

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Review Petition No. 444/2019

Date of Institution ... 25.11.2019

Date of Decision ... 01.02.2022

Muhammad Sohail, Ex-Deputy Secretary (BPS-18), Industries, Commerce and Technical Education Department Khyber Pakhtunkhwa Peshawar. R/O House No. 31, Street No. 9-A Gulbahar Colony No. 2, Peshawar City. ... (Petitioner)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others. ... (Respondents)

Present.

Mr. Fazal Shah Mohmand,  
Advocate ... For Petitioner.

Mr. Muhammad Adeel Butt,  
Addl. Advocate General, ... For respondents.

MR AHMAD SULTAN TAREEN ... CHAIRMAN  
MR. ATIQ-UR-REHMAN WAZIR, ... MEMBER(E)

JUDGMENT

**AHMAD SULTAN TAREEN, CHAIRMAN:-** Through the Review Petition described above in the heading, the petitioner has prayed for the relief as copied below:-

**"1. Upon acceptance of this leave to file review appeal, the appellant pray as below:-**

**1.1. The decision/order announced dated 13.06.2016 may please be reviewed and set aside on humanitarian ground.**

**1.2. The appellant appeal/case may please be transferred to the Establishment Department to conduct re-inquiry/hearing."**

2. The facts stated in the Review Petition precisely include that the petitioner was proceeded against under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 and penalty of removal from service was imposed upon him vide order dated 19.05.2015. He filed departmental appeal which was rejected vide order dated 05.08.2015. Consequently, Service Appeal No. 939/2015 was preferred before this Tribunal. The service appeal was adjudicated upon by the Tribunal under due course and vide judgment dated 13.04.2016, the penalty of removal from service was converted into that of compulsory retirement.

3. The grounds urged in the Review Petition include that no original documents were presented by the respondents before the departmental enquiry committee, and before this Tribunal; that the episodes of departmental enquiry, review petition and proceedings before this Tribunal were misguided by presenting a photocopy of fabricated, concocted, false and baseless letter provided by the Establishment Department, having no legal status under the *Qanun-e-Shahadat* Ordinance, 1984; that no relevant and specific documentary proofs were presented; that the evidence presented by the respondents was based on mere verbal statements specifically the statement of Mr. Naeem Khan which was used to build ground to initiate departmental proceedings; that the appellant was not treated in accordance with the basic principles of law and his rights guaranteed under the law were violated; that no legal proceedings were adopted to conduct departmental enquiry and awarded major penalty of removal from service; that the charges leveled against the appellant were never proved in the enquiry; and that the appellant never committed any act or omission which should be termed as misconduct.

4. Arguments advanced on behalf of the petitioner and by learned AAG on behalf of the respondents have been heard. Copies of the record comprising



judgment dated 13.04.2016 of this Tribunal, charge sheet/statement of allegations and reply, enquiry report and proceedings, show cause notice and reply, among others as annexed with the Review Petition have been perused.

5. The maintainability of this review petition is the first point for determination before embarking upon reviewability of the impugned judgment. Needless to say that this Tribunal has been established under the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with defined jurisdiction by the same statute. According to sub section (2) of Section 3 of the said Act, the Tribunal has been vested with exclusive jurisdiction in respect of matters relating to terms and conditions of service of civil servant including disciplinary matters. Section 4 of the Act ibid provides that any civil servant aggrieved by any final order, whether original or appellate made by departmental authority in respect of any of the terms and conditions of his service may prefer an appeal to the Tribunal having jurisdiction in the matter. However, Section 4 ibid does not provide right of appeal for civil servant in disciplinary matters. The right of appeal in disciplinary matter has been provided specially under Rule 19 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 which is copied below for ready reference:-

**"19. Appeal before Khyber Pakhtunkhwa Services Tribunal-**

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

*(2) xxx*

6. In view of the above legal position, a civil servant has been given right of appeal generally in respect of any of the terms and conditions of his service under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 while specially under Rule 19 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 in respect of disciplinary matters.

7. The Khyber Pakhtunkhwa Service Tribunal Act does not specifically provide for right to file a review petition before the Service Tribunal against its decision made in pursuance to the appeal preferred under Section 4 of the Act or Rule 19 of the Government Servants (E&D) Rules, 2011. Khyber Pakhtunkhwa Service Tribunal Rules, 1974 have been framed in pursuance to Section 11 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for carrying out the purpose of the said Act. However, the said rules are also silent about review petition. In general sense, the purpose of review petition is to make a request/submission for reconsideration of a decision already made by a Court/Tribunal for the purpose of making changes or making of fresh decision. In the strict legal sense, a court or Tribunal having given a final decision become *functus officio* and review of the decision thereafter is subject to the jurisdiction expressly provided by law or derived impliedly. In the present case, this Tribunal has got no express jurisdiction provided under the Act or Rules discussed above to embark upon review of its own decision. However, Federal Service Tribunal (FST) established under the federal legislation i.e. Service Tribunals Act, 1973 (LXX of 1973) has been vested with review jurisdiction under section 4A of the said Act. The same is copied herein below:-

**"4A. Review.—(1)** *A Tribunal shall have the power to review its final order on a review petition filed by an aggrieved party within thirty days of the order on the following grounds, namely:-*

- (i) *discovery of new and important matter or evidence which, after exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him at the time when the order was passed;*
- (ii) *on account of some mistake or error apparent on the face of record; or*
- (iii) *for any other sufficient cause."*
- (2) *The Tribunal shall decide the review petition within thirty days.*
- (3) *The Tribunal may confirm, set aside, vary or modify the judgment or order under review."*

8. FST and all provincial service tribunals including Khyber Pakhtunkhwa Service Tribunal have been established in pursuance to Article 212(1)(a) of the Constitution of Islamic Republic of Pakistan obviously with different territorial jurisdictions. Adjudicatory jurisdiction, which refers to the power of a tribunal to hear an appeal, is common for all the said tribunals as provided under section 4 of respective Service Tribunal Acts. However, unlike Provincial Service Tribunals, FST has been vested with express powers of review under section 4A copied above in addition to its basic adjudicatory jurisdiction under section 4 of Service Tribunal Act, 1973. Article 240 of the Constitution of Pakistan relates to appointment to Service of Pakistan and conditions of service. The Service of Pakistan as defined by Article 260 of the Constitution means any service, post or office in connection with the affairs of the Federation or a Province. Needless to say that FST exercises jurisdiction in connection with appeals of Federal Civil Servants who make part of the Service of Pakistan and the power of review has been expressly given to FST under Section 4A of the Service Tribunal Act, 1973 in the cases of such civil servants which the Provincial Service Tribunals lack in absence of appropriate legislation



for the sake of bringing conformity in the adjudicatory jurisdiction as the Provincial Civil Servants also make part of Service of Pakistan like the Federal Civil Servants. Therefore, if a civil servant in the province seeks review of the judgment of this Tribunal, he being part of the Service of Pakistan like Federal Civil Servants cannot be compelled to avoid seeking review when there is no specific prohibition in this respect in the Khyber Pakhtunkhwa Service Tribunal Act, 1974. On the other hand, having regard to general conformity of jurisdiction of FST and Khyber Pakhtunkhwa Service Tribunal, borrowing of review jurisdiction by the latter from the former is best suited to the purposes of Article 4 read with Article 25 of the Constitution of Pakistan. Hence, the review petition at hand is held as maintainable.

9. Coming to reviewability of the judgment passed by this Tribunal against the petitioner, it is apt to reproduce herein below the concluding part of the impugned judgment:-

*"We have carefully perused the record and have come to the conclusion that all codal formalities for disciplinary action against the appellant have been fulfilled by the respondent department. He has been given full opportunity of defense and hearing. Since charge No. 2 and No. 3 stands proved against the appellant, therefore, he has been punished. The major punishment awarded to the appellant is that of removal from service however it was observed that the appellant has rendered about thirteen years of service. Presently he was in grade-18 which shows that he was promoted from grade-17. Since Section-19 of the Civil Servant Act, 1973 provides for compassionate allowance not exceeding two-third of the pension or gratuity to dismissal/removed Government Servant on compassionate ground, therefore, the Tribunal is inclined to form the opinion that though penalty of removal from*

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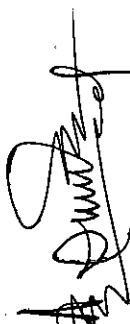
*service and that of compulsory retirement both falls in the domain of major punishment yet the latter is lesser harsh. We therefore, deem it appropriate to convert the appellant punishment of removal from service into that of compulsory retirement."*

10. The conditions which work for review of a judgment are as follow:-

- (i) *discovery of new and important matter or evidence which, after exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him at the time when the order was passed;*
- (ii) *on account of some mistake or error apparent on the face of record; or*
- (iii) *for any other sufficient cause.*

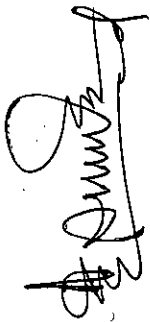
11. In order to see whether any of the above conditions is instrumental to make the review of impugned judgment possible, we have to have recourse to the charge sheet served upon the petitioner for formal inquiry. The said charge sheet includes three heads of charge as copied below:-

- i) You issued the fake Environment Protection Agency approval to 780 BTS sites for Pakistan Communication Limited (Mobilink).**
- ii) You, yourself delivered the fake Environmental Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink) to the office of Chief Secretary, Khyber Pakhtunkhwa and Secretary Environment.**



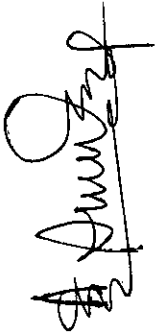
**iii) You had no official relation being a Deputy Secretary Industry with the EPA Environmental Approval but got yourself involved in it.**

12. According to inquiry report, first charge was not proved. The second charge as per Findings of Inquiry Committee was proved. The said charge relates to delivery of EPA approval in office of the Chief Secretary. The said committee as per its observation was concerned that a letter which was neither addressed nor endorsed to the Chief Secretary Khyber Pakhtunkhwa had been registered under Diary No. 10269 on 25<sup>th</sup> September, 2013 by Mr. Zafrullah, Junior Clerk, Chief Secretary Office. His statement that he received it with "positive intention" was noted with a question by the Committee that what could have been that "positive intention"? The Inquiry Committee itself answered that this was a lapse on part of him (Zafrullah). The Committee then embarked upon discussion of statements of other persons having no relevancy at all to proof of second charge but there seems no effort on part of the inquiry committee to dig out that who actually delivered the EPA approval to Mr. Zafarullah, Junior Clerk, Chief Secretary Office. When no evidence was brought on record to prove the charge that the petitioner had delivered the EPA approval in Chief Secretary's office, it was not warranted for the Inquiry Committee to give findings as to proof of said charge against the accused/petitioner. The third charge was itself inconsequential and it could work when there was no second opinion as to proof of the second charge. As already noted that first charge was not proved against the petitioner even during the departmental proceedings while second charge was held as proved quite imaginatively just to show something against the accused let it be with findings highly irrational and farfetched.







13. The concluding part of the judgment of this Tribunal impugned for review has already been reproduced herein above. Accordingly, it was concluded that all codal formalities for disciplinary action against the appellant (present petitioner) have been fulfilled by the respondent department. He has been given full opportunity of defense and hearing. Since charge No. 2 and No. 3 stand proved against the appellant, therefore, he has been punished. As far as fulfillment of codal formalities for disciplinary action is concerned, it is a matter relating to due process which the departmental authorities are bound to ensure in the proceedings but it also makes part of due process that evidence collected during inquiry is appraised impartially having regard to its probative value. Prior to initiation of disciplinary proceedings, there were only verbal allegations against the accused/petitioner which culminated into three heads of charges already discussed above. The inquiry report if read as a whole is mostly imaginative and unsupported by any tangible material. The factual details followed by pro and contra arguments were summed up in paragraph 10 of impugned judgment of this Tribunal which includes the findings that it is established on record that NOC in question was a fake document. Charge No. 2 pertains to the delivery of this fake document about which the inquiry committee reached on the conclusion that the document had been delivered by appellant himself to Muhammad Naeem, PS of the Secretary Environment. The finding is based on statement of Muhammad Naeem. May be there would have been a case of an allegation against the petitioner at the stage of facts finding that he delivered fake NOC to afore-named Mr. Muhammad Naeem but this allegation did not make part of the charge sheet or statement of allegations served upon accused/petitioner in the course of formal disciplinary proceedings. The findings in the impugned judgment of this Tribunal in this respect and believing the proof of second charge are beyond the scope of



charge sheet which is an error on the face of record making a good ground for review of the impugned judgment. It has been observed herein above that no evidence was brought on record to prove the charge that the petitioner had delivered the EPA approval in Chief Secretary's office. The alleged delivery of fake NOC to Mr. Muhammad Naeem cannot be stretched for proof of second charge in absence of further inquiry as to how and when the petitioner/accused had delivered fake NOC in the office of Chief Secretary. Therefore, there is a need of denovo inquiry in this respect to this extent.

14. For what has gone above, this review petition is accepted. Consequently, impugned judgment of this Tribunal being reviewable is set aside. The impugned order of removal of the petitioner from service is also set aside. He is reinstated into service for the purpose of denovo inquiry to be completed within 90 days of the receipt of this judgment officially. The back benefits are subject to outcome of the denovo inquiry. There is no order as to costs. File be consigned to the record room.

  
(ATIQ-UR-REHMAN WAZIR)  
Member (E)

  
(AHMAD SULTAN TAREEN)  
Chairman

ANNOUNCED  
01.02.2022


ORDER  
01.02.2022

Appellant present through counsel.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Vide our judgment of today of this Tribunal placed on file, this review petition is accepted. Consequently, impugned judgment of this Tribunal being reviewable is set aside. The impugned order of removal of the petitioner from service is also set aside. He is reinstated into service for the purpose of denovo inquiry to be completed within 90 days of the receipt of this judgment officially. The back benefits are subject to outcome of the denovo inquiry. There is no order as to costs. File be consigned to the record room.

ANNOUNCED.  
01.02.2022

  
(Atiq ur Rehman Wazir)  
Member (E)

  
(Ahmad Sultan Tareen)  
Chairman

31.01.2022

Petitioner alongwith counsel (Mr. Fazal Shah Mohmand Advocate) and Mr. Muhammad Adeel Butt, Addl. AG alongwith Mukarram Khan, SO (Litigation) for the respondents present.

Arguments on Review Petition heard. To come up for order on 01.02.2022 before this D.B.

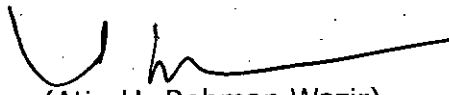
(Atiq-ur-Réhman Wazir)  
Member(E)

  
Chairman

26.01.2022

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Due to paucity of time, arguments could not be heard. Adjourned. To come up for arguments before the D.B on 27.01.2022.

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

  
Chairman

27.01.2022

Appellant alongwith his counsel present. Mr. Muhammad Adeel Butt, learned Addl. AG for respondents present.

Due to paucity of time, arguments could not be heard. To come up for arguments before the D.B on 31.01.2022.

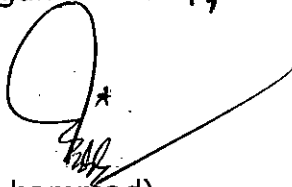
(Atiq-Ur-Rehman Wazir)  
Member (E)

  
Chairman

18.11.2021

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Learned AAG requested for adjournment on the ground that he has not made preparation for arguments. Granted. To come up for arguments on 14.12.2021 before the D.B.



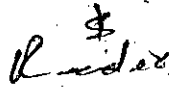
(Mian Muhammad)  
Member(E)



(Salah-Ud-Din)  
Member(J)

14-12-21

DB is on Tour case to come up  
For the same on Dated. 21-1-22



21.01.2022

Appellant in person present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments before the D.B on 26.01.2022



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



Chairman

24.06.2021

None present on behalf of petitioner.

Muhammad Adeel Butt learned A.A.G for respondents present.

Obviously, this is a Review Petition filed for review of the judgment of this Tribunal dated 13.04.2016 and the question of maintainability is apt to arise. Notice be given to the petitioner and his counsel alongwith copy of his order sheet. To come up on 27.10.2021 before D.B.



