS BS-18) (9210406)  
AIG Prisons Khyber Pakhtunkhwa  
Peshawar
2. Engr. Ahmad Nabi Sultan (BS-19)  
Director (Construction) PKHA  
Peshawar

Subject: MIS-APPROPRIATION IN PUBLIC CHEQUER

I am directed to refer to the subject noted above and to state that the Competent Authority (Chief Secretary) in the light of Service Tribunal judgment dated 30.09.2016 (copy attached) has been pleased to appoint you as inquiry committee to conduct de-novo formal inquiry under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 in the subject case against the following officer/official of C&W Department:-

- a. Mr. Muhammad Pervez (BS-17) the then Assistant Engineer (B&R) O/O Chief Engineer (North) C&W Peshawar now waiting for posting
- b. Mr. Iftikhar Hussain (BS-11) the then Sub Engineer Highway Division Kurram Agency now waiting for posting

2. Copies of the charge sheets and statement of allegations duly signed by the Competent Authority (Chief Secretary) are enclosed, with the request to serve these upon the above mentioned accused officer/official and initiate proceedings against them under the provision of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and submit report within 30 days positively.

Pakhtunkhwa Highways Authority Peshawar

Dist No	23043	3.2.2017
(1)		
(2)		
(3)		
(4)		

Encl: As above

*UJ*  
*Om*  
(USMAN JAN)  
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to the:

Dir (Const) for m

1. Chief Engineer (EATA) W&S Peshawar. He is requested to depute an officer well conversant with the case to assist the inquiry committee and provide him all relevant record required by the inquiry committee.
2. Copy along-with copy of the charge sheet/statement of allegations is forwarded to Mr. Muhammad Pervez Assistant Engineer and Mr. Iftikhar Sub Engineer presently waiting for posting with the direction to appear before the inquiry committee on the date, time and place fixed for the purpose of inquiry proceedings.

SECTION OFFICER (Estb)

No. 791  
Date 6.2.17

*Amirul*  
*Om*

## DISCIPLINARY ACTION

34

I, Abid Saeed Chief Secretary Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Engr. Muhammad Pervez Assistant Engineer (BS-17) C&W Department has rendered himself liable to be proceeded against, as he committed the following acts/omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011:

### STATEMENT OF ALLEGATIONS

- i. He has made fudge payment amounting to Rs.23,86,863/- to the contractor on old structures i.e. retaining walls, toe walls etc, on the above noted schemes constructed in 2006-07 as an ADP scheme and none of the fresh structures taken in MB were at site.
- ii. He has made fudge payment out of AOM&R funds during 2009-10 to the contractor but not visited these roads for verification/inspection and the measurements have been supplied by the Munshi of the contractor.
- iii. He has made fudge payment amounting to Rs.27,83,520/- on removal of heavy slips but all the roads were found full of heavy slips.

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

- i. Mr. Fayyaz Ali Shah
- ii. Eng. Ahmad Nabi Sultan

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

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the Inquiry Officer/ Inquiry Committee.

Abid Saeed  
18-1-2017  
(Abid Saeed)  
Chief Secretary  
Khyber Pakhtunkhwa

Attended  
[Signature]

To: The Members Enquiry Committee;  
(i) Mr. Fayyaz Ali Shah (PMS-18),  
AIG Prisons Khyber Pakhtunkhwa,  
Peshawar.  
(ii) Engr. Ahmad Nabi Sultan (BPS-19),  
Director (Construction) PKHA,  
Peshawar.

Subject: REPLY TO CHARGE SHEET/ STATEMENT OF ALLEGATIONS

Reference: Your no. 47724/3-PKHA dated Peshawar 24/02/2017.

With best regards it is submitted that the charge sheet served upon me is *vague*. It seems to have been drafted in hurry without confirmation of the ground realities besides that it is void of necessary details as required under rules.

The Charge sheet speaks of making payments for (i) *Kirman-Sikaram Road* and (ii) *Surpakh to Star Patti Road* without visiting sites. The charges at (i) and (iii) speak of making fudge payments of **Rs.23,86,863/-** for structure works and **Rs.27,83,520/-** against slips without giving a break up of cost with reference to Kilometer and Rd numbers of each road. As per charge no. (ii) that the measurements were supplied by the Munshi of the contractor. *I vehemently deny the charge being false and based on verbal statement attributed to the Sub Engineer.* Anyhow it is pertinent to mention that contractor can submit his bills to be verified by the department under clause (8) of the agreement (**Annexure D**).

The so called figures of **Rs.23,86,863/-** and **Rs.27,83,520/-** as depicted in the charge sheet at serial no. (i) and (iii) have been adopted from the record of the Divisional office, instead of calculating the figures by visiting the site and taking measurements at the spot, especially the charge no. (iii) is at the highest level of its vagueness presenting a post-flood scenario that **"The roads were found full of heavy slips"** which is totally against the factual position prior to the floods of 2010.

The reliance of the Enquiry Committee on the payment record supplied by the Divisional office concerned without carrying out measurements at site provides sufficient grounds to disprove the charges.

*Atta Ullah*  
*[Signature]*

36

The preliminary inspection of the said roads was carried out during October 2010. While as per payments record, the works under enquiry were completed prior to 30.6.2009, which clearly proves that the said roads were inspected after the lapse of **one and a half (1½) years**. It is incomprehensible as to which techniques/gadgets were used to distinguish between the old structures constructed in 2007 and fresh structures completed in 2009, after a long period of 1½ years, w.r.to charge no.(i).


The whole world had witnessed the unprecedented rains and catastrophic floods during July 2010 that presented the picture of Noah Deluge (*Toofan-e-Nooh*) with huge losses. A statement of Wikipedia ([http://en.wikipedia.org/wiki/2010Pakistan\\_floods](http://en.wikipedia.org/wiki/2010Pakistan_floods)) and an **FDMA** letter is enclosed Annexure-A for kind perusal, please.

*May I ask* as to why Divisional Accounts Officer (Abdur Rehman) did not put up his complaint well in time when he himself was signing the bills, and the works could have been verified on spot? And why the complainant waited for a long period of **one and a half years** when the heavy rains/ floods played havoc with the M&R works and converted our good into our bad. The abnormal delay in reporting the matter amounts to a criminal act on part of the so called complainant.

Why the works in question were not inspected before destruction made by the floods of 2010? It was a useless practice to verify the works after the devastating heavy rains/ floods. The heavy rains/ floods can cause huge slips and damages to the structures again and again even after removal/ repair of the earlier ones, which is a matter of common sense and can be easily visualized by a man of ordinary prudence.

The rule of law does not allow making an allegation after such an extraordinary delay of **one and a half (1 ½) years**. The delay clearly proves mala fide on part of the complainant. In order to judge credibility of the complainant, he is required to be cross-examined; otherwise it will be against the justice to hold the undersigned guilty upon his baseless allegations. In the absence of any substantial evidence/ witness, the charge falls to the ground proving the undersigned as innocent.

