

Order No. 05
26.05.2016

(43)

(10)

Mr. Farooq Shah, ADPG for the state and all the six accused in person alongwith their respective counsels present. Fresh wakalatnama submitted by Mr. Munir Hussain and Hafeez ul Asad Advocates on behalf of four accused, which are placed on file.

Charge framed against the accused which they denied and claimed trial. PWs at serial No. 1 to 2 alongwith record, if any, be summoned for 02.06.2016.

Since the accused facing trial have not been arrested in the present case and after submitting the Reference to this court, when they were summoned, they all put appearance, as such, to make sure their future attendance during the trial, this court invokes the power provided under section 91 of Cr.P.C, all the accused are directed to furnish bail bonds in sum of Rs. 01 Lac (100,000/-) with two sureties each in the like amount to the satisfaction of this court on or before the date fixed.

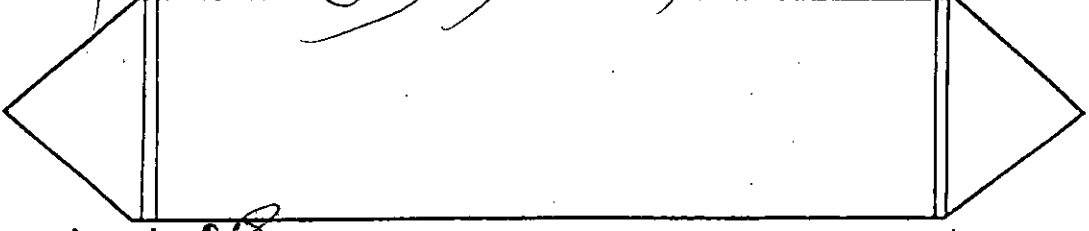
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Certified To Be True Copy
Examinor Copying Branch,
Ehtesab Courts, KPK,
Peshawar
26-05-2016

[Handwritten Signature]
28.5.2016
Judge,
Special Ehtesab Court-II,
KPK, Peshawar

ATTESTED

بعد الت سروس ٹرمینل لٹاؤ



2018ء منجانب امیلانٹ
بنام

موزخہ 16/5/2018
مقدمہ
دعویٰ - S-A
جرم

من علیہ السلام مملکت

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام ~~کیلئے~~ کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
دکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک دروپہ ارضی 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 یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائہ التوائے مقدمہ کے سبب سے وہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا ادکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 16 ماہ 2018

العبد

کے لئے منظور ہے۔

بمقام

ATTACHED

Amir
at
Wumar

03219870175

POWER OF ATTORNEY

In the Court of Before the KPK Service Tribunal

Mohsin Ali Khan } For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of KPK and others } Defendant
} Respondent
} Accused
}

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

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

ZARTAJ ANWAR ADVOCATE, my true and lawful attorney, for me in my same and on my behalf to appear at _____ 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. Compromise 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 sub-poena 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 _____
Accepted subject to the terms regarding fee _____

Zartaj Anwar
Zartaj Anwar

Advocate High Courts
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-2-2, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0331-9399185

original

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 673/2018

Muhsin Ali KhanAppellant

VERSUS

Government of Khyber PakhtunkhwaRespondents

INDEX

S.No.	Particular of documents	Annexes	Pages
1.	Para wise comments	01-02
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4.	Appeal rejection dated 08-05-2018 & 22-05-2018	"B"	05-06
5.	Order	"C"	07-11


DEPONENTS

(D)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. 673/2018

Mohsin Ali Khan Appellant

Versus

Government of Khyber Pakhtunkhwa etc..... Respondents

Respectively Sheweth

Parawise comments on the behalf of respondent No. 1 to 4

Preliminary Objections

1. That the appellant has not come to this tribunal with clean hands nor the appeal is based upon legal footing³ and is therefore liable to be dismissed.
2. That the appellant has no cause of action or locus standi to file the instant appeal, hence this appeal is not maintainable in its present form.
3. That the appellant is not entitle to any relief and this appeal is filed just to waste the precious time of this court.
4. That the appellant has no case in his support.

Reply on facts

1. Para 1 of the service appeal is correct.
2. Para 2 of the service appeal is correct to the extent that, currently no any complaint exists against the Appellant.
3. Para 3 of the service appeal is correct.
4. Para 4 of the service appeal is correct to the extent that, the meeting of Provincial Selection board was held on 28-12-2017. The Provincial Selection Board deferred the case of Appellant for promotion due to pending of the Ehtesab Court case.
5. Para 5 of the service appeal is correct to the extent that, the appellant filed departmental appeal dated 18/01/2018 through proper channel which was forwarded to the Appellate Authority for decision, vides letter dated 04/04/2018 (Annexure-A)
6. Para 6 of the service appeal is correct.
7. Para 7 of the service appeal is incorrect. The case was processed in accordance with Rules/Policy and inlight of Judgments of Peshawar High Court Peshawar. The Appellate Authority rejected the appeal of the appellant with reason “**rejected the subject appeal as it merits no consideration**” (Annexure B).