(Rozina Rehman)  
Member. (J)

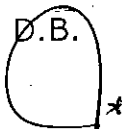


Chairman

27.10.2021

Mr. Fazal Shah Mohmand, Advocate, for the petitioner present and submitted fresh Wakalat Name on behalf of the petitioner, which is placed on file. Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Learned counsel for the petitioner seeks adjournment on the ground that he has been engaged recently and has not gone through the record. Adjourned. To come up on 18.11.2021 before the D.B.



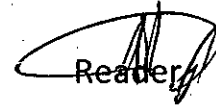
(Mian Muhammad)  
Member (E)



(Salah-Ud-Din)  
Member (J)

31.08.2020

Due to summer vacation, the case is adjourned to 05.11.2020 for the same as before.

  
Reader

05.11.2020

Junior to counsel for the appellant and District Attorney for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 15.01.2021 for hearing before the D.B.

  
(Mian Muhammad)  
Member

  
Chairman

15.01.2021


Due to COVID-19, the case is adjourned for the same on 26.03.2021 before D.B.

  
**READER**

26.03.2021

Counsel for the petitioner and Asstt. A.G for the respondents present.

The Worthy Chairman is on leave, therefore, instant petition is adjourned to 24.06.2021 for hearing before the D.B.

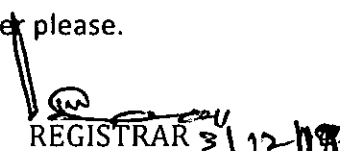

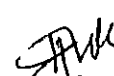


  
(Atiq-ur-Rehman Wazir)  
Member(E)



## FORM OF ORDER SHEET

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

Review Petition No. 444/2019


S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	03/12/2019	<p>The Review Petition of Mr. Muhammad Sohail Khan submitted by Mr. Nehar Muhammad Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 3/12/19</p>
2-	10.03.2020	<p>This Review Petition be put up before D. Bench on <u>10-3-2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Nemo for the petitioner. Adjourn. To come up on 23.04.2020 before D.B. Petitioner be put to notice for the date fixed.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;"> Member</div> <div style="text-align: center;"> Member</div> </div>
	23.04.2020	<p>Due to public holidays on account of Covid-19, the case adjourned. To come up for the same on 31.08.2020 before D.B. d.</p> <p style="text-align: right; margin-top: 20px;"> Reader</p>

The Review petition of Mr. Muhammad Sohail Ex-Deputy Secretary Industries Department received today i.e. on 25.11.2019 is incomplete on the following score which is returned to the counsel for the petitioner for completion and resubmission within 15 days.

- 1- Copy of Judgment/order dated 13.04.2016 passed by this Tribunal mentioned in the heading of the petition is not attached with the petition which may be placed on it.
- 2- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the petition which may be placed on it.
- 3- Copy of removal order dated 19.05.2015 mentioned in para-8 of the petition is not attached with the petition which may be placed on it.
- 4- Copy of departmental appeal/review petition and its rejection order mentioned in para-9 of the petition is not attached with the petition which may be placed on it.
- 5- Wakalat nama in favour of petitioner is not attached with the petition which may be placed on it.
- 6- Annexures of the petition may be attested.
- 7- Annexures of the petition may be flagged.
- 8- The law under which petition is filed is wrong.

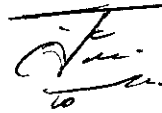
No. 2050 /S.T,

Dt. 26-11- /2019

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Nehar Muhammad Adv. Pesh.

*The above list has been  
Reviewed & completed.*



Refer to the list above.

*From Serial no 1 to Serial no-9 all the required documents are attached to the file and flagged properly.*

*The Explanation for Serial No. 8. is the that Review Petition is file under Section-4 to the reviewed / Decision- 13-4-2016 on humanitarian grounds.*

①

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

Review petition NO. 444/2019  
Service Appeal No. \_\_\_\_\_

Muhammad Sohail, Ex-Deputy Secretary (BPS-18), Industries, Commerce and Technical Education Department, Khyber Pakhtunkhwa (KP), Peshawar

..... (Appellant)

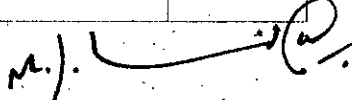
**VERSUS**

Govt of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

..... (Respondents)

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Appellant  
0334-9161291

Through

  
Nehar Muhammad  
Advocate, Peshawar

0331-6660061

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

Khyber Pakhtunkhwa Service Tribunal

Review petition No. 444/2019  
Diary No. 1678  
Dated 25/11/2019  
Service Appeal No. \_\_\_\_\_

- 1. Muhammad Sohail, Ex-Deputy Secretary (BPS-18), Industries, Commerce and Technical Education Department, Khyber Pakhtunkhwa (KP), Peshawar & R/o House No. 31, Street No. 9-A, Gulbahar Colony No.2, Peshawar City.

..... (Appellant)

**VERSUS**

- 1. Govt of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2. Secretary to Govt. of Khyber Pakhtunkhwa Commerce & Industries Department, Peshawar.
- 3. Secretary to Govt. of Khyber Pakhtunkhwa Environment Department, Peshawar.

..... (Respondents)

**LEAVE TO FILE REVIEW APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974. THE JUDGEMENT ANNOUNCED VIDE DATED 13.04.2016. WHEREBY THE SERVICES TRIBNAL CONVERNT THE PUNISHMENT AWAREDED BY DEPARTMENTAL INQUIRY COMMITTEE IN TO COMPLUSORY RETIREMENT FROM SERVICES.**

Prayer in Appeal:

- 1. Upon acceptance of this leave to file review appeal the appellant pray as below;
  - 1.1. The decision/order announced dated 13.04.2016. may please be review and set-aside on humanitarian ground (Annexure-2).

1.2. The appellant appeal/case may please be transfer to the establishment department to conduct re-inquiry/hearing.

**BACKGROUND:** At the time of appeal the appellant was performing as Deputy Secretary (BPS-18) Industries, Government of KP, Peshawar. The appellant was proceeded under the Khyber Pakhtunkhwa Civil Servant (Efficiency & Disciplinary) Rules-2011 and removed from services, vide impugned order dated 19.05.2015. The appellant departmental appeal was also rejected vide order dated 05.08.2015, hence this appeal under the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

The background of proceedings can better be extract from the inquiry report conducted by Mr. Zakir Hussain Afridi as below;

That before the year 2008 no environmental protection approval was required for Mobile Companies for installation of their BTS (Based Transceivers Stations) towers. In November, 2008 the Senate Standing Committee issues instructions to the EPA (Environment Protection Agencies) for regulating the BTS towers along with the guidelines and since then EPA is issuing approval of BTS towers in the KP. Some other recommendations were also given to the Secretary Environment Office, including making mandatory the BTS approval in draft Provincial Act. In May 2013, the Mobilink Communication Limited (Mobilink) approached Secretary Environment with written request to process EPA, NOC for installation of their towers.

Furthermore, Mr. Muhammad Naeem P.S. Secretary Environment claimed that Mr. Muhammad Sohail, the then Deputy Secretary (BPS-18) Industries Department visit his office and submitted a letter bearing No. EPA/NOC/BTC/646, dated 19.08.2013, from the Director General, EPA, addressed to M/S Pakistan Mobilink, Wherein EPA approval for 780 BTS sites for Mobilink, Pakistan was granted. The P.S to Secretary Environment further claim that he read the letter and acknowledged that the letter is fake because the signature of Director General EPA was not found correct. The designation was typed as Director EPA, whereas stamp was of Director General EPA and not his signature.

He further claimed that the accused officer came back to the office of P.S and told him that the said letter is fake and asked to torn the letter. The P.S replied him that he has torn the letter, but had retained 2/3 photo state copies of the same for submission to his high ups.

Furthermore, after Mr. Muhammad Sohail, left the office of P.S, the Director General EPA came to Secretary's Office with regard to some other official work. The P.S Mr. Muhammad Naeem, showed the alleged letter to him and Director General also claimed/responded that Mr. Muhammad Sohail, has also visited him in this very issue and was requesting him to do the needful.

The Director General after perusal of the letter took it to the Secretary Environment and submitted his report. After wards a fact finding inquiry was ordered on the issue. In light of the background, the appellant was issued charge sheet and statement of allegations mentioned in the appeal below;

It has been revealed from the record that after a fact finding inquiry the first regular inquiry was conducted by Mr. Zakir Hussain Afridi. On a petition of the appellant, the competent authority was pleased to order de-novo inquiry, therefore, committee comprising of Mr. Kamran Rehman, PAS Additional Secretary, Finance (PFC) and Mian Muhammad (PCS SG BS-19) Additional Secretary, Establishment Department was constituted.

The inquiry committee submitted its report, where-after a showcause notice was issued to the appellant tentatively notifying imposition of major penalty of removal from service. The option of personal hearing was also asked from the appellant. The appellant duly submitted the reply to this showcause notice. According to impugned notification dated 19.05.2015 after personal hearing, appellant was removed from service is un-justified. The appellant review petition dated 27.05.2015 was also rejected vide order dated 05.08.2015, hence this appeal as below;

Respectfully Sheweth:

1. That the appellant apart from above served on various post(s) and position(s) for more than eleven (11) years, both in the Secretariat and at field levels, bearing an unblemished status and record, which further testifies his honesty and integrity and refutes possibility and involvement in any sorts of misconduct.

2. That the appellant has been PMS Officer of (PBS-18) and at the time of departmental inquiry, review petition, followed by respective orders of inquiry committee(s) was posted and was serving as Deputy Secretary (BPS 18) in the Industries, Commerce and Technical Education Department, Peshawar, Khyber Pakhtunkhwa.
  
3. That the appellant, in the above stated capacity was served with a Charge Sheet containing allegations as below; (Annexure -3)
  - 3.1. That the appellant issued a fake EPA approval to 780 BTS for Mobilink, Pakistan.
  - 3.2. That appellant, delivered the fake EPA approval to 780 BTS sites for Mobilink, Pakistan to the offices of Chief Secretary, KP and Secretary Environment.
  - 3.3. That the appellant had no official relation being a Deputy Secretary, Industries with the EPA, but got yourself involved in it.
  
4. That the appellant upon receipt of Charge Sheet, duly responded, refuted and denied allegations leveled against him.
  
5. That the appellant was neither involved in omission nor commission of the above stated EPA approval to 780 BTS sites.
  
6. That a departmental inquiry committee was notified, inquiry concluded and submitted their findings and recommendations as below; (Copies of inquiry report is Annexure-4)
  - 6.1. Charge No. 1 (Not Proved).
  - 6.2. Charge No. 2 (Proved).
  - 6.3. Charge No. 3 (Partially Proved).
  
7. That instead of appreciating the facts of the case or the defense of the appellant. The appellant was served with a show cause notice proposing the penalties vide letter date 29.01.2015, as below; (Copy of Show Cause notice attached as Annexure- 5)
  - 7.1. ***“As a result thereof, I as competent authority, have tentatively decided to impose upon you the penalty of Removal from Service under Rule-4 of the said rules”.*** (Copy of showcause notice and reply is attached as Annexure-3 & 4)

- 8. That the appellant submitted due replies to the show cause notice and for the satisfaction of the competent authority and once again refute all allegations leveled against the appellant. However, in a surprised move and without even adhering to the findings and recommendations the penalty proposed in the show cause notice, the appellant was awarded the major penalty of Removal from Service vide order dated 19.05.2015. (Copies of the Removal Order attached as Annexure-6).
- 9. That appellant submitted review petition dated, 27.05.2015 to the Appellate Authority, however, the same was rejected dated 05.08.2015. (Copy Review petition is attached as Annexure-7).

**GROUND FOR RE-APPEAL**

- 1. That the impugned penalty/ order is illegal and unlawful and against the basic principles of law.
- 2. That no original documents were presented by the respondents before the departmental inquiry committee, review petition and before the Service Tribunal.
- 3. That the episodes of departmental inquiry, review petition and proceedings before the Service Tribunal were misguided by presenting a photo copy of fabricated, concocted, false and baseless letter, provided by the Establishment Department, having no legal status under the Qanoon-e-Shahadat Ordinance 1984.
- 4. That the above stated fabricated photo copy of letter was provided with the intention to support and to initiate departmental inquiry against the appellant.
- 5. That no relevant and specific documentary proofs were presented, hence photo copy is liable to be set aside inter alia on the grounds as below;
- 6. That the confirmation of evidences presented by the respondents were based on mere verbal statements, specifically the statement of Mr. Naeem Khan fabricated and



was used to amplify to build grounds and to initiate departmental inquiry.

7. That contrary to the fact the appellant on the same day and date was on an official tour to Lahore dated 06.09.2013 and 18.09.2013. (Letters are attached as Annexure 8 & 9).
8. That upon examination of the disputed NOC/letter, it was revealed that the letter containing approval of EPA to Mobilink company, bearing no diary or dispatch numbers, signature of the appellants or competent authority, hence no legal effect.
9. That the appellant has not been treated in accordance with basic principles of law and that the appellant rights guaranteed under the law were severely violated.
10. That under the rules of business the appellant area of responsibility belongs to Industries Department, Since the issue was categorically falls under the Environment Department. The issues neither fall in the domain, nor authorized to the appellant to intervene or to do anything relevant to the issue, hence raising questions on the whole process of departmental inquiry.
11. That no legal procedure has been adopted to conduct departmental inquiry and awarding appellant with major penalty of removal from service, which also questioned the formation of inquiry committee and conducting the departmental inquiry defective.
12. That during the process, no one from the end line beneficiary (Mobilink) was involved and invited during inquiry, review and appeal levels to testify the receiving of alleged fake NOC. In addition, the Mobilink itself denied processing of any such NOC.
13. That even otherwise for the sake of arguments in case, it has been admitted that only one of the charge is proved in the enquiry, can the penalty so imposed be considered as commensurate with the charges so proved.

- (2)
14. That the competent authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice. Therefore, the impugned order is not tenable under the law.
  15. That the appellant has at his credit a long, spotless and illustrious service career, the penalty of removal so awarded is harsh and does not commensurate with the allegations so leveled; the same is thus not sustainable.
  16. That the charges leveled against the appellant were never proved in the inquiry, the inquiry committee gave his findings on surmises and conjunctures.
  17. That appellant has never committed any act or omission, which could be termed as misconduct, albeit been awarded the penalty of "Removal from Service".
  18. That the appellant is jobless since the illegal removal from services.
  19. That the appellant also seeks permission of this Honorable Tribunal to rely on additional grounds at the time of hearing of this instant appeal.

***It is therefore, humbly prayed that on acceptance of this Leave to file Review Appeal the impugned order dated 13.04.2016 may please be reviewed on humanitarian ground and may set-aside and the appellant appeal/case may please be transferred to the Establishment Department to conduct re-inquiry/hearing on humanitarian ground.***

Dated: November 25<sup>th</sup>, 2019.



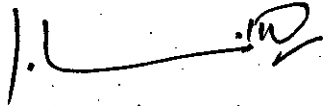
Petitioner(s)

Through

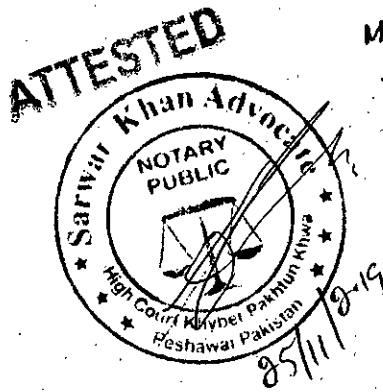
**Nehar Muhammad**  
Advocate, Peshawar.

**AFFIDAVITE**

I, Muhammad Sohail (Ex, PMS, BPS-18)/Ex Deputy Secretary, Industries Department, do hereby solemnly affirmed and declared on Oath that the contents of the above noted appeal are true and correct to the best of knowledge and belief and that nothing has been concealed misstated from this Honorable Tribunal.

M. 

Deponent



BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.