So far as the charge no. (ii) regarding the payments to the contractor "without visiting these roads for verification" and "supply of measurements by the Munshi of the contractor" is concerned, the same is totally false and without any substance. *A single penny has not been released without physical verification.*

*A. Hameed*  


37

It is further added that the damaged M&R works have been restored by the contractor concerned after the floods of 2010, at his own expense under clause **17A** of the agreement (**Annexure D**). Rather the contractor did carry out an extra work to clear the **full of slips** roads after floods of 2010, w.r.to charge (iii). The then incumbent Executive Engineers Mr. Najmul Islam in response to the Political Agent Kurram office memo no. 37-39/Dev:M&R/H/Way/inquiry/Kurram dated 8.1.2011, submitted a report in the following words "The respective M&R contractor has completed all the works pointed out by the enquiry committee in their report according to standard specification and payment made there on during 2008-09 and 2009-10". (**Annexure-B**). Consequent upon departmental appeal, the Chief Minister KPK referred the matter to the Chief Engineer (FATA) who gave back his report dated 07.03.2012, in these words "It is worth mentioned that the structural works including retaining walls and removal of slips on both the roads were found completed and intact. At the moment no road slips were found. In short what so ever been paid to the contractor under AMO&R 2008-09 and 2009-10 was found completed on spot and even after lapse of more than three years, no slip was found and no pulverization of structural work was observed. The roads were found neat and clean". (**Annexure-C**).

However, in addition to above, it is pointed out that a TEO No. 4 of June-2010 is also on record with an adjustment of worth Rs. **6.348 Millions** against the contractors (**Annexure-E**).

In view of the position explained as above, it is most humbly prayed that the undersigned may kindly be exonerated from the charges.

I also wish to be **heard in person**, please.

Received  
Wag  
8/3/17

O/C MP  
(Muhammad Pervez)  
Assistant Engineer,  
O/O the Secretary C&W,  
Peshawar.

AH  
B



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the Feb 28, 2018

38

AMM-11 F

**ORDER:**

No. SOE/C&WD/8-21/2010: WHEREAS, the following officer/official of C&W Department were proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the alleged irregularities in the (i) Kirman-Sikaram Road and (ii) Surpakh to Star Patti Road:

- i. Engr. Muhammad Pervez Assistant Engineer (BS-17)
- ii. Mr. Iftikhar Hussain Sub Engineer (BS-11)

2. AND WHEREAS, for the said act/omission specified in rule-3(a) of the rules ibid, he was served charge sheets/statement of allegations.

3. AND WHEREAS, de-novo inquiry through the committee comprising of Mr. Fayyaz Ali Shah AIG Prisons Khyber Pakhtunkhwa Peshawar and Engr. Ahmad Nabi Sultan Director (Construction) PKHA Peshawar conducted, who submitted the inquiry report.


4. NOW THEREFORE, the Competent Authority, after having considered the charges, material on record, inquiry report of the inquiry committee, explanation of the officer/officials concerned and in exercise of the powers conferred under Rule-14 (3) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, is pleased to exonerate officer/official of the charges leveled against them.

SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Accountant General PR (sub office), Peshawar
3. Secretary (AI&C) Department FATA Sectt, Warsak Road, Peshawar
4. All Chief Engineers, C&W Peshawar
5. Chief Engineer FATA C&W Peshawar
6. Executive Engineer Highway FATA Division Kurram Agency at Parachinar
7. Agency Accounts Officer Kurram Agency at Parachinar
8. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
9. PS to Secretary Establishment Deptt, Khyber Pakhtunkhwa, Peshawar
10. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar
11. PS to Secretary C&W Department Peshawar
12. Officer/official concerned
13. Office order File/Personal File

  
(ABDUR RASHID KHAN)  
SECTION OFFICER (Estb)






Dated Peshawar the January 17, 2013

39

Ann: "9"

*[Handwritten signature]*

**NOTIFICATION:**

No. SOE/C&W/4-53/2013: In consultation with the Provincial Selection Board (PSB), the competent authority has been pleased to promote the following Executive Engineers (BS-18) of C&W Department to the rank of Superintending Engineers (BS-19) on regular basis, with immediate effect:

- i. Engr. Farman Ali
- ii. Engr. Aslam Khan
- iii. Engr. Muhammad Uzair *Immediate junior*

2. All the officers will be on probation for a period of one year.

3. Consequent upon their promotion, the competent authority is further pleased to order the transfer/posting of the following officers of C&W Department, with immediate effect, in the public interest:

Sl. No.	Name of Officer & Designation	From	To	Remarks
1.	Engr. Farman Ali (BS-19) on regular basis	Working with Frontier Works Organization (FWO) on deputation basis	Repatriated to his parent Deptt i.e. C&WD and posted as Principal Design Engineer (Buildings) O/O CE (CDO) C&W Peshawar, after actualization of his promotion, his services are at the disposal of Frontier Works Organization (FWO) to continue work in the said organization on deputation basis	---
2.	Engr. Aslam Khan (BS-19) on regular basis	Superintending Engineer C&W FATA Circle, Kohat (OPS)	Services placed at the disposal of FATA Sectt, for further posting in FATA	---
3.	Engr. Muhammad Uzair (BS-19) on regular basis	Director (Maintenance) O/O Managing Director PKHA, Peshawar (OPS)	Superintending Engineer (HQ) O/O CE (North) C&W Peshawar, after actualization of his promotion, posted as Director (Maintenance) O/O MD PKHA, Peshawar, with additional charge of the post of DD (Centre) PKHA Peshawar	---

Secretary to  
Govt of Khyber Pakhtunkhwa  
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Additional Chief Secretary FATA Sectt, Warsak Road, Peshawar
2. Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar
3. Accountant General Khyber Pakhtunkhwa Peshawar
4. Accountant General PR (Sub Office) Peshawar
5. Secretary Infrastructure, Admn & Coord Deptt, FATA Sectt, Warsak Road, Peshawar
6. All Chief Engineer (Centre/North/CDO), C&W Peshawar.
7. All Chief Engineer (Centre/North/CDO), C&W Peshawar.
8. Chief Engineer FATA C&W Peshawar
9. Managing Director Pakhtunkhwa Highways Authority Peshawar
10. Snr Manager for D.G (Muhammad Riaz) Headquarter Frontier Works Organization 509 Kashmir Road, RA Bazar, Rawalpindi
11. Lieutenant Colonel for Commander Headquarter 11 Corps Peshawar Cantt
12. All Superintending Engineers C&W Circle,
13. District Accounts Officers concerned
14. Incharge Computer Cell, C&W Department, Peshawar
15. PS to Secretary, C&W Peshawar
16. Officers concerned
17. Manager Govt Printing Press, Peshawar for publication in the next issue of Govt Gazette
18. Office order File/Personal File.

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*  
(RAHIM BALUSHAH)  
SECTION OFFICER (ESTT)

40

Grade - 20



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT

Dated Peshawar, the May 28, 2018

NOTIFICATION

NO. SO(E-I)E&AD/9-232/2018. The Competent Authority on the recommendations of the Provincial Selection Board is pleased to promote the following Superintending Engineer (BS-19) of Communication & Works Department to the post of Chief Engineer (BS-20), as noted against each, with immediate effect:-

S. #.	NAME OF OFFICER
1.	Engr. Muhammad Uzair <i>Immediate junior M. Uzair</i>
2.	Engr. Muhammad Tariq
3.	Engr. Ejaz Hussain Ansari

2. The Engineers on promotion shall remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 and extendable for another year with the specific orders of appointing authority within two months of the expiry of first year of probation period as specified in Rule 15(2) of rules ibid or till their retirement, whichever is earlier, as the case may be.