(3)

8. In reply to para. 8 of the service appeal it is submitted that, the appeal of the appellant is liable for dismissal on the following grounds.

GROUND

- A. Para "A" of grounds of service appeal is incorrect. The decision taken by the Provincial Selection Board Khyber Pakhtunkhwa is clear and covered under the relevant law.
- B. Para "B" of grounds of service appeal is incorrect. Detail reply is mentioned in the above paras.
- C. Para "C" of grounds of service appeal is legal. The decision of Provincial Selection Board is lawful and covered under the law.
- D. Para "D" of grounds of service appeal is incorrect. Detail reply has mentioned in the above paras.
- E. Para "E" of grounds of service appeal is incorrect. No any such inquiry was pending against the appellant.
- F. Para "F" of grounds of service appeal is correct to the extent that a case of Ehtesab Commission is pending against the appellant in the special Ehtesab Court Khyber Pakhtunkhwa. Hence the order of respondents for deferment of promotion is lawful and covered under the law (Annexure-C).
- G. Para "G" of grounds of service appeal is incorrect. Reply has mentioned in the above para F.
- H. Para "H" of grounds of service appeal is legal. The order of respondents is lawful and covered under the relevant law.

In view of the above facts it is humbly prayed that, the appeal of the appellant may be dismissed with cost as the same is untenable on law please.

**Secretary to Government of
Khyber Pakhtunkhwa Mineral
Development Department
Respondent No.01**

**Chief Secretary
Khyber Pakhtunkhwa
Respondent No.02**

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 673/2018

Muhsin Ali KhanPetitioner

VERSUS

Government of Khyber PakhtunkhwaRespondent

AFFIDAVIT

I, Said Muhammad, Superintendent (Litigation), Directorate General Mines and Mineral do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Court.

DEPONENT

Identified by

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Government of ⁽¹⁷⁾
Khyber Pakhtunkhwa
Minerals Development Department

Annex "A"

No. SO (E)/MDD/2-4/2018/KC

Peshawar, 4th April, 2018/29/04/18

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department

Subject: APPEALS OF ASSISTANT DIRECTORS (BS-17) OF MINERAL DEVELOPMENT DIRECTORATE, KHYBER PAKHTUNKHWA

Dear Sir,

I am directed to refer to this department's letter of even number dated 07.03.2018 on the above captioned subject and to state that the officers, whose appeals have already been sent to Establishment Department through the above quoted letter, have filed a Writ Petition No.1284-P of 2018 in the Peshawar High Court, Peshawar (copy enclosed); with the plea that their appeals are pending before the Worthy Secretary, Minerals Development Department, Khyber Pakhtunkhwa, Peshawar/respondent No.1, which requires to be decided. The Peshawar High Court, in its judgment dated 22-03-2018 (copy enclosed), passed the following orders:-

"The petitioners are, directed to appear before the worthy Secretary, Minerals Development Department on 29-03-2018 at 10:00 AM. Surely, the petitioners should be provided sufficient opportunity to plead their case. Thereafter, the worthy Secretary is to decide the matter within thirty days. In case, the relief sought by the petitioners cannot be granted then reason in writing be recorded for the same, and copy thereof be transmitted to the worthy Director, Human Rights Cell of this Court."

2. It may be added that in compliance to Peshawar High Court's above judgment, the petitioner came/called for personal hearing on 29-03-2018 at 10:00 AM and during hearing, both the petitioners were of the view that they have nothing to add new and their stance is the same which already explained/expressed in their appeals submitted earlier.

3. However, it may also be added that the Secretary, Minerals Development Department, is not the Appellate Authority in the case to decide appeals of the officers (petitioners).

4. In view of the above, it is, therefore, requested that decision of the Appellate Authority, on the appeals already sent to Establishment Department, may please be communicated to this Department so that case could be processed further, accordingly.

Yours faithfully,

(Muhammad Javed)
Section Officer (Estt.)

Encls: as Above:

Endst: No & Date Even:

Copy is forwarded for information to:-

1. Mr. Waqar Ahmad, Additional Advocate General, Khyber Pakhtunkhwa, Peshawar.
2. Director, Human Rights Cell of Peshawar High Court, Peshawar.
3. The Director General, Mines & Minerals, Khyber Pakhtunkhwa.
4. P.S to Secretary Minerals Development Department.


Section Officer (Estt.)



GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

No. Kc. SO(O&M)E&AD/10-4/2014
Dated Peshawar, the 8th May, 2018

To ✓
The Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Development Department.

Subject: APPEAL OF ASSISTANT DIRECTORS (BS-17) OF MINERALS
DEVELOPMENT DIRECTORATE, KHYBER PAKHTUNKHWA.

Dear Sir,

I am directed to refer to your department letter No.SO (E)/MDD/2-4/2018/KC dated 04.04.2018 on the subject cited above and to state that the competent authority rejected the subject appeal as it merits no consideration.

Yours faithfully,

(Dr. Irum Shaheen)
SECTION OFFICER (O&M)

Copy to:-

PA to Deputy Secretary (Reg-III), Establishment Department.