SERVICE APPEAL NO. 939/015

Date of institution ... 17.08.2015

Date of judgment ... 13.04.2016

Muhammad Sohail,  
Ex Deputy Secretary, Industries Department,  
R/O House No.31 Street No. 9-A Gulbahar Colony No.2 Peshawar City.  
... (Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to Govt: of Khyber Pakhtunkhwa Commerce & Industries Department, Peshawar.
3. Secretary to Govt: of Khyber Pakhtunkhwa Environment Department, Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST the order dated 19.05.2015, WHEREBY THE APPELLANT HAS BEEN AWARDED MAJOR PUNISHMENT OF REMOVAL FROM SERVICE, AGAINST WHICH THE REVIEW PETITION DATED 27.5.2015 HAS BEEN REJECTED VIDE ORDER DATED 05.08.2015.

Mr. Ijaz Anwar, Advocate.

Mr. Muhammad Adeel Butt, Addl: AG.

.. For appellant.  
.. For respondents.

MR. PIR BAKHASH SHAH

MR. ABDUL LATIF

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

**ATTESTED**

JUDGMENT

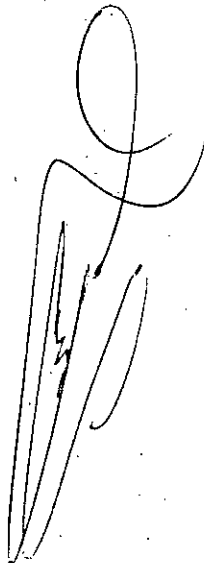
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

PIR BAKHASH SHAH, MEMBER: At the relevant time appellant was performing as Deputy Secretary (BPS-18) Industries, Govt: of Khyber Pakhtunkhwa Peshawar. He was proceeded against under Khyber Pakhtunkhwa Civil Servant

(Efficiency & Disciplinary) Rules-2011 and removed from service vide impugned order dated 19.05.2015. His departmental appeal was also rejected vide order dated 05.08.2015 hence this appeal under Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974.

2. The back ground of proceedings can better be reproduced from the enquiry report of Mr. Zakir Hussain Afridi as follows:-

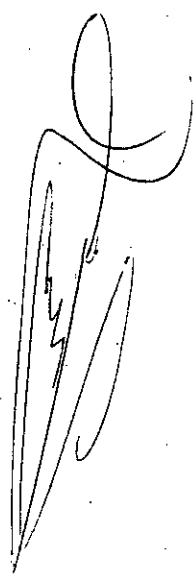
Background of the case is that before the year 2008 no Environmental protection approval was required for Mobile Companies for installation of their BTS (Based Transceivers Station) towers. In November, 2008 the Senate Standing Committee issued instructions to the Environment Protection Agencies for regulating the BTS towers alongwith the guidelines and since then EPA (Environmental Protection Agency) is issuing approval of BTS towers in the Province. Some other recommendations were also given to the Secretary Environment Office including making mandatory the BTS approval in draft Provincial Act. In May 2013, the Mobilink people were approaching Secretary Environment with written request for processing NOC of EPA for installation of their towers. In this regard one Mr. Muhammad Sohail, Deputy Secretary, (B.18) Industries Department came to the office of Secretary Environment and submitted to Mr. Muhammad Naeem, Private Secretary, a letter bearing No. EPA/NOC/BTC/646, dated 19.08.2013 (Ex-3) from the Director General, EPA, addressed to M/S Pakistan Mobilink Communication Limited Islamabad wherein EPA approval for 780 BTS sites for Pakistan Mobiles



**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Communication Limited (Mobilink) was granted. The P.S to Secretary Environment read the letter and acknowledged that the letter is fake because the signature of Director General EPA was not found correct. The designation was typed as Director EPA whereas stamp was of Director General EPA and the sign was just name of the Director General EPA and not his signature. In the meanwhile the accused officer came back to the office of P.S and told him that the said letter is fake and asked to torn the letter. The P.S replied him that he has torn the letter but he had retained 2/3 photo state copies of the same for submission to his high ups. After Mr. Sohail, left the office, the Director General EPA came to Secretary's office with regard to some other official work. The P.S Muhammad Naeem, showed the alleged letter to him and he responded that Mr. Sohail, has also visited him in this very issue and was requesting him to do the needful. The director General after perusal of the letter took it to the Secretary Environment and submitted his report as (Ex-4). After wards a fact finding enquiry was ordered on the issue.



3. In the said background, appellant was issued charge sheet and statement of allegations. The charges borne on the charge sheet are as follows:-

- i. You issued the fake Environment Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink).
- ii. You, yourself delivered the fake Environmental protection agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink) to the offices of Chief

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Secretary, Khyber Pakhtunkhwa and Secretary Environment.

- iii. You had no official relation being a Deputy Secretary Industry with the EPA Environmental Approval but got yourself involved in it.

It revealed from record that after a fact finding enquiry the first regular enquiry was conducted by Mr. Zakir Hussain Afridi. On a petition of the appellant, the competent authority was pleased to order *de-novo* enquiry therefore committee comprising of Mr. Kamran Rehman, PAS Additional Secretary, Finance (PFC) and Mian Muhammad (PCS SG BS-19) Additional Secretary, Establishment Department was constituted. The enquiry committee submitted its report where-after a show cause notice was issued to the appellant tentatively notifying imposition of major penalty of removal from service.

The option of personal hearing was also asked from the appellant. The appellant submitted his reply to this show cause notice. According to impugned notification dated 19.05.2015 after personal hearing, appellant was removed from service. His review petition dated 27.05.2015 was rejected vide order dated 05.08.2015.

4. Para wise comments of the respondents as well as the enquiry reports are available on file.

5. Arguments heard and record perused.

6. Learned counsel for the appellant submitted that there was no evidence against the appellant in support of the charges leveled against him. While referring to PLD 1989 S.C 335, he submitted that proceedings against the appellant were initiated and culminated into his removal, on the basis of surmises and conjectures in violation of the

requirement of law. He further submitted that even identification of the appellant that he committed the offence, was not proved and except Mr. Naeem Khan, Private Secretary to Secretary Environment none of the witnesses verified/identified the accused official.

ATTACHED

That the concerned NOC was forged or delivered by the appellant was not proved on record. He also submitted that according to the enquiry report charge (i) was not proved and charge (iii) partially proved hence it was evident that the major penalty of removal from service imposed on the appellant did not commensurate to the gravity of the offence. He also defended the appellant by stating that the proceedings were not in accordance with law. Finally he submitted that the impugned orders may be set aside and the appellant may be reinstated into service with all back benefits.

7. This appeal was resisted by learned Additional Advocate General on the ground that the charges against the appellant stood proved. He also submitted that all codal formalities of charge sheet, enquiries had been complied with and it was evident that full opportunity of defense and of personal hearing had been provided to the appellant. He submitted that the appeal being devoid of merits, may be dismissed.

8. A Photo copy of the fake NOC is on file the face of which bears 19<sup>th</sup>, Aug 2013 and at its bottom is the computerized name of Dr. Muhammad Bashir, then Director General Environmental Protection Agency who disowned the sign on it. According to record this NOC was marked from the office of Chief Secretary to the Secretary Environment for necessary action. One of the allegations against the appellant is that this NOC was brought by hand by the appellant and delivered to Muhammad Naeem Private Secretary of the Secretary Environment. It revealed from record that the appellant remained posted as Secretary RTA in the post which is one of the subordinate office of Environment and Transport Department. According to Private Secretary Muhammad Naeem, he therefore, personally knew the appellant and further that the said letter was brought by the appellant by hand and delivered to him. The date of delivery of this letter by appellant to Muhammad Naeem according to materials on file is 26.09.2010. The record further reveals that when the issue was taken notice of a fact finding committee was constituted, headed by Addl: Secretary Environment in the light

**ATTESTED**

SECRETARY  
ENVIRONMENT  
ISLAMABAD



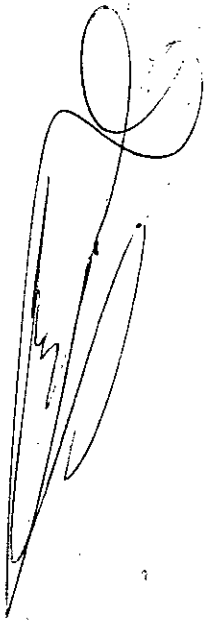
of which disciplinary proceedings were initiated against the appellant and he was issued charge sheet to which he submitted his reply.

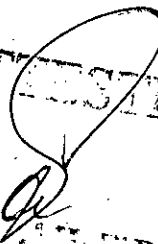
9. The plea in defense taken by the appellant is that being Deputy Secretary Industries, he had nothing to do with the issue of NOC which was the work of the Environment Department, therefore, he could not be held responsible for any fake NOC. His second plea is that on the relevant date i.e 26.09.2013 he was on official visit to Lahore in connection with Text Book Board matter therefore, delivery of the fake NOC on the same date is out of question.

10. We have carefully perused the enquiry report dated 31.10.2014 of the enquiry committee of Mr. Mian Muhammad and Mr. Kamran Rehman Khan. This report unequivocally shows that full opportunity of participation and defense had been provided to the appellant. The committee has fully attended to all relevant aspects of the case and has examined all materials and relevant record and witnesses. According to the findings of this report charge (i) is not proved; charge No.(ii) stood proved whereas charge No.(iii) partially proved. It is established on record that NOC in question was a fake document. Charge No.(ii) pertains to the delivery of this fake document about which the enquiry committee reached on the conclusion that the document had been delivered by appellant himself to Muhammad Naeem, PS of the Secretary Environment. This finding is based on the statement of Muhammad Naeem. Muhammad Naeem has deposed in unequivocal terms that he personally knew appellant and that the NOC in question was delivered to him by the appellant by hand. He also had been cross examined by the appellant and nothing in-consistent was obtained. Similarly witnesses Mr. Muhammad Iqbal Khattak, Deputy Secretary, Mr. Mirza Ali Khan, SO and Mr Shoukat Ali Yousafzai, Addl: Secretary have deposed that during the course of the fact finding enquiry the appellant had admitted before them that he had taken/delivered this NOC document to the Private Secretary Muhammad Naeem. The Director General, EPA Dr. Muhammad Bashir Khan stated that he was under constant pressure for NOC

in discussion from one Muhammad Sohail of the Peshawar Secretariat. Though Dr. Muhammad Bashir Khan has not identified appellant in affirmative but has also not denied his identity either. The enquiry report shows that due consideration was paid by the committee to the above pleas of the appellant. In this regard we may reproduce relevant portion from the enquiry report:-

- i. The accused officer is presently Deputy Secretary Industries whereas the issue relating to delivery of a fake Approval/NOC for 780 BTS sites to have been issued by Director General, Environmental Protection Agency (EPA) was the domain of Environment Department where the accused had been posted as Secretary RTA (10.12.2005 to 03.06.2007 in BPS-17, 04.06.2007 to 18.04.2008 in BPS-18). The accused was therefore acquainted with the relevant law and procedure involved in the Approval/NOC to BTS sites to Telecommunication Companies. However, the real motives behind the entire episode could not come to the front. But the fact is that the accused had been personally involved in the delivery of fake Approval/NOC for 780 BTS sites to PS to Secretary Environment.
- ii. On pointation by the departmental representative while referring to Para-04 of the reply of accused officer to charge sheet that he was on an official visit to Lahore on 26<sup>th</sup> September, 2013, then why he (the accused officer) did not take that stand before the earlier enquiry, to this question, the accused could only say that the earlier enquiry was totally one sided and having no footing hence *de-novo* enquiry.
- iii. The enquiry committee observed self contradiction and inconsistency in the written statement and cross



**ATTESTED**  
  
 Director  
 Khwairakhani  
 Service Tribunal,  
 Peshawar

examination of the accused officer. In written defence he stated that on 26<sup>th</sup> September, 2013 he was on official visit to Lahore in connection with Textbook Board matter. But on cross examination to enquiry committee, the accused stated that he attended his office in the morning and left for Lahore at 4:00 PM on 26<sup>th</sup> September, 2013.

11. We have carefully perused the record and have come to the conclusion that all codal formalities for disciplinary action against the appellant have been fulfilled by the respondent-department. He has been given full opportunity of defense and hearing. Since charge No.2 and No.3 stands proved against the appellant therefore he has been punished. The major punishment awarded to the appellant is that of removal from service however it was observed that the appellant has rendered about thirteen years of service. Presently he was in grade-18 which shows that he was promoted from grade-17. Since Section-19 of the Civil Servant Act, 1973 provides for compassionate allowance not exceeding two-third of the pension or gratuity to dismissal/removed Government Servant on compassionate ground, therefore, the Tribunal is inclined to form the opinion that though penalty of removal from service and that of compulsory retirement both fall in the domain of major punishment yet the latter is lesser harsh. We therefore deem it appropriate to convert the appellant punishment of removal from service into that of compulsory retirement. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
13.04.2016

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

**(ABDUL LATIF)**  
MEMBER

**(PIR BAKHSH SHAH)**  
MEMBER

07.04.2016

Appellant in person and Addl: AG for respondents present. The learned Member (Executive) is on leave therefore, order could not be announced. To come up for order on 13.4.16.

  
Member



13.04.2016

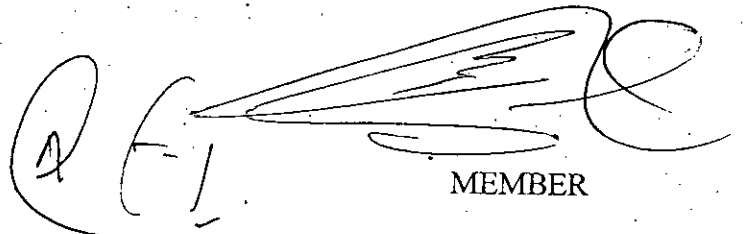
Appellant with counsel and Addl:AG for respondents present.

Vide our detailed judgment of to-day placed on file, this appeal decided as per detail judgment. Parties are left to bear their own costs. File be consigned to the record.

Announced  
13.04.2016

**ATTESTED**

  
BY   
Attesting Officer  
Services Division  
Bhubaneswar

  
MEMBER

Handwritten signature and date: 3/12/16

12.02.2016

Counsel for the appellants submitted an application for early hearing reason mentioned therein. Application allowed. To come up for arguments on 03.03.2016 instead of 18.05.2016. Parties may be informed accordingly.

Member

02.3.2016

Appellant with counsel and Mr. Ziaullah, GP for present. Since the court time is over, therefore, arguments could not be heard. To come up for arguments on 15.3.16.

MEMBER

MEMBER

15.03.2016

Junior to counsel for the appellant and Addl: A.G for respondents present. Junior counsel for the appellant submitted that senior learned counsel Mr. Ijaz Anwar, Advocate is busy at Islamabad before the august Supreme Court of Pakistan therefore, the case maybe adjourned. He further submitted that the appeal is against removal order as senior Civil Officer and has left over last time therefore, in view of availability of learned senior counsel for the appellant on 17.3.2016, case may be fixed for arguments. Since the question of availability of senior counsel is involved, therefore, to come up for arguments on 17.3.2016 before D.B.

ATTESTED  
Khyber Pakhtunkhwa  
Services Tribunal,  
Peshawar

MEMBER

MEMBER

25.08.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Deputy Secretary Industries Department when subjected to inquiry on the allegations of facilitation and issuance of fake Environment Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited and removed from service vide order dated 19.5.2015 regarding which he preferred review petition on 27.5.2015 which was rejected on 5.8.2015 and hence the instant service appeal on 17.8.2015.

Appellant Deposited Security & Process Fee



That the findings and punishment are against facts and law as no evidence whatsoever was produced in the inquiry and appellant punished despite the fact that the charges remained unproved.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 12.11.2015 before S.B.

  
Chairman

12.11.2015

Appellant with counsel and Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 9.2.2016 before S.B.

Certified to be true copy

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar


  
Chairman

09.02.2016

Appellant in person and Mr. Sultan Shah, Assistant alongwith Addl: A.G for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 18.5.2016.

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 28-11-2015   
Number of Words 4800 Chairman  
Copying Fee 50  
Urgent 4  
Total 54  
Name of Counsel A  
Date of Certificate of Appeal 28-11-2015  
Date of Delivery of Copy 28-11-2015


(21)

The appeal of Mr. Muhammad Sohail Dy. Secy. Industries Department received to-day i.e. on 17.08.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of rejection order of review petition of dated 27.5.2015 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it. Annexure-H is rejection order of review petition dated 27.5.2013 and not a review petition of dated 27.5.2015.
- 2- Page no. 9 of the appeal is illegible which may be replaced by legible/better one.