3. Posting/transfer orders of the above mentioned Engineers will be issue later only.

CHIEF SECRETARY,  
GOVERNMENT OF KHYBER PAKHTUNKHWA

Enst. Of even NO. & date

Copy forwarded to the:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary to Govt of Khyber Pakhtunkhwa, C&W Department.
4. Accountant General, Khyber Pakhtunkhwa.
5. Director General, PDA Peshawar.
6. Chief Engineer (Central) C&W, Peshawar.
7. Chief Engineer (North) C&W, Peshawar.
8. Chief Engineer (CDO) C&W, Peshawar.
9. Chief Engineer, EQAA, C&W Abbottabad.
10. Chief Engineer (FATA), Works and Services, Warsak Road, Peshawar.
11. Managing Director, Khyber Pakhtunkhwa Highways Authority, Peshawar.
12. Director BRT (Reach-III) PDA Peshawar.
13. PS to Chief Secretary, Khyber Pakhtunkhwa.
14. PS to Secretary Establishment, E&A Department/SO (Secret)/DS(Admn)/P/ Director (Protocol) E&AD/ACO Cyber E&AD.
15. Officers concerned.
16. Controller, Govt Printing Press, Peshawar.

(ISHTIQ AHMAD)  
SECTION OFFICER (ESST-I)  
PH: & FAX #091-9210529

ZIA UL HAQ

*Handwritten signature and initials*

GOVERNMENT OF KHYBER  
PAKHTUNKHWA

ESTABLISHMENT AND ADMINISTRATION  
DEPARTMENT

Dated Peshawar the may 28, 2018

NOTIFICATION

No. SO(E-I)/E&AD/9-232/2018. The competent authority on the recommendations of the Provincial Selection Board is pleased to promote the following superintending engineer (BS-19) of communication & Works department in the post of Chief Engineer (BS-20) as noted against each with immediate effect:-

S#	NAME OF OFFICER
1.	Engr Muhammad Uzair
2.	Engr Muhammad Tariq
3.	Engr Ejaz Hussain Ansari

2. The Engineers on promotion shall remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 15(1) of Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules 1989 and extendable for another year with specific orders of appointment authority within two months of the expiry of first year of probation period as specified in Rule 15(2) of rules ibid or till their retirement, whichever is earlier, as the case may be.

3. Posting/ transfer orders of the above mentioned Engineers will be issued later only.


Chief Secretary  
Government of Khyber Pakhtunkhwa

Endst of even NO & date

Copy forwarded to the:-

1. Principal Secretary to Government, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minsitrer , Khyber Pakhtunkhwa
3. Secretary to Govt. of Khyber Pakhtunkhwa C & W Department.
4. Accountant General, Khyber Pakhtunkhwa.
5. Director General, PDA, Peshawar
6. Chief Engineer (Central), C & W Peshawar.
7. Chief Engineer (North), C & W Peshawar.
8. Chief Engineer (CDO), C & W Peshawar.
9. Chief Engineer EQAA, C & W Peshawar.
10. Chief Engineer (FATA) Works and Services Warsak Road Peshawar.
11. Managing Director, Khyber Pakhtunkhwa Highways Authority, Peshawar
12. Director BRT (Reach-III) PDA Peshawar
13. PS to Chief Secreatry Khyber Pakhtunkhwa
14. PS to Secretary Establishment, E&A Department/ SO(Secret)/ DS (Admn) PA, Director (Protocol) E&AD/ ACO Cypher E& AD.
15. Officers Concerned
16. Controller, Govt. Printing Press, Peshawar

Attended  
CZ

  
(ISHTIAQ AHMAD)  
SECTION OFFICER (ESST-I)  
PH: & FAZ 3 091-9210529



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

41

DATED PESHAWAR, THE AUGUST 31, 2018

Grd. 20

NOTIFICATION

NO.SO(E-I)E&AD/9-232/2018. Consequent upon their promotion from Superintendent Engineers (BPS-19) to the rank of Chief Engineers (BPS-20) of Communication & Works Department as notified vide this Department's Notification of even No. dated 28.05.2018, the competent authority is pleased to order posting/transfer of this following Engineers, in the public interest:-

Immediate junior

SR.#	NAME OF OFFICER	FROM	TO
1.	Engr. Muhammad Uzair (BS-20)	Chief Engineer, FATA, W&S, Peshawar.	Retained as Chief Engineer, FATA, W&S, Peshawar.
2.	Engr. Muhammad Tariq (BS-20)	Awaiting posting in C&W Department.	Chief Engineer (North), C&W, Peshawar, vice Sr. No. 4.
3.	Engr. Ejaz Hussain Ansari (BS-20)	Chief Engineer (East), C&W, Abbottabad	Retained as Chief Engineer (East), Abbottabad.
4.	Engr. Riaz Arshad (BS-19)	Chief Engineer, (North), C&W, Peshawar.	Report to C&W Department for further posting.

CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst. No. and date even.

Copy forwarded to the:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary to Government of Khyber Pakhtunkhwa, C&W Department.
4. Commissioners, Peshawar/Hazara.
5. Accountant General, Khyber Pakhtunkhwa.
6. Deputy Commissioners, Peshawar/Abbottabad.
7. District Accounts Officers concerned.
8. Director Information, Khyber Pakhtunkhwa.
9. PS to Chief Secretary, Khyber Pakhtunkhwa.
10. PS to Secretary Establishment.
11. Engineers concerned.
12. Manager, Govt. Printing Press Peshawar.

\*A. LATIF\*\*

(ISHTIAQ AHMAD)  
SECTION OFFICER (ESTT. I)

A. Hasher

U3



Ann: "H"

42

**OFFICE OF THE CHIEF ENGINEER (FATA)  
WORKS & SERVICES DEPARTMENT  
PESHAWAR**

No. 105 12/26-E  
Dated Peshawar the, 22/06/2010

To

All Executive Engineers,  
Building/Highway/W&S,  
Divisions in FATA.

Kurram

The Design Engineer Building (Local)

The Design Engineer Road (Local).

The Technical Officer (Local).

Subject: **SENIORITY LIST.**

I am directed to refer to the above noted subject and to enclose herewith a copy of Notification Government of Khyber Pakhtunkhwa C&W Department No.SOE-1/C&W/8-15/2009, dated 11.6.2010 for information and further necessary action.

file

*[Signature]*

DA/As above

*[Signature]*

ADMINISTRATIVE OFFICER

Copy forwarded to the Section Officer (E) Communication & Works Department Peshawar with reference to above for information.

*[Signature]*  
*[Signature]*

ADMINISTRATIVE OFFICER

GOVT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the June 11, 2010

**NOTIFICATION**

**SOE-I/C&W/8-15/2009.**


In pursuance of Establishment & Admn: Department's Order No. SO(O&M) E&AD/2-22/2006-Vol-III, dated 24.11.2009, under Sub-Section (1) of the Section-8 of the NWFP Civil Servant Act 1973, the **Final seniority List** of Executive Engineers (BPS-18) of the Communication & Works Department, as it stood on 11/06/2010 is notified as detailed below:

Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of 1st Entry in Govt. Service	Date of Appointment/Promotion in Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Farooq-e-Azam	B.Sc. M.S. (Civil)	10/09/1951	Bannu	09/11/1978	05/05/1998	
2.	Mohammad Hamayun	B.Sc. (Civil)	14/11/1953	Malakand	31/10/1978	11/12/2009	
3.	Abdul Hafeez Saval	B.Sc. (Civil)	21/08/1951	Peshawar	09/09/1979	11/12/2009	Seniority fixed in light of E&A Deptt letter SOE-III (E&AD)1-3/2008 dated 28.01.09, w.e.f. 23.12.2004
4.	Imdad Hussain Bangash	B. Sc. (Civil)	02/02/1952	Kurram Agency	22/09/1979	11/12/2009	Seniority fixed in light of E&A Deptt letter SOE-III (E&AD)1-3/2008 dated 28.01.09, w.e.f. 23.12.2004
5.	Muhammad Ijaz	B. Sc. (Civil)	07/05/1956	Mardan	09/09/1979	11/12/2009	Seniority fixed in light of E&A Deptt letter SOE-III (E&AD)1-3/2008 dated 28.01.09, w.e.f. 23.12.2004
6.	Javed Ahmad Turk	B. Sc. (Civil)	15/02/1955	Abbottabad	09/09/1979	04/08/2005	Seniority fixed in light of E&A Deptt letter SOE-III (E&AD)1-3/2008 dated 28.01.09, w.e.f. 23.12.2004
7.	Muhammad Ashraf Khan	B.Sc. (Mech)	12/09/1954	Mardan	09/09/1979	11/12/2009	Seniority fixed in light of E&A Deptt letter SOE-III (E&AD)1-3/2008 dated 28.01.09, w.e.f. 23.12.2004

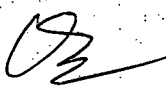
CE P&T W&S Deptt  
 390  
 18-6-2010  
 2/26E  
 B&W

*Admiral*  
*02*  
*18/6/10*

Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of 1st Entry in Govt. Service	Date of Appointment/Promotion in Present Grade	Remarks	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
8.	Abdul Samin Khan	B. Sc. (Civil)	14/11/1951	Kohat	09/09/1979	23/12/2004	Seniority fixed in light of Para-7 of the E&A Deptt letter No. SORI (S&GAD)1-29/75 dated 13.04.1987	
9.	Fateh Mohammad Jan	B. Sc. (Civil)	01/07/1953	Bajaur Agency	22/09/1979	23/12/2004		
10.	Waqar Ahmad Malik	B. Sc. (Civil)	11/02/1953	Mansehra	09/09/1979	23/12/2004		
11.	Abdul Saboor Usmani	B. Sc. (Civil)	23/05/1953	Abbottabad	09/09/1979	03/06/2005		
12.	Syed Jalaluddin	B. Sc. (Civil)	12/09/1953	Chitral	25/11/1979	23/12/2004		
13.	Muhammad Khaliq Shah	B. Sc. (Civil)	<u>31/10/1950</u>	Mardan	18/05/1980	11/12/2009		
14.	Inayatullah Khan	B. Sc. (Civil)	05/04/1955	Swabi	12/11/1981	23/12/2004		Seniority fixed in light of E&A Deptt letter SOE-III (E&AD)1-3/2008 dated 28.01.09, w.e.f. 23.12.2004
15.	Asif Iqbal	B. Sc. (Civil)	02/02/1954	Swat	12/11/1981	23/12/2004		
16.	Shamsu Zaman	B. Sc. (Civil)	08/01/1956	Peshawar	12/11/1981	23/12/2004		
17.	Faiz Mohammad	B. Sc. (Civil)	11/04/1954	Kohat	15/12/1981	23/12/2004		
18.	Javed Ihsan	B. Sc. (Civil)	21/02/1955	Mardan	15/12/1981	03/06/2005		
19.	Rashidullah	B. Sc. (Civil)	20/03/1955	Bannu	15/12/1981	23/12/2004	Seniority fixed in light of Para-7 of the E&A Deptt letter No. SORI (S&GAD)1-29/75 dated 13.04.1987	
20.	Fazle Kabir	B. Sc. (Civil)	01/08/1956	Peshawar	15/12/1981	23/12/2004		
21.	Syed Daud Jan	B. Sc. (Civil)	19/04/1957	Swabi	04/09/1982	23/12/2004		
22.	Farman Ali	B. Sc. (Civil)	02/04/1954	Swat	18/04/1983	23/12/2004		
23.	Saifur Rehman	B. Sc. (Civil)	06/10/1958	D.I.Khan	18/04/1983	23/12/2004		
24.	Muhammad Asif	B. Sc. (Civil)	25/12/1957	Mohmand Agency	18/04/1983	23/12/2004		

Attorn  


Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of 1st Entry in Govt. Service	Date of Appointment/Promotion in Present Grade	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
25.	Aslam Khan	B. Sc. (Civil)	03/04/1956	FR Bannu	11/11/1985	23/12/2004	(8)
26.	Shah Jehan	B. Sc. (Civil)	22/03/1958	Mardan	11/11/1985	23/12/2004	
27.	Muhammad Pervez	B. Sc. (Civil)	10/08/1958	Abbottabad	11/11/1985	23/12/2004	
28	Shafiq Ahmad	B. Sc. (Mechanical)	09/02/1955	Peshawar	09/09/1979	23/01/2010	
29.	Muhammad Uzair	B.Sc. (Civil) M.S (Civil)	16/04/1963	Malakand	16/09/1987	23/01/2010	
30	Muhammad Tariq-I	B. Sc. (Civil)	10/04/1963	Malakand	16/09/1987	23/01/2010	
31	Ejaz Hussain Ansari	B. Sc. (Civil)	22/07/1962	D.I.Khan	26/05/1988	23/01/2010	
32	Muhammad Shahab Khattak	B. Sc. (Civil) M.S. (Civil)	05/04/1960	Peshawar	26/05/1988	23/01/2010	
33	Zia-ur-Rehman	B. Sc. (Civil)	28/06/1956	Karak	26/05/1988	23/01/2010	
34	Shahid Hussain	B. Sc. (Civil) M.S. (Civil)	03/04/1962	Peshawar	26/05/1988	23/01/2010	
35	Syed Mohd Ilyas Shah	B. Sc. (Civil)	30/03/1957	Malakand	26/05/1988	23/01/2010	
36	Riaz Arshad	B. Sc(Civil) M.S (Civil)	25/11/1960	Peshawar	26/05/1988	23/01/2010	
37	Muhammad Ayub	B. Sc. (Civil)	03/02/1961	Kohat	26/09/1987	23/01/2010	
38	Abdul Sattar	B. Sc. (Civil)	07/03/1961	Orakzai Agency	26/05/1988	23/01/2010	
39	Arshad Khan	B. Sc. (Civil)	02/10/1961	Mardan (Swabi)	26/05/1988	23/01/2010	
40	Noor-us-Saeed Shah	B. Sc. (Civil)	02/03/1962	Mardan	26/05/1988	23/01/2010	
41	Amer Nadeem Durrani	B. Sc. (Civil)	28/04/1962	Peshawar	26/05/1988	23/01/2010	
42	Rafi-ud-Din	B. Sc. (Civil)	01/05/1962	Abbottabad	26/09/1987	23/01/2010	
43	Shakir Habib	B. Sc. (Civil)	30/03/1964	Kohat	26/05/1988	23/01/2010	
44	Ahmad Nabi Sultan	B. Sc. (Civil)	30/01/1964	Swat	26/09/1987	23/01/2010	
45	Hamid Ajmal Khan	B. Sc. (Civil)	01/08/1962	Abbottabad	26/05/1988	23/01/2010	
46	Aurangzeb	B. Sc. (Civil)	07/10/1958	Abbottabad	26/05/1988	23/01/2010	
47	Habib-ur-Rahim	B. Sc. (Civil)	01/01/1961	Swat	26/05/1988	23/01/2010	