SECTION OFFICER (O&M)

(5) Annex "B(2)"



Minerals Development Department

No. SO (E)/MDD/2-4/2018/1507
Dated Peshawar, May 22, 2018

To

The Directorate General,
Mines & Minerals,
Khyber Pakhtunkhwa

SUBJECT: APPEAL OF ASSISTANT DIRECTORS (BS-17) OF MINERALS
DEVELOPMENT DIRECTORATE, KHYBER PAKHTUNKHWA

I am directed to refer to this Department's letter No. SO(E)/MDD/
2-4/2018/KC/2073/75 dated 07-03-2018 on the above captioned subject and
to inform that the Competent Authority has been pleased to reject the subject appeal
as it merits no consideration.

Section Officer (Estt.)

Reference No. 04/2016

IPK Ehtesab Commission ...VS... Muhammad Riaz & others

CHARGE

I, Subhan Sher, Judge, Special Ehtesab Court-II Khyber Pakhtunkhwa, hereby charge you accused namely;

- 1.. Muhammad Riaz, aged about 50/51 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director (Royalty) Headquarter office, Peshawar.
2. Mohsin Ali Khan, aged about 32 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Swat.
3. Noor-ul-Islam aged about 46/47 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Mardan.
4. Zahoor-ud-Din aged about 49/50 years, Assistant Director Mineral Development, Mines & Mineral Department Khyber Pakhtunkhwa, presently posted as Assistant Director Minerals Development, Headquarters office, Peshawar.
5. Nazir Ahmed, aged about 63 years, s/o Abdul Haq, r/o Attar Sheesha, Shah Kot, District Manshara.
6. Ashraf Ali aged about 41 years s/o Ali Zaman r/o Shah Kot, District Manshara, as follow:-

Firstly:- That you accused No.1 Muhammad Riaz posted as Mineral Development Officer during the period from 10.07.2006 to 06.11.2008, as DDO from 23.09.2010 to 31.10.2011 and Assistant Director, Mineral Department, Manshara from 07.05.2015 to 31.10.2015, during your these tenures in the above mentioned capacities, in connivance with your co-accused at serial No. 2 to 6 and in furtherance of your

ATTENDED

Annular Copying Branch,
Ehtesab Court, IPK,
Peshawar

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common intention and common object of you all, fraudulently and illegally issued 1500 Transit Challans to your co-accused No.5, Nazir Ahmad from 28.06.2008 to 28.06.2011 for Feldspar mining area, but in fact no practical excavation/work was executed in the said area during the above mentioned period and thus you failed to exercise your authority required under the law as you were bound to inspect practically the area at the time of issuance of challans mentioned above. Similarly, you did not prepare the working papers for the cancellation of the lease to licensing authority and willfully failed to fulfill your duties, and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

secondly:- That you accused No.2 Mohsin Ali while posted as Assistant Director Mineral Department, Mansehra w.e.f 31.10.2011, during this tenure, your co-accused No.5 Nazir Ahmad filed an application for renewal of the mining lease on 14.06.2012 after 9 months and 25 days of the expiry of the period for filing application for renewal of mining lease, you accused No.2 was required under the law to prepare and submit the working papers for cancellation of mining lease; but you illegally, fraudulently kept the said application in your office and had not acted upon. Similarly, you accused named above posted as Assistant Director Mineral Department, Mansehra w.e.f. 25.07.2013 to 14.04.2014 but during this tenure too, you did not prepare and submit the working papers to competent authority for cancellation of mining lease. During your above mentioned tenures, your co-accused No.5 through authority letter dated 23.10.2013 without the permission of the Licensing Authority sublet the leased area to your co-accused No.6 (Ashraf Ali), who involved in unauthorized mining but you accused did not take any action against above named co-accused No.6 and has been failed to stop the unauthorized

25.5.2016

[Signature]

ATTESTED
 Inner Copying Branch,
 Mohab Courts, Peshawar

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by
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mining which was continued till 12.10.2015 and thus you willfully failed to fulfill your duties and responsibilities under the law, illegally benefited your co-accused No.5 by suppressing the application in your office and allowing the sublettee your co-accused No.6 for unauthorized and illegal excavation and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Thirdly:- That you accused No.3 Noor-ul-Islam while posted as Assistant Director Mineral Development, Mansehra w.e.f. 02.04.2013 to 29.07.2013 and 18.11.2014 to 06.05.2015, the application filed by your co-accused No.5 on 14.06.2012 in the office tenure of your co-accused No.2 for the renewal of the mining lease, deliberately it was kept pending from 14.06.2012 to 10.04.2015 whereas you accused were duty bound to prepare and submit the working papers to the competent authority for cancellation of mining lease but you with malafide intentions did not fulfill the same. Similarly, in your second office tenure you accused illegally and unlawfully did not prepare the working papers for the cancellation of mining lease. Furthermore, you accused illegally issued 200 challans in your second tenure from Serial No.1701 to 1900 of the Challan book on 17.02.2015 to unauthorized and illegal sublettee your co-accused No.6 inspite of the fact that the mining lease had been expired on 19.08.2012. So you accused named above willfully failed to fulfill your duties and responsibilities and illegally benefited the unauthorized sublettee your co-accused No.6 and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