No. 1208 /S.T.

Dt. 17/8 /2015

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Ijaz Anwar Adv. Pesh.

Resubmitted necessary correction made may  
be placed before us H-ble bench.

  
20/08/2015

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

Appeal No. 939 /2015

Muhammad Sohail (Ex PMS BS-18)/Ex Deputy Secretary,  
Industries Department. *(Appellant)*

**VERSUS**

Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber  
Pakhtunkhwa Civil Secretariat Peshawar and others. *(Respondents)*

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3	Copies of the inquiry report & proceedings	C	12- 21
4	Copies of show cause notice and reply	D & E	22-25
5	Copies of the Removal order dated 19.5.2015	F	26
6	Copies of Review petition 27.5.2015 and rejection order dated 5.8.2015	G&H	27-33
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Through

*Appellant*

*(Signature)*

**IJAZ ANWAR**  
Advocate Peshawar





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

Appeal No. 939 /2015

S.W.F. Province  
Service Tribunal

Diary No. 966

Dated 17-8-2015

Muhammad Sohail (Ex PMS BS-18)/Ex Deputy Secretary,  
Industries Department R/O House No 31 Street No 9-A  
Gulbahar colony No. 2 Peshawar City, Peshawar.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa Commerce & Industries Department.
3. Secretary to Govt of Khyber Pakhtunkhwa Environment Department.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 19.5.2015, whereby the appellant has been awarded major punishment of Removal from Service, against which the Review Petition dated 27.5.2015 has been rejected vide order dated 5.8.2015.

Prayer in Appeal: -

On acceptance of this appeal the order dated 19.5.2015 and the rejection order dated 5.8.2015 may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.

Respectfully Submitted:

1. That the appellant was working as Deputy Secretary BPS-18 (PMS) Industries Department Khyber Pakhtunkhwa in the respondent department.

RECEIVED

[Signature]

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Filed to the

Registrar

17/8/15

re-submitted to the

and filed;

[Signature]

Registrar

20/8/15.

2. That while working in the said capacity, the appellant was served with a charge sheet containing the following allegations:

- i. You issued the fake Environment Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink).
- ii. You, yourself delivered the fake Environmental Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink) to the offices of Chief Secretary, Khyber Pakhtunkhwa and Secretary Environment.
- iii. You had no official relation being a Deputy Secretary, Industries with the EPA Environmental Approval but got yourself involved in it.  
(Copies of the charge sheet and statement of allegations are attached as annexure A).

3. That the appellant duly replied the charge sheet refuted and denied the allegations, that the appellant was not involved in any omission or commission. (Copy of the reply to the charge sheet is attached as Annexure B).

4. That in the meantime the inquiry committee conducted the inquiry and submitted its findings/recommendations wherein allegedly not proved charge No. 1, proved charge no. 2, partially proved charge No. 3. (Copies of the inquiry report is attached as annexure C).

5. That without appreciating the facts of the case or the defense of the appellant, vide letter dated 29.1.2015, the appellant was served with a show cause notice proposing the penalties as follows:

*"As a result thereof, I as competent authority, have tentatively decided to impose upon you the penalty of Removal from Service under Rule 4 of the said rules"*

(Copy of show cause notice and reply is attached as annexure D & E).

6. That the appellant submitted reply to the show cause notice refuting the allegations so leveled, however, vide a surprised move, without even adhering to the recommendations or the penalty proposed in the show cause notice, the appellant was awarded the major penalty of Removal from service vide order dated 19.5.2015. (Copies of the Removal order dated 19.5.2015 is attached as annexure F).

ATTESTED

SECRETARY  
Khyber Pakhtunkhwa  
Tribunal,  
Peshawar

7. That the appellant submitted his Review petition dated 27.5.2015 to the appellate authority, however, the same was regretted vide letter dated 5.8.2015. (Copies of Review petition 27.5.2015 and rejection order dated 5.8.2015 are attached as annexure G & H).
8. That the impugned Penalty Order is illegal unlawful against law and facts hence liable to be set aside inter alia on the following grounds :

**GROUND OF APPEAL .**

- A. That the appellant has not been treated in accordance with law hence his rights secured and guaranteed under the law are badly violated.
- B. That there is no iota of evidence that could prove involvement of the appellant with the alleged charges, infact the appellant was posted in Industries Department, while the issue is related to Environment Department, simply a photo copy was made a basis in taking action against the appellant. Even the photo copy was also never processed at any stage however one of the witness having some personal grudges made a wrong statement making it a basis for the Removal of the appellant.
- C. That the Copy of the disputed NOC was provided by Establishment Department to the appellant, after the initiation of the departmental proceedings, when it was examined, it was an approval of EPA to Mobilink company, it did not contain any signature of the appellant nor it bears any diary number or date of dispatch, it is astonishing that how this letter can be connected to the appellant, albeit the enquiry committee acted illegally and against the record. (Copy of the letter dated 19.08.2013 is attached as Annexure I)
- D. That the witness whose statement has been made basis of enquiry was proved to false as the date on which it is alleged that the appellant has handed over that NOC to Mr. Naeem and than torn, the appellant was on official tour to Lahore. (Copies of the letters dated 6.09.2013 & 18.09.2013 are attached as Annexure J &K)

ATTACHED

EMERGENCY  
Cyber & E-Governance  
Service Tribunal,  
Peshawar

- E. That no proper procedure has been followed before awarding the major penalty of Removal from service to the appellant. No proper inquiry has been conducted, the appellant has not been associated with the inquiry proceedings, thus the whole proceedings are defective in the eyes of law.
- F. That non of the witness from the Mobilink company was called to the enquiry to testify about the alleged fake NOC, who were the main alleged beneficiary thus the enquiry so conducted can under any circumstance be termed as proper, it is on record that the officers of Mobilink Company have denied processing of any such NOC at any stage when they were called to the Fact finding enquiry.
- G. That even otherwise for the sake of arguments in case it admitted that one of the charge is proved in the enquiry, can the penalty so imposed be considered as commensurate with the charges so proved.
- H. That the competent authority was bound under the law to have examined the record of inquiry in its true perspective and in accordance with law and then to apply his independent mind to the merit of the case but he failed to do so and awarded major penalty of Removal from service to the appellant despite the fact that the allegations as contained in the charge sheet had not been proved in the so-called inquiry.
- I. That the competent authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic Principle of administration of justice. Therefore, the impugned order is not tenable under the law.
- J. That the appellant has at his credit a long, spotless and illustrious service career, the penalty of Removal so awarded is harsh and does not commensurate with the allegations so leveled, the same is thus not sustainable.
- K. That the charges leveled against the appellant were never proved in the enquiry, the Enquiry Committee gave his findings on surmises and conjunctures.

~~STAMPED~~  
A  
J. S. VERMA  
Deputy Director  
Police Training,  
Peshawar

- L. That appellant has never committed any act or omission which could be termed as misconduct, albeit been awarded the penalty of "Removal from Service."
- M. That the appellant is jobless since the illegal Removal from service.
- N. That the appellant also seeks permission of this Honourable Tribunal to rely on additional grounds at the time of hearing of the instant appeal.

*It is, therefore, humbly prayed that on acceptance of this appeal the order dated 19.5.2015 and the rejection order dated 5.8.2015 may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.*

Through

Appellant

IJAZ ANWAR

Advocate Peshawar

&

SAJID AMIN

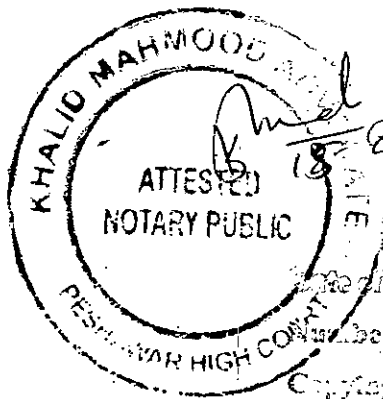
Advocate, Peshawar

AFFIDAVIT

I, Muhammad Sohail (Ex PMS BS-18)/Ex Deputy Secretary, Industries Department, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent

*(Signature)*



Date of Presentation of Affidavit: 28-11-2018  
 Number of Words: 2000  
 Copy Fee: 22  
 Urgent: 4  
 Total: 26  
 Name of Copy: \_\_\_\_\_  
 Date of Completion of Copy: 28-11-18  
 Date of Delivery of Copy: 28-11-18

Certified to be true copy  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

ATTESTED

EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar



(6) Annex = A (28)

GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT

CHARGE SHEET

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as competent authority, hereby charge you, **Mr. Muhammad Sohail (PMS BS-18)**, as follows:

That you, while posted as Deputy Secretary Industries, Government of Khyber Pakhtunkhwa committed the following irregularities:

- i) You issued the fake Environment Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink).
- ii) You, yourself delivered the fake Environmental Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink) to the offices of Chief Secretary, Khyber Pakhtunkhwa and Secretary Environment.
- iii) You had no official relation being a Deputy Secretary industry with the EPA Environmental Approval but got yourself involved in it.

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

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

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

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

6. A Statement of Allegations is enclosed.

Pervez Khattak  
(Pervez Khattak)  
Chief Minister  
Khyber Pakhtunkhwa  
(Competent Authority)

Mr. Muhammad Sohail (PMS BS-18),  
Deputy Secretary, Industries Department, Khyber Pakhtunkhwa.

*Attest*  
*[Signature]*

*a pre-ill*  
*[Signature]*

*V-1 17*



(7) (29)

GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT

**DISCIPLINARY ACTION**

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as competent authority, am of the opinion that **Mr. Muhammad Sohail (PMS BS-18), Deputy Secretary, Industries 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 and Discipline) Rules, 2011:

**STATEMENT OF ALLEGATIONS**

- i) He issued the fake Environment Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink).
- ii) He, yourself delivered the fake Environmental Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink) to the offices of Chief Secretary, Khyber Pakhtunkhwa and Secretary Environment.
- iii) He had no official relation being a Deputy Secretary industry with the EPA Environmental Approval but got yourself involved in it.

2. For the purpose of enquiry against the said accused with reference to the above allegations, an enquiry officer/enquiry committee, consisting of the following, is constituted under Rule 10(1)(a) of the ibid Rules.

- i) Resham Rehman Khan
- ii) Muhammad

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

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

*Pervez Khattak*  
(Pervez Khattak)  
Chief Minister  
Khyber Pakhtunkhwa  
(Competent Authority)

09.09.2014

Mr. Muhammad Sohail (PMS BS-18)  
Deputy Secretary, Industries Department, Khyber Pakhtunkhwa.

SECTION OFFICER (ESTT. I)  
PHONE & FAX # 091-9210529

17/9/14

(30)

APPROVED: B

(8)

No. 1-3 (Inquiry/1-2014

Dated: 19<sup>th</sup> September 2014

To

- ✓ 1. Mr. Kamran Rehaman Khan, (PAS BS-19)  
Inquiry Officer,  
Provincial Finance Controller,  
Finance Department
2. Mr. Mian Muhammad (PCS SG BS-19)  
Inquiry Officer,  
Additional Secretary, Establishment Department.

P.K.  
P.U. on  
file MS.  
22/9/11

Subject: DICIPLINARY PROCEEDING AGAINST MR. MUHAMMAD SOHAIL KHAN  
(PMS BS-18) DEPUTY SECRETARY INDUSTRIES DEPARTMENT

Dear Sirs,

Kindly refer to Establishment Department's letter No.SO(E-I) E&AD/5-197/2014 dated 15<sup>th</sup> September 2014 (**Annex-I**) on the subject noted above whereby a Charge Sheet (**Annex-II**) has been served on the undersigned wherein the following three charges have been leveled against the undersigned:

1. You issued the fake Environmental Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink).
2. You, yourself delivered the fake Environmental Protection Agency approval to 780-BTSSites for Pakistan Mobile Communication Limited (Mobilink) to the office of Chief Secretary Khyber Pakhtunkhwa and Secretary Environment.
3. You had no official relation being a Deputy Secretary, Industries with the EPA Environmental Approval but got yourself involved in it.

2. It is submitted that already an inquiry was conducted and I do hereby reiterate the same standpoint that all the three allegations are baseless, unfounded without any solid grounds to prove the same. As a response to the allegations, I hereby respond to each allegation as under:

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Attest  
X



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The allegation of issuing fake Environmental Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink).

Since my posting as DS Industries in April 2013 in Industries and Technical Education Department, I have been dealing exclusively with matters of Industries Department and have nothing to do with the Environment Department. As per Rules of Business 1985, both are two different Departments with exclusively different domains of responsibilities. Giving EPA approval to BTS sites is the domain of Environment Department, and not Industries & Technical Education Deptt. Even in the Industries Department all approvals in most of the cases are granted at Secretary level. My post does not enjoy any power to give approval to anything vital even in Industries Department. The allegation, is otherwise also baseless on the following grounds:

- a. The copies of approval of EPA to Mobilink in respect of 780 BTS sites (the copy whereof has been provided to me by Establishment Department) neither bears any diary no. or date of the dispatcher of Industries Deptt, nor it bears my signatures, nor the signatures on the approvals bear any resemblance with my signature. There is nothing to this effect neither in the preliminary/fact-finding inquiry, nor in the previous inquiry conducted by Mr. Zakir Hussain Afridi, Member Board of Revenue. There is no forensic proof provided by in the previous two inquiries.
- b. There is no evidence/witness on record that the undersigned has directly or indirectly rendered any assistance or used my office in the issuance of the forged approval
- c. The letter of Mr. Bashir Ahmed Dar, GM Operation FAE Pakistan at **Annex-III** and letter of Mr. Hyder Abedi, Director Corporate and Regulatory Affairs letter at **Annex-IV** does not contain anything that shows any connivance on my part with these bodies whose interest were at stake.
- d. My previous unblemished record of eleven years service in the Secretariat/Field testifies my honesty and integrity and denies any possibility of involvement in alleged act of misconduct.

ii. The allegation of delivering the fake Environmental Protection Agency approval to 780-BT sites for Pakistan Mobile Communication Limited (Mobilink) to the office of Chief Secretary Khyber Pakhtunkhwa and Secretary Environment.

Reply:

4 Like my standpoint in previous inquiries I do hereby again deny rather rebut this charge with full conviction. The charge is baseless and not supported by the circumstances on the following grounds:

- i. In the Inquiry Report authored by Mr. Zakir Hussain Afridi, the concerned Junior clerk Mr. Zafar, in the office of Chief Secretary Khyber Pakhtunkhwa denies having any explicit proof of delivery of such approval to the office of the Chief Secretary by the undersigned. **(Annex-V)**
- ii. As to the allegation of delivering the fake approval to PS to Secretary Environment, it is relevant to add that I did not visit the office of the PS Secretary Environment on 26/9/2013 as I was on official visit to Lahore in connection with Text Book Board matter. **(Annex-VI)**. Being DS Industries I am a member of the Committee to deal with the purchase of paper for the textbooks which are provided free of cost to all students upto matric level in Khyber Pakhtunkhwa. This clearly proves that the statement of Naeem, PS to Secretary Environment is baseless hence, not tenable.
- iii. The allegation in the Charge Sheet is based on a sentence in the contents of last para of page: 1 of the Preliminary Inquiry Report that states, "DS Industries also admitted that he delivered the fake approval". **(Annex-VII)** The allegation of admission of delivering the letter is absolutely wrong and concocted. The undersigned was neither called for giving statement by the committee constituted for conducting Preliminary Inquiry, nor ever I have never admitted this allegation anywhere in any inquiry.

iv. The allegation of allegation of getting involved with the EPA Environmental Approval despite being D.S. Industries

5. Replies to the allegation at S.No (i) and (ii) above clearly prove that I never remained involved in the matter directly or indirectly at any stage.

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6. In the light of the replies duly supported by the relevant annexures as proofs of my innocence, it is requested that the undersigned may please be exonerated from the baseless charges against me keeping in view my unblemished and speckles record of past service.

Yours faithfully,

u./L *[Signature]* 29/9/14  
(Muhammad Shoail Khan)  
Deputy Secretary Industries,  
Khyber Pakhtunkhwa

*[Signature]*

(12)

Approved: C

Subject: DISCIPLINARY PROCEEDINGS (DE NOVO ENQUIRY) AGAINST MR. MUHAMMAD SOHAIL KHAN (PMS BS-18) DEPUTY SECRETARY, INDUSTRIES DEPARTMENT.