Atten  




Sl. No.	Name of Officer	Academic Qualification	Date of Birth	Domicile	Date of 1st Entry in Govt. Service	Date of Appointment Promotion in Present Grade	(8)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
48	Fazli Wahab	B. Sc. (Civil)	01/09/1961	Swat	26/05/1988	23/01/2010	
49	Muhammad Nawaz-I	B. Sc. (Civil)	15/02/1962	Mohmand Agency	26/05/1988	23/01/2010	
50	Bakht Rawan	B. Sc. (Civil)	05/03/1962	Malakand Agency	26/05/1988	23/01/2010	
51	Munir Hussain	B. Sc. (Civil) M.S. (Civil)	10/04/1962	Mansehra	26/05/1988	23/01/2010	
52	Muhammad Tariq-II	B. Sc. (Civil)	12/01/1964	Malakand	26/05/1988	23/01/2010	
53	Abdul Ghafoor	B. Sc. (Civil)	15/11/1959	Mardan	26/09/1987	23/01/2010	
54	Bahadar Said	B. Sc. (Civil)	30/03/1957	Dir	26/05/1988	23/01/2010	
55	Rehmat Hakeem	B. Sc. (Civil)	31/05/1960	Dir	26/05/1988	23/01/2010	
56	Kifayatullah	B. Sc. (Civil)	07/07/1959	Malakand Agency	26/05/1988	23/01/2010	
57	Jamil Ahmad	B. Sc. (Civil)	20/11/1962	Malakand	16/09/1987	23/01/2010	
58	Muhammad Tassaduq	B. Sc. (Civil)	24/01/1959	Mansehra	16/09/1987	23/01/2010	
59	Javaid Akbar	B. Sc. (Civil)	27/10/1958	Peshawar	16/09/1987	23/01/2010	
60	Muhammad Adil	B. Sc. (Civil)	05/08/1964	Peshawar	16/09/1987	23/01/2010	
61	Muhammad Ayaz Khan	B. Sc. (Civil)	01/07/1957	Malakand	20/09/1987	23/01/2010	
62	Muhammad Nazar	B. Sc. (Civil)	17/10/1958	Swat	26/05/1988	30/04/2010	
63	Aziz Ahmad-II	B. Sc. (Civil)	22/03/1959	Karak	20/09/1987	30/04/2010	
64	Hamidullah Khan	B. Sc. (Civil)	30/03/1959	Bannu	21/09/1987	30/04/2010	
65	Abdul Qayyum	B. Sc. (Civil)	15/06/1954	Mohmand Agency	22/09/1987	30/04/2010	
66	Syed Yousaf Shah	B. Sc. (Civil)	03/03/1963	Mansehra	22/09/1987	30/04/2010	

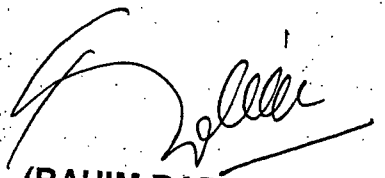
Attested  
On

SECRETARY TO  
GOVT. OF KHYBER PAKHTUNKHA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar June 11, 2010

1. Secretary to Governor, Khyber Pakhtunkhwa
2. Secretary to Chief Minister, Khyber Pakhtunkhwa
3. Chief Engineer Communication & Works Department
4. Chief Engineer (FATA) Communication & Works Department
5. Managing Director Frontier Highway Authority, Peshawar.
6. All Superintending Engineers Communication & Works Department
7. All Executive Engineers Communication & Works Department
8. P.S. to Chief Secretary, Khyber Pakhtunkhwa
9. P.S. to Secretary Establishment & Admin Department
10. P.S. to Secretary Law Department
11. P.S. to Secretary Communication & Works Department
12. Officers concerned.
13. Office order file /Personal files
14. Incharge Computer Cell C&W Department
15. Manager Govt. Printing & Press Department for publication in the next issue of the Govt. Gazette

Attended  
OS

  
(RAHIM BADSHAH)  
SECTION OFFICER (ESTT)



Ann: "I"  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

48

Dated Peshawar, the Nov 11, 2019

**ORDER:**

No.SOE/C&WD/8-7/2011: WHEREAS, Engr. Muhammad Pervez Executive Engineer (BS-18) C&W Department (who has already reached to superannuation i.e. 60 years on 09.08.2018) was proceeded against under Removal from Service (Special Powers) Ordinance 2000 for the alleged irregularities in the scheme "Construction of pre-stressed and steel bridge/causeway on existing roads in Kurram Agency" ADP No.473 (2009-10).

2. AND WHEREAS, for the said act/omission specified in Section-3 of the ibid ordinance, he was served with charge sheet/statement of allegations.

3. AND WHEREAS, Engr. Kifayatullah the then Executive Engineer (BS-18) C&W Department was appointed as inquiry officer, who conducted inquiry and submitted the report.

4. AND WHEREAS, show cause Notice containing the penalty of "withholding of 10% for 03 years" of the pension in terms of clause (a) of rule 1.8 of the Pension Rules 1963 was served upon Engr. Muhammad Pervez, who submitted his reply.

5. NOW THEREFORE, the Competent Authority, after having considered the charges, material on record, inquiry report of the inquiry officer, explanation of the officer concerned and in exercise of the powers conferred under the relevant rules, is pleased to abate the proceedings against him without any adversity.

SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

Endst of even number and date

Copy is forwarded for information to:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Accountant General PR (sub office), Peshawar.
3. Chief Engineer (North) C&W Peshawar
4. Chief Engineer (Merged Areas) C&W Peshawar
5. Superintending Engineer Southern C&W Circle Tribal District Bannu
6. Executive Engineer Highway Division Tribal District Kurram
7. District Accounts Officer Tribal District Kurram
8. PS to Secretary Establishment Department, Peshawar.
9. PS to Minister for C&W KPK, Peshawar.
10. PS to Secretary C&W Department, Peshawar.
11. Engr. Muhammad Pervez XEN (rtd) C&W Deptt: C/O CE (North) C&W Peshawar
12. Office order File/Personal File.

Attended  
Engr

Abdur Rashid Khan  
(ABDUR RASHID KHAN)

To

Ann: "J"

49

The Chief Secretary,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Through proper channel

**Subject:** DEPARTMENTAL REPRESENTATION FOR THE GRANT OF PROFORMA PROMOTION TO THE APPLICANT ON THE GROUND THAT A JUNIOR OFFICER TO THE APPLICANT HAS BEEN PROMOTED WHILE THE APPLICANT HAS BEEN DENIED THE SAME.

Respected Sir,

Attended  
Oad

With due regard and honour it is submitted that the applicant served the C & W Department for 33 years and got retired at the age of 60 years of age according to his service record. Earlier, the applicant was compulsorily retired from service by imposing upon him a major penalty along with a recovery of Rs. 18, 55, 680/- due to allegations of over payments to the contractor. That against the above order, the applicant knocked at the door of this Hon'ble tribunal which tribunal remanded the case of the applicant to the department for De Novo Inquiry besides ordering the department for his reinstatement into government service. That after reinstatement, there was constituted a high level inquiry which recommended the applicant for exoneration of the charges leveled against him which the department issued vide its notification. That in the year 2011, an inquiry regarding release of earnest money was initiated against the applicant thereby issuing him charge sheet and statement of allegations by appointing a junior officer to the effect that an amount of Rs. 34,34,529/- was allegedly shown to have been released to the contractor as earnest money which the appellant strongly denies to have been released by him, because there exist fake signatures on the vouchers with tampering in it and there exist impersonation of the payee to which allegations the petitioner had properly replied. The inquiry remained pending for the last 7/8 years which has not been concluded. It is worth to mention here that the applicant, after his re-instatement, remained

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on duty for about five months and during that period he was neither served with any show cause notice nor there was initiated any inquiry against him nor the inquiry initiated in the year 2011 has been concluded. It is worth to mention here that due to retirement of the applicant, the said inquiry abated vide notification dated 11-11-2019 as no loss to the National Exchequer was ever caused. That despite above all and the law on the subject, the applicant was never considered for promotion, hence this appeal.