26.5.2016
26.5.2016
ATTACHED
Minor Copying Branch,
Ehtesab Courts, KPK,
Peshawar
2016

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ly:- That you accused No.4 Zahir-ud-Din, while posted as Assistant Director Development, Mansehra w.e.f from 23.04.2014 to 14.11.2014, your co-accused No.5 (Nazir Ahmad) had already filed an application for renewal of mining lease on 14.06.2012. This application under the law was time-barred, so you accused were required to prepare and submit the working papers to the competent authority for cancellation of mining lease but inspite of doing this, you accused illegally and fraudulently issued 200 challans from 1501 to 1700 on 02.06.2014 to your co-accused. You accused willfully failed to fulfill your duties and responsibilities and illegally benefited the unauthorized and illegal sublettee your co-accused No.6 and you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Fifthly:

That you accused No.5 Nazir Ahmad were granted mining lease vide No. MDW/MA/ML-Feldspar(100)/2007 over an area of 299.163 acres near Village Shahkot, district Mansehra on 20.08.2007 for the period of 5 years valid upto 19.08.2012, but you accused did not work in the said lease area since June, 2008 to May, 2010, but even then you were receiving transit challans from your co-accused No.1 since 28.06.2008 to 28.06.2011 and you accused received 1500 challans during the period and utilized it; whereas, this area was idle since 2008 to May, 210. Inspite of directions issued by the Assistant Director Mineral Development, Mansehra you willfully did not submit the monthly production report showing raising and dispatches of feldspar since June, 2008 to Feb, 2011 and did not deposit the deed rent and annual rent as well. You accused also sublet the mining area to your co-accused No.6 illegally and without the permission of the licensing authority through authority letter dated 23.10.2013. You accused in connivance with accused No.1, 2, 3, 4 and 6 remained involved in unauthorized mining of feldspar and due to this,

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Inner Copying Branch
Local Courts, KPK.
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you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Sixthly:

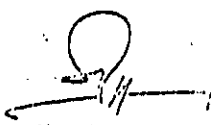
That you accused No.6, Ashraf Ali remained involved in unauthorized mining of feldspar from 23.10.2013 to October, 2015 under the cover of authority letter dated 23.10.2013 and in connivance with your co-accused No. 2, 3, 4 and 5, you accused illegally obtained the transit Challans from your co-accused No. 3 and 4 and utilized them and due to this practice, you accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

Seventhly:- That you all accused at serial No. 1 to 6 during posting in different categories, working in official and private capacities and in connivance of you all illegally assisted and facilitated one another in excavating mines in utter violation of the laws by misusing your authority and due to your above mentioned illegal acts, you all six accused caused to suffer public exchequer huge monetary loss to the tune of Rs. 64,204,000/- and thereby committed offences as defined u/s 23 of the Khyber Pakhtunkhwa Ehtesab Commission Act 2014 (as amended upto date) punishable under section 24 read with schedule thereto of the said Act and within the cognizance of this Court.

And I hereby direct that you be tried by me on the said

charges.

ATTESTED
Examiner Copy
Ehtesab Court, KPK,
Peshawar
26-05-2016


28.5.2016
Judge Special,
Ehtesab Court-II, KPK
Peshawar



**Government of Khyber Pakhtunkhwa
Minerals Development Department**

No. SO(Lit)/MDD/2-2/2019

Dated Peshawar, the 22.8.2019/9296-98

To

✓ Directorate General,
Mineral Development Department,
Khyber Pakhtunkhwa Peshawar.

Subject: **PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1,2
AND 4 IN AMENDED SERVICE APPEAL NO. 673/2019 TITLED
AS MOHSIN ALI KHAN VS SECRETARY, MINERAL
DEVELOPMENT DEPARTMENT KHYBER PAKHTUNKHWA AND
OTHERS**

Dear Sir,

I am directed to the subject noted above and to return herewith joint parawise comments **(in original)** duly signed by Secretary, Mineral Development Department, for further necessary action.

Encl: as above:

Your's faithfully

Aswadi
Section Officer (Litigation)
Mineral Dev: Department

CC:

1. PS to the Secretary Minerals Development Department
2. Master file.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Amended Service Appeal No. 673/2019
Mohsin ali Khan, Assistant Director Mineral,
Khyber Pakhtunkhwa Peshawar

Appellant

Versus

The Secretary Mineral
Development Department
Khyber Pakhtunkhwa, Peshawar & others

Respondent

**PARAWISE REPLY ON BEHALF OF RESPONDENT NO. 1,2 AND 4 IN
AMENDED SERVICE APPEAL NO. 673/2019 TITLED AS MOHSIN ALI
KHAN VS SECRETARY, MINERAL DEVELOPMENT DEPARTMENT
KHYBER PAKHTUNKHWA AND OTHERS**

Respectfully Shewith.