Introduction:-

A letter No: EPA/NOC/BTS/646 dated 19<sup>th</sup> August, 2013, addressed to M/S Pakistan Mobile Communication Limited, Mobilink House, I-A, Kohistan Road, F-8, Islamabad, intimating approval/NOC of the Director General Environmental Protection Agency for 780 BTS (Based Transceiver Station) sites located at various districts in Khyber Pakhtunkhwa, was found to have been fake and bogus. The mover behind this letter was Mr. Muhammad Sohail Khan who (reportedly) personally delivered it in the office of Chief Secretary and to Private Secretary to Secretary Environment. A preliminary enquiry was initially conducted against the accused and on the basis of its findings, a formal enquiry under the Khyber Pakhtunkhwa Government Servant (Efficiency and Disciplinary) Rules, 2011 was concluded.

Order of Enquiry:-

2. The Competent Authority (Chief Minister Khyber Pakhtunkhwa) was pleased to order de-novo enquiry against Mr. Muhammad Sohail Khan (PMS-BS-18) Deputy Secretary Industries Department on 15<sup>th</sup> September, 2013 and appointed enquiry committee comprising the following officers to enquire into the charges against the accused officer and resubmit its report (Annexure-I).

- i. Kamran Rehman Khan (PAS-BS-19), Additional Secretary (PFC), Finance Department.
- ii. Mian Muhammad (PCS-SG-BS-19), Additional Secretary (Estt), Establishment Department.

Law Applicable:-

3. The accused officer has been charge sheeted under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for the following charges (Annexure-II):-

- i. You issued the fake Environmental Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink).
- ii. You, yourself delivered the fake Environmental Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink) to the offices of Chief Secretary, Khyber Pakhtunkhwa and Secretary Environment.
- iii. You had no official relation being a Deputy Secretary Industries with the EPA Environmental Approval but got yourself involved in it.

Enquiry Proceedings:-

4. Charge Sheet and statement of allegation were served on the accused officer and he was directed to submit written reply to the enquiry committee and attend the proceedings as & when directed by the enquiry committee. The accused officer sent his written reply/defence to the enquiry committee via mail on 19<sup>th</sup> September, 2014 which was received on 22<sup>nd</sup> September.

22/9/14  
 Approved  
 C

(13)

2014 by the enquiry committee (Annexure-III). The enquiry proceedings were initiated immediately after receipt of order of enquiry from Establishment Department on 17<sup>th</sup> September, 2014. Secretary Environment Department was requested on 18<sup>th</sup> September, 2014 for provision of documents along with list of witnesses related to enquiry proceedings (Annexure-IV). Environment Department provided the requisite documents on 30<sup>th</sup> September, 2014 (Annexure-V) consequent upon which the following witnesses were summoned to be present on 10<sup>th</sup>, 13<sup>th</sup> & 14<sup>th</sup> October, 2014 for recording statements and producing evidence.

- i. Mr. Shaukat Ali Yousufzai, Additional Secretary Agriculture Department.
- ii. ✓ Dr. Muhammad Bashir Khan, Director General, Environmental Protection Agency (EPA).
- iii. ✓ Mr. Muahmmad Iqbal Khattak, Deputy Secretary, Environment Department.
- iv. ✓ Mr. Farhad Khan, Deputy Secretary, Environment Department.
- v. Mr. Muhammad Sohail Khan (the accused officer), Deputy Secretary, Industries Department.
- vi. ✓ Mr. Liaqat Ali Khan, Deputy Director, Environmental Protection Agency (EPA).
- vii. Dr. Amjad Ali Khan, Ex Deputy Director, Environmental Protection Agency (EPA).
- viii. ✓ Mr. Mir Zali Khan, Section Officer, Environment Department.
- ix. ✓ Mr. Muhammad Hanif, Assistant Director, Environmental Protection Agency (EPA).
- x. Mr. Naeem Khan, PS to Secretary Environment Department.
- xi. Mr. Zafarullah, Junior Clerk, office of the Chief Secretary.

5. On October 10<sup>th</sup>, 13<sup>th</sup> & 14<sup>th</sup> the officers/officials and witnesses recorded their statements and produced relevant record. Mr. Muhammad Sohail Khan was heard in person and given ample opportunity of defence. He also availed the opportunity to cross examine the witnesses in a free and fair manner.

6. In his reply, the accused officer has stated that he reiterates the same stand point that all the three charges/allegations are baseless, unfounded and without any solid grounds to prove the same.

**Reply of the accused officer to charge No.1 :-**

7. Since his posting as Deputy Secretary Industries in April, 2013 in Industries and Technical Education Department, he had been dealing exclusively with matters of Industries Department and have nothing to do with the Environment Department. As per Rules of Business 1985, these are two different departments with exclusively different domain of responsibilities. Giving EPA approval to BTS sites is the domain of Environment Department, and not Industries & Technical Education Department. Even in the Industries Department all approvals in most of the cases are granted at Secretary Level. His post does not enjoy any power to give approval to anything vital even in Industries Department. The allegation is otherwise also baseless on the following grounds:

- a. The copies of approval of EPA to Mobilink in respect of 780 BTS sites (the copy whereof has been provided to him by Establishment Department) neither bears any diary no. or date of the dispatcher of Industries Department, nor it bears his signatures, nor the signatures on the approvals bear any resemblance with his signature. There is nothing to this effect neither in the preliminary/fact-finding enquiry, nor in the previous enquiry conducted by Mr. Zakir Hussain Afridi, Member

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14

Board of Revenue. There is no forensic proof provided by in the previous two enquiries.

- b: There is no evidence/witness on record that the undersigned has directly or indirectly rendered any assistance or used his office in the issuance of the forged approval.
- c. The letter of Mr. Bashir Ahmed Dar, GM Operation FAE Pakistan and letter of Mr. Hyder Abedi, Director Corporate and Regulatory Affairs letter does not contain anything that shows any connivance on his part with these Bodies whose interest were at stake.
- d. His previous unblemished record of eleven years service in the Secretariat/Field testifies his honesty and integrity and denies any possibility of involvement in alleged act of misconduct.

Reply of the accused officer to charge No.2 :-

8. He denied this charge as baseless and not supported by circumstances on the following grounds:

- a. In the enquiry report authored by Mr. Zakir Hussain Afridi, the concerned Junior Clerk Mr. Zafar, in the office of Chief Secretary Khyber Pakhtunkhwa denied having any explicit proof of delivery of such approval to the office of the Chief Secretary by him (the accused).
- b. As to the allegation of delivering the fake approval to PS to Secretary Environment, he denied to have visited the office of PS to Secretary Environment on 26<sup>th</sup> September, 2013 as he was on official visit to Lahore in connection with Text Book Board matter. Being Deputy Secretary Industries and as member of the committee dealing with the purchase of paper for the textbooks provided free of cost to all students upto matric level in Khyber Pakhtunkhwa. This clearly proves that the statement of Naem, PS to Secretary Environment is baseless hence, not tenable.
- c. The allegation in the charge sheet is based on a sentence in the contents of last para of page of the preliminary enquiry report that states, "Deputy Secretary also admitted that he delivered the fake approval". The allegation of admission of delivering the letter is absolutely wrong. He was neither called for giving statement by the committee constituted for conducting preliminary enquiry, nor had he ever admitted this allegation anywhere in any enquiry.

Reply of the accused officer to charge No.3 :-

9. As Deputy Secretary, Industries Department, he had exclusively been dealing with the matters of Industries Department and having nothing to do with the Environment Department being two different departments with different domain of responsibilities (Annexure-III).

W 31/10

Statements of the witnesses and cross examination:-

10. **Mr. Liaqat Ali Khan**, Deputy Director, Environmental Protection Agency (EPA) recorded on oath the statement on 10<sup>th</sup> October, 2014 (Annexure-VI) highlighting that:-
- Letter in question bearing No.EPA/NOC/BTS/646 dated 19<sup>th</sup> August, 2013 communicating, EPA's approval for 780 BTS sites for Pakistan Mobiles Communication Limited (Mobilink) is fake and Environmental Protection Agency (EPA) does not own this letter or its contents.
  - He also referred to the detailed report of Director General, Environmental Protection Agency (EPA), submitted to Environment Department vide Letter No.EPA/NO/NOC/BTS/295 dated 7<sup>th</sup> October, 2013. The report clearly and unequivocally disowned the letter (fake) to have been issued by EPA.
11. **Dr. Amjad Ali Khan**, Ex Deputy Director, Environmental Protection Agency (EPA) recorded in his statement on 10<sup>th</sup> October, 2014 that he was part of the preliminary enquiry and he own his statement (Annexure-VII).
12. **Mr. Naeem Khan**, PS to Secretary Environment recorded his statement on 10<sup>th</sup> October, 2014. He confirmed that he (Mr. Muhammad Sohail Khan), Deputy Secretary, Industries Department had delivered photo copy of the fake letter to him by hand. Mr. Muhammad Sohail Khan was known to him. This letter did have original stamp of Chief Secretary Office and had been marked to Secretary Environment. He (Naeem Khan) kept this letter in fresh dak. After some time (5-6 minutes) the accused (Mr. Muhammad Sohail Khan) stated to him to return the letter. As it was not received by Peon Book so he returned the letter to Mr. Muhammad Sohail Khan. But before return he had made two/three photo copies of this letter. In the meanwhile Mr. Muhammad Sohail Khan came to him and told that it was not a reliable letter and should not disclose it to anyone.
13. He was cross examined by the accused (Muhammad Sohail Khan) that on which date he came to him for delivery of letter to which he replied that it was 26<sup>th</sup> September, 2013 that he (the accused) came to his office. He was further questioned by the accused that whether he had brought this letter and was it marked to Secretary Environment to which he replied that yes it was marked to Secretary Environment. He was questioned by the accused that whether the fake letter placed before the enquiry committee for probe is the same letter? He replied yes it is copy of that letter. He was also questioned by the accused that for how long did he know him (the accused) to which he replied he knew him since he was posted as Secretary RTA (Annexure-VIII).
14. **Mr. Zafar Ullah**, Junior Clerk, Issue Branch of Chief Secretary recorded in his statement on 10<sup>th</sup> October, 2014 that he had diarized (by mistake) the letter under NO.10369 on 25<sup>th</sup> September, 2013 with positive intention and not with the negative one. No remarks were written by the Chief Secretary, PSO to Chief Secretary, PS to Chief Secretary or by him on the letter in question.
15. He was cross examined by the accused that whether he had delivered this letter to him (Zafarullah) to which he replied "No". He forgot that who brought this letter to him and further said that he did not know about Mr. Muhammad Sohail Khan (Annexure-IX).

16. Mr. Muhammad Bashir Khan, Director General, Environmental Protection Agency (EPA), recorded in his statement on 13<sup>th</sup> October, 2014 that he solemnly states on oath that Mr. Muhammad Sohail Khan, Deputy Secretary had issued fake letter for BTS Towers of Mobilink Company. A person by the name of Mr. Sohail introducing himself to be a DMG officer did visit his office requesting for help in granting approval on the subject issue to the Company. He was already irritated as many impersonators were approaching him for approval of BTS towers. On suspicion, he inquired through his PS regarding Mr. Sohail to be Additional Secretary and a DMG officer in Industries Department. The reply was in negative and the PS told him that there was a PCS officer and a Deputy Secretary in Industries Department by the same name. With 100% surety, he would not be able to confirm that the person who visited his office was Mr. Sohail (the accused officer) as someone else was also trying to present as an imposture and claiming to be DMG officer and pushing him for this approval. With Mr. Naeem PS to Secretary Environment he did not discuss if he knew Mr. Sohail or not but he (Muhammad Bashir Khan) told him that one Mr. Sohail had approached him.

17. He was cross examined by Mr. Naeem Khan, PS to Secretary Environment Department that whether a person with the name of Mr. Sohail met him to which he replied yes a person with the name of Mr. Sohail had met him. He was further questioned that whether he had told his own PA to get information and what was his reply about Mr. Sohail from Industries Department. To this query he replied that his reply was available in his statement and due to unfamiliarity he had not got information about Mr. Sohail from Industries Department. He was also questioned by the accused that did he see any resemblance with him (the accused) and the one who delivered the fake letter to him to which he replied he could not say with 100% surety he was that person. He was further questioned by the enquiry committee that what would have been the pros and cons on the issuance of NOC for BTS sites 780 for government, to which he replied that Provincial Government did not charge any fees so far as Environmental Protection Agency is concerned. However, it causes noise pollution, air emission and creates legal complications (Annexure-X).

18. ✓ Mr. Muhammad Iqbal Khattak, Deputy Secretary, Environment Department (a member in the preliminary enquiry committee) recorded in his statement on 13<sup>th</sup> October, 2014 that Mr. Muhammad Sohail Khan had denied about the fake letter on 19<sup>th</sup> November, 2013. But on 22<sup>nd</sup> November, 2013 Mr. Naeem Khan stated that the fake letter had been delivered by Mr. Muhammad Sohail Khan himself and he knew him since the time he was posted as Secretary RTA. Later on, the accused had admitted the delivery of letter to Naeem Khan? (when)

He was cross examined by the accused that on which date he had delivered the fake letter to him (Mr. Naeem Khan) to which he replied that on 22<sup>nd</sup> November, 2013 he (the accused) did admit that he had delivered it to Mr. Naeem Khan. He was further questioned by the accused had did he have any written evidence about it to which he replied that he (the accused) had verbally admitted before the fact finding enquiry that the fake letter was delivered by accused personally to Mr. Naeem Khan, PS to Secretary Environment Department (Annexure-XI). (when)?

19. ✓ Mr. Mir Zali Khan, Section Officer, Environment Department recorded in his statement on 13<sup>th</sup> October, 2014 that as stated in the fact finding enquiry report, Mr. Muhammad Sohail, Deputy Secretary, Industries Department had delivered the fake document/approval to Mr. Naeem, PS to Secretary Environment, is true.

He was cross examined by the accused that on which date he admitted the delivery of fake document to Mr. Naeem, PS to Secretary Environment to which he replied that

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on 22<sup>nd</sup> November, 2013. He was further questioned by the accused that was he sure about the date on which he (the accused) confessed that he had delivered fake letter to Mr. Naeem? To this query he replied yes he was sure about the date (Annexure-XII).

20. Mr. Shaukat Ali Yusufzai, Additional Secretary Agriculture Department recorded in his statement on 14<sup>th</sup> October, 2014 that he stood by the wordings of the enquiry report (Facts Finding Enquiry). He was crossed examined by the accused that whether he had given anything in writing during fact finding enquiry to which he replied that on 19<sup>th</sup> November, 2013 he did turn down the charges and stated that he was unaware/unconcerned with the Mobilink Company and further he had never met P.S to Secretary Environment. On 22<sup>nd</sup> November, 2013 in the presence of enquiry committee, P.S to Secretary Environment (Mr. Naeem) identified Mr. Muhammad Sohail Khan, Deputy Secretary Industries Department and stated in front of the accused that he had (the accused) delivered the fake document to him (Mr. Naeem) and Mr. Sohail was known to him as he did remain Secretary RTA, which was at that time part of Environment Department. After listening to Mr. Naeem, Mr. Sohail admitted that he had delivered the fake document to Mr. Naeem. No written statement was recorded at that time. (Annexure-XIII).

Cross Examination of Mr. Muhammad Sohail Khan by the Departmental Representative:-

21. The accused was also cross examined by the representative of Environment Department (Farhad Khan-Deputy Secretary) and pointed out that in para-4 of his reply to charge sheet he stated that he was neither called for recording statement, before the committee constituted for conducting preliminary enquiry nor he ever admitted this allegation anywhere in the enquiry. To this query the accused replied that the matter had already been settled. He was questioned that in his statement he said that he was in Lahore on 26<sup>th</sup> September, 2013, so why he did not take this stand before the earlier enquiry committee? To this question the accused replied that earlier enquiry was totally one sided and having no footing hence de-novo. He was further questioned that would he like the enquiry committee to verify the notification No:3050-69 dated 5<sup>th</sup> July, 2013 regarding composition of the committee (including the name of accused) "to ascertain the existing rates of printing paper in the open market at Punjab" and his presence at Lahore on 26<sup>th</sup> September, 2013 as mentioned in office order No:3059-69 dated 18<sup>th</sup> September, 2013 from Industries Department? To which he replied yes, it could be confirmed from the Industries Department.