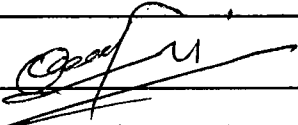
It is therefore most humbly requested that your honour may very graciously be pleased to grant proforma promotion to the applicant with all back benefits.

Yours Obediently

Attested  
Qayyum

M. Pervez  
08-12-2019

**Engineer Muhammad Pervez**  
Executive Engineer (Rtd), C & W  
Department Peshawar.

قیمت 50 روپے	47261			
ایڈوکیٹ: 		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: 2101				
رابطہ نمبر: 0333927258				

بعدالت جناب: جسٹس مین کمال مسرور سید ایڈووکیٹ

مخانب: ایڈووکیٹ	دعویٰ:
محمد سید بنجام حکومت پاکستان	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

**باعت تحریر آگہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ  
 آن مقام سید علی کیلیہ موسف خان کو وکیل مقرر  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تحقیق  
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور دستخطی لینے  
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے  
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 17-03-2020

المقام: سید علی کیلیہ

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.3976 of 2020**

Engr. Muhammad Pervez  
Executive Engineer (retired)  
C&W Department.

.....

**(Appellant)**

**V/S**

Govt of Khyber Pakhtunkhwa through  
Chief Secretary and others

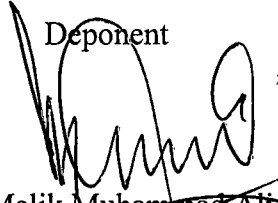
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**(Respondents)**

**I N D E X**

<b>S.NO.</b>	<b>DESCRIPTION OF DOCUMENTS</b>	<b>ANNEXURE</b>	<b>PAGE</b>
1	Parawise Comments on behalf of Respondent No.1 to 3	-	1-3
2	Affidavit	-	4
3	Govt of Khyber Pakhtunkhwa C&W Department Order No.SOE/C&WD/8-21/2010 dated 12-01-2012	I	5
4	Govt of Khyber Pakhtunkhwa C&W Department Order No.SOE/C&WD/8-21/2010 dated 02-02-2017	II	6
5	Khyber Pakhtunkhwa Service Tribunal Peshawar judgment dated 30-09-2016	III	7-9
6	Govt of Khyber Pakhtunkhwa C&W Department Order No.SOE/C&WD/8-21/2010 dated 028-02-20182-02-2017	IV	10
7	Govt of Khyber Pakhtunkhwa C&W Department Notification No.SOE/C&WD/4-7/2018 dated 08-03-2018	V	11
8	Khyber Pakhtunkhwa Service Tribunal Peshawar judgment dated 30-09-2016	VI	12-14

Deponent

  
Malik Muhammad Ali,  
Section Officer (Litigation),  
C&W Department Peshawar

①

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**  
**SERVICE APPEAL NO. 3976 OF 2020**

Engr Muhammad Pervez ----- Appellant  
Executive Engineer (rtd)  
C&W Department

**VERSUS**

1. Govt of Khyber Pakhtunkhwa ----- Respondents  
Through Chief Secretary, Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa  
C&W Department, Peshawar
3. Engr. Muhammad Uzair  
Chief Engineer (North)  
C&W Peshawar

**PARAWISE REPLY ON BEHALF OF RESPONDENT NO. 1, 2 & 3**

Respectfully Sheweth:

**Preliminary Objections**

- i. That the Appellant has got no cause of action
- ii. The appeal is badly time barred
- iii. That the appeal is not maintainable in its present form
- iv. That the appeal is bed for mis-joinder and non-joinder of necessary parties
- v. That the appellant has not come to this Hon'able Tribunal with clean hands

**FACTS:**

1. No comments, pertains to record
2. Correct to the extent, that appellant while posted as XEN Highway Division Kurram Agency and holding the charge of SDO Highway Division Kurram Agency was found involved in massive irregularities committed by him, as reported by erstwhile FATA Sectt. Charge sheet and statement of allegations was served upon him, with the approval of competent authority and formal inquiry was conducted under RSO 2000, in which the charges were found proved against him, and the competent authority after fulfillment of all codal formalities, imposed major penalty of "Compulsory retirement, besides recovery of Rs.18,55,680/-" upon him **(Annex-I)**.
3. Incorrect, the appellant (Engr. Muhammad Pervez) aggrieved and filed an appeal in the Service Tribunal. The Tribunal set aside the impugned orders dated 10.03.2016, 12.01.2012 & 11.05.2012 **(Annex-II)**. The Tribunal ordered to reinstate the appellants and remanded the case back to the respondent department with the direction to conduct de-novo inquiry in the case within a period of sixty days in accordance with law and rules **(Annex-III)**.



4. Incorrect, the department submitted a Note to Chief Secretary Khyber Pakhtunkhwa with the proposal to withdraw the Notification regarding compulsory retirement dated 12.01.2012 and initiation of de-novo inquiry. In pursuance to the approval of Competent Authority, an inquiry committee was constituted to conduct de-novo inquiry under the Khyber Pakhtunkhwa Govt Servants (Efficiency & Discipline) Rules, 2011 against the accused officer/official, including appellant, who submitted the report, which was further processed and the Chief Secretary (competent authority) has approved the exoneration of the officer and notified on 28.02.2018 and subsequently adjusted him as Assistant Engineer O/O CE (North) C&W Peshawar (**Annex-IV**).
5. As explained in para-4 above
6. As explained in para-4 above
7. Incorrect, the appellant (Muhammad Pervez) reinstatement in BS-17 in the inquiry i.e. mis-appropriation in Public Exchequer is concerned, in this regard it is clarified that the Service Tribunal has clearly ordered to reinstate the applicant in service and remand the case to the respondent Department with the direction to conduct de-novo inquiry and the matter of back benefits shall be subject to the outcome of the de-novo inquiry. In the judgment, the applicant (Muhammad Pervez) has clearly treated as Ex-Assistant Engineer O/O Chief Engineer (North) C&W Peshawar (**Annex-V**). Moreover, the compulsory retirement order dated 12.01.2012 was issued while he was Assistant Engineer (BS-17) after approval of Competent Authority i.e. Chief Secretary Khyber Pakhtunkhwa. Therefore, in light of Service Tribunal judgment dated 30.09.2016, a Note submitted to Chief Secretary for conducting de-novo inquiry as well as his reinstatement in BS-17 for the purpose of inquiry. It is further added that if the applicant considered in BS-18 and reinstate him as XEN BS-18 then it will be un-lawful favour with the applicant as in the judgment the officer has clearly shown as Ex-Assistant Engineer and the Tribunal ordered for reinstatement (**Annex-VI**).
8. Incorrect, as the appellant at that time was under disciplinary proceedings and his case could not be considered for promotion as per promotion policy of the Government. The appellant reinstated in service in BS-18 on 17.09.2018 and retired from Govt service on the age of superannuation i.e. 60 years w.e.f. 09.08.2018, meaning thereby the appellant was no more Government servant at the time of reinstatement in service.
9. Incorrect, in fact, the appellant during the time was under disciplinary proceedings, as his case for promotion could not be considered by the PSB as per promotion policy of the Provincial Government.
10. As per para 7 & 9 above.