PRELIMINARY OBJECTION

1. That the appellant has got no cause of action and locus standi to file the instant service appeal.
2. That the instant appeal is not maintainable in its present form.
3. That the instant appeal is bad due to non joinder and miss-joinder of necessary party.
4. The appellant has not come to his Tribunal with clean hands.
5. That the appellant is estopped by his own conduct to file this appeal.

FACTS

1. Pertains to record, hence no comments.
2. Incorrect. A case in the Ehtisab Commission is pending adjudication against the appellant.
3. Correct to the extent that working paper for promotion from BPS-17 to BPS-18 were processed and sent to Establishment Department for placing before the Provincial Selection Board (PSB) Meeting, which was held on 28.12.2017. The Department did not recommend him for promotion due to the reasons recorded against his name in the working paper (Annex-"A" of the appeal).
4. Correct to the extent that Provincial Selection Board deferred the case of promotion of the appellant due to pending Ehtisab Court's case against him.

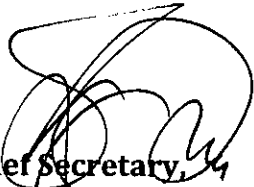
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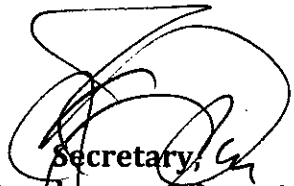
- 3 103
5. Correct to the extent that the appellant filed Departmental appeal which was dismissed on 8.5.208.
 6. No comments.
 7. The Departmental Appeal of the appellant was rejected by the Competent Authority on 8.5.2018, and conveyed to him on 22.05.2018 (**Annex-I**)
 8. No comments.

GROUND:

- A. His promotion was deferred by the Competent Authority for his pending case in Ehtisab Court which was criminal in nature.
- B. The plea taken by the appellant is not correct as he has quoted para-4 and 5 of "Instruction on Performance Evaluation Report" which is a separate guideline for filling of Performance Evaluation Report.
- C. His promotion was deferred due to a case pending adjudication against him in Ehtisab Court.
- D. As explained in para-C of the grounds.
- E. No comments as it relates to Ehtisab Court.
- F. Ehtisab Commission case which is criminal in nature was sufficient to prove him guilty.
- G. As explained in para-C.
- H. No comments.

Foregoing in view, there is no solid or legal ground to maintain the present appeal of the appellant for the reason that the appellant has got promotion to BPS-18 in the Provincial Selection Board Meeting held on 19.04.2019, (**Annex-II & III**) hence the same may very graciously be dismissed with cost.


Chief Secretary,
Govt: of Khyber Pakhtunkhwa
Respondent No.2&4


Secretary,
Mineral Development Department
Respondent No.1

**BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 673/2019

Mohsin Ali Khan, Assistant Director Minerals, Khyber
Pakhtunkhwa, Peshawar.

(Appellant)

VERSUS

Secretary Mineral, Khyber Pakhtunkhwa Peshawar and Others

(Respondents)

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Submitted:

The appellant submit his rejoinder as under:

Preliminary Objections:

1. That the appellant has cause of action against the respondents.
2. That the appellant has locus standi and got cause of action to file the instant appeal and is maintainable in its present form.
3. That all the necessary parties are included in the appeal.
4. That the appellant has come to this court with clean hands.
5. That the appellant has not concealed anything from this honourable Tribunal.

ON FACTS:

1. Need no reply.
2. Contents of Para 2 of the Appeal is correct, furthermore, mere pendency of any proceeding pending before any Commission or Court of law does not de-bar the civil servant from his right of promotion.

3. Para 3 of Appeal is correct as admitted by the respondent as well, as the case of the Appellant was placed before the Provincial Selection Board and the meeting held on 28.12.2017, but illegally against the settled rule and law on the subject deferred the present Appellant from promotion.
4. Contents of Para 4 of the Appeal is correct. The detail reply is given in the above para.
5. Contents of Para 5 as admitted by the respondent on submission of the departmental appeal by the Appellant which was dismissed on 08.05.2018, without following the due course of law on the subject matter.
6. Contents of Para 6 needs no reply.
7. Contents of Para 7 where the departmental appeal of the Appellant was dismissed by the respondent department on 08.05.2018, conveyed later on but without due course of law, hence need no reply.


GROUNDS

- A. Incorrect. According to the lay down law & procedure mere pendency of any proceeding does not de-bar any civil servant from his right of promotion.
- B. Contents of Para B of Appeal are correct and the reply so submitted is incorrect and misleading.
- C. Para C of the appeal is correct and the reply so submitted in incorrect and misleading.
- D. Para D of the appeal is correct and the reply so submitted in incorrect and misleading.
- E. Contents of the appeal is correct and the reply so submitted in incorrect and misleading.
- F. Contents of the appeal is correct and the reply so submitted in incorrect and misleading.


G. Contents of the appeal is correct and the reply so submitted in incorrect and misleading.

H. Need no comments.

It is, therefore, prayed that on acceptance of this *Service Appeal*, may please be accepted as prayed for.

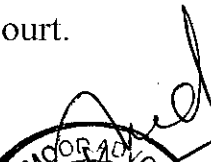
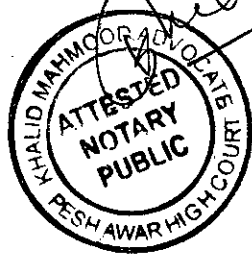

Appellant

Through

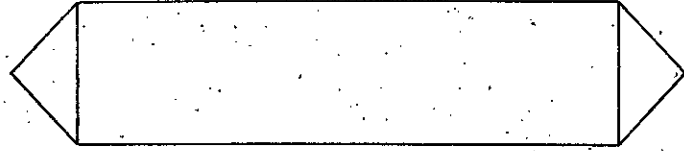

ZARTAJANWAR
Advocate Peshawar

Affidavit

I, do hereby solemnly affirm and declare that the contents of the *above Rejoinder* are true and correct and that nothing has been kept back or concealed from this Honourable Court.


 1524-19


Deponent



2019ء جناب سائل

حسن علی خان بنام حکومت

20 دسمبر

مورخہ

مقدمہ

حسوسی کسروپول

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام خسوسی کسروپول کیلئے حفیظ الامیر صاحب نامہ

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 پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زر اپ 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 مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور 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 بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داخہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

حسن علی خان

2019ء

دسمبر

ماہ

20

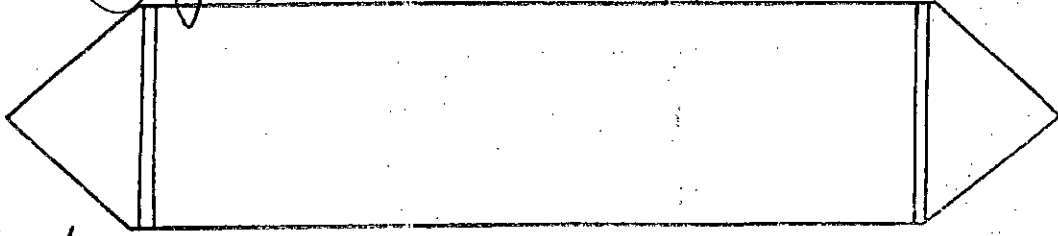
المرقوم

العبد گواہ العبد

کے لئے منظور ہے۔

مقام لیسٹاؤ

بعد الت خیر لکنو خواہ سوہ لری بیول



۲۰۲۱ء منجانب اسلڈ
بنام حکومت و عزم

حسن علی

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئیکہ

۱۰/۱۱/۲۰۲۱

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جو اسے پیروی و کل کارروائی متعلقہ
آن مقام کیلئے سید اربینو بیول احفظ
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
دکیل صاحب کو راضی نامہ کرنے و تقرر حالت فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ 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 برادگی 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 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سند ہے۔

Monsir Ali Khan

Handwritten signature

المرقوم 14 ماہ ستمبر 2021

بمقام _____ کے لئے منظور ہے۔
accepted

Annexure B

PSB-I

WORKING PAPER FOR PROVINCIAL SELECTION BOARD.

Department: DIRECTORATE GENERAL MINES AND MINERALS KHYBER PAKHTUNKHWA (GOVERNMENT OF KHYBER PAKHTUNKHWA MINERAL DEVELOPMENT DEPARTMENT).

1.	Nomenclature of the Post/Basic Scale	Deputy Director Technical (BS-18)		
2.	Service Group/Cader	Mines and Minerals		
3.	Sanction strength of cader	8 posts.		
4.		Direct	Promotion	Transfer
i)	Percentage of share	---	100 %	---
ii)	Nos of posts allocated To each category	---	8 posts.	---
iii)	Present occupancy position	---	1 post	---
iv)	No of vacancies in each category		7 posts.	---
v)	How did the vacancy (ies) under Promotion quota accrue and since When?	The Finance Department has created Two posts of Deputy Director Technical (BS-18) During the financial year 2016-17 and due to retirement of the incumbent and promotion, these posts have become with effect from 01/01/2015, 04/04/2015, 26/08/2015, 01/09/2016 and 20/06/2017(Annexure-I, II, III, IV, V & VI).		
vi)	Recruitment Rules.	By Promotion on the basis of seniority-cum-fitness, from amongst the Assistant Directors (Technical)(Mining Engineer)/Geologist/Assistant Directors (Royalty) with at least five years service as such. (Annexure- VII).		
vii)	Required length of service	5-years service		
viii)	Whether to be promoted on Regular basis or appointed on Acting charges basis?	The officers in "Panel of officers for consideration" at S.No. 01 to 06 having the requisite length of service may be promoted on regular basis. While the officer at S.No. 07 of the same panel having short length of service about 04 months may be promoted on acting charge basis as per Rule-09 of part-II of appointment, promotion & transfer Rules-2011. (ESTA CODE revised addition-2011)		
ix)	Mandatory training, if any.	Not applicable		
x)	Minimum required Score on EI	60		

Signature _____

Designation _____

Dated: 30-10-2017

SECRETARY
to Govt of Khyber Pakhtunkhwa
Mineral Development

PANEL OF OFFICERS FOR CONSIDERATION

S.No.	Name of Officer with Qualification	Date of Birth	Date of 1 st entering into Govt. service.	Date Of Appointment Promotion To BPS-17	Date of Regular Appointment to the present scale.	Whether Fulfill The prescribed Length of Service.	Quantified Scores	Missing PERs (if any)	Disciplinary Proceeding (if any)	Case (if any) In any court of Law including NAB/Plea Bargaining with NAB	Mandatory Training for promotion	Research papers	Present posting.	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1	Mr. Siraj Ahmad B.Sc. Mining Engineering	05/04/1970	18/12/1994	20/12/2008	20/12/2008	Yes	76.25	Nil	Nil	Nil	Nil	Nil	Assistant Director (Technical) (BPS-17) H/Q Office	Eligible
2	Mr. Sher Ayaz B.Sc L.L.B	20-05-1961	13-09-2008	20-12-2008	20-12-2008	Yes	77.50	Nil	1. The Minor Penalty "with holding of two increments for one year" was imposed vide notification No. SOE(MDD)/4-8/2014 dated 04/08/2016. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.		Nil	Nil	=do=	1. The Minor Penalty "with holding of two increments for one year" was imposed vide notification No. SOE(MDD)/4-8/2014 dated 04/08/2016. 2. The name of the officer has been included in embezzlement of royalty case in of the Assistant Director Mineral Mardan vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.

3	Muhammad Zulkifal Khan B.Sc Mining Engineering	19-01-1986	19-12-2009	19-12-2009	19-12-2009	Yes	78.57	Nil	Nil	Nil	Nil	Nil	=do=	Eligible
4	Mr. Mohsin Ali Khan B.Sc Mining Engineering	15-05-21984	19-12-2009	19-12-2009	19-12-2009	Yes	78.57	Nil	Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process.		Nil	Nil	Newsiera	Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process.
5	Mr. Ishfaq Ahmad Saleem	06-04-1986	19-12-2009	19-12-2009	19-12-2009	Yes	72.86	Nil	The minor penalty of "Censure" has been imposed in the Departmental enquiry on the officer, vide letter No.9638-39/DGM M/Admn/2/942, dated 28/09/2015.		Certificate attached	Nil	H/Q Office	The minor penalty of "Censure" has been imposed in the Departmental enquiry on the officer, vide letter No.9638-39/DGM M/Admn/2/942, dated 28/09/2015.
6	Mr. Zahoor Ud Din B.A	01-04-1967	16-01-1991	12-04-2012	12-04-2012	Yes	78.60	Nil	1. Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan, vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.		Nil	Nil	H/Q office	1. Reference No. 4/2016 in the Court of Special Ehtesab Court-II Khyber Pakhtunkhwa, Peshawar against the officer regarding Feldspare case under file No. MDW/MA/PL-Feldspare (100)/2007 is under process. 2. The name of the officer has been included in embezzlement of royalty case in office of the Assistant Director Mineral Mardan, vide Notification No. SOE(MDD)/4-1/Vol-II/2017 dated 15/09/2017 and the enquiry is pending with the Enquiry Officer.

7	Mr. Hayat ur Rehman B.Sc Mining Engineering	27-02-1987	21-02-2013	21-02-2013	21-02-2013	No	77.50	Nil	Nil	Nil	Nil	Nil	H/Q Office	Not eligible due to non-completion of length of service
8	Mr. Ihsan Ud Din B.Sc Mining Engineering	19-08-1987	26-08-2013	26-08-2013	26-08-2013	No	---	2013 2014 2015 2016	Nil	Nil	Nil	Nil	Mardan	Not eligible due to non-completion of length of service
9	Mr. Qasim Jamal M.Sc Mineral Resource Management	01-06-1987	07-02-2014	07-02-2014	07-02-2014	No	--	2014 2015 2016	Nil	Nil	Nil	Nil	Manshera	Not eligible due to non-completion of length of service
10	Mr. Asmat Ali E.Sc Mining Engineering	01-07-1985	07-03-2014	07-03-2014	07-03-2014	No	---	2014 2015	Nil	Nil	Nil	Nil	D.I.Khan	Not eligible due to non-completion of length of service
11	Mr. Muhammad Riaz M.A	02-02-1966	11-02-1996	23-09-2015	23-09-2015	No	---	2015 2016	Nil	Nil	Nil	Nil	Abbottabad	Not eligible due to non-completion of length of service

Certified that the officer at S.No 1 to 6 included in the panel are eligible for promotion in all respects. While the officer at S.No. 7 of the same panel having short length of service about four months may be Promoted on acting charge basis as per rule 9 of the part-II of appointment of promotion rules 2011 (ESTA CODE Revised addition 2011)

Signature: _____
 Designation: _____
 Date: 30/12/17

MINERALS DEVELOPMENT DEPARTMENT

(Meeting of PSB held on 28.12.2017)

SUBJECT: PROMOTION OF ASSISTANT DIRECTOR BS-17 TO THE POST OF DEPUTY DIRECTOR MINERAL BS-18.

Secretary Mincs & Minerals Development apprised the Board that due to creation, retirement and promotion, seven (07) posts of Deputy Director Technical BS-18 are lying vacant.

2. According to service rules the post is required to be filled as under:-

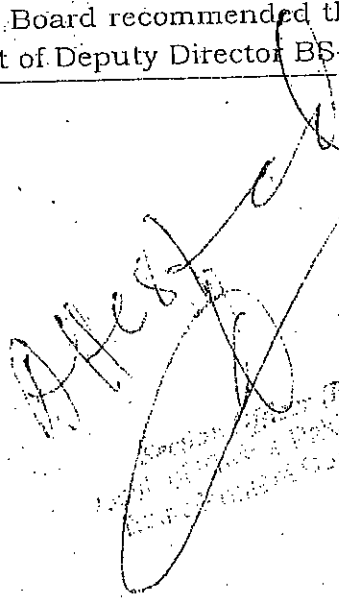
"By promotion, on the basis of seniority cum fitness, from amongst the Assistant Directors (Technical) (Mining Engineer)/Geologist/Assistant Directors (Royalty) with at least five years service as such."

3. The service record of the officer included in the panel was discussed as follows:-

S.NO	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Siraj Ahmad	His date of birth is 18.04.1970. He joined government service on 18.12.1994 and was promoted to BS-17 on 20.12.2008. No enquiry is pending against him. His service record upto 2016 is generally good. The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.
2)	Mr. Sher Ayaz	His date of birth is 20.05.1961. He joined government service on 13.09.1982 and was promoted to BS-17 on 20.12.2008. The Secretary Mines was directed to inform the enquiry Officer to speed up the instant enquiry and submit report at the earliest. The Board recommended to defer his promotion?
3.	Mr. Muhammad Zulkifal Khan	His date of birth is 19.01.1986. He joined government service on 19.12.2009 in BS-17. No enquiry is pending against him. His service record upto 2016 is generally good. The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.
4)	Mr. Mohsin Ali Khan	His date of birth is 15.05.1984. He joined government service on 19.12.2009 in BS-17. According to Mineral

Handwritten signature and stamp:
 Mr. Mohsin Ali Khan
 Deputy Director
 Minerals Development Department

		Development department a case is under process against him in Ehtisab Court. The Board recommended to defer his promotion.
5.	Mr. Ishfaq Ahmad Saleem	His date of birth is 06.04.1986. He joined government service on 19.12.2009 in BS-17. He has been imposed a minor penalty of censure on 28.09.2015. No enquiry is pending against him. His service record upto 2016 is generally good. The Board recommended the Officer for promotion to the post of Deputy Director BS-18 on regular basis. He will be on probation for a period of one year.
6.	Mr. Zahoor ud Din	His date of birth is 01.04.1962. He joined government service on 16.01.1991 and was promoted to BS-17 on 12.04.2012. According to Mineral Development department he is included in Ehtisab Court case and an enquiry is pending against him. The Board recommended to defer his promotion.
7.	Mr. Hayat ur Rehman	His date of birth is 27.02.1987. He joined government service on 21.02.2013 in BS-17. He has not yet completed prescribed length of service for promotion. No enquiry is pending against him. His service record upto 2016 is generally good. The Board recommended the Officer for appointment to the post of Deputy Director BS-18 on acting charge basis.


 Secretary (P&S)
 Ministry of Petroleum & Natural Resources
 Government of Punjab

Annex A, B, C, D

Government of
Khyber Pakhtunkhwa
Minerals Development Department

Dated Peshawar, January 05, 2018 /

NOTIFICATION

No. SO (E)/MDD/2-4/2017 The Competent Authority, on the recommendations of the Provincial Selection Board, is pleased to promote the following Assistant Directors (BS-17) to the post of Deputy Director (BS-18) Directorate General, Mines & Minerals, Khyber Pakhtunkhwa Peshawar, on regular basis, with immediate effect:-

S.No.	Name of Officers
1.	Mr. Siraj Ahmad
2.	Muhammad Zulkifal Khan
3.	Mr. Ishfaq Ahmed Saleemi

The officers, on promotion, will remain on probation for a period of one year extendable for another one year in terms of Section 6 (2) of Khyber Pakhtunkhwa Civil Servants, Act, 1973 read with Rule-15 (1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

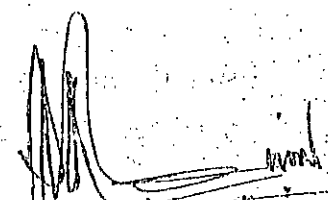
Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Development Department

No. SO (E)/MDD/2-4/2017

Dated Peshawar, 6th January, 2018

Copy forwarded to:

1. PSO to Chief Secretary, Khyber Pakhtunkhwa.
2. PS to Secretary Minerals Development Department Peshawar.
3. The Accountant General Khyber Pakhtunkhwa, Peshawar.
4. The Director General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar.
5. The Manager Government Printing Press for publication in next issue Government Gazette.
6. Officer Concerned.
7. Personal file of the officer concerned
8. Master file.


(Muhammad Javed)
Section Officer (Estt.)