Cross Examination of Mr. Muhammad Sohail Khan by the Enquiry Committee:-

22. The accused was cross examined by the enquiry committee that on 26<sup>th</sup> September, 2013 at what time did he leave for Lahore? To which he replied he left for Lahore at 04:00 P.M. He was further questioned that on 26<sup>th</sup> September, 2013 did he attend office in the morning? He replied yes he attended the office in the morning.

Cross Examination of Departmental Representative by the Enquiry Committee:-

23. The departmental representative was questioned by the enquiry committee that could he substantiate as to whether the accused had drafted the fake letter either personally or through someone else and issued accordingly # ? He replied that the department's view point is that the fake letter was delivered by Mr. Muhammad Sohail Khan, Deputy Secretary, Industries Department to Mr. Naeem Khan, PS to Secretary Environment on 26<sup>th</sup> September, 2013. Further details regarding drafting or issuance of the fake letter could be answered by the accused officer (Annexure-XIV).

Handwritten signatures and initials at the bottom left of the page.

Conclusion on Charge No.1:-

24. Fake and bogus letter bearing No: EPA/NOC/BTS/646 dated 19<sup>th</sup> August, 2013 containing approval/NOC of the Environment Protection Agency had not been issued by Environmental Protection Agency EPA. This was reported by Director General, Environmental Protection Agency (EPA) to Environment Department through a note No: EPA//NOC/BTS/285 on 7<sup>th</sup> October, 2013 and established the case through argument mentioning the procedure involved in issuance of Approval/NOC. The fake letter did not have logo of the Environmental Protection Agency (EPA) and the signature of the Director General on it and was bogus. Besides, this NOC in such cases are issued by Assistant Director (Technical) and not Director General, Environmental Protection Agency (EPA). NOC is issued after receipt of monitoring report and that too in respect of each site. This was not possible that one official/officer could carry out inspection/monitoring of 780 BTS sites at one time and on the same day i.e. 19<sup>th</sup> August, 2013 when M/S Pakistan Mobile Communication Limited was addressed through the fake letter.

25. The enquiry committee did try to find out as what would have been the implication (s) of fake approval/NOC and asked Director General, Environmental Protection Agency (EPA) for that purpose during course of the enquiry. He informed that Provincial Government does not charge any fees as far as Environmental Protection Agency (EPA) is concerned. However, implications in terms of noise pollution, air emission and legal complications would definitely have arouse if the fake approval/NOC could have found place for implementation.

Findings:-

26. Charge against the accused is not proved.

Conclusion on Charge No.2:-

27. The enquiry committee was concerned that a letter which was neither addressed nor endorsed to Chief Secretary Khyber Pakhtunkhwa had been registered under Diary No: 10369 on 25<sup>th</sup> September, 2013 by Mr. Zafarullah, Junior Clerk, Chief Secretary office. He states that he received it with "positive intention and not with negative one". Now the question arises that what could have been that "positive intention"? This is a lapse on part of him.

28. Naeem Khan, Private Secretary to Secretary Environment Department, during course of the enquiry proceedings as well as written statement recorded on oath, stood by his words that it was accused (Mr. Muhammad Sohail Khan, Deputy Secretary Industries Department) who had personally delivered the fake Approval/NOC for 780 BTS sites on 26<sup>th</sup> September, 2013.

29. Director General, Environmental Protection Agency (EPA), Mr. Muhammad Bashir Khan, however, could not say for sure that the accused was the same impersonator (Mr. Sohail) who met him in connection with a request for helping issue the required Approval/NOC in respect of the same Company.

30. The other witnesses Mr. Shaukat Ali Yousufzai, Ex-Additional Secretary Environment, Two Deputy Secretaries Mr. Farhad Khan, Mr. Muhammad Iqbal Khattak and Mr. Mir-Zali Khan Section Officer including Mr. Naeem Khan PS to Secretary Environment stood by the statement and confirmed that during preliminary/fact finding enquiry the accused turned down the charge on 19<sup>th</sup> November, 2013 to have delivered the fake Approval/NOC to Mr.

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Naeem Khan but on identification of the accused (Mr. Muhammad Sohail Khan) by Mr. Naeem Khan on 22<sup>nd</sup> November, 2013 that it was the accused who had delivered it personally to him on 26<sup>th</sup> September, 2013. They all confirmed that the accused had verbally admitted to have delivered the fake Approval/NOC to Mr. Naeem Khan but not in written form. (where)?

31. On pointation by the departmental representative while referring to Para-04 of the reply of accused officer to charge stating that he was on an official visit to Lahore on 26<sup>th</sup> September, 2013, then why he (the accused officer) did not take that stand before the earlier enquiry, to this question, the accused could only say that the earlier enquiry was totally one sided and having no footing hence de-novo enquiry.

32. The enquiry committee observed self contradiction and inconsistency in the written statement and cross examination of the accused officer. In written defence he stated that on 26<sup>th</sup> September, 2013 he was on official visit to Lahore in connection with Textbook Board matter. But on cross examination to enquiry committee, the accused stated that he attended his office in the morning and left for Lahore at 4:00 P.M on 26<sup>th</sup> September, 2013.

**Findings:-**

33. Charge against the accused stands proved. (How?)

**Conclusion on Charge No.3:-**

34. The accused officer is presently Deputy Secretary Industries whereas the issue relating to delivery of a fake Approval/NOC for 780 BTS sites to have been issued by Director General, Environmental Protection Agency (EPA) was the domain of Environment Department where the accused had been posted as Secretary RTA (10/12/2005 to 03/06/2007 in BSP-17, 04/06/2007 to 18/04/2008 in BPS-18). The accused was therefore acquainted with the relevant law and procedure involved in the Approval/NOC to BTS sites to Telecommunication Companies. However, the real motives behind the entire episode could not come to the front. But the fact is that the accused had been personally involved in the delivery of fake Approval/NOC for 780 BTS sites to PS to Secretary Environment.

**Findings:-**

35. Charge against the accused is partially proved. Hence not Proved.

Kamran Rehman Khan, PAS  
Additional Secretary, Finance (PFC)  
Enquiry Officer

Mian Muhammad (PCS SG BS-19)  
Additional Secretary, Establishment Department  
Enquiry Officer

Dated: 31<sup>st</sup> October, 2014

(20) (42)

STATEMENT OF NAEEM EX- PRIVATE SECRETARY TO SECRETARY ENVIRONMENT PRESENTLY POSTED AT GIS LAB.

Stated on oath that I was posted as PS to Secretary Environment when the alleged incident happened. It is one of my duty to receive letters, briefs, addressed or marked to Secretary Environment. The alleged letter was brought in Secretary Environment office by Mr. Suhail Sahib, a Secretarial Group officer, Ex-Secretary RTA attached formation of Environment in 2004-05. When the said letter was brought by him to me, I put that letter in fresh Dak folder. Being officer of Secretariat I treated him like an officer offered him tea etc. As the said letter was not received through proper channel so I did not sign it. I also did not made receiving sign <sup>as usual</sup> and delivered by hand. After some time Mr. Suhail Sahab, requested me to return the letter and do not put it to Secretary because he told me that you ( Mr. Naeem ) has not made a receiving sign in respect of the said letter. Before returning it to Mr. Suhail, I made two three photo copies of the said letter which was also a photo copy. Mr. Suhail, after leaving the office came back and asked me to torn the letter as the letter is fake. I told Mr. Suhail that I have torn the letter. After Suhail left the office, the Director General E.P.A. came to Secretary's office with regard to some other official work. I showed him the alleged letter and he responded that Mr. Suhail also visited him on this very issue and was requesting him to do the needful. The D.G. after perusal of the letter took it to the Secretary and afterwards an enquiry was ordered on the issue. I appeared before the fact finding enquiry and identified Mr. Suhail before the enquiry committee.

XX I do know that he remained Secretary RTA and I think he is from Secretarial Group. It is my duty to bring each and every thing in the notice of my higher-ups. I know Mr. Suhail well and recognize him by face. I as PS to Secretary receive all the correspondence addressed in the name of the Secretary Environment. We maintain proper record of the same as per rules. The letter which was brought by Mr. Suhail was a photo copy and he brought it by hand and not by peon book and did not recorded the same in the Receive Diary as it has not come through proper channel and was not yet perused by the Secretary after which we Diary such letters.

I, photo copied the same when Mr. Suhail stated the letter is fake, since being part of my duty, I informed the Secretary. I have known Mr. Suhail since he was Secretary RTA and he as such did not need introduction. The Diary number affixed on the alleged letter on behalf of Environment Department <sup>as</sup> and the same was being processed for enquiry.

It is wrong to suggest that I do not know Mr. Suhail by name or by face.

*Astute*  
*to*

21

STATEMENT OF MR. ZAFARULLAH JUNIOR CLERK WORKING IN THE OFFICE OF PS TO CHIEF SECRETARY, KHYBER PAKHTUNKHWA ON OATH.

Stated on oath that he is Junior Clerk, posted in the Diary Branch of Chief Secretary's office. Any letter received is recorded in the Diary Register with a separate Diary number and afterwards put before the Chief Secretary for appropriate orders after which the same is sent to the relevant quarter with the same number. This was the practice which was adopted before this incident. Presently letters are diared after commented by the Chief Secretary. The letter under inquiry which I read has been diared by me and given the number of 10369 on 25-09-2013.

The letter had enclosed other documents which I had written with the Diary number. I had perused the letter. The diary number is correct but the signature on behalf of the Chief Secretary are fake.

XX It is wrong to suggest that I intentionally diared fake letter to give it an official covering. We in the office receive hundreds of letters either through official channel or even through private individual which are diared accordingly. I was not aware of the fakeness of this fake letter. I also do not remember that the fake letter was delivered by whom.

The said letter was not further processed in our office nor it was sent to D.G. office as is clear from the peon book. I do not remember where the letter went after being diared. It might has been taken away by the concerned who has plotted. I have done the action under good intention and had no collusion what-so-ever. The work load and public dealing make it so difficult to remember each individual. However mistake was made.

XX Accused Official.

I do not remember whether it was the accused official or anybody else who brought this letter to my office and diared it from me.

Read & Signed  
Zafarullah  
07-4-14  
(Zafarullah)  
Junior Clerk.

Asst. Secy  
Mr. [Signature]  
[Signature]

[Signature]

CONFIDENTIAL/MOST IMMEDIATE



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

NO. SO(E-I)E&AD/5-197/2014

Dated Peshawar, the January 29, 2015.

To

Mr. Muhammad Sohail  
(PMS BS-18),  
Deputy Secretary, Industries Department.

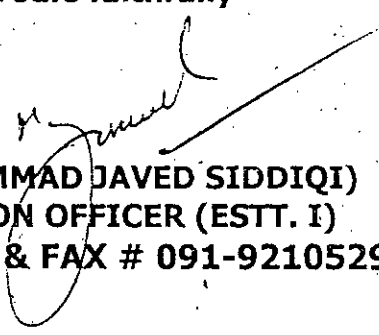
**SUBJECT: - SHOW CAUSE NOTICE**

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith a Show Cause Notice, duly signed by the competent authority alongwith a copy of the enquiry report, conducted by the committee comprising Mr. Kamran Rehman Khan (PAS BS-19) Additional Secretary, Finance Department and Mian Muhammad (PCS SG BS-19) Additional Secretary (Establishment) Establishment Department, for further necessary action at your end, please.

Yours faithfully

Encl: Show Cause Notice (original)  
Enquiry report.

  
(MUHAMMAD JAVED SIDDIQI)  
SECTION OFFICER (ESTT. I)  
PHONE & FAX # 091-9210529



45

23

## SHOW CAUSE NOTICE

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 do hereby serve you, Mr. Muhammad Sohail (PMS BS-18) Deputy Secretary, Industries Department with the following:-

That on going through the material on record and other papers connected with the case, I am satisfied that the charge given below has been proved against you:-

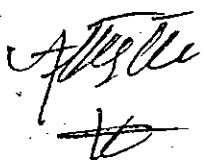
- i) You issued the fake Environment Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink).
- ii) You, yourself delivered the fake Environmental Protection Agency approval to 780-BTS sites for Pakistan Mobile Communication Limited (Mobilink) to the offices of Chief Secretary, Khyber Pakhtunkhwa and Secretary Environment.
- iii) You had no official relation being a Deputy Secretary, Industries with the EPA Environmental Approval but got yourself involved in it.

2. That as a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalty of Removal from service under rule 4 of the said rules.

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

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

5. A copy of enquiry report is enclosed.



(PERVEZ KHATTAK)  
CHIEF MINISTER  
KHYBER PAKHTUNKHWA  
(COMPETENT AUTHORITY)

Mr. Muhammad Sohail (PMS BS-18)  
Deputy Secretary, Industries Department.

To

The Hon'ble Chief Minister,  
Khyber Pakhtunkhwa, Peshawar.

Subject:- SHOW CAUSE NOTICE.

Dear Sir,

With due respect, it is stated that a show cause notice was served upon the undersigned vide Establishment Department letter No. SO (E-I)E&AD/5-197/2014 dated January 29, 2015. Along-with show cause notice a copy of the formal inquiry report was also received by the undersigned.

2. It is worth to mention that during the proceedings, statements of the following were recorded. They were also cross examined by the undersigned as per provision of law:-

- i) Mr. Shaukat Ali Yousufzai, Additional Secretary, Agriculture Department.
- ii) Dr. Muhammad Bashir Khan, Director-General, Environmental Protection Agency (EPA).
- iii) Mr. Muhammad Iqbal Khattak, Deputy Secretary, Environment Department.
- iv) Mr. Farhad Khan, Deputy Secretary, Environment Department.
- v) Mr. Muhammad Sohail Khan (the accused officer), Deputy Secretary, Industries Department.
- vi) Mr. Liaqat Ali Khan, Deputy Director, Environmental Protection Agency.
- vii) Mr. Mir Zali Khan, Section Officer, Environment Department.
- viii) Mr. Muhammad Hanif, Assistant Director (EPA).
- ix) Mr. Naeem Khan, PS to Secretary Environment Department.
- x) Mr. Zafarullah, Junior Clerk, office of the Chief Secretary.

3. All the statements were recorded and papers pertaining to cross examination are a part of the inquiry report. However, no documents had been annexed/forwarded to the undersigned with the report, which is pre-requisite under the law. The undersigned was unable to submit reply in defence, due to absence of above-mentioned report.

4. It was, therefore, requested that all the documents viz: all statements recorded and documents of the cross-examination may be provided to the undersigned as required under the law, which were provided by the Establishment Department to the undersigned on 16-02-2015 by their letter No. SO (E-I)E&AD/5-197/2015. After going

C.S.

Please Conduct fair Inquiry.

Per my signature

CHIEF MINISTER  
Khyber Pakhtunkhwa

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through all the annexed statements, it is pertinent to mention that any statement recorded during the inquiry was not against the undersigned except that of Mr. Naeem, PS to Secretary, Environment Department, that shows ulterior motives of the said person, on which such a huge penalty viz: "Removal from Service" is unjustified.

5. It is, therefore, requested humbly that the subject huge penalty based on a baseless inquiry, may be dropped against the undersigned. I may be heard personally as well, if required, please.

Yours faithfully,

Dated: 18-02-2015.

*N. / /*  
(ENGR: MUHAMMAD SOHAIL)  
PMS BS-18  
Deputy Secretary,  
Industries Department.

Copy forwarded for information to:-

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, Establishment Department, Khyber Pakhtunkhwa.
3. The Section Officer (E-I), Establishment Department.

(ENGR: MUHAMMAD SOHAIL)  
PMS BS-18  
Deputy Secretary,  
Industries Department.