11. Incorrect, the departmental appeal/representation of the appellant has never received in the department.

12. As explained in para-11 above

13. Incorrect, detail reply given in above paras.

**GROUND**

A. Not correct, the whole process of the inquiry in respect of appellant was processed and completed by the respondents purely in light of the rules/law in the subject, no violation of constitution of Islamic Republic of Pakistan 1973 was made.

B. Incorrect. As explained in Para A of the Grounds.

C. Incorrect. As explained in para 7 & 9 of the facts.

D. Incorrect. Although the appellant has more than 26 years service at his credit, during his service, he remained involved in the financial massive irregularities, which were finalized. He was habitual for committing irregularities though not taking responsibility.

E. Incorrect, as explained in paras-D of the grounds

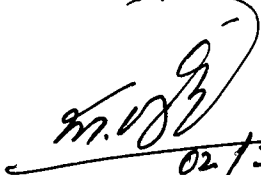
F. As explained in Paras 7 & 8 of the facts

G. Incorrect, as explained in paras-7 & 8 of the facts

H. Incorrect, as explained in paras-7 of the facts

I. The respondents seek permission of this Hon'able Tribunal to relay additional grounds at the time of arguments.

In view of the above, it is humbly prayed that the instant appeal which is not based on facts may please be dismissed with cost.

  
02/3/2021  
(MUHAMMAD UZAIR)  
Chief Engineer (North)  
C&W, Peshawar  
(Respondent No.3)

  
SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department  
(Respondent No. 1 & 2)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.3976 of 2020**

Engr. Muhammad Pervez  
Executive Engineer (retired)  
C&W Department.

.....

**(Appellant)**

**V/S**

Govt of Khyber Pakhtunkhwa through  
Chief Secretary and others

.....

**(Respondents)**

**AFFIDAVIT**

I, Malik Muhammad Ali, Section Officer (Litigation) C&W Department Peshawar hereby affirm and declare that all the contents of the Parawise comments are correct to the best of my knowledge and belief and nothing has been concealed.

Deponent

Malik Muhammad Ali,  
Section Officer (Litigation),  
C&W Department Peshawar

Annex-I

(S) (A) (H) (S)

GOVT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the January 12, 2012

ORDER:

No.SOE/C&WD/8-21/2010: WHEREAS, Engr Muhammad Pervez, Assistant Engineer (BS-17) C&W Department was proceeded against under the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance 2000 for the the following irregularities committed in the "(i) Kirman-Sikaram Road and (ii) Surpakh to Star Patti Road".

2. AND WHEREAS, for the said act of misconduct, he was served with charge sheet/statement of allegations.

3. AND WHEREAS, Engr Shahid Hussain Director (P&M) C&W Department and Mr Zairful Mani, (PSC SG) PPHI, FR Peshawar was appointed as inquiry committee, who submitted inquiry report.

4. AND WHEREAS, show cause Notice for imposition of major penalty of "compulsory retirement besides recovery of Rs.18,55,680/-" was served upon the accused officer alongwith a copy of inquiry report, who submitted his reply.

5. NOW THEREFORE, the competent authority after having considered the charges, material on record, inquiry report of the inquiry committee, in exercise of the powers conferred by Section-3 of Khyber Pakhtunkhwa Removal from Services (special-powers) Ordinance 2000, has been pleased to impose the major penalty of "compulsory retirement besides recovery of Rs.18,55,680/-" upon the aforementioned officer.

Secretary to  
Govt of Khyber Pakhtunkhwa  
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

- 1) Additional Chief Secretary FATA Secretariat, Warsak Road, Peshawar
- 2) Accountant General Khyber Pakhtunkhwa, Peshawar
- 3) All Chief Engineers, C&W Peshawar
- 4) Chief Engineer (North) C&W Peshawar
- 5) Chief Engineer FATA C&W Peshawar
- 6) Secretary (Admn & Coordination) FATA Secretariat, Warsak Road, Peshawar
- 7) Executive Engineer Highway Division Kurram Agency at Parachinar
- 8) Agency Accounts Officer Kurram Agency at Parachinar
- 9) PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
- 10) PS to Secretary Establishment Deptt, Khyber Pakhtunkhwa, Peshawar
- 11) Incharge Computer Centre C&W Department, Peshawar
- 12) PS to Secretary C&W Peshawar
- 13) Officer concerned
- 14) Office order File/Personal File

  
(RAHIM BADSHAH)  
SECTION OFFICER (ESTT)

Annex-II

(6)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the February 02, 2017

**ORDER:**

No.SOE/C&WD/8-21/2010: In pursuance of the Service Tribunal Khyber Pakhtunkhwa order dated 30.09.2016 in service appeal No.370/2016, the Competent Authority is pleased to withdraw this Department letter No.SOE/C&WD/13-9/2012 dated 10.03.2016 and order No.SOE/C&WD/8-21/2010 dated 12.01.2012 regarding Compulsory Retirement in respect of Engr. Muhammad Pervaz Assistant Engineer/SDO (BS-17).

2. Consequent upon the above, the aforesaid officer of C&W Department is hereby reinstated into service and directed to report to C&W Secretariat. The matter of back benefits shall be subject to the outcome of the de-novo inquiry.

SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

Copy is forwarded for information to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Accountant General PR (sub office), Peshawar
3. Secretary Admn, Infrastructure & Coord Deptt, FATA Sectt Warsak Road, Peshawar
4. Chief Engineers (North) C&W Peshawar
5. Chief Engineer FATA W&S Peshawar
6. Executive Engineer Highway FATA Division Kurram Agency
7. Agency Accounts Officer Kurram Agency
8. PS to Chief Secretary Khyber Pakhtunkhwa Peshawar
9. PS to Secretary Establishment Department Peshawar
10. PS to Secretary C&W Department Peshawar
11. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar
12. Officer concerned
13. Office order File/Personal File

  
(TUSMAN JAN)  
SECTION OFFICER (Estb)

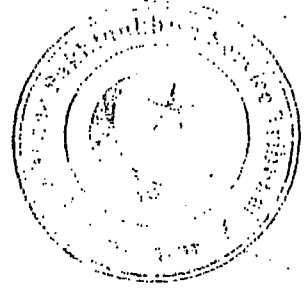
(4) Annex-III  
TRIBUNAL ORDER FOR  
DENOVO INQUIRY

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEAL NO. 370/2016

Date of institution ... 06.04.2016

Date of judgment ... 30.09.2016



Muhammad Pervez  
Ex-Assistant Engineer,  
Officer of the Chief Engineer (North)  
C&W Secretariat, Peshawar.

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa,  
through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary, to Government of Khyber Pakhtunkhwa,  
Communication and Work Department, Civil Secretariat, Peshawar.
3. Additional Chief Secretary FATA, FATA Secretariat,  
Warsak Road, Peshawar.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED  
10.03.2016 WHEREBY THE MAJOR PENALTY OF COMPULSORY  
RETIREMENT AND RECOVERY OF RS. 18,55,680/- REMAINED INTACT.

Mr. Shumail Ahmad Butt, Advocate.  
Mr. Muhammad Jan, Government Pleader

.. For appellant.  
.. For respondents.

MR. ABDUL LATIF  
MR. PIR BAKHSH SHAH

.. MEMBER (EXECUTIVE)  
.. MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:-

We intend to dispose of the instant service appeal of the appellant Muhammad Pervez and the connected Service Appeal No. 373/2016 of the appellant Sayed Iftikhar Hussain who lodged their separate appeals against the impugned order dated 10.03.2016 passed by the appellate authority.

2. Brief stated facts of the case are that the above two appellants who were posted in Highway Division Kurram Agency were proceeded against for the charges contained in the

charge-sheet and statement of allegations on the basis of findings of a fact finding inquiry by a three members committee. A formal inquiry was conducted by a committee comprising of two officers who submitted their reports and based on the findings of the inquiry report the competent authority imposed major penalty of compulsory retirement besides recovery of Rs. 18,55,680/- upon Engineer Muhammad Pervez and major penalty of compulsory retirement and recovery of Rs. 9,27,840 was imposed on Sayed Ifikhar Hussain Sub-Engineer.

3. The appellants then approached this Service Tribunal against the impugned orders in separate Service Appeals which were decided through a single judgment on 11.09.2015 the relevant paras whereof are reproduced as under:-

"Report of the departmental enquiry committee shows that the committee has not physically inspected the spot. When in response to departmental appeal of the appellant then XEN Battagram was directed to report who reported vide his letter No. 1565/PF, dated 07.03.2012 (copy available on file as annexure-J) that all is well. The Tribunal does not find any reason in the order of the appellate authority as to why and for what reasons this report was ignored. Similarly, the record shows that then XEN Kurram vide his letter dated 14.1.2011, after inspection of the spot reported that all works was complete; the same also seems to have not been taken into account by the appellate authority. This being so, we have carefully gone through order of the appellate authority dated 11.5.2012 by way of which the appeal of the appellant has been rejected but we are unable to find it having any reason for such rejection in contemplation of Section 24-A of the General Clauses Act. Further this rejection order is also not in accordance with the requirements of rule-5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 which is here below reproduced for facilitation of reference:-

"5. Action by the appellate authority --- (1) The appellate authority, after making such further inquiry or calling for such information or record or giving the appellant an opportunity of being heard, as it may consider necessary, shall determine-

ATTACHED

9

8. The order passed in pursuance of the above directions of the Tribunal however does not appear a speaking/reasoned order because rejection of the departmental appeals of the appellants were attributed to the recommendations of the inquiry committee wherein the committee stated "it seems irregularities have been made in the payment". Moreover instead of producing credible evidence against the appellants, it was stated that the accused could not present any proof of innocence in their support which is not fair as the burden of proof rests with the respondents. In the above scenario, we are constrained to set-aside the impugned orders dated 10.03.2016, 12.01.2012 and 11.05.2012, reinstate the appellants in service and remand the case to the respondent-department with direction to conduct de-novo inquiry in the case within a period of sixty days after receipt of this judgment strictly in accordance with law and rules providing full opportunity of defence and cross-examination to the appellants before passing of appropriate order by the competent authority. The matter of back benefits shall be subject to the outcome of the de-novo inquiry. The appeals are disposed of in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
30.09.2016

*Sd/- Abdul Latif, Member*  
*Sd/- Pir Bakhtishah, Member*

*[Handwritten signature and stamp]*

07-10-2016  
2400  
14  
14  
*[Signature]*  
17-10-2016  
17-10-2016





10 Annex-IV  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the Feb 28, 2018

**ORDER:**

No. SOE/C&WD/8-21/2010: WHEREAS, the following officer/official of C&W Department were proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the alleged irregularities in the (i) Kirman-Sikaram Road and (ii) Surpakh to Star Patti Road:

- i. Engr. Muhammad Pervez Assistant Engineer (BS-17)
- ii. Mr. Iflikhar Hussain Sub Engineer (BS-11)

2 AND WHEREAS, for the said act/omission specified in rule-3(a) of the rules ibid, he was served charge sheets/statement of allegations.

3 AND WHEREAS, de-novo inquiry through the committee comprising of Mr. Fayyaz Ali Shah AIG Prisons Khyber Pakhtunkhwa Peshawar and Engr. Ahmad Nabi Sultan Director (Construction) PKHA Peshawar conducted, who submitted the inquiry report.

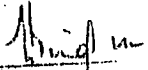
4 NOW THEREFORE, the Competent Authority, after having considered the charges, material on record, inquiry report of the inquiry committee, explanation of the officer/officials concerned and in exercise of the powers conferred under Rule-14 (3) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, is pleased to exonerate officer/official of the charges leveled against them.

SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Accountant General PR (sub office), Peshawar
3. Secretary (AI&C) Department FATA Sectt, Warsak Road, Peshawar
4. All Chief Engineers, C&W Peshawar
5. Chief Engineer FATA C&W Peshawar
6. Executive Engineer Highway FATA Division Kurram Agency at Parachinar
7. Agency Accounts Officer Kurram Agency at Parachinar
8. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
9. PS to Secretary Establishment Deptt, Khyber Pakhtunkhwa, Peshawar
10. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar
11. PS to Secretary C&W Department Peshawar
12. Officer/official concerned
13. Office order File/Personal File

  
(ABDUR RASHID KHAN)  
SECTION OFFICER (Estb)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the March 08, 2018

**NOTIFICATION:**

**No.SOE/C&WD/4-7/2018:** The Competent Authority is pleased to transfer Engr. Muhammad Pervez Assistant Engineer BS-17 (awaiting posting) and posted him as Assistant Engineer O/O Chief Engineer (North) C&W Peshawar against the vacant post, with immediate effect, in the public interest.

SECRETARY TO  
Government of Khyber Pakhtunkhwa  
**Communication & Works Department**

Copy is forwarded for information to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (North) C&W Peshawar
3. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar
4. PS to Secretary C&W Department, Peshawar
5. PA to Additional Secretary C&W Department, Peshawar
6. PA to Deputy Secretary (Admn) C&W Department, Peshawar
7. PA to Director (P&M) C&W Department, Peshawar
8. Officer concerned
9. Office order File/Personal File

  
(ABDUR RASHID KHAN)  
SECTION OFFICER (Estb)

Annex-vi

TRIBUNAL ORDER FOR  
DENOVO INQUIRY

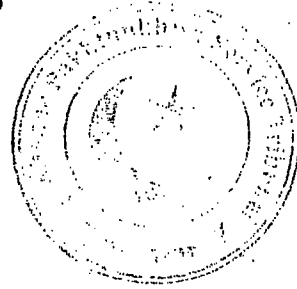
(12) (12)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEAL NO. 370/2016

Date of institution ... 06.04.2016

Date of judgment ... 30.09.2016



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Ex-Assistant Engineer,  
Officer of the Chief Engineer (North)  
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... (Appellant)

VERSUS

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MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

MR. PIR BAKHSH SHAH

.. MEMBER (JUDICIAL)

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ANNOUNCED  
30.09.2016

*Self- Abdul Latif, Member*  
*Self- Pir Bakhtish Shah, Member*

*(Official stamp and signature)*

07-10-2016  
2400  
14  
14  
*(Signature)*  
17-10-2016  
17-10-2016

Before The Learned Member Service Tribunal  
Khyber Pakhtunkhwa, Peshawar.

Pervez vs Govt.

Application For Adjournment

Respectfully sheweth:

1. That the above titled case is  
fixed for to-day.

2. That on the last date of hearing this  
Hon'ble Court directed the petitioner  
to deposit process fee etc but  
inadvertently the petitioner has not  
deposited the same.

3. That the non deposit of fee  
is not deliberate or willful  
but was due to the circumstances  
beyond control.

That the case is, therefore, requested  
be adjourned for to-day kindly.

Prayer  
Through Only  
Counsel