*N. / /*  
*J*



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

Dated Peshawar the May 19, 2015

NOTIFICATION

NO.SO(E-I)E&AD/5-197/2015. WHEREAS, Mr. Muhammad Sohail (PMS BS-18) Deputy Secretary, Industries & Commerce Department was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011;

2. AND WHEREAS, a committee comprising Mr. Kamran Rehman Khan (PAS BS-19) Additional Secretary, Finance Department and Mr. Mian Muhammad (PCS SG BS-19) Additional Secretary (Estt.) E&A Department was constituted to conduct inquiry against the accused officer;

3. AND WHEREAS, the Inquiry committee after having examined the charges, evidence on record and explanation of the accused officer, submitted its report;

4. AND WHEREAS, the competent authority also afforded the opportunity of personal hearing to the accused officer;

5. NOW THEREFORE, the competent authority, after having considered the charges, evidence on record, the explanation of the accused officer, defense offered by the accused officer during personal hearing and exercising his power under Rule-14 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose major penalty of "Removal from Service" on Mr. Muhammad Sohail (PMS BS-18) Deputy Secretary, Industries & Commerce Department, with immediate effect.

CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst. No. & date even.

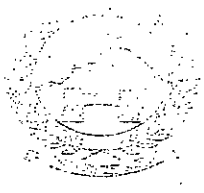
Copy forwarded to the:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary to Government of Khyber Pakhtunkhwa, Environment Department.
4. Secretary to Government of Khyber Pakhtunkhwa, Industries & Commerce Department.
5. Accountant General, Khyber Pakhtunkhwa.
6. S.O. (Secret). E&AD/Section Officer (HRD Wing)/S.O. (Admn.)/S.O.(PSB), State Officer, S.O. (E.II) E&AD.
7. PS to Chief Secretary, Khyber Pakhtunkhwa
8. PS to Secretary Establishment/PS to Secretary (Admn.)/PS to SS(E)/PS to SS(Reg.) E&AD/PA to Deputy Secretary (Establishment)/D.S (Admn.) E&AD.
9. Officer concerned.
10. Manager, Government Printing Press, Peshawar.

*Signature*

*Signature*  
(MUHAMMAD JAVED SIDDIQI)  
SECTION OFFICER (ESTT. I)  
PH. & FAX # 091-9210529

49



CHIEF MINISTER'S SECRETARIAT  
KHYBER PAKHTUNKHWA

27

June 9

No. SC (Admn.)CMS/KPK/Misc/2015 / 9324  
Dated Peshawar the, 30.08.2015

To

The Chief Secretary,  
Government of Khyber Pakhtunkhwa,  
Peshawar

Subject:- RE-VIEW PETITION.

Dear Sir,

I am directed to refer to the subject noted above and to forward herewith a review petition received from Engr. Muhammad Sohail (FMS BS-18) Deputy Secretary, Industries Department, for further processing as per remarks of Honourable Chief Minister, Khyber Pakhtunkhwa.

Yours Faithfully,

  
(Khalid Mehmood)  
Section Officer (Admn.)

Copy forwarded to:-

1. PS to Chief Minister, Khyber Pakhtunkhwa.
2. PS to Principal Secretary to Chief Minister Khyber Pakhtunkhwa.
3. Assistant Director-I I, Chief Minister's Secretariat.



  
Section Officer (Admn.)

(S)

(50)

To

The Honorable Chief Minister,  
Khyber Pakhtunkhwa, Peshawar.

Per procedure.

Pervez Imtiaz

**CHIEF MINISTER**  
**KHYBER PAKHTUNKHWA**

**Subject: Re-View Petition**

Dear Sir,

Kindly refer to notification no. SO (E-I) E&A/5-197/2015 dated May 20, 2015. In which a major penalty viz "Removal from Service" was imposed upon the undersigned on the formal inquiry conducted by the following:-

1. Mr. Kamran Rehman Khan (PAS BS-19) Additional Secretary, Finance Department
2. Mr. Mian Muhammad (PCS SG BS-19) Additional Secretary, (Estt), Establishment Department.

Now as per Govt: Servants E&D rules-2011 under rule 17, sub rule-3 which states that "a re-view petition preferred under these rules shall be made in the form of petition, in writing, and shall set forth concisely the grounds of objection in impugned order in a proper and temperate language".

In this respect it stated that on the formal inquiry conducted by the above officers such a huge penalty viz "Removal from service" seems unjustified hence it requested that such penalty may be dropped.

2. In the previous inquiry all the statements were recorded and papers pertaining to cross examination are a part of the inquiry report. However, no documents had been annexed/forwarded to the undersigned with the report, which is pre-requisite under the law. The undersigned was unable to submit reply in defence, due to absence of above mentioned report.
3. It was, therefore, requested that all the documents viz: all statements recorded and documents of the cross examination may be provided to the undersigned as required under the law, which were provided by the Establishment Department to the undersigned on 16-02-2015 by their letter No. SO(E-I)E&A/5-197/2015. After going through all the annexed statements, it is pertinent to mention that any statement recorded during the inquiry was not

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SO (E-I)

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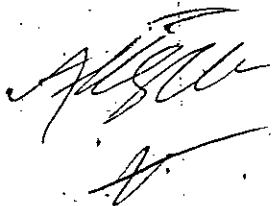
against the undersigned except that of Mr. Naeem, PS to Secretary, Environment Department, that shows ulterior motives of the said person, on which such a huge penalty viz: "Removal from Service" is unjustified.

4. The charges leveled against the appellant were never proved in the enquiry. My defense was not properly appreciated. I dully explained in my reply to the charges as follows:

**The allegation of issuing fake Environmental Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink).**

Since my posting as DS Industries in April 2013 in Industries and Technical Education Department, I have been dealing exclusively with matters of Industries Department and have nothing to do with the Environment Department. As per Rules of Business 1985, both are two different Departments with exclusively different domains of responsibilities. Giving EPA approval to BTS sites is the domain of Environment Department, and not Industries & Technical Education Dept. Even in the Industries Department all approvals in most of the cases are granted at Secretary level. My post does not enjoy any power to give approval to anything vital even in Industries Department. The allegation, is otherwise also baseless on the following grounds:

- a. The copies of approval of EPA to Mobilink in respect of 780 BTS sites (the copy whereof has been provided to me by Establishment Department) neither bears any diary no. or date of the dispatcher of Industries Deptt, nor it bears my signatures, nor the signatures on the approvals bear any resemblance with my signature. There is nothing to this effect neither in the preliminary/fact-finding inquiry, nor in the previous inquiry conducted by Mr. Zakir Hussain Afridi, Member Board of Revenue. There is no forensic proof provided by in the previous two inquiries.
- b. There is no evidence/witness on record that the undersigned has directly or indirectly rendered any assistance or used my office in the issuance of the forged approval
- c. The letter of Mr. Bashir Ahmed Dar, GM Operation FAE Pakistan at Annex-III and letter of Mr. Ryder Abedi, Director Corporate and Regulatory Affairs letter



(30)  
(52)

Annex-IV does not contain anything that shows any connivance on my part with these bodies whose interest were at stake.

d. My previous unblemished record of eleven years service in the Secretariat/Field testifies my honesty and integrity and denies any possibility of involvement in alleged act of misconduct.

ii. The allegation of delivering the fake Environmental Protection Agency approval to 780-BT sites for Pakistan Mobile Communication Limited (Mobilink) to the office of Chief Secretary Khyber Pakhtunkhwa and Secretary Environment

Reply:

Like my standpoint in previous inquiries I do hereby again deny rather rebut this charge with full conviction. The charge is baseless and not supported by the circumstances on the following grounds:

- i. In the Inquiry Report authored by Mr. Zakir Hussain Afridi, the concerned Junior clerk Mr. Zafar, in the office of Chief Secretary Khyber Pakhtunkhwa denies having any explicit proof of delivery of such approval to the office of the Chief Secretary by the undersigned. (Annex-V)
- ii. As to the allegation of delivering the fake approval to PS to Secretary Environment, it is relevant to add that I did not visit the office of the PS Secretary Environment on 26/9/2013 as I was on official visit to Lahore in connection with Text Book Board matter. (Annex-VI). Being DS Industries I am a member of the Committee to deal with the purchase of paper for the textbooks which are provided free of cost to all students upto matric level in Khyber Pakhtunkhwa. This clearly proves that the statement of Naeem, PS to Secretary Environment is baseless hence, not tenable.
- iii. The allegation in the Charge Sheet is based on a sentence in the contents of last para of page: 1 of the Preliminary Inquiry Report that states, "DS Industries also admitted that he delivered the fake approval". (Annex-VII). The allegation of admission of delivering the letter is absolutely wrong and concocted. The undersigned was neither called for giving statement by the committee constituted for conducting Preliminary



(31)

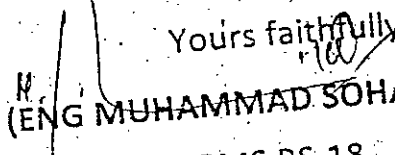
(53)

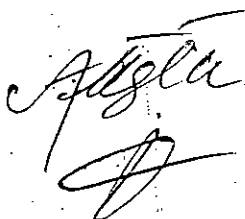
Inquiry, nor even I have ever admitted  
inquiry.

iv. The allegation of getting involved with the EPA  
Environmental Approval despite being D.S. Industries

5. Replies to the allegation at S.No (i) and (ii) above clearly prove that I never remained involved in the matter directly or indirectly at any stage.
6. In the light of the replies duly supported by the relevant annexure as proofs of my innocence, it is requested that the undersigned may please be exonerated from the baseless charges against me keeping in view my unblemished and speckles record of past service.
7. The undersigned had already received from the appellant authority an order to the Chief Secretary that " please conduct fair inquiry" but instead of any formal and fair inquiry just personal hearing was conducted for a total of five minutes in which no human being can Judge the truthiness or otherwise of a person. Hence it is requested that either a formal inquiry may be conducted or the order viz: "Removal from service" based on a baseless allegation may be dropped against the undersigned. So that the famous slogan viz: "changed Pakistan" may be achieved.
8. It is, therefore, requested that on acceptance of the review petition, the order of penalty viz: "REMOVAL FROM SERVICE" may please be set aside and I may be reinstated in service with full back wages and salaries.

Dated: 27-05-2015

Yours faithfully,  
  
(ENG MUHAMMAD SOHAIL),  
PMS BS-18  
Deputy Secretary  
Industries Department

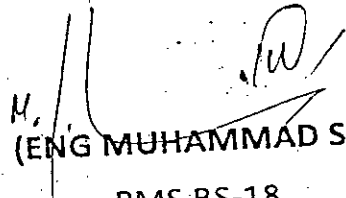


(32)

(54)

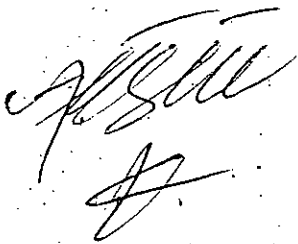
Copy forwarded for information to:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary to Government Khyber Pakhtunkhwa, Environment Department.
4. Secretary to Government Khyber Pakhtunkhwa, Industries Commerce & Technical Education Department.
5. Accountant General, Khyber Pakhtunkhwa.

  
(ENG MUHAMMAD SOHAIL)

PMS BS-18

Deputy Secretary  
Industries Department







GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

55

ANNEX - 14

3B

NO. SO(E-I)E&AD/5-197/2014  
Dated Peshawar, the August 5, 2014

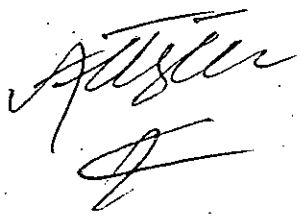
To

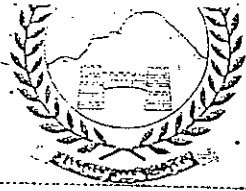
Mr. Muhammad Sohail  
(EX-PMS BS-18)  
Ex-Deputy Secretary, Industries Department.

**SUBJECT: - REVIEW PETITION.**

I am directed to refer your Review Petition dated 27.5.2013 on the subject noted above and to state that the competent authority has rejected your review petition being not merit consideration.

  
(MUHAMMAD JAVED SIDDIQI)  
SECTION OFFICER (ESTT. I)





I

3/5

57

ENVIRONMENTAL PROTECTION AGENCY  
ENVIRONMENT DEPARTMENT  
GOVT; OF KHYBER PAKHTUNKHWA

No.EPA/NOC/BTS/646 dated 19<sup>th</sup> August, 2013

To  
M/S Pakistan Mobile Communication Limited,  
Mobilink House, 1-A, Kohistan Road,  
F-8, Islamabad.

PS/O.E. Khyber Pakhtunkhwa  
Diary No. 10369 (we)  
Date 25-9-13

Subject: EPA APPROVAL FOR 780 BTS SITES FOR PAKISTAN MOBILES COMMUNICATION LIMITED (MOBILINK)

For Immediate

Secretary

Reference to your Environmental Monitoring report submitted to this office vide letter No.NOC/BTS/646 dated 19.08.2013 on the subject cited above for the approval of 780 BTS Sites located at various Districts in the Province of Khyber Pakhtunkhwa.

2. Environmental Protection Agency, Govt; of Khyber Pakhtunkhwa is pleased to consider your request for the attached list of BTS Sites with subject to compliance of the terms and conditions mentioned in this letter.

Terms and Condition for Approval of the Installed BTS Sites:-

1. That no violation of any National/International Environmental Law, Rule of Protocol, Treaty shall be made whatsoever by Executing body or the company.
2. That International Commission on Non-Ionizing Radiation Protection (ICNIRP), Guidelines should be followed with letter and spirit.
3. All necessary measures as proposed in the documents shall be adopted as mandatory with regard to Noise and Air emissions including radiations.
4. That the firm will strictly comply with the National Environmental Quality Standards for Air emissions and Noise level and submit reports of generator exhaust emission including noise level of at least 20% existing BTS Sites through EPA certified lab.
5. That Mobilink is responsible to monitor the noise intensity, air emissions being discharged from Generator sets installed for backup purpose and initiate measure to install solar panels/UPS, where possible, to reduce noise, vibration and air emissions at existing BTS Sites.
6. That the applicant shall ensure compliance of all applicable parameters set by EPA and report to this Agency for review and record after frequent intervals.
7. That there should be no complaint or grievance from the neighbours or the residents of the building/plot where the BTS tower has been erected and in case of any such complaint the approval shall be treated as cancelled automatically.
8. That this approval is granted for the above listed sites only, however, any upcoming project which might be started in future, would be treated according to

3958  
25/9/13

S. (Full)

low noise level  
d. 3/9/13

Atty

(SB)

(316)

Page 22



KHYBER PAKHTUNKHWA TEXTBOOK BOARD  
HAYATABAD PESHAWAR  
EPABX: 9217159-61 - FAX: 9217163

No.PSP/86-Vol-III/ 3050-69

Dated: SB/IC/ 858  
D.NO.7-2013  
DATED 7/7/13

NOTIFICATION

The Chairman, Khyber Pakhtunkhwa Textbook Board/Paper Purchase Committee has been pleased vide third meeting of the Paper Purchase Committee held on 27-06-2013, to notify a subcommittee comprising the following officers to evaluate/scrutinize the technical bids/documents of the bidders and conduct market survey to ascertain the existing rates of printing paper in the open market, at Punjab, so as to rationalize the rates quoted by various paper mills for the Academic Year 2014-15. The committee will also visit the respective paper mills to verify the daily production capacity. The committee will submit report within a week.

- a. Mr. Bashir Hussain Shah,  
Director, Curriculum & Teacher Education, Khyber Pakhtunkhwa;
- b. Mr. Wali Khan,  
Deputy Director (P&D), E&SE Department.
- c. Mr. Muhammad Siraj Munior,  
Senior Planning Officer-II, E&SE Department, Khyber Pakhtunkhwa
- d. Mr. Muhammad Sohail Khan, Deputy Secretary-II  
Industries Department, Khyber Pakhtunkhwa

7/7/13  
D.S. / II

pd put up on 7/7/13  
file! Ass't!

SECRETARY  
Khyber Pakhtunkhwa  
Textbook Board  
Peshawar

Endst.No.PSP/86-Vol-III/ 3050-69

Dated: \_\_\_\_\_

Copy to:

- 1. P.S to Secretary, E&SE Department, Govt. of Khyber Pakhtunkhwa
- 2. P.S to Secretary, Industries Department, Govt. of Khyber Pakhtunkhwa
- 3. All concerned
- 4. Resident Assistant Director (Audit)
- 5. PS to Chairman
- 6. Accounts Branch

SECRETARY

Handwritten signature

59

27

Page 23



KHYBER PAKHTUNKHWA TEXTBOOK BOARD  
HAYATABAD PESHAWAR  
EPABX: 9217159-61 - FAX: 9217163

No.PSP/86-Vol-III/ 3059-69

✓

REC'D: ICL: 849  
D.NO: 09-2013 13/13/13  
DATED

OFFICE ORDER

The Chairman, Khyber Pakhtunkhwa Textbook Board/Paper Purchase Committee has been pleased to nominate the evaluation committee comprising the following officers to conduct market survey and ascertain the existing rates of printing paper in the open market, at Punjab, so as to rationalize the rates quoted by various paper mills for the AY 2014-15:

- a. Mr. Bashir Hussain Shah,  
Director, Curriculum & Teacher Education Khyber Pakhtunkhwa,
- b. Mr. Wali Khan,  
Deputy Director (P&D), E&SE Department
- c. Mr. Muhammad Siraj Munior,  
Senior Planning Officer-II, E&SE Department, Khyber Pakhtunkhwa
- ✓ d. Mr. Muhammad Sohail Khan, Deputy Secretary-II  
Industries Department, Khyber Pakhtunkhwa

2. The committee will also visit the respective paper mills to verify the daily production capacity, as per programme given below.

- |    |   |                            |
|----|---|----------------------------|
| a. | Departure to Sheikhupura / Lahore           | <u>24-09-2013</u>          |
| b. | Inspection at paper mills and market survey | <u>25 &amp; 26-09-2013</u> |
| c. | Return to Peshawar                          | <u>27-09-2013</u>          |

3. Board vehicle No. A-1433, alongwith Tariq Khan, Driver, will be used for the purpose. DA will be paid as per Board's rules.

*DS*  
*Put up on file*  
*ASST*  
*20/9/13*

SECRETARY  
Khyber Pakhtunkhwa  
Textbook Board  
Peshawar

Endst.No.PSP/86-Vol-III/3059-69

Dated: \_\_\_\_\_

Copy to:

1. All concerned
2. Resident Assistant Director (Audit)
3. PS to Chairman
4. Accounts Branch
5. Paper File

*As directed by*  
*worthy Secretary*  
*Please attend*  
*circ. prev*  
*Schedule*  
*PS to*

SECRETARY

*[Handwritten signature]*

*[Handwritten signature]*  
*18/9*

*[Handwritten signature]*  
*19/9/13*

POWER OF ATTORNEY

60

In the Court of KPK Services Tribunal Peshawar  
Muhammad Sahail

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

VERSUS

Govt of Khyber Pakhtun Khwara and  
others.

} Defendant  
} Respondent  
} Accused  
}

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/We, the undersigned, do hereby nominate and appoint

**IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN**

and Sajid Amin Advocate my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at \_\_\_\_\_

the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_

Executant/Executants M. I. P.

Accepted subject to the terms regarding fee \_\_\_\_\_

*Handwritten signatures and notes on the left side of the page.*

*Signature of Ijaz Anwar*  
**Ijaz Anwar**

Advocate High Courts & Supreme Court of Pakistan

(61)

(4)

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

Service Appeal No. 939/2015

Mr. Muhammad Sohail (Ex-PMS BS-18)/Deputy  
Secretary, Industries Department.

(Appellant)

VERSUS

Chief Secretary, Khyber Pakhtunkhwa

(Respondent)

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1, 2 & 3**

**Preliminary Objections**

1. The appellant has got no cause of action.
2. The appellant has not come to the Tribunal with clean hands.
3. The appeal is bad for mis-joinder and non-joinder of necessary parties.
4. The appeal is badly time barred.
5. That the appellant is estopped by his own conduct to file the appeal.
6. That the appeal is not maintainable in its present form.

**ON FACTS**

**PARA-1** Correct. The appellant was posted as Deputy Secretary, Industries Department on 7.2.2013 (Annex-I)

**PARA-2** Correct. The appellant was served with charge sheet and statement of allegations on 15.9.2014 (Annex-II).

**PARA-3** Correct to the extent that the appellant replied the charge sheet to the enquiry committee constituted in the matter.

**PARA-4** Correct to the extent that the enquiry committee conducted the enquiry and submitted its report.

**PARA-5** Correct to the extent that appellant was served with Show Cause Notice, proposing tentative penalty of Removal from Service.

(b2)

4

**PARA-6** **Incorrect.** The appellant replied to the Show Cause Notice and mentioned nothing new in his reply. However, he was accordingly given a chance of personal hearing. During the personal hearing the appellant showed a fake office order to the authorized officer, with such magnitude declared a serious offence, due to which the competent authority confirmed major penalty "Removal from Service".

**PARA-7** **Correct.**

**PARA-8** The penalty of Removal from Service imposed upon the appellant is according to the rules as two charges out of three levelled against him (as shown in charge sheet and statement of allegations) had been proved.

### **ON GROUNDS**


- A.** **Incorrect.** As the appellant had himself delivered the fake Environment Protection Agency approval to 780 BTS sites for Pakistan Mobile Communication Limited (Mobilink) to the offices of Chief Secretary, Khyber Pakhtunkhwa and Secretary Environment, though he had no official relation being a Deputy Secretary, Industries Department with the Environmental Protection Agency (EPA) Environmental Approval but got himself involved in it.
- B.** **Incorrect** as the Provincial Government constituted an Enquiry Committee comprising of Mr. Kamran Rehman Khan (PAS BS-19) the then Provincial Finance Controller and Mian Muhammad (PCS SG BS-19), Additional Secretary, Establishment Department which conducted the enquiry and found that two charges out of three levelled against appellant stand proved.
- C** **Incorrect.** A proper enquiry committee had been constituted during which it was proved.
- D** **Incorrect** as all the witnesses had recorded their statements before the enquiry committee, in presence of the appellant.
- E** **Incorrect** as after conducting proper enquiry the appellant was given Show Cause Notice and thereafter given chance of personal hearing during which he tried to mislead the authorized officer and asked that on that day he was on official visit to Lahore and showed another fake office order to the Authorized officer in support of his contention. Copy of Personal Hearing proceedings is at **(Annexed-III)**.
- F** **Incorrect** as all the witnesses had recorded their statements before the enquiry committee, in presence of the appellant.

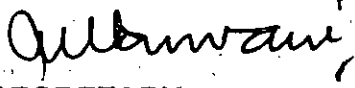
63

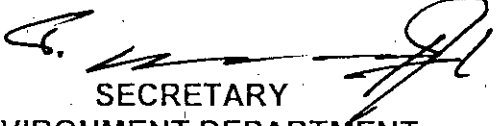
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- G to I**     **Incorrect.** In enquiry report, the appellant had been found guilty of impersonation and during the personal hearing showing a fake office order with such magnitude declared a serious offence, due to which the competent authority confirmed major penalty "Removal from Service".
- J**            **Incorrect.** The appellant during his service/career faced different enquiries and he was awarded different penalties etc. **(Annex-IV)**.
- K & L**       **Incorrect.**
- M to N**      **No comments**

It is therefore, respectfully prayed that instant Service Appeal being devoid of any merit may please be dismissed with costs.

  
CHIEF SECRETARY  
KHYBER PAKHTUNKHWA  
(RESPONDENT NO. 1)

  
SECRETARY  
COMMERCE & INDUSTRIES  
DEPARTMENT.  
(RESPONDENT NO. 2)

  
SECRETARY  
ENVIRONMENT DEPARTMENT.  
(RESPONDENT NO. 3)





GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT

Dated Peshawar, the February 7, 2013

**NOTIFICATION**

**NO.SO(E-I)/E&AD/5-197/2013.** Government of Khyber Pakhtunkhwa is pleased to post Mr. Muhammad Sohail (PCS SG BS-18) OSD Establishment & Administration Department as Deputy Secretary, Industries Department, against the vacant post, in the public interest, with immediate effect.

CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA

**Endst: No. & date even.**

Copy forwarded to the:-

1. Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary to Govt of Khyber Pakhtunkhwa, Industries Department.
4. Accountant General, Khyber Pakhtunkhwa.
5. PS to Chief Secretary, Khyber Pakhtunkhwa
6. PS to Secretary Establishment/ D.S(Admn)/D.S. (Estt.)/S.O.(Secret)/SO(HRD-I)/SO(Admn) E&AD.
7. Officer concerned.
8. Manager, Govt. Printing Press Peshawar.

(MUHAMMAD JAVED SIDDIQI)  
SECTION OFFICER (ESTT. I)  
PHONE & FAX # 091-9210529

ZIA.UL.HAQ\*\*

CONFIDENTIAL - MOST IMMEDIATE

GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

NO. SO(E-I)E&AD/5-197/2014  
Dated Peshawar, the September 15, 2014

To

- 1) Mr. Kamran Rehman Khan (PAS BS-19) Additional Secretary, Finance Department.
- 2) Mian Muhammad (PCS SG BS-19) Additional Secretary (Estt.), Establishment Department.

**SUBJECT: - DISCIPLINARY PROCEEDING AGAINST MR. MUHAMMAD SOHAIL KHAN (PMS BS-18) DEPUTY SECRETARY, INDUSTRIES DEPARTMENT - DE NOVO ENQUIRY**

Dear Sir,

I am directed to refer to the subject cited above and to inform that the competent authority has been pleased to constitute a committee comprising you to conduct de novo enquiry under Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011, against Mr. Muhammad Sohail Khan (PMS BS-18) Deputy Secretary, Industries Department.

2. Copies of the charge Sheet and Statement of Allegations against the accused officer duly signed by the competent authority are enclosed for further necessary action.

3. It is requested to kindly conduct the enquiry and submit report within the prescribed time as per rules.

Yours faithfully,

Encl: as above.

(MUHAMMAD JAVED SIDDIQI)  
SECTION OFFICER (ESTT. I)

Endst. No. & date even

Copy is forwarded to the:-

1. Secretary to Government of Khyber Pakhtunkhwa, Environment Department with the request to nominate a Departmental Representative well conversant with the case to assist the Enquiry committee and also to provide the record/information as and when required by the Enquiry Committee.
2. Mr. Muhammad Sohail Khan (PMS BS-18) Deputy Secretary, Industries Department alongwith copies of Charge Sheet and Statement of Allegations with the request to submit written reply to the Enquiry Committee and attend the proceedings as and when directed by the Enquiry Committee.

SECTION OFFICER (ESTT. I)  
PHONE & FAX # 091-9210529

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Am  
15-9-14

**CONFIDENTIAL/MOST IMMEDIATE**



**GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT**

NO. SO (E-I)/E&AD/5-197/2015  
Dated Peshawar, the April 30, 2015

To

Mr. Muhammad Sohail (PMS BS-18),  
Deputy Secretary, Industries Department.

**SUBJECT: - PERSONAL HEARING**

Dear Sir,

I am directed to refer to this Department's letter of even No. dated 14.4.2015 on the subject and to inform that personal hearing earlier scheduled for 22.4.2015 at 1200 hours has now been re-scheduled for 6.5.2015 at 1100 hours.

2. You are therefore, informed to attend the office of Secretary Establishment, Khyber Pakhtunkhwa on 6.5.2015 at 1100 hours for the personal hearing.

Yours faithfully,

*(Signature)*  
**(MUHAMMAD JAVED SIDDIQI)  
SECTION OFFICER (ESTT. I)**

**Endst. No. & date even**

Copy forwarded to the following:-

1.	The Secretary to Government of Khyber Pakhtunkhwa, Environment Department, with the request to depute a Departmental Representative well conversant with the case to assist the authorized Officer and also to provide the record/information (if any), to be available, on the above mentioned date, during personal hearing.
2.	PS to Secretary Establishment, Khyber Pakhtunkhwa

**SECTION OFFICER (ESTT. I)**

*9C*

*(Signature)*  
30/4/15



67

49

**GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT**

Dated Peshawar the January 10, 2013

**NOTIFICATION**

**NO.SO(E-I)E&AD/5-197/2012.** WHEREAS, Mr. Muhammad Sohail (PCS SG BS-18) the then Deputy Secretary, C&W Department now OSD Establishment Department was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

2. **AND WHEREAS**, Mr. Ahmad Hanif Orakizai (PAS BS-20) Secretary to Government of Khyber Pakhtunkhwa, Population Welfare Department, was appointed as Inquiry Officer to conduct inquiry against the accused officer.

3. **AND WHEREAS**, the Inquiry Officer after having examined the charges, evidence on record and explanation of the accused officer submitted report.

4. **NOW THEREFORE**, the Competent authority, after having considered the charges, evidence on record, the explanation of the accused officer, and exercising his power under Rule-8 read with Rule-14 of Civil Servants (E&D) Rules 2011, has been pleased to impose major penalty of "**reduction to lower stage by three stages in a time scale**" on Mr. Muhammad Sohail Khan (PCS SG BS-18) the then Dy. Secretary, C&W now OSD Establishment Department.

**CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA**

Endst. No. & date even.

Copy forwarded to the:-

1. Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Accountant General, Khyber Pakhtunkhwa.
4. PA to Deputy Secretary (Establishment)/D.S (Admn.) E&Ad.
5. S.O. (Secret) E&AD/Section Officer (HRD Wing)/S.O. (Admn.)/S.O.(PSB), S.O. (E.II) E&AD.
6. PS to Chief Secretary, Khyber Pakhtunkhwa
7. PS to Secretary Establishment, Khyber Pakhtunkhwa
8. Officer concerned.
9. Manager, Government Printing Press, Peshawar.

*(Signature)*  
(MUHAMMAD JAVED SIDDIQI)  
SECTION OFFICER (ESTT.I)  
Ph: & Fax No. 091/9210529

68

تیت 50 روپے



33550

ایڈویکٹ: محمد سعید خان  
بار کونسل/ایسوسی ایشن نمبر: BC-11-1070  
رابطہ نمبر: 0331-666006

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سروس ٹریبونل - کشاور

منجانب: <u>محمد سعید خان</u>	دعوی:
بنام	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:
<u>احمد مسکھ مری - حکومت خیبر پختونخواہ</u>	
<b>باعث تحریر آنگہ</b>	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ و  
 آن مقام کشاوریہ دیکھ کر محمد سعید خان نے محمد سعید خان کو کشاوریہ میں 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 برخلاف دئے جواب دعوی اقبال دعوی اوزد درخواست از ہر قسم کی تصدیق  
 زرائیں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا تاخیر کی صورت میں اپیل کی برآمدگی اور منسوخی، نیز  
 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 بااختیارات حاصل ہوں گے اور اس کا ساختہ پر ذاخت منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانب 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:

Accepted

محمد سعید خان

مقام کشاوریہ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فونو کالی ناقابل قبول ہوگی۔

محمد سعید خان

بعدالت سرورس ٹریبونل لہنڈاور

سرورس ایپل نمبر # 444/2019

محمد عیسیٰ

2021 پنجاب

محمد عیسیٰ بنام گورنمنٹ آف لہنڈاور

موزخ  
مقدمہ  
دعویٰ  
نمبر

باعث تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آنگہ مقام لہنڈاور کیلئے فصل بیان مقدمہ اور البصورت اور دیگر

مقررہ کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار دیا گیا۔ نیز وکیل صاحب کو براہ راست نامہ کرنے و تقرر ثالثیت ہ فیصلہ برحلقہ دینے جواب دہی اور اقبال دعویٰ اور بلاورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا سائلت براخیز منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جائز التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی تاریخ پیشگی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھنا یا کہ سند ہے۔

المرتوم 27 واہ اکتوبر 2021

واہ العبد

بمقام لہنڈاور

Attested & Accepted  
[Signature]



**KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

No: 1642 /ST Dated: 10 / 06 / 2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

To,

The Chief Secretary, Govt. of Khyber Pakhtunkhwa Civil  
Secretariate, Peshawar.

**Subject: JUDGMENT IN REVIEW PETITION NO. 444/2019 OF TITLE MOHAMMAD SOHAIL EX- DEPUTY SECRETARY VS GOVT. OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY CIVIL SECRETARIATE, PESHAWAR.**

I am directed to forward herewith a certified copy of Judgement dated 01.02.2022 passed by this Tribunal on the above subject for strict compliance.

**Encl: As Above.**

(WASEEMAKHTAR)

REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR