

تعمیر تحریری مہارت (21) ~~183~~ ~~183~~ ~~183~~
یادداشت پر عمل پیرا ہو کر نوڈ اور ڈی ایم ڈی

نوڈ لیسٹر نمبر 7076 مورفہ 22/8/2013 جاری کر (DEEM) ایم ڈی ایم
کیا آپ انکوائری کیسٹی اور شوکار نوڈس کے تحریری جوابات
کے علاوہ اپنے دفاع میں مزید کوئی جواب یا دستاویز
جمع کروانا چاہتے ہیں؟

• حجاج شیٹ کے جوابات اور شوکار نوڈس کے تحریری جوابات
کے علاوہ سائل چند گزارشات مزید پیش کرنا چاہتا ہے

1. سائل نے کسی بھی DD0 کی ذمہ داری سمجھانے سے پہلے
لوگس دستخط ہیں کیے بلکہ دستخط اصلی ہیں اور یہی اصل الزام
میں سائل پر

2. کہہ کر سائل کو ڈائریکٹر ESSE نے ملذمت پر بحال اسی تاریخ سے
کیا جس تاریخ سے سائل کو ملذمت سے برخاست کیا گیا
جس سے واضح ہوتا ہے کہ سائل کو جملہ تقابلیات سمیت بحال
کیا گیا۔

3. بہتر اگر آپ اس بات پر مطمئن نہیں ہیں کہ سائل صحیح ہے

(28)

کی مدد سے ہر حال جملہ نفاذ یا اجراء سمیت بیوی سے تو

(29)

بہتر اس سلسلے میں ڈائریکٹر GSSC سے رائے لے لی جائے

کیونکہ اس پیرسٹ کو ایڈجسٹ کرنے کی اجازت ہے

4. اگر ڈائریکٹر GSSC نے بہتر مدد سے درخواستی عہدہ کو

چھٹی بغیر نسخواہ ایڈجسٹ کر دے تو سائل جملہ رقم واپس

جمع کروانے کا پابند ہے

5. بہتر سائل کی حوصلہ افزائی 4 انگریز سٹاپ کی گئی

تھی وہ 11/11/2014ء تک ہے لہذا 11/11/2014ء

بعد سے سائل کی سزا پر عمل درآمد شروع کیا جائے

اور سائل نے الٹی تک حوزہ رائڈ نسخواہ وصول کی ہے

وہ 20980 روپے بنتی ہے لہذا اس روک بک

میں ریکوری درست کی جانے تا کہ سائل اس ریکوری

کو ایک سی قسط میں جمع کروا سکے

اور سائل کی جو باقیہ انگریز سٹاپ کر دی گئی

میں ان کو درست کر کے آئندہ والی سٹاپ کی جائے

اور فالو اپ بھی لیا جیتا ہے

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کا معاہدہ 8/4/2013 کو سائل کی مدد سے برخواستگی ہوئی ہے

سے لائی گئی تھی وہ سیاسی اور انتظامی کارروائی کا نتیجہ تھی

7. سائل کی مذکورہ اپنی گذارشات مورخہ 28/8/2013 کو پیدے ہی

داخل دفتر کر چکا ہے۔ (کافی لف ہے)

8. سائل نے اپنے سابقہ 12 سالہ سروس میں جو کردار عملی طور پر

سکول اور بچوں کی بشری کیمپے ادا کیا اس کا ثبوت بھی لوج ہے

9. مذکورہ کہ آپ آج محار اور الفاضل پیرست آفسر ہیں

سہ لے پیر سائل کیمپے جو بھی آڈر جاری کریں گے وہ

سائل سے آنکھوں پر تسلیم کرتے گا۔

10. سائل گوکا واحد کفیل ہے اور سائل کی شہواہ بند ہوئے

کی وجہ سے سائل کا لیورا گوارڈ سائل اور پیر لیشا بنوں سے

دو جاری ہیں ہے۔

دعا ہے اللہ تعالیٰ آپ کی عمر بڑھائی میں بہت عطا فرمائے

3/8/2013

سوال :- آپ نے لٹا یا اجاٹ برائے عرصہ 01.3.2013 تا

30.4.2012 اور 01.7.2012 تا 30.9.2012

مبلغ = 153,850 روپے کس انٹھارٹی کی منظوری سے ٹوٹی خزانے سے draw کیے ہیں۔ اسی طرح

آپ نے واجبات شیواہ برائے دورانیہ

01-12-2010 تا 30-11-2011 (Pam 12) مبلغ = 293723 روپے

کس sanction order کی روشنی سے draw کیے ہیں۔ اگر یہ source form سے لوگس اندراجات کا نتیجہ نہیں لوگوں sanction پیش کریں۔

جواب :- مندرجہ بالا سپر انڈر رائٹ میں جو سپر انڈر رائٹ کی اجازت کا ذکر ہے

یہ کسی لٹریٹیویشن کے تحت ہے متعلقہ DDEO نے جاری کیا ہوا

ہیں بلکہ متعلقہ DDEO نے سوئی نام پر خود دستخط کیے ہیں۔
تحت یہ رقم جاری ہوئی اور ڈسٹرکٹ آٹھوٹھ کے آفسر
نے رقم جاری کرنے کا اندراج سرورس میں ہی کیا۔

31.8.2013

سوال :- Statement of Allegation اور خارج سٹیٹ کے نتیجے

میں آپ نے یہ مؤقف اختیار کیا ہے کہ آپکی سروکارنگ دفتر سے نم کی ہے لیکن اچانک مورفہ 08/7/2013 کو آپ نے یہ سروکارنگ زبردستی کو سٹیشن کی جس کے معاہدے سے یہ پتہ چلا کہ مافی میں آپ کی Termination اور Reversion اور Stoppage of Increments سے کئے گئے اپنے اپنی ٹوٹیل میں رکھی ہے۔ جس پر یہ اندر اچا ہے مورفہ 22/07/2013 کو ڈسٹرکٹ ایجوکیشن آفیسر (گردانہ) ایمپٹ آباد نے کئے ہیں۔

جواب :- سائل کی سروکارنگ دفتر ہذا میں ہی موجود رہی دسمبر 2011 میں

گنشن ہزارہ کی انکوائری کے سلسلے میں سروکارنگ میں بالو خالد سے سروکارنگ جس کا تحریر صورت گنشن ہزارہ کی طرف سے کی گئی انکوائری رپورٹ کے ساتھ ملے

انکوائری اور نومبر 2012 میں سائل کے حملہ تقابلیات کے سلسلے میں 2 مرتبہ سروکارنگ ڈسٹرکٹ آبادنگ آفس بھی گئی دفتر ہذا کے آرڈر نمبر 2653 مورفہ 24/4/2013 کی نقل کی روشنی میں سروکارنگ ڈسٹرکٹ آبادنگ آفس سے سروکارنگ بیرونی اور مورفہ 24/5/2013 کو انکوائری کمیٹی کے سامنے پیش کی گئی بعد ازاں مورفہ 08/7/2013 کو دفتر ہذا میں داخل کی گئی۔

31-8-2013

(26)
سائل کی روک تھام کے لیے مقررہ صورت کا ثبوت بہ بھی
مدرسہ 2012/12/1 تک کی انٹری میٹروں DDEO کی طرز سے

(188)
(29)

موجود اور اندراج سے اور AT کے ساتھ کی پر مشتمل
سائل کا عملہ ریکارڈ سے روک تھام سے نقل کیا گیا

EX EDEO تنظیم میں حاضرانہ حوالہ مقررہ صورت اور EX ڈی ڈی اور
سائل کی روک تھام کے لیے یہ ضلعہ کیا گیا کہ مدرسہ
2011ء کے ضلعہ کے حوالہ پیل دائرہ کی کمی سے
اس کے ضلعہ کے لیے یہ سزا روک تھام سے دفع کی جائے
گی



31-8-2013

(27)

(کرا)

(30)

جواز اٹھارہ کی منظوری کے بغیر آپ نے سرکاری
 خزانے سے ٹوکن Source form کے ذریعے
 مبلغ 47,573/2 روپے جو رقم خزانہ سے نکالی ہے
 وہ رقم آپ نے بغیر کسی ماحضرت کے سرکاری خزانے
 میں جمع کرانہ کے لیے دیا، یہاں؟

ج: یہ دو جی ہاں تینے دلوں میں۔

3/8/2013

3/8/2013
 DEO (M)

~~3/8/13~~
 Muhammad Ayyaz
 Superintendent
 DEO (M) A-Abad.

Registered

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Amr "A" / Amr "O"

1732
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Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa

Amr "M"

NOTIFICATION

1. WHEREAS, Mr. Naveed Iqbal, AT, GMS, Todu Maira Abbottabad, was proceeded for having committed the following gross irregularities which constitute inefficiency, misconduct and corruption under Rule-3, Sub Rules (a), (b) and (c) of the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline Rules, 2011).

2. AND WHEREAS, he has committed gross misconduct and corruption by dishonestly tempering in the Source Form-II in the month of October 2012, with the bogus and tempered entries of arrears under the signature of Mr. Zafar Arbab Abbasi, the then DEO(M) / DDO of Boys Middle Schools Abbottabad, and unlawfully drawn the amount of Rs.153850/- (Rupees one lac fifty three thousand eight hundred and fifty) for the period from 01-03-2012 to 30-04-2012 and 01-07-2012 to 30-09-2012 (five months) through pay roll for the month of October, 2012, whereas he has failed to produce any valid order of the competent authority regarding the bogus arrear of pay.

3. AND WHEREAS, he in the month of November, 2012, again committed the same mal-practices through submission of another Source Form-II with bogus arrear under the tempered signatures of Qazi Tajammal Hussain, the then DEO(M)/DDO Boys Middle Schools Abbottabad, and unlawfully drawn the unauthorized arrears of pay for the period from 01-12-2010 to 30-11-2011 (twelve months) amounting to Rs:293723/- (Rupees two lac ninety three thousand seven hundred and twenty three) through pay roll for the month of December, 2012, whereas for the said period he remained out of service in result of order of removal from service by the competent authority for producing fake/forged letters on behalf of the Director, E&SE, Khyber Pakhtunkhwa, and Honourable Service Tribunal Peshawar. Drawl of bogus arrears could not be justified by him.

1732
29-3-14

4. AND WHEREAS, his original service book remained in his personal custody just to conceal the facts and avoid entries of penalties/orders previously passed against him but all of a sudden, in result of his adjustment at GHS, No.3, Abbottabad, he presented his original service book on 08-07-2013. It has been detected through its scrutiny that not even a single entry regarding removal from service, reduction to lower post as well as stoppage of 04 (four) increments have been made therein and he remained enjoying the same status by drawing his existing pay without indicating recovery of four increments in result of review order passed by the appellate authority. The said left over entries in result of concealment of original service book have been made by the DDO concerned on 22-07-2013.

EB-II
10 sep 2013
29/03/14

5. AND WHEREAS, Charge Sheet and Statement of allegation were served upon him vide this office Memo: No:2984, dated 20-04-2013, and regular inquiry committee was constituted vide notification of DEO issued under Endst: No:2979, dated 20-04-2013; to inquire the charges levelled against him. The inquiry committee provided you full opportunity of defense and even to cross examining the evidence against him and submit its findings / report.

DDEO(M)
For record
information
Please.

27/3/14

6. AND WHEREAS, Show Cause Notice was served upon him vide this office Memo: No:6724, dated 29-07-2013, wherein Major Penalty of dismissal from service was tentatively proposed under Rule-4(b) (iv) of Khyber Pakhtunkhwa, Government Servant (Efficiency & Discipline) Rule-2011; and recovery of unlawfully drawn amount of Rs:447573.00 from Govt: Exchequer within fifteen days.

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7. AND WHEREAS, on receipt of reply of show cause notice, he was summoned vide this office Memo: No. 7076, dated 20-08-2013, for personal hearing on 26-08-2013 but due to engagement of competent authority, the proceedings were adjourned to 31.08.2013. On the date fixed, he availed the opportunity of defense and admitted the commission of the charges with the request to deposit the said amount within three days.
8. AND WHEREAS, he has deposited Rs:447573.00 into Government Treasury vide Challan
9. No:73 and 74 dated 10-09-2013, which is established evidence that he has committed gross misconduct, dishonesty and fraudulently drawl of the said amount.
10. AND WHEREAS, due to the concealment of his service book entries regarding his removal reversion and stoppage of four increments could not be made therein. In result of stoppage of four increments, re-fixation was made in his service book that creates further outstanding liabilities of Rs: 136443/-(Rupees one lac thirty six thousand four hundred forty three) against him.
11. AND BY, reason of the above, charges leveled against him have been proved and he was found guilty of corruption, misconduct, forgery, inefficiency, insubordination, professional dishonesty and financial loss to the Government Exchequer under Rule-3 of the Khyber Pakhtunkhwa, Govt: Servant (Efficiency and Discipline) Rules-2011.
11. Whereas, the competent authority in exercise of the power conferred upon him under Sub Rules-4-b(ii) of Khyber Pakhtunkhwa, Government Servant (Efficiency & Discipline) Rules-2011, has issued order to impose Major Penalty of "COMPULSORY RETIREMENT" upon him with the recovery of Rs:136443/-(Rupees: One Lac thirty six thousand four hundred forty three) out of his emoluments / pension vide notification No.8188-93 dated 19.10.2013.
12. Now therefore, the appellate authority has decided to reject the appeal of Mr. Naveed Iqbal, Ex-AT, GMS, Todu Maira A/Abad.

Director
Elementary & Secondary
Education Khyber Pakhtunkhwa

Endst: No. U357-59 File No. 285/Vol-II/TT dated Peshawar the 25/3 2014

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Copy forwarded for information to the:-

1. District Education Officer (M) A/Abad with reference to his letter No. 1276-77 dated 25-2-2014.
2. District Accounts Officer A/Abad
3. Head master GMS, Todu Maira A/Abad
4. Appellant concerned.
5. Master File.

Deputy Director Establishment (M)
E&SE Khyber Pakhtunkhwa, Pesh:

[Signature]
21/3/2014
21/3/14

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Ann "P"
Ann "N"

21 /
4/2
AB

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD

No. 119-20 (EB)

Dated 2-1-2014

The Director,
Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar.

Subject: APPEAL FOR RE-INSTATEMENT IN SERVICE
Memo:

I am directed to refer to Memo: No.2406/F.No.285/Vol-II/ET/Al.Qari (M) DATED 16.12.2013 on the subject noted above and to state that appeal of the ex-civil servant is without mentioned annexure, hence the proper reply without the attached document is not possible. Copy of appeal is attached

You are therefore, requested to provide the same for further proceeding.

DY: DISTRICT EDU: OFFICER (M)
ABBOTTABAD

Endst: of even number & date:

Copy forwarded for information to the Section Officer (PE) Government of Khyber Pakhtunkhwa, Elementary & Secondary Education Department, Peshawar w/r to his No.SO(PE)/E&SE/1-1/Abbottabad/2013 dated 04.12.2013 addressed to Director E&SE Khyber Pakhtunkhwa, Peshawar.

DY: DISTRICT EDU: OFFICER (M)
ABBOTTABAD

Computer No. 988-90-492193

Am 00

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Note:— The entries in this page should be renewed or re-attested at least every five years and the Signature to lines 9 and 10 should be dated.

Police
ult

Police
clerk

7/19

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1. Name: Naveed Iqbal.

2. Race: MUSLIM

3. Residence: Village Banda Ulair Ali Khan
PO Debalpur Teh; Distt: Abbottabad

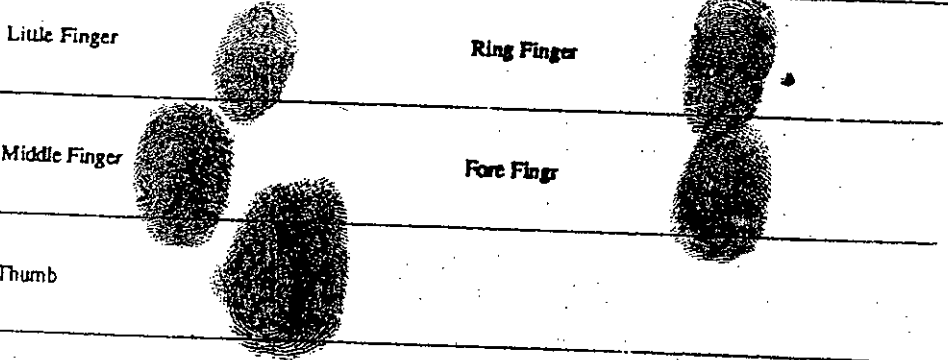
4. Father's name and residence: Muhammad Rabbani.
Address: AS Above.

5. Date of birth by Christian era as nearly as can be ascertained: 19-4-1975.
19th April 1975 Security fine

6. Exact height by measurement: 5-5

7. Personal marks for Identification: Black mole on the Lt;
upper lip.

8. Left hand thumb and Finger Impression of (Non-Gazetted) Officer.



9. Signature of Government Servant: [Signature]

10. Signature and Designation of the Head of the Office, or other Attesting Officer: [Signature]
By DEO (Secy),
Abbottabad

Name and designation of the head office or other officer in position of posts 1 to 8	Date of termination of appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting Officer	Nature and duration of leave taken	Leave		Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government Servant
					Allocation of period of leave on average pay upto four months for which leave salary is debit to another Government	Government to which debit		
DO E & S (Edu) Deptt: Atd	30/11/2011	P/R	[Signature]					Suspended from Service w.e.f. 09/04/2013 vide DEO(M)
DO E & S (Edu) Deptt: Atd	30/06/2013	P/R	[Signature]					Abbottabad Endst. No 2654-58/11-13 - Suspension/Retired 09/04/2013
DO E & S (Edu) Deptt: Atd	30/11/2011	A/loc	[Signature]					
DO E & S (Edu) Deptt: Atd	30/11/2012	A/loc	[Signature]					
DO E & S (Edu) Deptt: Atd	30/06/2013	Transf	[Signature]					Suspension period for three months is hereby extended vide DEO(M) Abbottabad Endst. No. 6403-5 dt. 09/07/2013
DO E & S (Edu) Deptt: Atd	30/11/2010	No	[Signature]					w.e.f. 17/12/2013 to 30/12/2013 (3) Months
DO E & S (Edu) Deptt: Atd	30/07/2011	P/R	[Signature]					
DO E & S (Edu) Deptt: Atd	30/11/2011	No	[Signature]					T-1035 15/7/2013
DO E & S (Edu) Deptt: Atd	30/11/2012	A/loc	[Signature]					Drawn suspension allowance for the period 14/2/2013 to 30/6/2013 amounting to Rs. 91126/-
DO E & S (Edu) Deptt: Atd	30/06/2013	Transf	[Signature]					(3) months Distt: Accounts Officer Abbottabad 13/7/2013
								Drawn suspension allowance for the period w.e.f. 17/12/2013 to 30/12/2013 for amounting Rs. 290792/-

AD
10/12/2013

(5)



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

Service Appeal No.206/2014

Naveed Iqbal

V E R S U S

Government of Khyber Pakhtunkhwa & Others

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth;

Rejoinder on behalf of appellant is submitted as under:-

PRELIMINARY OBJECTIONS:

- i) Objection No.1 is incorrect. The appellant is the Civil Servant appointed as Arabic Teacher (A.T) on 05.04.1999 and he was compulsorily retired from service dated 19.10.2013. Appellant has cause of action to file the instant appeal against order No.8188-93 dated 19.10.2013 passed by respondent No.3.
- ii) Objection No.2 is incorrect.
- iii) Objection No.3 is incorrect.
- iv) Objection No.4 is incorrect. Appellant come to this Honourable Tribunal with clean hands but respondents concealed and distorted the material facts from this Honourable Court, during the pendency of the instant appeal. Appellant moved an application for providing relevant documents to this Honourable Tribunal but respondents failed to produce the same documents till now.
- v) Objection No.5 is incorrect and are without any substance and raised in the comments only to decorate the reply.

- vi) Objection No.6 is incorrect, appeal is within time. Appellant has challenged the order No.8188-93 dated 19.10.2013 which is well within time whereas order dated 02.11.2011 is concerned, appellant has filed separate appeal before this Honourable Tribunal which is pending for further proceedings.
- vii) Objection No.7 is incorrect, Service Tribunal is the only forum which has the jurisdiction to entertain the appeal and can give the relief to aggrieved civil servant.

ON FACTS:-

1. Para No.1 of the facts needs no reply.
2. Para No.2 of the facts needs no reply.
3. Para No.3 reply of respondents is incorrect whereas Para No.3 of the instant appeal is correct.
4. Para No.4 reply of respondents is incorrect whereas Para No.4 of the instant appeal is correct.
5. Para No.5 reply of respondents is incorrect whereas Para 5 appeal of the appellant is correct.
6. Para No.6 reply of respondents is incorrect whereas Para No.6 of instant appeal is correct. Appellant was reinstated in service with full back benefits w.e.f 23.11.2010.
7. Para No.7 reply of respondents is incorrect whereas Para No.7 of appeal of the appellant is correct. Rest of Para reply of respondents needs to arguments.
8. Para No.8 reply of respondents is incorrect whereas Para No.8 of appeal of appellant is correct.

9. Para No.9 of appeal of the appellant is correct whereas Para No.9 reply of respondents need to proof. Moreover, matter was pending before Hon'ble Service Tribunal not payment of the appellant, but in process matter is transfer matter of the appellant, respondent No.3 also disobeyed the direction of this Hon'ble Service Tribunal and committed contempt of Court.
10. Para No.10 of appeal of the appellant is correct whereas Para No.10 of reply of respondents is incorrect hence denied. Moreover, it is pertinent to mention here that the salary of appellant was illegally and unlawfully stopped by respondent No.3. The duty certificate is present as Annexure "I" with the main appeal.
11. Para No.11 of the reply of respondents needs no reply.
12. Para No.12 of the appeal of appellant is correct whereas Para No.12 of reply of the respondents need to arguments. The allegation leveled in this para is not present in charge sheet and neither at any stage the appellant was informed in respect of this charge nor appellant was given any chance of defence.
13. Para No.13 of the appeal of appellant is correct whereas Para No.13 reply of the respondents is incorrect. Appellant drawn his salary amounting to Rs.2,93,723/- fulfilling all the legal requirements, there is no fault on the part of the appellant for drawing salary of mentioned period, rest of reply of Para by respondents need to proof. The respondent No.3 failed to prove the charges of bogus signatures, leveled against the appellant.
14. Para No.14 appeal of appellant is correct whereas Para No.14 is incorrect. Charge against the appellant regarding service book is baseless, service book of the

appellant always remained in the custody of respondent No.3 verified entries are made in the service book dated 01.12.2012 which shows that allegation of the respondents about service book is baseless. Moreover, proceedings initiated by the scrutiny committee and prepared the bio-data of the appellant for in the light of said service book, the service book which is available as Annexure "A1" in the instant appeal.

15. Para No.15 of appeal of the appellant is correct whereas Para No.15 reply of the respondents is incorrect. No independent inquiry was conducted against the appellant. Moreover, Inquiry Officer appointed by the respondent No.3 who was biased against the appellant meanwhile Contempt of Court proceedings were in process before this Honourable Tribunal, the said proceeding were in respect of the transfer matter of the appellant. Appellant also moved an application for appointment of Inquiry Officer any other, impartial person. But respondent No.3 did not consider the application of the appellant.
16. Para No.16 of the appeal is correct whereas Para No.16 reply of the respondents need to arguments.
17. Para No.17 of appeal of appellant is correct whereas Para No.17 reply of respondents need no reply.
18. Para No.18 appeal of the appellant is correct whereas Para 18 reply of the respondents is incorrect. Detail is already mentioned in Para No.15.
19. Para No.19 of the appeal of appellant is correct whereas reply to Para No.19 by the respondents needs no reply.

20. Para No.20 of the appeal of appellant is correct, whereas Para No.20 reply of the respondents is incorrect, whole proceeding conducted by the so-called inquiry committee is against the law, no chance given to appellant for cross examination moreover, inquiry officer was biased against the appellant, there is contradiction in the so-called inquiry initiated against the appellant, during the so-called inquiry proceeding respondent No.3 pressurized the inquiry committee to collect the illegal material against the appellant for proof of major penalty. Inquiry officer without proving the allegations leveled against the appellant imposed major penalty of compulsory retirement of appellant.
21. Para No.21 of the appeal of appellant is correct whereas Para No.21 reply of the respondents is incorrect. Inquiry committee without proving the allegations leveled against the appellant, which is not fulfilling the legal requirement of law.
22. Para No.22 of appeal of the appellant is correct whereas Para No.22 reply of the respondents is incorrect, not related to the Para No.22 of the appeal.
23. Para No.23 reply of the respondents needs no reply.
24. Para No.24 reply of the respondents needs no reply.
25. Para No.25 appeal of the appellant is correct whereas Para No.25 reply of the respondents needs to prove.
26. Para No.26 appeal of the appellant is correct whereas Para No.26 reply of the respondents is incorrect, no opportunity is given to the appellant for cross examination, whole proceeding initiated against the appellant was illegal, against the norms of natural justice.

27. Para No.27 of the appeal of appellant is correct whereas Para No.27 reply of the respondents is incorrect, respondent No.3 is bias against the appellant and pressurized the appellant deposited amount mentioned in Para No.27 reply of the respondents, appellant is subordinate of the respondents, and deposited the said amount under the pressure and personal grudge of the respondents. Moreover, appellant moved an application before respondent No.2 to resolve the problem of the appellant, even the respondent No.3 denied to compliance the directions issued by the respondent No.2.
28. Para No.28 appeal of the appellant is correct whereas Para No.28 reply of respondents is incorrect. Respondent No.3 did not obey the order of this Honourable Tribunal and committed Contempt of Court, Contempt of Court proceeding is pending before this Honourable Tribunal.
29. Para No.29 of appeal of appellant is correct whereas Para No.29 reply of the respondents is incorrect, departmental proceedings initiated against the appellant was not according to the rules and law, proceeding taken against the appellant just to linger on the proceeding and not decide the case within 15 days after the personal hearing.
30. Para No.30 of appeal of the appellant is correct whereas Para No.30 reply of the respondents is incorrect, charge leveled against the appellant in charge sheet which is not proved during proceeding of the inquiry. There is contradiction between charge sheet and report of inquiry, respondent No.3 whole proceeding taking against the appellant just to escape Contempt of Court proceeding.

31. Para No.31 of appeal of appellant is correct whereas Para No.31 reply of the respondents is incorrect. Appellant filed the instant appeal before the Honourable Tribunal after expiration of statutory period of 90 days.
32. Para No.32 of appeal of appellant is correct whereas reply of the respondents is related to record.
33. Para No.33 of appeal of appellant is correct whereas reply of the respondents is related to record.
34. Para No.34 of appeal of appellant is correct whereas Para No.34 reply of the respondents needs to prove.
35. Para No.35 of appeal of appellant is legal.

ON GROUNDS:-

- a) Para 'a' of grounds of appeal is correct whereas reply to Para 'a' of the grounds by the respondents is incorrect. Appellant was discriminated and not dealt according to the rules and law.
- b) Para 'b' grounds of appeal is correct whereas reply to Para 'b' of the grounds by the respondents is incorrect. Para 'b' reply of the respondents concocted story which is not related to the Para 'b' of the grounds of appeal.
- c) Para 'c' grounds of appeal is correct whereas reply to Para 'c' of the grounds by the respondents is not correct. Mentioned amount received by the appellant through valid order and adopted all legal requirements of the respondent No.3 hence, allegations leveled against the appellant are baseless and without any justification.

- d) Para 'd' grounds of appeal is correct whereas reply to Para 'd' of the grounds by the respondents is incorrect.
- e) Para 'e' grounds of appeal is correct whereas reply to Para 'e' of the grounds by the respondents is incorrect. No impartial inquiry was conducted against the appellant, during proceeding of inquiry appellant was not given chance of cross examination moreover, inquiry officer is also biased against the appellant. Meanwhile, Contempt of Court proceeding is in process and the instant proceedings were related to the transfer matter of the appellant before this Honourable Tribunal. Respondent mentioned letter in his Para 'e' grounds of the reply said notice issued to the inquiry officer not to appellant and appellant was not informed about the so-called inquiry proceeding.
- f) Para 'f' grounds of appeal is correct whereas reply to Para 'f' of the grounds by the respondents is incorrect. Appellant was duty full and never absent during his entire service and performing his duty regularly. Relevant proof is annexed with appeal of the appellant as Annexure "B" and "I" respectively.
- g) Para 'g' grounds of appeal is correct whereas reply to Para 'g' of the grounds by the respondents is incorrect and needs arguments.
- h) Para 'h' grounds of appeal is correct whereas reply to Para 'h' of the grounds by the respondents is incorrect.
- i) Para 'i' grounds of appeal is correct whereas reply to Para 'i' of the grounds by the respondents is incorrect.
- j) Para 'j' grounds of appeal is correct whereas reply to Para 'j' of the grounds by the respondents is incorrect.

- k) Para 'k' grounds of appeal is correct whereas reply to Para 'k' of the grounds by the respondents is incorrect and not related to Para No.'k' of the grounds of the appeal in hand.
- l) Para 'l' grounds of appeal is correct whereas reply to Para 'l' of the grounds by the respondents is incorrect which is also not related to reply ground 'l' of appeal of the appellant.
- m) Para 'm' grounds of appeal is correct whereas reply to Para 'm' of the grounds by the respondents is incorrect. Issue related to the increment, appellant filed separate appeal before this Hon'ble Tribunal which is pending for further proceedings.
- n) Para 'n' grounds of appeal is correct whereas reply to Para 'n' of the grounds by the respondents is incorrect. Moreover, Para No.12-13 factual objections reply of the respondents is also incorrect.
- o) Para 'o' grounds of appeal is correct whereas reply to Para 'o' of the grounds by the respondents is incorrect.
- p) Para 'p' grounds of appeal is correct whereas reply to Para 'p' of the grounds by the respondents is incorrect which need arguments.
- q) Para 'q' grounds of appeal is correct whereas reply to Para 'q' of the grounds by the respondents is incorrect.
- r) Para 'r' grounds of appeal is correct whereas reply to Para 'r' of the grounds by the respondents is incorrect.
- s) Para 's' grounds of appeal is correct whereas reply to Para 's' of the grounds by the respondents is incorrect.

- t) Para 't' grounds of appeal is correct whereas reply to Para 't' of the grounds by the respondents is incorrect. Appeal of the appellant is well within time.

It is, therefore, very humbly prayed that the comments of the respondents be rejected/ dismissed and the instant appeal of the appellant may graciously be accepted with all back benefits.

...APPELLANT

Through:



(SARDAR MUHAMMAD AKMAL)
Advocate High Court, Abbottabad.

Dated:- 11-7 /2014

AFFIDAVIT:-

I, Naveed Iqbal S/o Ghulam Rabbani, resident of Village Banda Kheir Ali Khan, P.O Dobathar, Tehsil and District Abbottabad Ex-A.T (Arabic Teacher) Government Middle School Todo Maira, District Abbottabad **appellant**, do hereby solemnly affirm and declare on Oath that the contents of instant **Rejoinder** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

DEPONENT



...APPELLANT

Dated:- 11-7 /2014

IDENTIFIED BY:-



(SARDAR MUHAMMAD AKMAL)
Advocate High Court, Abbottabad.

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

Service Appeal No.206/2014

Naveed Iqbal

V E R S U S

Government of Khyber Pakhtunkhwa & Others

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth;

Rejoinder on behalf of appellant is submitted as under:-

PRELIMINARY OBJECTIONS:

- i) Objection No.1 is incorrect. The appellant is the Civil Servant appointed as Arabic Teacher (A.T) on 05.04.1999 and he was compulsorily retired from service dated 19.10.2013. Appellant has cause of action to file the instant appeal against order No.8188-93 dated 19.10.2013 passed by respondent No.3.
- ii) Objection No.2 is incorrect.
- iii) Objection No.3 is incorrect.
- iv) Objection No.4 is incorrect. Appellant come to this Honourable Tribunal with clean hands but respondents concealed and distorted the material facts from this Honourable Court, during the pendency of the instant appeal. Appellant moved an application for providing relevant documents to this Honourable Tribunal but respondents failed to produce the same documents till now.
- v) Objection No.5 is incorrect and are without any substance and raised in the comments only to decorate the reply.

- vi) Objection No.6 is incorrect, appeal is within time. Appellant has challenged the order No.8188-93 dated 19.10.2013 which is well within time whereas order dated 02.11.2011 is concerned, appellant has filed separate appeal before this Honourable Tribunal which is pending for further proceedings.
- vii) Objection No.7 is incorrect, Service Tribunal is the only forum which has the jurisdiction to entertain the appeal and can give the relief to aggrieved civil servant.

ON FACTS:-

1. Para No.1 of the facts needs no reply.
2. Para No.2 of the facts needs no reply.
3. Para No.3 reply of respondents is incorrect whereas Para No.3 of the instant appeal is correct.
4. Para No.4 reply of respondents is incorrect whereas Para No.4 of the instant appeal is correct.
5. Para No.5 reply of respondents is incorrect whereas Para 5 appeal of the appellant is correct.
6. Para No.6 reply of respondents is incorrect whereas Para No.6 of instant appeal is correct. Appellant was reinstated in service with full back benefits w.e.f 23.11.2010.
7. Para No.7 reply of respondents is incorrect whereas Para No.7 of appeal of the appellant is correct. Rest of Para reply of respondents needs to arguments.
8. Para No.8 reply of respondents is incorrect whereas Para No.8 of appeal of appellant is correct.

9. Para No.9 of appeal of the appellant is correct whereas Para No.9 reply of respondents need to proof. Moreover, matter was pending before Hon'ble Service Tribunal not payment of the appellant, but in process matter is transfer matter of the appellant, respondent No.3 also disobeyed the direction of this Hon'ble Service Tribunal and committed contempt of Court.
10. Para No.10 of appeal of the appellant is correct whereas Para No.10 of reply of respondents is incorrect hence denied. Moreover, it is pertinent to mention here that the salary of appellant was illegally and unlawfully stopped by respondent No.3. The duty certificate is present as Annexure "I" with the main appeal.
11. Para No.11 of the reply of respondents needs no reply.
12. Para No.12 of the appeal of appellant is correct whereas Para No.12 of reply of the respondents need to arguments. The allegation leveled in this para is not present in charge sheet and neither at any stage the appellant was informed in respect of this charge nor appellant was given any chance of defence.
13. Para No.13 of the appeal of appellant is correct whereas Para No.13 reply of the respondents is incorrect. Appellant drawn his salary amounting to Rs.2,93,723/- fulfilling all the legal requirements, there is no fault on the part of the appellant for drawing salary of mentioned period, rest of reply of Para by respondents need to proof. The respondent No.3 failed to prove the charges of bogus signatures, leveled against the appellant.
14. Para No.14 appeal of appellant is correct whereas Para No.14 is incorrect. Charge against the appellant regarding service book is baseless, service book of the

appellant always remained in the custody of respondent No.3 verified entries are made in the service book dated 01.12.2012 which shows that allegation of the respondents about service book is baseless. Moreover, proceedings initiated by the scrutiny committee and prepared the bio-data of the appellant for in the light of said service book, the service book which is available as Annexure "Ai" in the instant appeal.

15. Para No.15 of appeal of the appellant is correct whereas Para No.15 reply of the respondents is incorrect. No independent inquiry was conducted against the appellant. Moreover, Inquiry Officer appointed by the respondent No.3 who was biased against the appellant meanwhile Contempt of Court proceedings were in process before this Honourable Tribunal, the said proceeding were in respect of the transfer matter of the appellant. Appellant also moved an application for appointment of Inquiry Officer any other, impartial person. But respondent No.3 did not consider the application of the appellant.
16. Para No.16 of the appeal is correct whereas Para No.16 reply of the respondents need to arguments.
17. Para No.17 of appeal of appellant is correct whereas Para No.17 reply of respondents need no reply.
18. Para No.18 appeal of the appellant is correct whereas Para 18 reply of the respondents is incorrect. Detail is already mentioned in Para No.15.
19. Para No.19 of the appeal of appellant is correct whereas reply to Para No.19 by the respondents needs no reply.

20. Para No.20 of the appeal of appellant is correct, whereas Para No.20 reply of the respondents is incorrect, whole proceeding conducted by the so-called inquiry committee is against the law, no chance given to appellant for cross examination moreover, inquiry officer was biased against the appellant, there is contradiction in the so-called inquiry initiated against the appellant, during the so-called inquiry proceeding respondent No.3 pressurized the inquiry committee to collect the illegal material against the appellant for proof of major penalty. Inquiry officer without proving the allegations leveled against the appellant imposed major penalty of compulsory retirement of appellant.
21. Para No.21 of the appeal of appellant is correct whereas Para No.21 reply of the respondents is incorrect. Inquiry committee without proving the allegations leveled against the appellant, which is not fulfilling the legal requirement of law.
22. Para No.22 of appeal of the appellant is correct whereas Para No.22 reply of the respondents is incorrect, not related to the Para No.22 of the appeal.
23. Para No.23 reply of the respondents needs no reply.
24. Para No.24 reply of the respondents needs no reply.
25. Para No.25 appeal of the appellant is correct whereas Para No.25 reply of the respondents needs to prove.
26. Para No.26 appeal of the appellant is correct whereas Para No.26 reply of the respondents is incorrect, no opportunity is given to the appellant for cross examination, whole proceeding initiated against the appellant was illegal, against the norms of natural justice.

27. Para No.27 of the appeal of appellant is correct whereas Para No.27 reply of the respondents is incorrect, respondent No.3 is bias against the appellant and pressurized the appellant deposited amount mentioned in Para No.27 reply of the respondents, appellant is subordinate of the respondents, and deposited the said amount under the pressure and personal grudge of the respondents. Moreover, appellant moved an application before respondent No.2 to resolve the problem of the appellant, even the respondent No.3 denied to compliance the directions issued by the respondent No.2.
28. Para No.28 appeal of the appellant is correct whereas Para No.28 reply of respondents is incorrect. Respondent No.3 did not obey the order of this Honourable Tribunal and committed Contempt of Court, Contempt of Court proceeding is pending before this Honourable Tribunal.
29. Para No.29 of appeal of appellant is correct whereas Para No.29 reply of the respondents is incorrect, departmental proceedings initiated against the appellant was not according to the rules and law, proceeding taken against the appellant just to linger on the proceeding and not decide the case within 15 days after the personal hearing.
30. Para No.30 of appeal of the appellant is correct whereas Para No.30 reply of the respondents is incorrect, charge leveled against the appellant in charge sheet which is not proved during proceeding of the inquiry. There is contradiction between charge sheet and report of inquiry, respondent No.3 whole proceeding taking against the appellant just to escape Contempt of Court proceeding.

31. Para No.31 of appeal of appellant is correct whereas Para No.31 reply of the respondents is incorrect. Appellant filed the instant appeal before the Honourable Tribunal after expiration of statutory period of 90 days.
32. Para No.32 of appeal of appellant is correct whereas reply of the respondents is related to record.
33. Para No.33 of appeal of appellant is correct whereas reply of the respondents is related to record.
34. Para No.34 of appeal of appellant is correct whereas Para No.34 reply of the respondents needs to prove.
35. Para No.35 of appeal of appellant is legal.

ON GROUNDS:-

- a) Para 'a' of grounds of appeal is correct whereas reply to Para 'a' of the grounds by the respondents is incorrect. Appellant was discriminated and not dealt according to the rules and law.
- b) Para 'b' grounds of appeal is correct whereas reply to Para 'b' of the grounds by the respondents is incorrect. Para 'b' reply of the respondents concocted story which is not related to the Para 'b' of the grounds of appeal.
- c) Para 'c' grounds of appeal is correct whereas reply to Para 'c' of the grounds by the respondents is not correct. Mentioned amount received by the appellant through valid order and adopted all legal requirements of the respondent No.3 hence, allegations leveled against the appellant are baseless and without any justification.

- d) Para 'd' grounds of appeal is correct whereas reply to Para 'd' of the grounds by the respondents is incorrect.
- e) Para 'e' grounds of appeal is correct whereas reply to Para 'e' of the grounds by the respondents is incorrect. No impartial inquiry was conducted against the appellant, during proceeding of inquiry appellant was not given chance of cross examination moreover, inquiry officer is also biased against the appellant. Meanwhile, Contempt of Court proceeding is in process and the instant proceedings were related to the transfer matter of the appellant before this Honourable Tribunal. Respondent mentioned letter in his Para 'e' grounds of the reply said notice issued to the inquiry officer not to appellant and appellant was not informed about the so-called inquiry proceeding.
- f) Para 'f' grounds of appeal is correct whereas reply to Para 'f' of the grounds by the respondents is incorrect. Appellant was duty full and never absent during his entire service and performing his duty regularly. Relevant proof is annexed with appeal of the appellant as Annexure "B" and "I" respectively.
- g) Para 'g' grounds of appeal is correct whereas reply to Para 'g' of the grounds by the respondents is incorrect and needs arguments.
- h) Para 'h' grounds of appeal is correct whereas reply to Para 'h' of the grounds by the respondents is incorrect.
- i) Para 'i' grounds of appeal is correct whereas reply to Para 'i' of the grounds by the respondents is incorrect.
- j) Para 'j' grounds of appeal is correct whereas reply to Para 'j' of the grounds by the respondents is incorrect.

- k) Para 'k' grounds of appeal is correct whereas reply to Para 'k' of the grounds by the respondents is incorrect and not related to Para No.'k' of the grounds of the appeal in hand.
- l) Para 'l' grounds of appeal is correct whereas reply to Para 'l' of the grounds by the respondents is incorrect which is also not related to reply ground 'l' of appeal of the appellant.
- m) Para 'm' grounds of appeal is correct whereas reply to Para 'm' of the grounds by the respondents is incorrect. Issue related to the increment, appellant filed separate appeal before this Hon'ble Tribunal which is pending for further proceedings.
- n) Para 'n' grounds of appeal is correct whereas reply to Para 'n' of the grounds by the respondents is incorrect. Moreover, Para No.12-13 factual objections reply of the respondents is also incorrect.
- o) Para 'o' grounds of appeal is correct whereas reply to Para 'o' of the grounds by the respondents is incorrect.
- p) Para 'p' grounds of appeal is correct whereas reply to Para 'p' of the grounds by the respondents is incorrect which need arguments.
- q) Para 'q' grounds of appeal is correct whereas reply to Para 'q' of the grounds by the respondents is incorrect.
- r) Para 'r' grounds of appeal is correct whereas reply to Para 'r' of the grounds by the respondents is incorrect.
- s) Para 's' grounds of appeal is correct whereas reply to Para 's' of the grounds by the respondents is incorrect.

- t) Para 't' grounds of appeal is correct whereas reply to Para 't' of the grounds by the respondents is incorrect. Appeal of the appellant is well within time.

It is, therefore, very humbly prayed that the comments of the respondents be rejected/ dismissed and the instant appeal of the appellant may graciously be accepted with all back benefits.

...APPELLANT

Through:

Dated:- 11-7 /2014


(SARDAR MUHAMMAD AKMAL)
Advocate High Court, Abbottabad.

AFFIDAVIT:-

I, Naveed Iqbal S/o Ghulam Rabbani, resident of Village Banda Kheir Ali Khan, P.O Dobathar, Tehsil and District Abbottabad Ex-A.T (Arabic Teacher) Government Middle School Todo Maira, District Abbottabad *appellant*, do hereby solemnly affirm and declare on Oath that the contents of instant *Rejoinder* are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

Dated:- 11-7 /2014


...APPELLANT

IDENTIFIED BY:-


(SARDAR MUHAMMAD AKMAL)
Advocate High Court, Abbottabad.

بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ) E&S ضلع ایبٹ آباد

ANNEXURE
Q

-Personal Hearing / Suspension Allowance

عنوان:

جناب عالی! درخواست ذیل عرض ہے۔

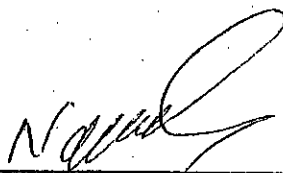
- ۱۔ یہ کہ سائل AT پوسٹ پر گورنمنٹ مڈل سکول ٹوڈومیر میں اپنے فرائض سرانجام دے رہا تھا کہ مورخہ 09/04/2013 کو بغیر انکوائری اشوکا زونٹس کے سائل کو ہروس سے معطل کر دیا گیا۔
- ۲۔ یہ کہ چارج شیٹ میں درج شدہ الزامات کی تحقیق کے لئے انکوائری کمیٹی تشکیل دی گئی ہے۔ سائل نے ڈیفنس سٹیٹمنٹ جملہ ریکارڈ کے ساتھ انکوائری کمیٹی کے پاس جمع کروا دیا ہے۔
- ۳۔ یہ کہ سائل کی تنخواہ بھی بند کر دی گئی ہے اور Suspension آرڈر میں الاؤنس کی منظوری بھی دی گئی تھی مگر ابھی تک سائل کو Suspension الاؤنس نہیں دیا گیا۔

لہذا استدعا ہے:

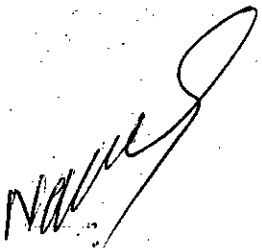
- i۔ انکوائری کمیٹی کو ہدایات جاری کی جائیں کہ وہ سائل کو جملہ ریکارڈ کے ساتھ زبانی طور پر بھی سنیں اور صفائی کا موقع بھی فراہم کریں۔
- ii۔ Suspension الاؤنس کی ادائیگی کے احکامات صادر فرمائے جائیں۔

العارض

الرقوم: 10/6/2013 ایبٹ آباد



نوید اقبال AT گورنمنٹ مڈل سکول ٹوڈومیر تحصیل ضلع ایبٹ آباد



**BEFORE THE HON'BLE KHYBER PAKHTOONKHUWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No.206/14

Naveed Iqbal Ex-AT U/T GHS No.3, Abbottabad.

...APPELLANT

VERSUS

Government of KPK, through Secretary Education Peshawar & others

...RESPONDENTS

**SUBJECT: APPLICATION FOR EARLY HEARING OF FRESH SERVICE APPEAL
NO.206/14.**

Respected Sir,

That the applicant/appellant filed a service appeal bearing No.206/14 on 15.02.2014 before this Hon'ble Tribunal whose date of hearing was fixed for 21.04.2014. That the next of hearing i.e 21.04.2014 of said service appeal is far and the matter is of urgent nature and it is being linger on due to the prolonged dates of hearing.

It is, therefore, requested that the Service Appeal No.206/14 may graciously be heard on early basis in the best interest of justice.

Dated:-26-3 /2014



**NAVEED IQBAL
..APPLICANT/APPELLANT
IN PERSON**

Ex-A.T U/T GHS No.3, Abbottabad.

خدمتِ جنابِ چیمبرین سرور ٹریسٹوئل ۱۲۱۲ لٹاور
سرور ایپل ریٹائرمنٹ
جناب عالی
2014/206

عرضِ خدمتِ حکیم سائل کی سرور ایپل میں اک وقت
✓ جبری برخواستگی مندرجہ کے معاملہ کو پیش کرنے کی

اجازت دی جائے بقیہ دو معاملہ ت موزوں موفیہ
ٹریسٹوئل کے سامنے پیش کر دوں گا

العارضی نوید اصیل
سرور ایپل 14/206
2/4/2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 206/14

DATE OF HEARING: 21.05.2015

FINAL BENCH - II

NAVEED IQBAL EX-A.T G.M.S TODO MAIRA, ABBOTTABAD

VS


SECRETARY ELEMENTARY & SECONDRY EDUCATION KPK, PESHAWAR ETC

APPLICATION FOR EARLY HEARING OF FINAL DECISION : عنوان

جناب عالی!

- 1- یہ کہ سائل کی سروس اپیل نمبر 206/14 آپ کے پاس زیر سماعت ہے جس کی آئندہ پیشی مورخہ 21.05.2015 مقرر ہے
- 2- یہ کہ سائل نے Compulsory retirement کے آرڈر مورخہ 19.10.2013 کے خلاف سروس اپیل نمبر: 206/14 سروس ٹریبونل خیبر پختونخوا میں مورخہ 15.02.2014 کو دائر کی۔
- 3- یہ کہ مورخہ 08.04.2014 کو سائل کی مندرجہ بالا سروس اپیل سماعت کے لئے منظور کر دی گئی۔
- 4- یہ کہ مورخہ 26.06.2014 کو Respondents نے مندرجہ بالا اپیل کا Reply جمع کروادیا اور سائل نے Respondents کے Reply کا Rejoinder مورخہ 05.08.2014 کو جمع کروادیا۔
- 5- یہ کہ مورخہ 18.12.2014 کی تاریخ فائنل بحث کے لئے مقرر کی گئی مگر ٹریبونل مکمل نہ ہونے کی بناء پر سماعت نہ ہو سکی اور آئندہ پیشی مورخہ 19.02.2015 مقرر کر دی گئی۔
- 6- یہ کہ مورخہ 19.02.2015 کو بحث مکمل ہو گئی اور فیصلہ سنانے کی تاریخ مورخہ 24.03.2015 مقرر کر دی گئی۔
- 7- یہ کہ مورخہ 24.03.2015 کو ٹریبونل کی مصروفیات کی بناء پر سائل کی اپیل کا فیصلہ نہیں سنایا جا سکا تو آئندہ پیشی مورخہ 21.05.2015 مقرر کر دی گئی۔

لہذا استدعا ہے کہ اگر ٹریبونل مناسب سمجھے تو سائل کی پریشانیوں کو مدنظر رکھتے ہوئے فیصلہ سنانے کی تاریخ کا دورانیہ کم فرمایا جاوے تاکہ سائل کی ذہنی اور مالی پریشانیوں کا جلد ازالہ ہو سکے۔


نوید اقبال
اپیلانٹ

المرقوم: 2015/04/06

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPLICATION NO. _____/2015
SERVICE APPEAL NO. 206/2014
FINAL BENCH-II

NAVEED IQBAL V/S Govt of KPK Peshawar & others

Subject: APPLICATION FOR EARLY HEARING FOR THE ANNOUNCEMENT OF DECISION
REGARDING SERVICE APPEL NO.206/14

*To be fixed in July if no take
notice to sep
concerned
26/6*

RESPECTFULLY SUBMITTED:

1. That the above noted service appeal was pending for announcement of final decision in this Honorable Tribunal since 19.02.2015. and the next date is fixed for 06.08.2015.
2. That the 22.05.2015 date was fixed for the announcement of final decision of above noted service appeal but there was another appeal No.717/14 of the appellant was already filed before the Tribunal due to which the service Tribunal said to the appellant that we will compile both the appeals and after that the final decision will be given.
3. That on 25.05.2015 Appellant has withdraw the appeal No. 717/14 on the following grounds:
 - (i) that the appeal No. 717/14 was not maintable
 - (ii) That the appeal No. 717/14 needs too long proceeding which the appellant could not afford due to critical financial position.
 - (iii) That the Appellant will refer the matter of appeal no.717/4 to his concerning department.

".....In view of the above, the appellant prayed that on acceptance of instant application kindly fix a early hearing date for the announcement of final decision of service appeal No. 206/14 alongwith Execution Petition No. 56/2013.

Dated: 26/5/2015

NAVEED IQBALAPPELLANT
IN PERSON

Ndile

AFFIDAVIT

I Mr. Naveed Iqbal Appellant in person do hereby solemnly affirm and declare on oath that the contents of the above petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Tribunal.

put up to the court with appeal.

Read
concerned
Dated: 26/5/2015

102-2815/6-

NAVEED IQBAL....APPELLANT
IN PERSON

Ndile

I

Service Tribunal, Peshawar

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

714
22/5/14
Service Appeal No. 717 /2014

Naveed Iqbal S/o Ghulam Rabbani, resident of Village Banda Kheir Ali Khan, P.O Dobathar, Tehsil and District Abbottabad Ex-A.T (Arabic Teacher) Government Middle School Todu Maira, District Abbottabad.

...APPELLANT

V E R S U S

- 1) Government of Khyber Pakhtoonkhwa through Secretary Elementary and Secondary Education, Peshawar.
- 2) Director Elementary and Secondary Education, Khyber Pakhtoonkhwa Peshawar.
- 3) District Education Officer (E&S) Male, District Abbottabad.

...RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE NWFP NOW
KHYBER PAKHTOONKHUWA SERVICE TRIBUNAL ACT,
1974 AGAINST THE OFFICE ORDER NO.221-26 DATED
02.11.2011 PASSED BY RESPONDENT NO.2 IN WHICH
THE FOUR INCREMENTS OF APPELLANT WERE
STOPPED WITH CUMULATIVE EFFECT AND SALARY
OF THE DISPUTED PERIOD W.E.F 01-12-2010 TO
30.11.2011 WAS STOPPED WAS ILLEGAL, UNLAWFUL,
BASES ON MALAFIDE AND DISCRIMINATORY, IS THE
RESULT OF ILLEGAL EXERCISE OF POWERS, HENCE
THE SAME IS LIABLE TO BE MODIFIED TO THE EXTENT
OF RELEASE/RESTORATION OF FOUR INCREMENTS
AND SALARY OF THE AFORESAID DISPUTED PERIOD**

22/5/14
ATTESTED

Khyber Pakhtoonkhwa
Service Tribunal,
Peshawar

25.05.2015

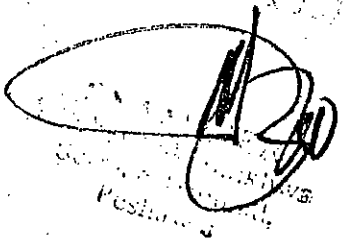
Appellant in person present. Submitted application for withdrawal of the instant appeal. Dismissed as withdrawn. File be consigned to the record.

*sd/p
Chairman*

ANNOUNCED
25.5.2015

8
5/115

ATTESTED



Residence

Reader Note:
08.12.2014

No one is present on behalf of the appellant. Mr. Kabirullah Khattak, Asst: Advocate General for the respondents present. Since the Tribunal is incomplete, therefore, case is adjourned to 16.02.2015 for the same.

*SLP
Leader*

16.02.2015

Appellant sent an application through this office vide diary No. 75 dated 13.02.2015, wherein he requested for adjournment. Asst: AG for the respondents present. Application allowed. To come up for preliminary hearing on 2.04.2015 before S.B

*SLP
Member*

02.04.2015

None present of appellant. The appeal pertains to territorial limits of Hazara Division. The same is to be heard at Camp Abbottabad on 18.6.2015. Appellant informed.

*SLP
Chairman*

Certified to be true copy

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

25.5.2015
1600
18
2
19

25.5.2015
25.5.2015

1- at Camp

Date 5. February

15.07.2014

No one is present on behalf of the appellant. Notices be issued to the appellant/counsel for the appellant. To come up for preliminary hearing on 15.09.2014 .

*sd/-
Member*

4
Reader Note.

15.09.2014

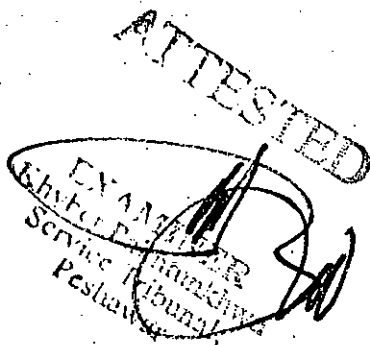
No one is present on behalf of the appellant. The learned Member (Judicial) is not working due to a recent order of the Hon'ble Peshawar High Court, Peshawar effecting his status as District and Session Judge. To come up for preliminary hearing on 23.10.2014.

*sd/-
Member*

5
23.10.2014

Appellant in person present. Preliminary arguments partly heard. Since the appellant had already ~~been~~ submitted an appeal No. 206/2014 against the order of his compulsory retirement which is pending before the learned bench-II on 18.12.2014, the same may be requisitioned on the date fixed. Pre-admission notice also be issued to the AAG/GP to assist the Tribunal. To come up for preliminary hearing on 08.12.2014.

*sd/-
Member*



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPLICATION NO. _____/2015
SERVICE APPEAL NO. 206/2014
FINAL BENCH-II

NAVEED IQBAL V/S Govt of KPK Peshawar & others

**Subject: APPLICATION FOR EARLY HEARING FOR THE ANNOUNCEMENT OF DECISION
REGARDING SERVICE APPEL NO.206/14**

RESPECTFULLY SUBMITTED:

1. That the above noted service appeal was pending for announcement of final decision in this Honorable Tribunal since 19.02.2015. and the next date is fixed for 06.08.2015.
2. That the 22.05.2015 date was fixed for the announcement of final decision of above noted service appeal but there was another appeal No.717/14 of the appellant was already filed before the Tribunal due to which the service Tribunal said to the appellant that we will compile both the appeals and after that the final decision will be given.
3. That on 25.05.2015 Appellant has withdraw the appeal No. 717/14 on the following grounds:
 - (i) that the appeal No. 717/14 was not maintainable
 - (ii) That the appeal No. 717/14 needs too long proceeding which the appellant could not afford due to critical financial position.
 - (iii) That the Appellant will refer the matter of appeal no.717/4 to his concerning department.

".....In view of the above, the appellant prayed that on acceptance of instant application kindly fix a early hearing date for the announcement of final decision of service appeal No. 206/14 alongwith Execution Petition No. 56/2013.

Naveed Iqbal
NAVEED IQBALAPPELLANT
IN PERSON

Dated: 26/5/2015

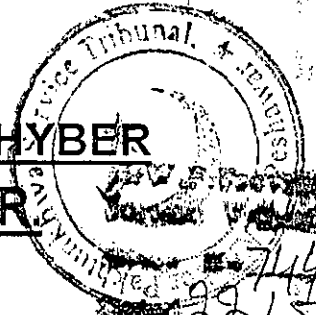
AFFIDAVIT

I Mr. Naveed Iqbal Appellant in person do hereby solemnly affirm and declare on oath that the contents of the above petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Tribunal.

Naveed Iqbal
NAVEED IQBALAPPELLANT
IN PERSON

Dated: 26/5/2015

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTOONKHUWA, PESHAWAR



Service Appeal No. 717 /2014

Naveed Iqbal S/o Ghulam Rabbani, resident of Village Banda Kheir Ali Khan, P.O Dobathar, Tehsil and District Abbottabad Ex-A.T (Arabic Teacher) Government Middle School Todu Maira, District Abbottabad.

...APPELLANT

VERSUS

- 1) Government of Khyber Pakhtoonkhwa through Secretary Elementary and Secondary Education, Peshawar.
- 2) Director Elementary and Secondary Education, Khyber Pakhtoonkhwa Peshawar.
- 3) District Education Officer (E&S) Male, District Abbottabad.

...RESPONDENTS

APPEAL UNDER SECTION 4 OF THE NWFP NOW KHYBER PAKHTOONKHUWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE OFFICE ORDER NO.221-26 DATED 02.11.2011 PASSED BY RESPONDENT NO.2 IN WHICH THE FOUR INCREMENTS OF APPELLANT WERE STOPPED WITH CUMULATIVE EFFECT AND SALARY OF THE DISPUTED PERIOD W.E.F 01-12-2010 TO 30.11.2011 WAS STOPPED WAS ILLEGAL, UNLAWFUL, BASES ON MALAFIDE AND DISCRIMINATORY, IS THE RESULT OF ILLEGAL EXERCISE OF POWERS, HENCE THE SAME IS LIABLE TO BE MODIFIED TO THE EXTENT OF RELEASE/RESTORATION OF FOUR INCREMENTS AND SALARY OF THE AFORESAID DISPUTED PERIOD

22/5/14

ATTESTED

[Signature]

Khyber Pakhtoonkhwa
Service Tribunal,
Peshawar

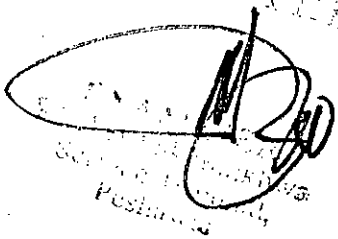
25.05.2015

Appellant in person present. Submitted application for withdrawal of the instant appeal. Dismissed as withdrawn. File be consigned to the record.

sd/
Chairman

ANNOUNCED
25.5.2015

15/15

ATTESTED

Registrar

Reader Note:

08.12.2014

No one is present on behalf of the appellant. Mr. Kabirullah Khattak, Asst: Advocate General for the respondents present. Since the Tribunal is incomplete, therefore, case is adjourned to 16.02.2015 for the same.

Sy Leader

16.02.2015

Appellant sent an application through this office vide diary No. 75 dated 13.02.2015, wherein he requested for adjournment. Asst: AG for the respondents present. Application allowed. To come up for preliminary hearing on 2.04.2015 before S.B

Sy Member

02.04.2015

None present of appellant. The appeal pertains to territorial limits of Hazara Division. The same is to be heard at Camp Abbottabad on 18.6.2015. Appellant informed.

Sy Chairman

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

25.5.2015
1600
18
2
19

Date of Completion

Date of Filing

25.5.2015
25.5.2015

15.07.2014

No one is present on behalf of the appellant. Notices be issued to the appellant/counsel for the appellant. To come up for preliminary hearing on 15.09.2014.

*sd/-
Member*

4
Reader Note.

15.09.2014

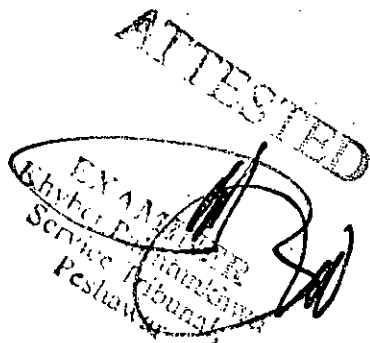
No one is present on behalf of the appellant. The learned Member (Judicial) is not working due to a recent order of the Hon'ble Peshawar High Court, Peshawar effecting his status as District and Session Judge. To come up for preliminary hearing on 23.10.2014.

*sd/-
Reader*

5
23.10.2014

Appellant in person present. Preliminary arguments partly heard. Since the appellant had already ~~been~~ submitted an appeal No. 206/2014 against the order of his compulsory retirement which is pending before the learned bench-II on 18.12.2014, the same may be requisitioned on the date fixed. Pre-admission notice also be issued to the AAG/GP to assist the Tribunal. To come up for preliminary hearing on 08.12.2014.

*sd/-
Member*



774
10-9-14

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.206/14
Final Bench-II

Naveed Iqbal **VERSUS** Govt. of KPK through Secretary E&SE

SUBJECT: APPLICATION FOR GRANT OF DIRECTIONS TO RESPONDENTS TO PROVIDE THE DOCUMENTS AS MENTIONED IN PARA 2 i.e "A" to "F" TO APPELLANT.

Respectfully submitted,

1. That, applicant's service appeal bearing No.206/14 is pending adjudication before Hon'ble Final Bench-II of the Khyber Pakhtunkhwa Service Tribunal, Peshawar and the next date for final arguments is fixed on 18-12-2014.
2. That, the important entire service record of appellant which is the base of titled appeal, is not being provided to the appellant since long and the respondents has also ignored the gracious directions for the production of the same upon prior applications moved by appellant before this Hon'ble Tribunal. (*Copies of applications are annexed herewith*). The detail of required documents are as below:-
 - A) Attested photo copy of service book of appellant
 - B) Verification report of District Accounts Officer Abbottabad regarding both the DDOs signatures on Source Form-II.
 - C) Written expert/laboratory report of the signatures of Mr.Qazi Tajamul Hussain (DDO) on Source Form-II.
 - D) The notification regarding stoppage of appellant's salary for the periods w.e.f 01.03.2012 to 30.04.2012 & 01.07.2012 to 30.09.2012.
 - E) The notification regarding the release of appellant's salary w.e.f 01.05.2012 to 30.06.2012.
3. That, recently on 06.09.2014 appellant/applicant again furnished an application via endorsement No.5488 before DEO/respondent No.3 but the same was not entertained and respondent No.3 is reluctant to provide the said record. (*Copy of application is annexed herewith*)
4. That, appellant has become rolling stone and is moving from one office to another since long.
5. That, the precious rights of appellant are at stake.

It is, therefore, humbly prayed that strict orders for the production of entire service record i.e *Para 2 "A" to "F"* and any other documents related to appellant may graciously be passed to the respondents for the ends of justice.

Dated:- 10 -09-2014


...APPLICANT

Naveed Iqbal S/o Ghulam Rabbani,
R/o Village Banda Khair Ali Khan, District Abbottabad.

AFFIDAVIT:

P.O. Box - 146

I, Naveed Iqbal, S/o Ghulam Rabbani, R/o Village Banda Khair Ali Khan, District Abbottabad *appellant*, do hereby solemnly affirm and declare on Oath that the contents of instant *application* are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Dated:- 10 -09-2014


...APPELLANT

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

SERVICE APPEAL NO.206/14

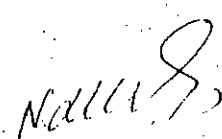
**APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS
MENTIONED IN PARA 2 i.e "a" to "f", FROM RESPONDENT NO.3.**

Respectfully Sheweth;

1. That, the titled appeal is pending adjudication before this Hon'ble Tribunal.
2. That, in support of the stance of appellant, respondent NO.3 be ordered to provide the following documents to the Hon'ble Service Tribunal:-
 - a) *Original service book of appellant*
 - b) *Verification report of District Accounts Officer Abbottabad regarding both the DDOs signatures on Source Form-II.*
 - c) *Written expert/laboratory report of the signatures of Mr.Qazi Tajamul Hussain (DDO) on Source Form-II.*
 - d) *The notification regarding stoppage of appellant's salary for the periods w.e.f 01.03.2012 to 30.04.2012 & 01.07.2012 to 30.09.2012.*
 - e) *The notification regarding the release of appellant's salary w.e.f 01.05.2012 to 30.06.2012.*
 - f) *The implementation report of order dated 24.05.2012 passed by Hon'ble Peshawar High Court, Abbottabad Bench in W.P No.411-A/2012.*
3. That, the appellant contacted respondent NO.3 for the above mentioned documents i.e "a" to "f" but respondent No.3 is reluctant to give the same. Appellant time and again visited respondent No.3 for the said purpose and requested him that these documents are the base of the appellant's appeal and shall be helpful in deciding the case on merits but respondent NO.3 did not put heed upon appellant's request.
4. That, the gracious indulgence of this Hon'ble Tribunal is hereby seek because the respondent No.3 does not give any value both to the high ups of his Department and or the Hon'ble Courts.

It is, therefore, humbly prayed that this Hon'ble Tribunal may please pass gracious orders for the production of the above said documents i.e *Para 2 "a" to "f"* from respondent NO.3 through Tribunal.

Dated:- 08/4 /2014


...APPELLANT
Navced Iqbal A.T.
U/T GHS NO.3, Abbottabad.

1

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

SERVICE APPEAL NO.206/14


APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS
MENTIONED IN PARA 2 i.e "a" to "f", FROM RESPONDENT NO.3.

Respectfully Sheweth;

1. That, the titled appeal is pending adjudication before this Hon'ble Tribunal.
2. That, in support of the stance of appellant, respondent NO.3 be ordered to provide the following documents to the Hon'ble Service Tribunal:-
 - a) *Original service book of appellant*
 - b) *Verification report of District Accounts Officer Abbottabad regarding both the DDOs signatures on Source Form-II.*
 - c) *Written expert/laboratory report of the signatures of Mr.Qazi Tajamul Hussain (DDO) on Source Form-II.*
 - d) *The notification regarding stoppage of appellant's salary for the periods w.e.f 01.03.2012 to 30.04.2012 & 01.07.2012 to 30.09.2012.*
 - e) *The notification regarding the release of appellant's salary w.e.f 01.05.2012 to 30.06.2012.*
 - f) *The implementation report of order dated 24.05.2012 passed by Hon'ble Peshawar High Court, Abbottabad Bench in W.P No.411-A/2012.*
3. That, the appellant contacted respondent NO.3 for the above mentioned documents i.e "a" to "f" but respondent No.3 is reluctant to give the same. Appellant time and again visited respondent No.3 for the said purpose and requested him that these documents are the base of the appellant's appeal and shall be helpful in deciding the case on merits but respondent NO.3 did not put heed upon appellant's request.
4. That, the gracious indulgence of this Hon'ble Tribunal is hereby seek because the respondent No.3 does not give any value both to the high ups of his Department and or the Hon'ble Courts.

It is, therefore, humbly prayed that this Hon'ble Tribunal may please pass gracious orders for the production of the above said documents i.e *Para 2 "a" to "f"* from respondent NO.3 through Tribunal.

Dated:- 22/5/2014


...APPELLANT
Naveed Iqbal A.T,
U/T GHS NO.3, Abbottabad.

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

Service Appeal No.206/14

Naveed Iqbal **VERSUS** Secretary E&SE, Peshawar & others


SUBJECT: APPLICATION FOR PRODUCTION OF DOCUMENTS AS MENTIONED IN PREVIOUS APPLICATIONS DATED 08.04.2014 & 22.05.2014 (ANNEXED HEREWITH) BEFORE THIS HON'BLE TRIBUNAL AND ALSO CONTEMPT OF COURT PROCEEDINGS MAY KINDLY BE INITIATED AGAINST RESPONDENT NO.3 FOR WILLFULLY DISOBEYING THE ORDER OF THIS HON'BLE TRIBUNAL.

Respected Sir,


1. That, the titled service appeal is pending adjudication before this Hon'ble Tribunal and is fixed for today.
2. That, on previous dates i.e 08.04.2014 and 22.05.2014, appellant moved applications requesting therein that the documents as mentioned in aforesaid applications may please be asked to produce from respondent No.3 before this Hon'ble Tribunal. *(Copies of applications and order are annexed herewith)*
3. That, this Hon'ble Tribunal while graciously accepting the appellant's applications, has passed order for the production of said documents before Court. But this order has not yet complied by respondent No.3 which comes in the definition of *Contempt of Court.*
4. That, the appellant's fate is still undecided lying at the mercy of Department and this Hon'ble Tribunal.
5. That, the precious rights of the appellant is involved and said documents shall also play a vital role in deciding the titled appeal on merits.

It is, therefore, requested that respondent No.3 be dealt with strict hands and Contempt of Court proceedings may kindly be initiated against respondent No.3 for willfully disobeying the order of this Hon'ble Tribunal for the production of said documents as mentioned in the application (annexed herewith).

Dated:-26-06-2014


...APPELLANT
NAVEED IQBAL A.T

Through:


SARDAR MUHAMMAD AKMAL
Advocate High Court, Abbottabad.

To

The District Education Officer,
E&SE, District Abbottabad.

**SUBJECT: APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS MENTIONED
IN PARA 2 i.e "A" to "F".**

Respected Sir,

1. That, applicant's service appeal bearing No.206/14 is pending adjudication before Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. That, applicant moved a written request before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar on 21.04.2014 and 22.05.2014 in respect of production of applicant's record from respondent No.3 (DEO) before the Hon'ble Tribunal. The Hon'ble Tribunal directed the respondent No.3 to present/produce the same before Hon'ble Tribunal on the next date. The detail of required documents are as below:-
 - A) Attested photo copy of service book of appellant
 - B) Verification report of District Accounts Officer Abbottabad regarding both the DDOs signatures on Source Form-II.
 - C) Written expert/laboratory report of the signatures of Mr.Qazi Tajamul Hussain (DDO) on Source Form-II.
 - D) The notification regarding stoppage of appellant's salary for the periods w.e.f 01.03.2012 to 30.04.2012 & 01.07.2012 to 30.09.2012.
 - E) The notification regarding the release of appellant's salary w.c.f 01.05.2012 to 30.06.2012.
 - F) The implementation report of order dated 24.05.2012 passed by Hon'ble Peshawar High Court, Abbottabad Bench in W.P No.411-A/2012.
3. That, on the next date i.e 26.06.2014, the representative of department took the stance that he will produce the record on next date i.e 28.08.2014. On 28.08.2014, no representative was present before the Hon'ble Tribunal.
4. That, on the above said date, applicant complain before the Hon'ble Tribunal regarding non-compliance of Hon'ble Tribunal order and thereafter non-production of applicant's record.
5. That, the Hon'ble Tribunal directed the applicant to move application before your good self for the production of applicant's entire record hence, the instant application accordingly.

It is, therefore, requested that as the applicant's service case is at last stage i.e final arguments hence applicant may graciously be given the above said documents/records i.e Para 2 "A" to "F" forthwith.

Dated:-06-09-2014

(Copy)
** Admitted*
Pl. do the
measures as
6/9/14 Naveed
APPLICANT
Naveed Iqbal,
S/o Ghulam Rabbani,
R/o Village Banda Khair Ah Khan, District Abbottabad.

COPY FOR INFORMATION:-

- 1) The Hon'ble Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar with reference to service appeal No.206/14 titled as "Naveed Iqbal Vs Govt. of KPK" pending adjudication before the Hon'ble Tribunal.
- 2) Secretary, E&SE, KPK, Peshawar (respondent No.1 of service appeal No.206/14).
- 3) Director, E&SE, KPK, Peshawar (respondent No.2 of service appeal No.206/14).

5488
6.9.2014

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.206/14
Final Bench-II

Naveed Iqbal **VERSUS** Govt. of KPK through Secretary E&SE

SUBJECT: APPLICATION FOR GRANT OF DIRECTIONS TO RESPONDENTS TO PROVIDE THE DOCUMENTS AS MENTIONED IN PARA 2 i.e "A" to "F" TO APPELLANT.

Respectfully submitted,

1. That, applicant's service appeal bearing No.206/14 is pending adjudication before Hon'ble Final Bench-II of the Khyber Pakhtunkhwa Service Tribunal, Peshawar and the next date for final arguments is fixed on 18-12-2014.
2. That, the important entire service record of appellant which is the base of titled appeal, is not being provided to the appellant since long and the respondents has also ignored the gracious directions for the production of the same upon prior applications moved by appellant before this Hon'ble Tribunal. (*Copies of applications are annexed herewith*). The detail of required documents are as below:-
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 - C) Written expert/laboratory report of the signatures of Mr.Qazi Tajamul Hussain (DDO) on Source Form-II.
 - D) The notification regarding stoppage of appellant's salary for the periods w.e.f 01.03.2012 to 30.04.2012 & 01.07.2012 to 30.09.2012.
 - E) The notification regarding the release of appellant's salary w.e.f 01.05.2012 to 30.06.2012.
3. That, recently on 06.09.2014 appellant/applicant again furnished an application via endorsement No.5488 before DEO/respondent No.3 but the same was not entertained and respondent No.3 is reluctant to provide the said record. (*Copy of application is annexed herewith*)
4. That, appellant has become rolling stone and is moving from one office to another since long.
5. That, the precious rights of appellant are at stake.

It is, therefore, humbly prayed that strict orders for the production of entire service record i.e *Para 2 "A" to "F"* and any other documents related to appellant may graciously be passed to the respondents for the ends of justice.

Dated:- 10 -09-2014


...APPLICANT

Naveed Iqbal S/o Ghulam Rabbani,
R/o Village Banda Khair Ali Khan, District Abbottabad.

AFFIDAVIT:

I, Naveed Iqbal, S/o Ghulam Rabbani, R/o Village Banda Khair Ali Khan, District Abbottabad *appellant*, do hereby solemnly affirm and declare on Oath that the contents of instant *application* are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Dated:- 10 -09-2014


...APPELLANT

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

SERVICE APPEAL NO.206/14

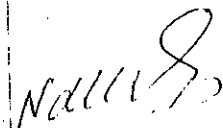
**APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS
MENTIONED IN PARA 2 i.e "a" to "f", FROM RESPONDENT NO.3.**

Respectfully Sheweth;

1. That, the titled appeal is pending adjudication before this Hon'ble Tribunal.
2. That, in support of the stance of appellant, respondent NO.3 be ordered to provide the following documents to the Hon'ble Service Tribunal:-
 - a) *Original service book of appellant*
 - b) *Verification report of District Accounts Officer Abbottabad regarding both the DDOs signatures on Source Form-II.*
 - c) *Written expert/laboratory report of the signatures of Mr.Qazi Tajamul Hussain (DDO) on Source Form-II.*
 - d) *The notification regarding stoppage of appellant's salary for the periods w.e.f 01.03.2012 to 30.04.2012 & 01.07.2012 to 30.09.2012.*
 - e) *The notification regarding the release of appellant's salary w.e.f 01.05.2012 to 30.06.2012.*
 - f) *The implementation report of order dated 24.05.2012 passed by Hon'ble Peshawar High Court, Abbottabad Bench in W.P No.411-A/2012.*
3. That, the appellant contacted respondent NO.3 for the above mentioned documents i.e "a" to "f" but respondent No.3 is reluctant to give the same. Appellant time and again visited respondent No.3 for the said purpose and requested him that these documents are the base of the appellant's appeal and shall be helpful in deciding the case on merits but respondent NO.3 did not put heed upon appellant's request.
4. That, the gracious indulgence of this Hon'ble Tribunal is hereby seek because the respondent No.3 does not give any value both to the high ups of his Department and or the Hon'ble Courts.

It is, therefore, humbly prayed that this Hon'ble Tribunal may please pass gracious orders for the production of the above said documents i.e Para 2 "a" to "f" from respondent NO.3 through Tribunal.

Dated:- 08/4 /2014


...APPELLANT
Naveed Iqbal A.T.
U/T GHS NO.3, Abbottabad.

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

SERVICE APPEAL NO.206/14


**APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS
MENTIONED IN PARA 2 i.e "a" to "f", FROM RESPONDENT NO.3.**

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4. That, the gracious indulgence of this Hon'ble Tribunal is hereby seek because the respondent No.3 does not give any value both to the high ups of his Department and or the Hon'ble Courts.

It is, therefore, humbly prayed that this Hon'ble Tribunal may please pass gracious orders for the production of the above said documents i.e *Para 2 "a" to "f"* from respondent NO.3 through Tribunal.

Dated:- 22/5/2014


 ...APPELLANT
 Naveed Iqbal A.T,
 U/T GHS NO.3, Abbottabad.

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

Service Appeal No.206/14

Naveed Iqbal **VERSUS** Secretary E&SE, Peshawar & others


SUBJECT: APPLICATION FOR PRODUCTION OF DOCUMENTS AS MENTIONED IN PREVIOUS APPLICATIONS DATED 08.04.2014 & 22.05.2014 (ANNEXED HEREWITH) BEFORE THIS HON'BLE TRIBUNAL AND ALSO CONTEMPT OF COURT PROCEEDINGS MAY KINDLY BE INITIATED AGAINST RESPONDENT NO.3 FOR WILLFULLY DISOBEYING THE ORDER OF THIS HON'BLE TRIBUNAL.

Respected Sir,

1. That, the titled service appeal is pending adjudication before this Hon'ble Tribunal and is fixed for today.
2. That, on previous dates i.e 08.04.2014 and 22.05.2014, appellant moved applications requesting therein that the documents as mentioned in aforesaid applications may please be asked to produce from respondent No.3 before this Hon'ble Tribunal. *(Copies of applications and order are annexed herewith)*
3. That, this Hon'ble Tribunal while graciously accepting the appellant's applications, has passed order for the production of said documents before Court. But this order has not yet complied by respondent No.3 which comes in the definition of *Contempt of Court.*
4. That, the appellant's fate is still undecided lying at the mercy of Department and this Hon'ble Tribunal.
5. That, the precious rights of the appellant is involved and said documents shall also play a vital role in deciding the titled appeal on merits.

It is, therefore, requested that respondent No.3 be dealt with strict hands and Contempt of Court proceedings may kindly be initiated against respondent No.3 for willfully disobeying the order of this Hon'ble Tribunal for the production of said documents as mentioned in the application (annexed herewith).

Dated:-26-06-2014


...APPELLANT
NAVEED IQBAL A.T

Through:


SARDAR MUHAMMAD AKMAL
Advocate High Court, Abbottabad.

To

The District Education Officer,
E&SE, District Abbottabad.

**SUBJECT: APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS MENTIONED
IN PARA 2 i.e "A" to "F".**

Respected Sir,

1. That, applicant's service appeal bearing No.206/14 is pending adjudication before Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. That, applicant moved a written request before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar on 21.04.2014 and 22.05.2014 in respect of production of applicant's record from respondent No.3 (DEO) before the Hon'ble Tribunal. The Hon'ble Tribunal directed the respondent No.3 to present/produce the same before Hon'ble Tribunal on the next date. The detail of required documents are as below:-
 - A) Attested photo copy of service book of appellant
 - B) Verification report of District Accounts Officer Abbottabad regarding both the DDOs signatures on Source Form-II.
 - C) Written expert/laboratory report of the signatures of Mr.Qazi Tajamul Hussain (DDO) on Source Form-II.
 - D) The notification regarding stoppage of appellant's salary for the periods w.e.f 01.03.2012 to 30.04.2012 & 01.07.2012 to 30.09.2012.
 - E) The notification regarding the release of appellant's salary w.e.f 01.05.2012 to 30.06.2012.
 - F) The implementation report of order dated 24.05.2012 passed by Hon'ble Peshawar High Court, Abbottabad Bench in W.P No.411-A/2012.
3. That, on the next date i.e 26.06.2014, the representative of department took the stance that he will produce the record on next date i.e 28.08.2014. On 28.08.2014, no representative was present before the Hon'ble Tribunal.
4. That, on the above said date, applicant complain before the Hon'ble Tribunal regarding non-compliance of Hon'ble Tribunal order and thereafter non-production of applicant's record.
5. That, the Hon'ble Tribunal directed the applicant to move application before your good self for the production of applicant's entire record hence, the instant application accordingly.

It is, therefore, requested that as the applicant's service case is at last stage i.e final arguments hence applicant may graciously be given the above said documents/record i.e Para 2 "A" to "F" forthwith.

Dated:-06-09-2014

(Signature)
* *(Signature)*
R/o Village Banda Khair Ah Khan,
APPLICANT
Naveed Iqbal,
S/o Ghulam Rabbani,
District Abbottabad.

COPY FOR INFORMATION:-

- 1) The Hon'ble Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar with reference to service appeal No.206/14 titled as "Naveed Iqbal Vs. Govt. of KPK" pending adjudication before the Hon'ble Tribunal.
- 2) Secretary, E&SE, KPK, Peshawar (respondent No.1 of service appeal No.206/14).
- 3) Director, E&SE, KPK, Peshawar (respondent No.2 of service appeal No.206/14).

5488
6.9.2014

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.206/14
Final Bench-II

Naveed Iqbal **VERSUS** Govt. of KPK through Secretary E&SE

SUBJECT: APPLICATION FOR GRANT OF DIRECTIONS TO RESPONDENTS TO PROVIDE THE DOCUMENTS AS MENTIONED IN PARA 2 i.e "A" to "F" TO APPELLANT.

Respectfully submitted,

1. That, applicant's service appeal bearing No.206/14 is pending adjudication before Hon'ble Final Bench-II of the Khyber Pakhtunkhwa Service Tribunal, Peshawar and the next date for final arguments is fixed on 18-12-2014.
2. That, the important entire service record of appellant which is the base of titled appeal, is not being provided to the appellant since long and the respondents has also ignored the gracious directions for the production of the same upon prior applications moved by appellant before this Hon'ble Tribunal. (*Copies of applications are annexed herewith*). The detail of required documents are as below:-
 - A) Attested photo copy of service book of appellant
 - B) Verification report of District Accounts Officer Abbottabad regarding both the DDOs signatures on Source Form-II.
 - C) Written expert/laboratory report of the signatures of Mr.Qazi Tajamul Hussain (DDO) on Source Form-II.
 - D) The notification regarding stoppage of appellant's salary for the periods w.e.f 01.03.2012 to 30.04.2012 & 01.07.2012 to 30.09.2012.
 - E) The notification regarding the release of appellant's salary w.e.f 01.05.2012 to 30.06.2012.
3. That, recently on 06.09.2014 appellant/applicant again furnished an application via endorsement No.5488 before DEO/respondent No.3 but the same was not entertained and respondent No.3 is reluctant to provide the said record. (*Copy of application is annexed herewith*)
4. That, appellant has become rolling stone and is moving from one office to another since long.
5. That, the precious rights of appellant are at stake.

It is, therefore, humbly prayed that strict orders for the production of entire service record i.e *Para 2 "A" to "F"* and any other documents related to appellant may graciously be passed to the respondents for the ends of justice.

Dated:- 10 -09-2014


...APPLICANT

Naveed Iqbal S/o Ghulam Rabbani,
R/o Village Banda Khair Ali Khan, District Abbottabad.

AFFIDAVIT:

I, Naveed Iqbal, S/o Ghulam Rabbani, R/o Village Banda Khair Ali Khan, District Abbottabad *appellant*, do hereby solemnly affirm and declare on Oath that the contents of instant *application* are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Dated:- 10 -09-2014


...APPELLANT

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

SERVICE APPEAL NO.206/14

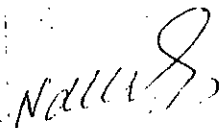
**APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS
MENTIONED IN PARA 2 i.e "a" to "f", FROM RESPONDENT NO.3.**

Respectfully Sheweth;

1. That, the titled appeal is pending adjudication before this Hon'ble Tribunal.
2. That, in support of the stance of appellant, respondent NO.3 be ordered to provide the following documents to the Hon'ble Service Tribunal:-
 - a) *Original service book of appellant*
 - b) *Verification report of District Accounts Officer Abbottabad regarding both the DDOs signatures on Source Form-II.*
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3. That, the appellant contacted respondent NO.3 for the above mentioned documents i.e "a" to "f" but respondent No.3 is reluctant to give the same. Appellant time and again visited respondent No.3 for the said purpose and requested him that these documents are the base of the appellant's appeal and shall be helpful in deciding the case on merits but respondent NO.3 did not put heed upon appellant's request.
4. That, the gracious indulgence of this Hon'ble Tribunal is hereby seek because the respondent No.3 does not give any value both to the high ups of his Department and or the Hon'ble Courts.

It is, therefore, humbly prayed that this Hon'ble Tribunal may please pass gracious orders for the production of the above said documents i.e *Para 2 "a" to "f"* from respondent NO.3 through Tribunal.

Dated: 08/4 /2014


...APPELLANT
Naveed Iqbal A.T.
U/T GHS NO.3, Abbottabad.

1

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

SERVICE APPEAL NO.206/14


**APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS
MENTIONED IN PARA 2 i.e "a" to "f", FROM RESPONDENT NO.3.**

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It is, therefore, humbly prayed that this Hon'ble Tribunal may please pass gracious orders for the production of the above said documents i.e *Para 2 "a" to "f"* from respondent NO.3 through Tribunal.

Dated:- 22/5/2014


...APPELLANT
Naveed Iqbal A.T,
U/T GHS NO.3, Abbottabad.

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

Service Appeal No.206/14

Naveed Iqbal **VERSUS** Secretary E&SE, Peshawar & others

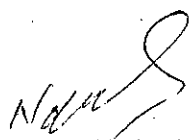
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Respected Sir,

1. That, the titled service appeal is pending adjudication before this Hon'ble Tribunal and is fixed for today.
2. That, on previous dates i.e 08.04.2014 and 22.05.2014, appellant moved applications requesting therein that the documents as mentioned in aforesaid applications may please be asked to produce from respondent No.3 before this Hon'ble Tribunal. *(Copies of applications and order are annexed herewith)*
3. That, this Hon'ble Tribunal while graciously accepting the appellant's applications, has passed order for the production of said documents before Court. But this order has not yet complied by respondent No.3 which comes in the definition of *Contempt of Court.*
4. That, the appellant's fate is still undecided lying at the mercy of Department and this Hon'ble Tribunal.
5. That, the precious rights of the appellant is involved and said documents shall also play a vital role in deciding the titled appeal on merits.

It is, therefore, requested that respondent No.3 be dealt with strict hands and Contempt of Court proceedings may kindly be initiated against respondent No.3 for willfully disobeying the order of this Hon'ble Tribunal for the production of said documents as mentioned in the application (annexed herewith).

Dated:-26-06-2014


...APPELLANT
NAVEED IQBAL A.T

Through:


SARDAR MUHAMMAD AKMAL
Advocate High Court, Abbottabad.

To

The District Education Officer,
E&SE, District Abbottabad.

**SUBJECT: APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS MENTIONED
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2. That, applicant moved a written request before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar on 21.04.2014 and 22.05.2014 in respect of production of applicant's record from respondent No.3 (DEO) before the Hon'ble Tribunal. The Hon'ble Tribunal directed the respondent No.3 to present/produce the same before Hon'ble Tribunal on the next date. The detail of required documents are as below:-
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3. That, on the next date i.e 26.06.2014, the representative of department took the stance that he will produce the record on next date i.e 28.08.2014. On 28.08.2014, no representative was present before the Hon'ble Tribunal.
4. That, on the above said date, applicant complain before the Hon'ble Tribunal regarding non-compliance of Hon'ble Tribunal order and thereafter non-production of applicant's record.
5. That, the Hon'ble Tribunal directed the applicant to move application before your good self for the production of applicant's entire record hence, the instant application accordingly.

It is, therefore, requested that as the applicant's service case is at last stage i.e final arguments hence applicant may graciously be given the above said documents/records i.e Para 2 "A" to "F" forthwith.

Dated:-06-09-2014

(Copy)
** Admitted*
do this as
6/9/14
APPLICANT
Naveed Iqbal,
S/o Ghulam Rabbani,
R/o Village Banda Khair Ah Khan, District Abbottabad.

COPY FOR INFORMATION:-

- 1) The Hon'ble Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar with reference to service appeal No.206/14 titled as "Naveed Iqbal Vs. Govt. of KPK" pending adjudication before the Hon'ble Tribunal.
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- 3) Director, E&SE, KPK, Peshawar (respondent No.2 of service appeal No.206/14).

5488
6.9.2014

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.206/14
Final Bench-II

Naveed Iqbal **VERSUS** Govt. of KPK through Secretary E&SE

SUBJECT: APPLICATION FOR GRANT OF DIRECTIONS TO RESPONDENTS TO PROVIDE THE DOCUMENTS AS MENTIONED IN PARA 2 i.e "A" to "F" TO APPELLANT.

Respectfully submitted,

1. That, applicant's service appeal bearing No.206/14 is pending adjudication before Hon'ble Final Bench-II of the Khyber Pakhtunkhwa Service Tribunal, Peshawar and the next date for final arguments is fixed on 18-12-2014.
2. That, the important entire service record of appellant which is the base of titled appeal, is not being provided to the appellant since long and the respondents has also ignored the gracious directions for the production of the same upon prior applications moved by appellant before this Hon'ble Tribunal. (*Copies of applications are annexed herewith*). The detail of required documents are as below:-
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It is, therefore, humbly prayed that strict orders for the production of entire service record i.e *Para 2 "A" to "F"* and any other documents related to appellant may graciously be passed to the respondents for the ends of justice.

Dated:- 10 -09-2014


...APPLICANT

Naveed Iqbal S/o Ghulam Rabbani,
R/o Village Banda Khair Ali Khan, District Abbottabad.

AFFIDAVIT:

I, Naveed Iqbal, S/o Ghulam Rabbani, R/o Village Banda Khair Aii Khan, District Abbottabad *appellant*, do hereby solemnly affirm and declare on Oath that the contents of instant *application* are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Dated:- 10 -09-2014


...APPELLANT

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

SERVICE APPEAL NO.206/14

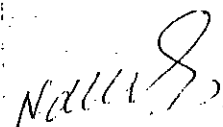
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Respectfully Sheweth;

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2. That, in support of the stance of appellant, respondent NO.3 be ordered to provide the following documents to the Hon'ble Service Tribunal:-
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3. That, the appellant contacted respondent NO.3 for the above mentioned documents i.e "a" to "f" but respondent No.3 is reluctant to give the same. Appellant time and again visited respondent No.3 for the said purpose and requested him that these documents are the base of the appellant's appeal and shall be helpful in deciding the case on merits but respondent NO.3 did not put heed upon appellant's request.
4. That, the gracious indulgence of this Hon'ble Tribunal is hereby seek because the respondent No.3 does not give any value both to the high ups of his Department and or the Hon'ble Courts.

It is, therefore, humbly prayed that this Hon'ble Tribunal may please pass gracious orders for the production of the above said documents i.e *Para 2 "a" to "f"* from respondent NO.3 through Tribunal.

Dated:-08/4 /2014


...APPELLANT
Naveed Iqbal A.T.
U/T GHS NO.3, Abbottabad.

1

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

SERVICE APPEAL NO.206/14


**APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS
MENTIONED IN PARA 2 i.e "a" to "f", FROM RESPONDENT NO.3.**

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4. That, the gracious indulgence of this Hon'ble Tribunal is hereby seek because the respondent No.3 does not give any value both to the high ups of his Department and or the Hon'ble Courts.

It is, therefore, humbly prayed that this Hon'ble Tribunal may please pass gracious orders for the production of the above said documents i.e *Para 2 "a" to "f"* from respondent NO.3 through Tribunal.

Dated:- 22/5/2014


...APPELLANT
Naveed Iqbal A.T,
U/T GHS NO.3, Abbottabad.

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

Service Appeal No.206/14

Naveed Iqbal **VERSUS** Secretary E&SE, Peshawar & others

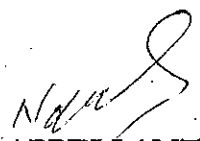
SUBJECT: APPLICATION FOR PRODUCTION OF DOCUMENTS AS MENTIONED IN PREVIOUS APPLICATIONS DATED 08.04.2014 & 22.05.2014 (ANNEXED HEREWITH) BEFORE THIS HON'BLE TRIBUNAL AND ALSO CONTEMPT OF COURT PROCEEDINGS MAY KINDLY BE INITIATED AGAINST RESPONDENT NO.3 FOR WILLFULLY DISOBEYING THE ORDER OF THIS HON'BLE TRIBUNAL.

Respected Sir,


1. That, the titled service appeal is pending adjudication before this Hon'ble Tribunal and is fixed for today.
2. That, on previous dates i.e 08.04.2014 and 22.05.2014, appellant moved applications requesting therein that the documents as mentioned in aforesaid applications may please be asked to produce from respondent No.3 before this Hon'ble Tribunal. *(Copies of applications and order are annexed herewith)*
3. That, this Hon'ble Tribunal while graciously accepting the appellant's applications, has passed order for the production of said documents before Court. But this order has not yet complied by respondent No.3 which comes in the definition of *Contempt of Court.*
4. That, the appellant's fate is still undecided lying at the mercy of Department and this Hon'ble Tribunal.
5. That, the precious rights of the appellant is involved and said documents shall also play a vital role in deciding the titled appeal on merits.

It is, therefore, requested that respondent No.3 be dealt with strict hands and Contempt of Court proceedings may kindly be initiated against respondent No.3 for willfully disobeying the order of this Hon'ble Tribunal for the production of said documents as mentioned in the application (annexed herewith).

Dated:-26-06-2014


...APPELLANT
NAVEED IQBAL A.T

Through:


SARDAR MUHAMMAD AKMAL
Advocate High Court, Abbottabad.

To

The District Education Officer,
E&SE, District Abbottabad.

**SUBJECT: APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS MENTIONED
IN PARA 2 i.e "A" to "F":**

Respected Sir,

1. That, applicant's service appeal bearing No.206/14 is pending adjudication before Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. That, applicant moved a written request before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar on 21.04.2014 and 22.05.2014 in respect of production of applicant's record from respondent No.3 (DEO) before the Hon'ble Tribunal. The Hon'ble Tribunal directed the respondent No.3 to present/produce the same before Hon'ble Tribunal on the next date. The detail of required documents are as below:-
 - A) Attested photo copy of service book of appellant
 - B) Verification report of District Accounts Officer Abbottabad regarding both the DDOs signatures on Source Form-II.
 - C) Written expert/laboratory report of the signatures of Mr.Qazi Tajamul Hussain (DDO) on Source Form-II.
 - D) The notification regarding stoppage of appellant's salary for the periods w.e.f 01.03.2012 to 30.04.2012 & 01.07.2012 to 30.09.2012.
 - E) The notification regarding the release of appellant's salary w.e.f 01.05.2012 to 30.06.2012.
 - F) The implementation report of order dated 24.05.2012 passed by Hon'ble Peshawar High Court, Abbottabad Bench in W.P No.411-A/2012.
3. That, on the next date i.e 26.06.2014, the representative of department took the stance that he will produce the record on next date i.e 28.08.2014. On 28.08.2014, no representative was present before the Hon'ble Tribunal.
4. That, on the above said date, applicant complain before the Hon'ble Tribunal regarding non-compliance of Hon'ble Tribunal order and thereafter non-production of applicant's record.
5. That, the Hon'ble Tribunal directed the applicant to move application before your good self for the production of applicant's entire record hence, the instant application accordingly.

It is, therefore, requested that as the applicant's service case is at last stage i.e final arguments hence applicant may graciously be given the above said documents/records i.e Para-2 "A" to "F" forthwith.

Dated:-06-09-2014

(Copy)
** Admitted as*
Pl. do this
as
6/9/14
Naveed
APPLICANT
Naveed Iqbal,
S/o Ghulam Rabbani,
R/o Village Banda Khair Ak Khan, District Abbottabad.

COPY FOR INFORMATION:-

- 1) The Hon'ble Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar with reference to service appeal No.206/14 titled as "Naveed Iqbal Vs. Govt. of KPK" pending adjudication before the Hon'ble Tribunal.
- 2) Secretary, E&SE, KPK, Peshawar (respondent No.1 of service appeal No.206/14).
- 3) Director, E&SE, KPK, Peshawar (respondent No.2 of service appeal No.206/14).

5488
6.9.2014

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.206/14
Final Bench-II

Naveed Iqbal **VERSUS** Govt. of KPK through Secretary E&SE

SUBJECT: APPLICATION FOR GRANT OF DIRECTIONS TO RESPONDENTS TO PROVIDE THE DOCUMENTS AS MENTIONED IN PARA 2 i.e "A" to "F" TO APPELLANT.

Respectfully submitted,

1. That, applicant's service appeal bearing No.206/14 is pending adjudication before Hon'ble Final Bench-II of the Khyber Pakhtunkhwa Service Tribunal, Peshawar and the next date for final arguments is fixed on 18-12-2014.
2. That, the important entire service record of appellant which is the base of titled appeal, is not being provided to the appellant since long and the respondents has also ignored the gracious directions for the production of the same upon prior applications moved by appellant before this Hon'ble Tribunal. (*Copies of applications are annexed herewith*). The detail of required documents are as below:-
 - A) Attested photo copy of service book of appellant
 - B) Verification report of District Accounts Officer Abbottabad regarding both the DDOs signatures on Source Form-II.
 - C) Written expert/laboratory report of the signatures of Mr.Qazi Tajamul Hussain (DDO) on Source Form-II.
 - D) The notification regarding stoppage of appellant's salary for the periods w.e.f 01.03.2012 to 30.04.2012 & 01.07.2012 to 30.09.2012.
 - E) The notification regarding the release of appellant's salary w.e.f 01.05.2012 to 30.06.2012.
3. That, recently on 06.09.2014 appellant/applicant again furnished an application via endorsement No.5488 before DEO/respondent No.3 but the same was not entertained and respondent No.3 is reluctant to provide the said record. (*Copy of application is annexed herewith*)
4. That, appellant has become rolling stone and is moving from one office to another since long.
5. That, the precious rights of appellant are at stake.

It is, therefore, humbly prayed that strict orders for the production of entire service record i.e *Para 2 "A" to "F"* and any other documents related to appellant may graciously be passed to the respondents for the ends of justice.

Dated:- 10 -09-2014


...APPLICANT

Naveed Iqbal S/o Ghulam Rabbani,
R/o Village Banda Khair Ali Khan, District Abbottabad.

AFFIDAVIT:

I, Naveed Iqbal, S/o Ghulam Rabbani, R/o Village Banda Khair Ali Khan, District Abbottabad *appellant*, do hereby solemnly affirm and declare on Oath that the contents of instant *application* are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Dated:- 10 -09-2014


...APPELLANT

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

SERVICE APPEAL NO.206/14

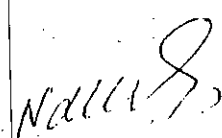
**APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS
MENTIONED IN PARA 2 i.e "a" to "f", FROM RESPONDENT NO.3.**

Respectfully Sheweth;

1. That, the titled appeal is pending adjudication before this Hon'ble Tribunal.
2. That, in support of the stance of appellant, respondent NO.3 be ordered to provide the following documents to the Hon'ble Service Tribunal:-
 - a) *Original service book of appellant*
 - b) *Verification report of District Accounts Officer Abbottabad regarding both the DDOs signatures on Source Form-II.*
 - c) *Written expert/laboratory report of the signatures of Mr.Qazi Tajamul Hussain (DDO) on Source Form-II.*
 - d) *The notification regarding stoppage of appellant's salary for the periods w.e.f 01.03.2012 to 30.04.2012 & 01.07.2012 to 30.09.2012.*
 - e) *The notification regarding the release of appellant's salary w.e.f 01.05.2012 to 30.06.2012.*
 - f) *The implementation report of order dated 24.05.2012 passed by Hon'ble Peshawar High Court, Abbottabad Bench in W.P No.411-A/2012.*
3. That, the appellant contacted respondent NO.3 for the above mentioned documents i.e "a" to "f" but respondent No.3 is reluctant to give the same. Appellant time and again visited respondent No.3 for the said purpose and requested him that these documents are the base of the appellant's appeal and shall be helpful in deciding the case on merits but respondent NO.3 did not put heed upon appellant's request.
4. That, the gracious indulgence of this Hon'ble Tribunal is hereby seek because the respondent No.3 does not give any value both to the high ups of his Department and or the Hon'ble Courts.

It is, therefore, humbly prayed that this Hon'ble Tribunal may please pass gracious orders for the production of the above said documents i.e *Para 2 "a" to "f"* from respondent NO.3 through Tribunal.

Dated:-08/4 2014


...APPELLANT
Naveed Iqbal A.T.
U/T GHS NO.3, Abbottabad.

1

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

SERVICE APPEAL NO.206/14


**APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS
MENTIONED IN PARA 2 i.e "a" to "f", FROM RESPONDENT NO.3.**

Respectfully Sheweth;

1. That, the titled appeal is pending adjudication before this Hon'ble Tribunal.
2. That, in support of the stance of appellant, respondent NO.3 be ordered to provide the following documents to the Hon'ble Service Tribunal:-
 - a) *Original service book of appellant*
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4. That, the gracious indulgence of this Hon'ble Tribunal is hereby seek because the respondent No.3 does not give any value both to the high ups of his Department and or the Hon'ble Courts.

It is, therefore, humbly prayed that this Hon'ble Tribunal may please pass gracious orders for the production of the above said documents i.e *Para 2 "a" to "f"* from respondent NO.3 through Tribunal.

Dated:- 22/5/2014


...APPELLANT
Naveed Iqbal A.T,
U/T GHS NO.3, Abbottabad.

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

Service Appeal No.206/14

Naveed Iqbal **VERSUS** Secretary E&SE, Peshawar & others


SUBJECT: APPLICATION FOR PRODUCTION OF DOCUMENTS AS MENTIONED IN PREVIOUS APPLICATIONS DATED 08.04.2014 & 22.05.2014 (ANNEXED HEREWITH) BEFORE THIS HON'BLE TRIBUNAL AND ALSO CONTEMPT OF COURT PROCEEDINGS MAY KINDLY BE INITIATED AGAINST RESPONDENT NO.3 FOR WILLFULLY DISOBEYING THE ORDER OF THIS HON'BLE TRIBUNAL.

Respected Sir,

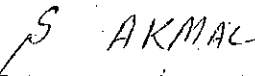
1. That, the titled service appeal is pending adjudication before this Hon'ble Tribunal and is fixed for today.
2. That, on previous dates i.e 08.04.2014 and 22.05.2014, appellant moved applications requesting therein that the documents as mentioned in aforesaid applications may please be asked to produce from respondent No.3 before this Hon'ble Tribunal. *(Copies of applications and order are annexed herewith)*
3. That, this Hon'ble Tribunal while graciously accepting the appellant's applications, has passed order for the production of said documents before Court. But this order has not yet complied by respondent No.3 which comes in the definition of *Contempt of Court.*
4. That, the appellant's fate is still undecided lying at the mercy of Department and this Hon'ble Tribunal.
5. That, the precious rights of the appellant is involved and said documents shall also play a vital role in deciding the titled appeal on merits.

It is, therefore, requested that respondent No.3 be dealt with strict hands and Contempt of Court proceedings may kindly be initiated against respondent No.3 for willfully disobeying the order of this Hon'ble Tribunal for the production of said documents as mentioned in the application (annexed herewith).

Dated:-26-06-2014


...APPELLANT
NAVEED IQBAL A.T

Through:


SARDAR MUHAMMAD AKMAL
Advocate High Court, Abbottabad.

To

The District Education Officer,
E&SE, District Abbottabad.

**SUBJECT: APPLICATION FOR THE PRODUCTION OF DOCUMENTS AS MENTIONED
IN PARA 2 i.e "A" to "F".**

Respected Sir,

1. That, applicant's service appeal bearing No.206/14 is pending adjudication before Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. That, applicant moved a written request before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar on 21.04.2014 and 22.05.2014 in respect of production of applicant's record from respondent No.3 (DEO) before the Hon'ble Tribunal. The Hon'ble Tribunal directed the respondent No.3 to present/produce the same before Hon'ble Tribunal on the next date. The detail of required documents are as below:-
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3. That, on the next date i.e 26.06.2014, the representative of department took the stance that he will produce the record on next date i.e 28.08.2014. On 28.08.2014, no representative was present before the Hon'ble Tribunal.
4. That, on the above said date, applicant complain before the Hon'ble Tribunal regarding non-compliance of Hon'ble Tribunal order and thereafter non-production of applicant's record.
5. That, the Hon'ble Tribunal directed the applicant to move application before your good self for the production of applicant's entire record hence, the instant application accordingly.

It is, therefore, requested that as the applicant's service case is at last stage i.e final arguments hence applicant may graciously be given the above said documents/records i.e Para 2 "A" to "F" forthwith.

Dated:-06-09-2014

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6/9/14
Naveed
...APPLICANT
Naveed Iqbal,
S/o Ghulam Rabbani,
R/o Village Banda Khair Akh Khan, District Abbottabad.

COPY FOR INFORMATION:-

- 1) The Hon'ble Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar with reference to service appeal No.206/14 titled as "Naveed Iqbal Vs. Govt. of KPK" pending adjudication before the Hon'ble Tribunal.
- 2) Secretary, E&SE, KPK, Peshawar (respondent No.1 of service appeal No.206/14).
- 3) Director, E&SE, KPK, Peshawar (respondent No.2 of service appeal No.206/14).

5488
6.9.2014

THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

NAVEED IQBAL

VS

GOVT OF KPK & OTHERS

SERVICE APPEAL NO.: 206/14

DATE OF HEARING: 19.02.2015

AUTHORITIES PRODUCED BY THE APPELLANT:

S.NO	AUTHORITY	PAGE NO	ALLEGATION	PUNISHMENT	DECISION	GROUNDS / FACTS
1	1986 (SCMR) Supreme Court of Pakistan (BIASE AUTHORITY)	1066	Misconduct	Dismissal from Service	Re-Instatement of Appellant with all back benefits with cost	Where inquiry officer and department biased against the appellant appeal accepted with cost
2	1993 (SCMR) Supreme Court of Pakistan	1440	Misconduct	Compulsory Retirement from Service	Re-Instatement of Appellant with all back benefits	Inquiry conducted against the Appellant no opportunity of cross Examination, inquiry officer not changed
3	1993 PLC (CS) Lahore High Court	10	Misconduct	Compulsory Retirement from Service	Re-Instatement of Appellant with all back benefits	No opportunity of cross examination
4	1996 (SCMR) Supreme Court of Pakistan	802	Misconduct	Compulsory Retirement from Service	Re-Instatement of Appellant with all back benefits	Where charge of mis-conduct not admitted by the Appellant, inquiry officer not proved the charge
5	2011 PLC (CS) KPK Service Tribunal	1111	Tempering	Compulsory Retirement from Service	Re-Instatement of Appellant with all back benefits	Inquiry proceeding conducted by respondents against the violation of rules and law no opportunity of cross examination given to the appellant
6	1997 PLC (CS) Supreme Court of Pakistan	817	Embezzlement	Dismissal from Service	Re-Instatement of Appellant with all back benefits	The disputed amount deposited in the Govt treasury
7	2003 PLC (CS) Supreme Court of Pakistan	497	Embezzlement Public Money	Dismissal from Service	Re-Instatement without pay	Whereas appellant refund the public money but in this case appellant refund the salary and arrear amount which has been accepted by the respondents/ inquiry officer
8	2004 PLC (CS) Supreme Court of Pakistan	328	Misconduct	Dismissal from Service	Re-Instatement of Appellant with all back benefits	Where two charges imposed by respondents against appellant none of them proved during the inquiry proceeding, charge of allegation base less
9	2008 (SCMR) Supreme Court of Pakistan	609	Misconduct	Removal from Service	Re-Instatement of Appellant with all back benefits and fresh inquiry if so advised	No opportunity of cross examination given to the appellant
10	2005 PLC (CS) Lahore High Court	04	Inefficiency	Stoppage of Salary	Salary released on payment of 25 thousand cost	Competent Authority has no power to stop the salary of civil servant without any lawful justification

1. The competent Authority and Inquiry Officer biased with appellant.
2. Charges against the appellant not proved during the inquiry proceeding .
3. Appellant has not given the opportunity of cross-examination.
4. The appellant already filed the COC before this Honourable Service Tribunal against the Respondent No. 3 and Inquiry Officer.
5. District Account Officer, Abbottabad verified the signatures of both DDOs.
6. The stoppage of salary of the Appellant was without any lawful justification.

No. 1 before the Service Tribunal is dismissed as incompetent. Order as to costs as the respondent has not turned up to contest the proceedings and was proceeded ex parte.

M.I.

Appeal accepted

1986 S C M R 1066

Present: Muhammad Haleem, C.J.,
Shafiur Rahman and Zaffar Hussain Mirza, JJ

M. HANIF NIAZI--Petitioner

versus

THE DIRECTOR OF FOOD and others--Respondents

Civil Appeal No. 25-K of 1982, decided on 22nd January, 1986.

(Against the judgment of the Sind Services Tribunal, Karachi dated 6-7-1981 in Appeal No. 56 of 1979).

(a) Constitution of Pakistan (1973)--

---Art. 212(3)--Sind Civil Servants (Efficiency and Discipline) Rules, 1973, r. 5(4)(a)--Dismissal from service--Misconduct--Leave to appeal granted to consider inter alia whether Authority had any powers under r. 5(4)(a) of Sind Civil Servants (Efficiency and Discipline) Rules, 1973 to interfere with an order of authorised officer competently passed exonerating appellant of charges inquired into by him. [p. 1067]

(b) Sind Civil Servants (Efficiency and Discipline) Rules, 1973--

---Rr. 5(4)(a) & 10(A)--Dismissal from service--Petitioner suspended on charge of misconduct--Exonerated by Authorized Officer and recommended to be re-instated--Same person who had suspended petitioner and initiated enquiry against him, imposed major penalty of dismissal from service--Order impugned--Allegation of bias--Plea that Authorized Officer having exonerated petitioner of all charges, it was not open to Authority to substitute that order by an order of dismissal, not sustained--Order of Authorized Officer being merely a recommendation could not be taken to be a final order--Authority could take such action in accordance with procedure prescribed in r.10(A)--Such power in any case was to be exercised after affording an opportunity of hearing to the affected civil servant--Bias being established on record, appeal accepted with costs and order of dismissal set aside.

[p. 1068] B & C

(c) Sind Civil Servants (Efficiency and Discipline) Rules, 1973--

---R. 5(4)(a)--Dismissal from service--Bias--Authority, being involved and interested person, suspending appellant, initiating enquiry against him and passing final order of his dismissal over ruling recommendation of Authorized Officer--Bias visible in proceedings of a nature to vitiate proceedings--Order of dismissal set aside and appeal allowed with costs. [p. 1068] C

S.M. Abbas, Advocate-on-Record for Appellant.

A. Sattar Shaikh, Additional Advocate-General Sind with Muzaffar Hassan, Advocate-on-Record for Respondents Nos. 1 to 3.

Respondent No. 4: Ex parte

Date of hearing: 22nd January, 1986.

JUDGMENT

SHAFIUR-RAHMAN, J.--Leave to appeal was granted under Art. 212(3) of the Constitution to examine, inter alia, whether the Authority had any powers under rule 5(4)(a) of the Sind Civil Servants (Efficiency and Discipline) Rules, 1973 (hereinafter referred to as the Rule) to interfere with an order of the Authorised Officer competently passed exonerating the appellant of the charges inquired into by him.

2. The appellant, who was a Junior Clerk Sector-II under Rationing Controller IV was placed under suspension with immediate effect on account of misconduct on 4th of July, 1978 by an order passed by Mian Bahadur Shah, Deputy Director Food, Karachi Region. The Authorized Officer, an Assistant Director Food, Karachi, served on him a show-cause notice dated 29-7-1978. The sum and substance of the charges was that he had been making wild allegations against his superior officers and making applications to the higher authorities outside the department and releasing information to the newspapers thereby rendering himself liable to major penalty. In his defence in reply to the show-cause notice, he stated that his complaints were no doubt directed against the malfunctioning of his own department and he had at first submitted his application in writing to the Rationing Controller IV under whom he was serving. It was only on his refusal to entertain or accept it that he as a measure of last resort sent it to other officers. The contents of those applications, according to the appellant, were correct.

3. An inquiry was held by the Authorized Officer into his case and he who concluded his report in the following words:-

"In view of the circumstances discussed above, the only course for the undersigned is to exonerate Mr. Muhammad Hanif Niazi for having made direct applications to the higher authorities which were under compulsion of necessity and in the interest of the Government. The two charges stand disproved as discussed above. It is accordingly recommended that Mr. Niazi suspended since 4-7-1978, may be re-instated treating suspension as leave subject to title."

4. By an order, dated 4-9-1978, Mian Bahadur Shah, Deputy Director Food, Karachi dismissed him from service with immediate effect. The operative part of his order relevant for the purposes of this appeal is contained in clauses (4) and (5) reproduced hereunder:-

"(4) And whereas the order No. ADM/E-13/78, dated 4-7-1978, passed by the Authorized Officer's order, has been vacated the Authorized Officer's order is found to be infructuous and void as the Authorized Officer is not competent to pass such order in cases involving gross misconduct where major penalty is proposed to be awarded to the appellant and hence the said order is hereby vacated."

(5) And whereas after taking into consideration the reply submitted by said Mr. Muhammad Hanif Niazi and the order No. ADM/E-13/78 dated 12-9-1978 passed by the Authorized Officer having vacated the Authority is satisfied that a major penalty should not be imposed on Mr. Niazi.

Now, therefore, in exercise of the powers conferred by sub-

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(4) of Rule 5 of the Sind Civil Servants (Efficiency and Discipline) Rules the said Mr. Muhammad Hanif Niazi, Junior Clerk is hereby dismissed from Government Service with immediate effect.

5. A departmental appeal to the Director Food and an appeal to the Service Tribunal proved of no avail to him.

The learned counsel for the appellant contended that it was a case of an all pervasive bias floating on the record and it vitiated the order passed by the Deputy Director Food Mian Bahadur Shah as the very basis of the complaint and the grievance of the appellant was personally against him and his deeds in the department. Besides, according to the learned counsel for the appellant, the Authorized Officer having exonerated the appellant of all the charges, it was not open to the Authority to substitute that order by an order of dismissal.

7. So far as the specific point of law on which this appeal was admitted for hearing is concerned, we find that it cannot prevail. The order of the Authorized Officer reproduced above itself shows that it was an order making a recommendation and not an order deciding the matter. What is expressed to be tentative and has to be finalised after an order of the competent Authority cannot be taken to be a final order.

8. Besides, in addition to the intrinsic effect of the order of the Authorized Officer itself, we find that there is a provision in rule 10(A) of the Rules whereby the Authority can be entrusted with the power of correcting errors and improprieties of finding, penalty, order, or any irregularity in proceedings under the rules. This power in any case is to be exercised after affording an opportunity of hearing to the affected civil servant. The power was not lacking. The procedure prescribed was, however, not followed, if at all it is taken to be a case under rule 10(A).

9. The record of the proceedings does in fact bear out the first contention of the learned counsel for the appellant. The complaint of the appellant for which he was charged related to Mian Bahadur Shah and his conduct of the affairs of the department. It was Mian Bahadur Shah, the Deputy Director Food who suspended him, initiated the inquiry against him and passed the final order of his dismissal overruling the recommendation of the Authorized Officer. The bias visible in the proceedings is indeed of a nature to vitiate the proceedings and we are left in no manner of doubt about it. This appeal is, therefore, allowed with costs and the judgment of the Service Tribunal as well as the order of dismissal of the appellant is set aside. However, it will be for the competent authority other than Mian Bahadur Shah to examine the case afresh free from any such bias as has been detected in the proceedings.

M.I.

Appeal allowed.

Shahid Hussain v. Iqbal
(Zaffar Hussain Mirza, J)

1069

1986 S C M R 1069

Present: Abdul Kadir Shaikh, S.A. Nusrat
and Zaffar Hussain Mirza, JJ

SHAHID HUSSAIN--Petitioner

versus

IQBAL and 11 others--Respondents

Civil Petition No. K-602 of 1984, decided on 2nd July, 1985

(On appeal from the judgment and order of the High Court of Sindh at Karachi, dated 8-10-1984 passed in First Rent Appeal No. 632 of 1983).

Constitution of Pakistan (1973)--

Art. 185(3)--Sind Rented Premises Ordinance (XVII of 1979),
Section 16(1)--Non-compliance with order to deposit rent--Striking off defence
order--suffered from patent contradiction and remanded case for retrial--
order impugned--Finding of Rent Controller being contradictory and
defendant in payment of rent being merely technical, impugned order,
was not open to question--Leave to appeal refused. [p. 1070] A

Muhammad Bashir v. Mst. Mubina Begum Civil Petition for Special
Leave to Appeal No. K-484 of 1983 distinguished.

Badrudaja Khan, Advocate Supreme Court assisted by Nazir Ahmed
Siddiqui, Advocate-on-Record for Petitioner.

Nemo for Respondents.

Date of hearing: 2nd July, 1985.

ORDER

ZAFFAR HUSSAIN MIRZA, J.--In an application for ejectment
under section 15 of the Sind Rented Premises Ordinance, 1979, by the
petitioner against the respondents, the learned Rent Controller passed
the following order, dated 2-7-1983 under section 16(1) of the said
Ordinance:-

"The applicant claims the rent at the rate of Rs.59 being the
latest assessment for November, 1977. And whereas according to
the opponents, the rate of rent is Rs.35 and they have been
depositing the same at the said rate in Miscellaneous Rent Case
No. 1600/75 and have deposited upto December, 1982. In support
of this, photostatic copies of rent receipt issued by the
owner Mst. Sardar Begum, two money orders sent by the tenants
to Sardar Begum in June 1974 at the rate of Rs.35 and
Miscellaneous Rent Application whereby the rent was deposited
at the rate of Rs.35. The applicant has relied on P.T.I. issued
by the Excise and Taxation Department, dated 18-4-1968.

Admittedly the opponent had been paying the rent to the landlord
at the rate of Rs.35 per month as indicated from the receipts.
Therefore, in my opinion the applicants cannot claim the rent as
per latest assessment without obtaining the order from the Rent
Controller concerned. As such, the opponents are directed to
deposit the current and future monthly rent at the rate of
Rs.35 per month, in this case and in this Court on or before

imposed was maintained in Departmental appeal as well as by the Service Tribunal.

3. Leave is granted to consider the question whether in the facts and circumstances of the case considering the past history of the assessee and the complaint referred to the petitioner, was the petitioner justified in making assessment under section 59 of the Income-tax Ordinance and was such an act in violation of any law and rule to attract the provisions of the Civil Servants (Efficiency and Discipline) Rules.

M.B.A./S-750/S

Leave granted.

1993 S C M R 1440

[Supreme Court of Pakistan]

Present: Ajmal Mian, Sajjad Ali Shah and Saleem Akhtar, JJ

JAN MUHAMMAD---Appellant

versus

THE GENERAL MANAGER, KARACHI TELECOMMUNICATION
REGION, KARACHI and another---Respondents

Civil Appeal No. 149-K of 1991, decided on 31st March, 1992.

(On appeal from the judgment of the Federal Service Tribunal, Islamabad dated 13-1-1991 passed in Appeal No.56(K) of 1987).

Government Servants (Efficiency and Discipline) Rules, 1973---

---Rr. 6, 5 & 4---Misconduct---Compulsory retirement---Enquiry against Government servant---Procedure---Enquiry proceedings were conducted by way of questionnaire without examination of witnesses in support of charge or defence---Such enquiry proceedings being not consistent with requirements of R. 6, Government Servants (Efficiency and Discipline) Rules, 1973 was not sustainable.

In Government Servants (Efficiency and Discipline) Rules, 1973, "misconduct" is defined. Rule 4 contemplates minor and major penalties. Compulsory retirement is included in major penalties. Rule 5 empowers authorised officer to direct enquiry against Government servant through an Enquiry Officer or Enquiry Committee, or if he is satisfied, may order that there would be no enquiry in the interest of security of the country. If it is decided that there should be enquiry either by Enquiry Officer or Enquiry Committee then procedure laid down in Rule 6 is to be followed and the requirements enumerated therein are that charge shall be framed and

Government servant proceeded against would be allowed to reply to the charge after which evidence is to be recorded by examining witnesses in support of the charge allowing opportunity to the affected Government servant to cross-examine the witnesses and he can also produce witnesses in his defence. In the present case this procedure as such was not followed in letter and spirit and witnesses were not examined in support of the charge. It was necessary for that reason that ultimately major penalty has been imposed upon the civil servant. The manner in which enquiry proceedings were conducted by way of questionnaire without examination of witnesses in support of charge or defence cannot be approved as it was not consistent with requirements of Rule 6 of the above mentioned Rules. Before the Service Tribunal in written objections filed on behalf of Department order of compulsory retirement has been defended on other unconnected grounds that civil servant was inefficient and unwilling worker. In the enquiry report no comment was made upon plea of civil servant that his immediate superior officer recommended that he was overburdened with his own work and should not be given additional work. Order of compulsory retirement, therefore, was not sustainable as enquiry was not held in accordance with procedure laid down in Rule 6 of Government Servants (Efficiency and Discipline) Rules, 1973. Judgment of Service Tribunal and order of compulsory retirement of civil servant was set aside with the direction that he be reinstated with back benefits. Order of compulsory retirement of civil servant having been set aside on the ground that enquiry was not held as required under the Rules, it was open to Department to take action against him on that ground but strictly according to law and rules. [p. 1443] A

Rasheed A. Razvi, Advocate Supreme Court instructed by M.A.I. Qarni, Advocate-on-Record for Appellant.

M. Umar Qureshi, Advocate Supreme Court instructed by S.M. Abbas, Advocate-on-Record for Respondents.

Date of hearing: 31st March, 1992.

JUDGMENT

SAJJAD ALI SHAH, J.---In this appeal with leave is challenged judgment dated 13-1-1991 of the Federal Service Tribunal, Islamabad, whereby service appeal of the appellant is dismissed on the ground that it has no merit.

2. Briefly stated the relevant facts giving rise to this appeal are that appellant was serving as Lower Selection Grade Clerk (BPS-9) posted as Head Clerk Phone Branch, Karachi, when on 7-7-1986 he received order from Director, Telephones-II giving him additional work of "Minister communication cases". Assistant Director, Phones-II, who was immediate superior officer of appellant forwarded a note recommending that appellant should be spared as he was already loaded with heavy work on account of shortage of staff and for that reason additional work may be assigned to some

other Head Clerk. On the following day appellant was suspended and on 20-7-1986 he was served with charge-sheet on the ground that he had disobeyed the order of superior officer which amounted to misconduct. Appellant submitted his defence denying allegations. Mr. Zahiruddin Siddiqui, A.D. Engineering-II proceeded to examine appellant by directing him to answer questionnaire which was done. After formal personal hearing, order of compulsory retirement of appellant from Government service was passed on 18-11-1986. According to the appellant, he had put in 28 years of service. He filed departmental appeal which was dismissed after which he filed a

3. We have heard learned counsel for both the parties. It appears from the impugned judgment of Service Tribunal that charge against the appellant is that he disobeyed office order passed on 7-7-1986 directing him to look after "Minister communications cases" in addition to his own duties, which he refused. It is submitted on behalf of the appellant that he did not refuse or disobey the order but apprised his own immediate superior officer about the order and the factual position with regard to his own load of work and on that note his immediate superior officer A.D. Phones-II agreed and recommended in writing that appellant was already overloaded with heavy work in his normal duties, which he had been performing in the face of shortage of suitable staff, hence additional work should be assigned to some other Head Clerk.

4. We have noted in the record that order assigning additional duty was passed on 7-7-1986 and on the same day appellant forwarded a note in writing to A.D. Phones-II, who on the same day added his own note in hand in the margin agreeing with appellant and recommending that he should be spared. There is also another note of the same officer i.e. A.D. Phones-II made on the following day directing appellant to clear all the files on his table and then start attending to additional work as well. It, therefore, appears that inbetween these two notes this officer was called and persuaded to change his mind and not recommend that appellant should be spared from additional duty.

5. On 8-7-1986 appellant was suspended and on 20-7-1986 he was charge-sheeted and required to show cause within 7 days as to why penalty of dismissal from service as specified in Government Servants (Efficiency and Discipline) Rules, 1973 should not be imposed upon him on the ground of misconduct. Mr. Zahiruddin Siddiqui A.D. Engineering-II was appointed as Enquiry Officer. On 3-8-1986 appellant filed written reply to charge-sheet in which allegation levelled against him was denied. Appellant asked for change of Enquiry Officer but his request was declined. In the enquiry no witness was examined and as it appears from the enquiry report dated 26-8-1986, four allegations were noted from which one related to refusal to do additional work and the other three with regard to the objections raised by the appellant himself. It further appears that appellant was cross-examined on these points and his defence in writing was considered and in one short paragraph

conclusion is noted that charge of misconduct stands justified. Vide order dated 18-11-1986, authorised officer, who is Assistant General Manager-I, Karachi, Telecommunication Region, Karachi, retired appellant compulsorily from Government service with effect from 17-11-1986 with all admissible benefits treating period of suspension as leave admissible.

6. In Government Servants (Efficiency and Discipline) Rules, 1973, "misconduct" is defined. Rule 4 contemplate minor and major penalties. Compulsory retirement is included in major penalties. Rule 5 empowers Enquiry Officer or Enquiry Committee of the country. If it is decided that there should be enquiry either by Enquiry Officer or Enquiry Committee then procedure laid down in Rule 6 is to be followed and the requirements enumerated therein are that charge shall be framed and Government servant proceeded against would be allowed to reply to the charge after which evidence is to be recorded by examining witnesses in support of the charge allowing opportunity to the affected Government servant to cross-examine the witnesses and he can also produce witnesses in his defence. It appears that in the instant case this procedure as such was not followed in letter and spirit and witnesses were not examined in support of the charge. It was necessary for that reason that ultimately major penalty has been imposed upon the appellant. The manner in which enquiry proceedings were conducted by way of questionnaire without examination of witnesses in support of charge or defence cannot be approved as it is not consistent with requirements of Rule 6 of the abovementioned Rules. Before the Service Tribunal in written objections filed on behalf of respondents order of compulsory retirement has been defended on other unconnected grounds that appellant was inefficient and unwilling worker. In the enquiry report no comment is made upon plea of appellant that his immediate superior officer recommended that appellant was overburdened with his own work and should not be given additional work. For the facts and reasons mentioned above, we are of the view that order of compulsory retirement is not sustainable as enquiry was not held in accordance with procedure laid down in Rule 6 of Government Servants (Efficiency and Discipline) Rules, 1973. We, therefore, set aside impugned judgment of Service Tribunal and order of compulsory retirement of appellant and direct that he be reinstated with back benefits. Since we are striking down order of compulsory retirement of appellant on the ground that enquiry was not held as required under the rules, it is open to the respondents to take action against appellant on that ground but strictly according to law and rules.

Appeal is allowed.

M.B.A./J-99/S

Appeal allowed.

1993 P L C (C.S.) 10

[Lahore High Court]

Before Manzoor Hussain Sial, J

Dr. Mrs. KHALIDA RAZI

versus

FEDERATION OF PAKISTAN and others

(a) Civil service---

---Compulsory retirement from service---Validity---Leave availed by petitioner having been regularised later on, allegations forming basis of the charge to that extent in the charge-sheet were untenable---Authorised Officer having himself lodged complaint against petitioner, was not competent to act as an Authorised Officer---Civil servant had moved application to the Authority against the Authorised Officer, before she was charge-sheeted, therefore, her apprehension that he was biased against her was not ill-founded---Compulsory retirement from service was thus, not warranted on that account. [p. 13] A

(b) Government Servants (Efficiency and Discipline) Rules, 1973---

---R. 4---Constitution of Pakistan (1973), Art.199---Compulsory retirement---Misconduct---Constitutional jurisdiction---Where department concerned had adopted Government Servants (Efficiency and Discipline) Rules, 1973, in the disciplinary matters of its employees, any action taken in derogation or violation thereof, could be set aside in Constitutional jurisdiction. [p. 13] B

Syed Mir Muhammad v. N.-W.F.P. Government through Chief Secretary PLD 1981 SC 176; Federation of Pakistan and 2 others v. Abdul Razzaq 1983 SCMR 229; The Principal, Cadet College, Kohat and another v. Muhammad Shoab Qureshi PLD 1984 SC 170 and Anwar Hussain v. Agricultural Development Bank of Pakistan and another PLD 1984 SC 197 rel.

(c) Master and servant---

---Government Servants (Efficiency and Discipline) Rules, 1973, R. 4---Constitution of Pakistan (1973), Art.199---Respondent department had adopted Government Servants (Efficiency and Discipline) Rules, 1973, in objection of non-maintainability of Constitutional petition on the point of relationship of master and servant could not be pressed into service. [p. 14]

Karachi Development Authority and another v. Wali Ahmed Khan and others 1991 SCMR 2434 rel.

(d) Civil service---

---Constitution of Pakistan (1973), Art.199---Compulsory retirement from service---Constitutional jurisdiction---Laches---Basic order passed and proceedings conducted being without jurisdiction, no period of limitation would be reckoned against civil servant---Order of compulsory retirement of civil servant being void, no limitation would run in the matter. [p. 14] D

---Redress of her grievance after passing of the impugned order, which amply showed that she had been vigilant all along---Impugned order of compulsory retiring petitioner, was, thus, unwarranted under the law and was declared to be of no legal effect. [p. 14] D

(e) Civil servant---

---Government Servants (Efficiency and Discipline) Rules, 1973, R.4---Constitution of Pakistan (1973), Art.199---Compulsory retirement---Inquiry against civil servant---Non-supply of inquiry report---Effect---Non-supply of the inquiry report to the accused officer to enable him to offer his explanation with regard to adverse finding recorded by the inquiry officer amounted to denial of providing him reasonable opportunity of defence. [p. 13] E

Syed Mir Muhammad v. N.-W.F.P. Government through Chief Secretary PLD 1981 SC 176 rel.

Muhammad Rashid Malik for Petitioner, Faqir Muhammad Khokhar D.A.-G. and Ahmad Hassan Khan for Respondents Nos. 2 and 4.

Date of hearing: 22nd September, 1992.

JUDGMENT

Dr. Mrs. Khalida Razi petitioner herein, by means of this Constitutional petition calls in question the validity of order dated 16th July, 1979 passed by respondent No.2 whereby she was compulsorily retired from service.

The relevant facts of the case are that the petitioner was appointed on 7-9-1968 as Research Officer in the Pakistan Council of Scientific and Industrial Research (hereinafter referred to as PCSIR). She was promoted on 20th September, 1974 as Senior Research Officer. She was posted in that capacity at Peshawar PCSIR Laboratories. In 1976 she was married to one Major Muhammad Razi Ullah Khan who was at the relevant time posted at Abbottabad. A year later, he was transferred to Ordinance Centre, Malir Cantt., Karachi. The petitioner applied for her transfer to Karachi to join him

Handwritten notes in Urdu: "نویسندہ", "سرورس اپیل 206/14", "KPK ایجوکیشن", "دریگر وینس", "ڈپٹی ایجوکیشن", "سرورس اپیل 206/14", "دریگر وینس".

but her request was declined. Simultaneously she applied for leave which was initially declined but later on regularized vide letter dated 17-2-1979. Due to her illness and family circumstances, she could not pull on with her duties at Peshawar and again on 17-3-1979 applied for extraordinary leave but her application was rejected on 19-3-1979. She was charge-sheeted for misconduct by the Director, PCSIR Laboratories, Peshawar while acting as Authorised Officer under the Government Servants (Efficiency & Discipline) Rules, 1973 and on the following day viz. 20-3-1979 he appointed an Inquiry Committee for proceeding in the matter. The petitioner had earlier submitted applications to the Chairman, PCSIR expressing that the Director was inimical and biased against her and was bent upon harming her, nevertheless he was appointed as an Authorised Officer by respondent No.2 in response to letter dated 18-2-1979 sent by the former to the respondent No.2 (See Annexure D-19). The petitioner was served with another charge-sheet by the Director, PCSIR, Peshawar on 19-4-1979 for her absence and leaving the station without permission. The Inquiry Committee proceeded ex parte. The respondent No.2 vide impugned order dated 10-7-1979 compulsorily retired her from service. Afterwards, she moved several applications/representations against the aforementioned order to the various authorities including the President of Pakistan, Prime Minister of Pakistan, the Ombudsman and also filed an appeal against the aforesaid order before the Federal Service Tribunal but of no avail. Hence this petition.

2. Learned counsel for the petitioner contended that the Director, PCSIR, Peshawar (Dr. Riaz Ali Shah) who lodged complaint against the petitioner was inimical towards the petitioner and she had expressed in writing to the various authorities against his biased attitude, he was therefore not competent to act as Authorised Officer in the case. The Authorised Officer appointed the inquiry committee but did not provide her copy of the report made by the committee nor supplied copy of his recommendation for her compulsory retirement. She was therefore deprived to offer her explanation against the report of the inquiry committee recorded ex parte for consideration of the competent authority. It was contended that by non-provision of the report of the inquiry committee and recommendation of the Authorised Officer the case of the petitioner was highly prejudiced.

It was next argued that once the PCSIR adopted the provisions of Government Servants (Efficiency & Discipline) Rules, 1973, it was necessary for the Authorised Officer and the competent authority to have followed the procedure laid therein in letter and spirit but the provisions of the relevant rules were not followed in the case of the petitioner. Learned counsel relied on Syed Mir Mubammad v. N.-W.F.P. Government through Chief Secretary (PLD 1981 SC 176) and Federation of Pakistan and 2 others v. Abdul Razzaq (1983 SCMR 229) in support of his submission.

3. Learned counsel for the contesting respondents on the other hand

stated that the writ petition suffers from laches. The petitioner was compulsorily retired in 1979 but she filed the present petition in 1990. He however did not deny, the petitioner's having moved several applications for the redress of her grievance after the impugned order was passed against her. Learned counsel, however, maintained that it was imperative for the petitioner to have approached this Court within reasonable time after the passing of the impugned order. The next contention advanced by the learned counsel for the respondent was that the PCSIR was a statutory body, the employees whereof were governed by the relationship of master and servant. The petitioner is not a civil servant, she therefore cannot invoke the Constitutional jurisdiction of this Court. She could file a suit for damages in the event she considered that her compulsory retirement was illegal. Learned counsel, however, candidly affirmed that neither the copy of the inquiry report was provided to her, nor recommendations of the Authorised Officer were supplied to her to submit explanation for consideration of the competent authority.

4. I have considered the arguments advanced by learned counsel for the parties and have thoroughly perused the documents available on the file. It is true that the leave availed by the petitioner was later on regularised and allegations forming basis of the charge to that extent in the first charge-sheet were untenable.

I am of the view that there is hardly any need for going into the merit of the charge-sheet because the disposal of case can be made on facts established on record namely that she was not provided copy of the inquiry report to tender her explanation for consideration of the competent authority. The Authorised Officer himself lodged complaint against the petitioner as such, he was not competent to act as Authorised Officer, she moved application to the authority against the Authorised Officer, before she was charge-sheeted, therefore, her apprehension that he was biased against her was not ill-founded.

The Supreme Court in Syed Mir Muhammad's case and Abdul Razzaq's case referred hereinbefore, clearly held that by non-supply of the inquiry report to the accused officer to enable him to offer his explanation with regard to adverse findings, if any, recorded by the inquiry officer amounted to denial of providing him reasonable opportunity of defence. This petition, therefore, merits acceptance on these grounds alone.

As for the contention of the learned counsel for respondent, that petitioner's case is covered by the principle of master and servant and the writ petition is not competent, it is pointed out that the PCSIR had adopted the application of the Government Servants (Efficiency & Discipline) Rules, 1973 in the disciplinary matters of its employees any action taken in derogation or in violation thereof can be set aside in writ jurisdiction.

In the case of The Principal, Cadet College, Kohat and another v.

Muhammad Shoab Qureshi (PLD 1984 SC 170) and in case of Anwar Hussain v. Agricultural Development Bank of Pakistan and another (PLD 1984 SC 194) the Supreme Court has taken the view that even an employee of a corporation can maintain a writ petition if there has been a violation of any provision of law or of any statutory rules of service. This view was re-affirmed in Karachi Development Authority and another v. Wali Ahmed Khan and others (1991 SCMR 2434). The objection of the non-maintainability of the petition on the point of relationship of master and servant, therefore, cannot be pressed into service in the instant case. The petitioner's case was grossly prejudiced and the entire proceedings of the inquiry vitiated.

As regards the question of laches, suffice it to say, that the basic order passed and proceedings held being without jurisdiction, no period of limitation therefore would be reckoned against the petitioner. The order compulsorily retiring the petitioner being void no limitation would run in the matter. It is not denied by the learned counsel for the contesting respondent that the petitioner had been knocking at the door of every possible authority for the redress of her grievance after the passing of the impugned order, which amply shows that she had been vigilant all along.

For all the reasons highlighted above, I hold that the impugned order of compulsorily retiring the petitioner was unwarranted under the law and is hereby declared to be of no legal effect.

Before parting with this case, I may observe, with regret that since 1979, the petitioner has not been paid her dues by the respondent although she was entitled to consequential benefits even under the impugned order.

In the result, this petition is allowed, with no order as to costs.

A.A./K-56/L

Petition accepted.

1993 P L C (C.S.) 14

[Federal Service Tribunal]

Before Ch. Hasan Nawaz and Muhammad Ismail, Members

ZAKRIA KHAN BABAR

versus

GOVERNMENT OF PAKISTAN through Secretary,
Establishment Division, Islamabad and 8 others

Appeals Nos. 149 and 308(L) of 1988 and Appeal No. 182(L) of 1991, decided on 18th October, 1992.

(a) Service Tribunals Act (LXX of 1973)---

---S. 4---Constitution of Pakistan (1973), Art. 212(3)---Judgment of Supreme

Court in service matter---Civil servant affected by such judgment was not before Supreme Court as a party in respondent civil servant's appeal---Effect of the said judgment on the rights of civil servant not a party in that appeal as also before Service Tribunal---Any action taken or order made adversely affecting interests of civil servant not before the Court as a party would not be effective against him---Supreme Court judgment was thus, not binding against those civil servants who were not impleaded as respondents. [p. 24, 25] A & B

1987 SCMR 899 and 1988 SCMR 620 ref.

(b) Civil service---

---Appointment in Grade-17 with retrospective effect by an executive order---Validity---Respondent civil servant having been appointed in Grade-16, remained in that grade from date of his appointment viz. 27-8-1975 to date of his promotion on 20-7-1981---Status of Grade-17 could not legally be bestowed upon such civil servant with retrospective effect, even by competent Authority---Civil servant by no means could be legally made what he had never been. [p. 27] C

1990 SCMR 1216 and 1990 SCMR 1623 rel.

(c) Civil Servants Act (LXX of 1973)---

---S. 9(1)---Promotion to a higher post---Respondent civil servant who initially belonged to legal group could not be promoted in a different cadre viz. investigation group. [p. 28] D

(d) Civil service---

---Seniority list---Notification of specified date whereby respondent (civil servant) was shown senior to civil servant (appellant) suffered from illegality, was ab initio void and of no legal effect whatever for respondent belonging to a different cadre could not be included in the list belonging to cadre of different category to which civil servant (appellant) belonged. [p. 30] E

(e) Civil service---

---Limitation---Limitation would not run against a void order. [p. 31] F

(f) Service Tribunals Act (LXX of 1973)---

---S. 4---Appeal---Limitation---Respondent's initial appointment being in Grade-16, he could not be placed in Grade-17 with retrospective effect from the date of his initial appointment---Civil servant came to Service Tribunal after his departmental appeal against respondent's promotion with retrospective effect and placing his name (respondent's) in the seniority list proved abortive---Appeals were thus, within time---Notification whereby respondent was promoted with retrospective effect from the date of his initial appointment being void ab initio and of no legal effect was set aside---

instance of the present petitioners who were only informers and were not the sitting allottees of the Chak. In our view, the learned Judge in the High Court has examined the case of both the parties from all possible angles and has rightly and for good reasons declared the orders of the Settlement Authorities as without lawful authority and of no legal effect. The impugned judgment is also just and fair as we find that a direction has been issued to the Chief Settlement Commissioner also to settle the claim of the present petitioners as to their balance units on any other available land.

11. Upshot of the above discussion is that no case is made out by the petitioners for the grant of leave to appeal against the impugned judgment. Both the petitions are accordingly dismissed but we reiterate the observation/direction contained in the impugned judgment to settle the pending claim/units of the petitioners on some other available land.

A.A./Z-215/S

Leave refused

1996 S C M R 802

[Supreme Court of Pakistan]

Present: Ajmal Mian, Saleem Akhtar
and Mukhtar Ahmad Junejo, JJ

GHULAM MUHAMMAD KHAN---Appellant

versus

PRIME MINISTER OF PAKISTAN and others---Respondents

Civil Appeal No.261 of 1994, decided on 17th December, 1995.

(On appeal from the judgment dated 12-9-1993 of the Federal Service Tribunal, Islamabad, passed in Appeal No.23(K) of 1993).

(a) Government Servants (Efficiency and Discipline) Rules, 1973---

---Rr. 5 & 6---Constitution of Pakistan (1973), Art. 212(3)---Misconduct---Compulsory retirement---Penalty of compulsory retirement on ground of misconduct---Validity---Leave to appeal was granted to consider, whether Service Tribunal, after having found that some of the allegations as to irregularity in inquiry were correct and had gone un rebutted, was justified in dismissing civil servant's appeal on ground that no prejudice had been caused to him. [p. 804] A

SCMR

(b) Government Servants (Efficiency and Discipline) Rules, 1973---

---Rr. 5 & 6---Distinction between Rr. 5 & 6, Government Servants (Efficiency and Discipline) Rules, 1973, highlighted.

There is a marked distinction between Rule 5 and Rule 6 of the Rules, inasmuch as under the former Rule, a regular inquiry can be dispensed with, whereas the latter Rule envisages conducting of regular inquiry which would necessitate the examination of witnesses in support of the charges brought against the accused civil servant, his right to cross-examine such witnesses and his right to produce evidence in rebuttal. The question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, would depend on the nature of the alleged misconduct. If the nature of the alleged misconduct was such on which a finding of fact could not be recorded without examining the witnesses in support of the charge or charges, the regular inquiry could not be dispensed with. [p. 805] B

Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another 1993 SCMR 1440 and Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others PLD 1994 SC 222 rel.

(c) Government Servants (Efficiency and Discipline) Rules, 1973---

---Rr. 5 & 6---Constitution of Pakistan (1973), Art. 212---Misconduct---Charges of misconduct not admitted by civil servant---Effect---Nature of charges against civil servant were such on which no finding of fact could have been recorded by Inquiry Officer without recording evidence in support of charges which implied right of civil servant to cross-examine witnesses who might have been produced in support of those charges---Service Tribunal, after having found such material irregularity in conducting departmental inquiry, was not justified in concluding that no prejudice had been caused to civil servant by such irregularities---Civil servant was thrown out of service prematurely by imposing major penalty of compulsory retirement---Such penalty could not be deemed to be of the nature which had not prejudiced civil servant---Judgment of Service Tribunal was not sustainable and so also notification compulsorily retiring civil servant by way of imposing major penalty---Judgment of Service Tribunal was set aside and civil servant was re-instated in service with back benefits. [p. 806] C & E

(d) Government Servants (Efficiency and Discipline) Rules, 1973---

---Rr. 5 & 6---Misconduct---Civil servant's entitlement to proper inquiry---Once department had decided to opt R. 6, Government Servants (Efficiency and Discipline) Rules, 1973, and to hold proper inquiry, it could not have resorted to R. 5 of the Rules without any justifiable reason---Inquiry conducted against civil servant was thus, not proper and valid. [p. 806] D

SCMR

صاحب
نور اقبال لاہور
بنام
سکرٹری اے ایچو کینن وغیرہ
سروکار اے ایچو کینن وغیرہ
206/14

Azhar Ali Siddiqui, Advocate Supreme Court and M. Shabbir Ghaury,
Advocate-on-Record for Appellant.
Farooq H. Naik, Deputy Attorney-General alongwith A.A. Siddiqui,
Advocate-on-Record for Respondents Nos. 1 to 3.

Date of hearing: 17th December, 1995.

JUDGMENT

AJMAL MIAN, J.—This is an appeal with the leave of this Court against the judgment dated 12-9-1993 of the Federal Service Tribunal, Islamabad, hereinafter referred to as the Tribunal, passed in Appeal No.23(K) of 1993, filed by the appellant against the penalty of compulsory retirement through a notification dated 19-9-1992, dismissing the same. Leave to appeal was granted to consider the question, whether the Tribunal, after having found that some of the allegations as to irregularity in the inquiry were correct and had gone unrebutted, was justified in dismissing the appellant's appeal on the ground that no prejudice had been caused to him.

2. The brief facts are that the appellant joined service on 10-3-1954. He was promoted from time to time. At the relevant time i.e. in 1988, he was holding the post of Assistant Director (Passports), RPO, Saddar, Karachi, when he was charge-sheeted as follows:—

- (i) He issued Passports to 79 persons whose addresses given in the declaration forms were incomplete.
- (ii) The names of the parties in the declaration forms and identity cards were different.
- (iii) Signatures appended on declaration forms and identity cards were not similar, etc.
- (iv) Photographs in many cases affixed on the declaration forms, Identity Cards and Police Verification Certificates were different.
- (v) He issued many passports on the basis of the same Identity Cards.
- (vi) He signed a large number of passports without verifying that the documents on the basis of which these were being issued were deficient, false and full of discrepancies."

Mr. Fazle Raziq, the then Deputy Secretary, Ministry of Interior, was appointed as Inquiry Officer for holding a formal inquiry into the above charges. The Inquiry Officer in his report held that the charges were proved, as a result of which the penalty of compulsory retirement was imposed and the appellant was retired through notification dated 19-9-1992. The appellant filed a review

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petition to the Prime Minister on 18-10-1992. Since he had not received any reply within 90 days, he filed the above service appeal on 16-2-1993. The main grievance of the appellant before the Tribunal was, that he was not given fair opportunity to defend the above charges inasmuch as the inquiry proceedings were completed within about 45 minutes, references were made to the Director-General Registration outside the inquiry proceedings and the replies to the same were taken into consideration by the Inquiry Officer without showing the same to the appellant. The Tribunal in its judgment accepted the appellant's above contention as to the irregularity in the following words:—

"Some of these allegations are correct and have gone unrebutted by the respondent-department. However, we are inclined to ignore these irregularities as, in our view, these have caused no prejudice to the appellant."

3. However, the appeal was dismissed on the ground that overall the appellant was responsible being the head. It was also ordered by the Tribunal that the action should also be taken against the Examiner and Superintendent who were also responsible for scrutiny of the above documents. Thereupon, the appellant filed a petition for leave to appeal, which was granted to consider the above question.

4. In support of the above appeal, Mr. Azhar Ali Siddiqui, learned Advocate Supreme Court for the appellant, has vehemently contended that though respondents Nos. 1 to 3 had decided to hold inquiry against the appellant but no evidence was recorded and the conclusion that the appellant was guilty of the above charges was arrived at on the basis of inquiries made by the Inquiry Officer from three persons behind the back of the appellant. He, therefore, contended that the aforesaid impugned order of compulsory retirement was not sustainable in law. To reinforce the above submission, he has referred to the case of Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another (1993 SCMR 1440), in which it has been held that the inquiry proceedings conducted by way of questionnaire without examination of witnesses in support of the charges are not consistent with the requirement of Rule 6 of the Government Servants (Efficiency and Discipline) Rules, 1973, hereinafter referred to as the Rules.

Mr. Farooq H. Naik, learned Deputy Attorney-General, who has appeared for the official respondent has candidly submitted that factually no regular inquiry was conducted as the finding of the Inquiry Officer is founded on the documentary evidence.

5. It has been consistently held by this Court that there is a marked distinction between Rule 5 and Rule 6 of the Rules, inasmuch as under the

SCMR

former Rule, a regular inquiry can be dispensed with, whereas the latter Rule envisages conducting of regular inquiry which will necessitate the examination of witnesses in support of the charges brought against the accused civil servant, his right to cross-examine such witnesses and his right to produce evidence in rebuttal. The question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the alleged misconduct is such on which a finding of fact could not be recorded without examining the witnesses in support of the charge or charges, the regular inquiry cannot be dispensed with. Reference may be made in this behalf to the case of Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others (PLD 1994 SC 222).

6. In the present case we have reproduced hereinabove in para.-2 the charges which were levelled against the appellant. Admittedly the appellant had not admitted the above charges but denied his participation. The nature of the charges was such on which no finding of fact could have been recorded by the Inquiry Officer without recording evidence in support of the charges which implies the right of the appellant to cross-examine the witnesses who might have been produced in support of the charges. This was not done. The Tribunal, after having found the above material irregularity in conducting departmental inquiry, was not justified in concluding that no prejudice had been caused to the appellant by the above irregularities. The appellant was thrown out of service prematurely by imposing major penalty of compulsory retirement. This penalty cannot be said to be of the nature which has not prejudiced the appellant.

7. Additionally, once the department had decided to opt Rule 6 of the Rules and to hold a proper inquiry by appointing an Inquiry Officer, it could not have resorted to Rule 5 of the Rules without any justifiable reason. Factually it is not the case of the respondent-department that it resorted to Rule 5.

8. The upshot of the above discussion is that the judgment of the Tribunal is not sustainable and so also the aforesaid Notification dated 19-9-1992 compulsorily retiring the appellant by way of imposing major penalty. The same are set aside and the above appeal is allowed. The appellant is reinstated in service with back benefits subject to adjustment of monetary benefits received by him from the Government for the period from the date of above notification till the date he joins the service or till the date he attains the age of superannuation, whichever is earlier. However, there will be no order as to costs.

A.A./C-549/S

Appeal accepted

Muhammad Zubair v. State
(Muhammad Ilyas, J)
1996 S C M R 807

[Supreme Court of Pakistan]

Present: Saad Saood Jan and Muhammad Ilyas, JJ

MUHAMMAD ZUBAIR alias NANNA and another---Petitioners

versus

THE STATE---Respondent

Criminal Petition for Leave to Appeal No. 465-L of 1995, decided on 9th January, 1996.

(On appeal from the judgment of the Lahore High Court dated 16-10-1995 passed in CrI. Appeal No. 341/1994).

Penal Code (XLV of 1860)---

S. 307/34---Constitution of Pakistan (1973), Art.185(3)---Leave to appeal was granted to accused to examine as to which of two parties was the aggressor and whether the aggressed party had exceeded its right of self-defence and quantum of sentence awarded to them in the circumstances was appropriate and also to examine whether the ocular evidence needed corroboration and the same was available to sustain the conviction. [p. 808] A

M.A. Zafar, Advocate Supreme Court instructed by Ch. Mehdi Khan Mehtab, Advocate-on-Record for Petitioners.

Date of hearing: 9th January, 1996.

ORDER

MUHAMMAD ILYAS, J.---Petitioners, namely, Muhammad Zubair alias Nanna and Muhammad Shafique were convicted by the Special Court No.III, Suppression of Terrorist Activities, Lahore Division, Lahore, under section 307 read with section 34 of the Pakistan Penal Code and sentenced to different terms of imprisonment. They were also directed to pay various amounts of fine.

2. It is alleged that the petitioners made a murderous assault on the complainant, Ahmad Saeed Babar in furtherance of their common intention and the first petitioner caused injuries to him with a Kalashnikov. Petitioners went in appeal before the Lahore High Court to assail the order of their conviction, etc., but the same was dismissed by a Division Bench thereof. Hence this petition for leave to appeal against the judgment of the learned Division Bench.

3. It was contended by learned counsel for the petitioners that the conviction of the petitioners was mainly based on the ocular evidence furnished

JUDGMENT

ABDUL HAMEED DOGAR, J.--- Petitioners seek leave to appeal against the order dated 24-9-2003 passed by a learned Judge in Chambers of High Court of Sindh, Karachi, whereby Revision Application No. 218 of 2003 filed by petitioners was dismissed in limine.

2. The facts in brief giving rise to the filing of instant petition are that respondent Sharif Ahmed Sub-Inspector of Sindh Police was sent on deputation to Federal Investigating Agency till 20-9-1979 from where he was, repatriated and retired as Deputy Superintendent of Police on 5-2-1983. Since he did not succeed in getting his G.P. Fund from petitioner No.1 Accountant-General of Sindh for about ten years, as such, he invoked the constitutional jurisdiction of the High Court of Sindh by filing Constitution Petition No. D-2841 of 1993 which was allowed and petitioner No. 1 was directed to pay G.P. Fund within thirty days which was accordingly paid.

3. Respondent however, feeling still not satisfied, filed suit for damages/compensation to the tune of Rs.3,00,000 on 1-12-1994 against petitioners which was decreed vide judgment dated 13-12-2000 by learned 3rd Senior Civil Judge, Karachi South. Petitioners preferred appeal against the said judgment which was dismissed as time-barred vide order dated 6-8-2002 by 3rd Additional District Judge, Karachi (South). The said order was challenged in revision application before the learned High Court of Sindh which too was dismissed vide the impugned order.

4. We have heard Mr. Akhlaq Ahmed Siddiqui, learned Advocate Supreme Court for the petitioners and have gone through the record and proceedings of the case in minute particulars.

5. Learned counsel for the petitioners mainly contended that respondent in fact had received the entire claim of his G.P. fund, as such, was not justified to file suit for compensation. According to him, the learned Appellate Court, as well as the learned Revisional Court, had erred in appreciating the explanation furnished for condoning the delay of ten months in filing of appeal but non-suited petitioners only on technical ground.

6. The appeal filed by the petitioners on the face of it was barred by ten months and was thus rightly dismissed on that ground. Finding no justifiable reason, the learned High Court also rightly maintained the decision of the Appellate Court.

7. Thus, there being concurrent findings recorded by the two

Courts below on the above aspect, we do not find any justification to interfere with the same.

8. Resultantly, the petition being devoid of force is dismissed and leave to appeal refused.

Leave refused.

1/A-15/SC

2011 P L C (C.S.) 1111

[KPK Service Tribunal]

Before Qalandar Ali Khan, Chairman and Noor Ali Khan, Member

GUL SHEHZAD

versus

CHAIRMAN, BOARD OF GOVERNOR, PESHAWAR PUBLIC SCHOOL/COLLEGE, and 2 others

Appeals Nos.541, 557, 558 and 608 of 2009, decided on of 28th April, 2010.

(a) North-West Frontier Province Removal from Service (Special Powers) Ordinance (V of 2000)---

---Ss. 3, 5, 10 & 11---North-West Frontier Province Service Tribunals Act (1 of 1974), S.4---Imposition of major penalty of compulsory retirement from service---Said penalty was imposed after serving with charge-sheet and holding inquiry against employees on certain allegations---Appellants had not only questioned the legality of the departmental proceedings on the basis of mala fide on the part of respondents, but had also assailed the inquiry proceedings for being in contravention of relevant law/rules---Inquiry proceedings were conducted in the case in clear violation of mandatory provisions of North-West Frontier Province Removal from Service (Special Powers) Ordinance, 2000 as neither statements of the witnesses were recorded in a proper way nor the appellants were allowed to cross-examine the witnesses against them---Nothing was brought on record by the Inquiry Officer against the appellants---Final show-cause notice contained some more allegation which were not part of the charge-sheet and statement of allegations, which also had shown mala fide on the part of the authorities---Appellants were never allowed personal hearing nor they were allowed to produce defence in support of their case---

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Impugned order was set aside and appellants were reinstated in service with all consequential benefits.

[pp. 1113, 1116, 1117, 1118] A, D, E, F & G

2000 PLC (C.S.) 857; 1997 PLC (C.S.) 396 1999 PLC (C.S.) 1332 and 2007 PLC (C.S.) 222 ref.

(b) North-West Frontier Province Civil Servants Act (XVIII of 1973)---

---S. 2(d)---North-West Frontier Province Removal from Service (Special Powers) Ordinance (V of 2000), Ss. 3, 5, 10 & 11---North-West Frontier Province Service Tribunals Act (I of 1974), S.4---Imposition of major penalty of compulsory retirement from service---Jurisdiction of Service Tribunal---Scope---Authorities in their written reply raised plea that appellants being not civil servants within the meaning of clause (b) of subsection (1) of S.2 of North-West Frontier Province Civil Servants Act, 1973, they could not file appeal before Service Tribunals Act, 1974---Validity---Employer School and College, was a statutory body as same had been established by the Provincial Government under the North-West Frontier Province Government Education and Training Institution Ordinance, 1971---Application of North-West Frontier Province Removal from Service (Special Powers) Ordinance, 2000 was extended to a person in "corporation" and S.10 of the Ordinance had provided for filing of appeal by any such person aggrieved by any final order under the Ordinance and S.11 of the Ordinance had over-riding effect---Appellants, therefore, had no other choice but to lodge appeals in the Service Tribunal under S.4 of North-West Frontier Province Service Tribunals Act, 1974, read with S.10 of the Ordinance---Authorities, after proceedings against the appellants under North-West Frontier Province Removal from Service (Special Powers) Ordinance, 2000, could not turn around and say that appellants could not invoke the jurisdiction of Service Tribunal as provided for in S.10 of the said Ordinance. [pp. 1114, 1115] B & C

PLD 2006 SC 602; 2007 PLC (C.S.) 1046; 2009 PLC (C.S.) 817; 2005 SCMR 1603 and Professor Dr. Nizakat Begum, Ayub Medical College, Abbottabad v. Government of N.-W.F.P. through Secretary Health and 2 others 2005 PLC (S.C) 1247 ref.

Ijaz Anwar for Appellant.

Sher Afgan Khattak, Addl. A.-G. and Muhammad Isa Khan for Respondents.

JUDGMENT

QALANDAR ALI KHAN (CHAIRMAN).--- This single order is

also directed to dispose of Appeal No.557 of 2009 by Muhammad Salim, Appeal No. 558 of 2009 by Muhammad Khan and Appeal No.608 of 2009 by Inam-ur-Rehman, because in all the four appeals common questions of law and facts are involved.

2. The appellant, Gul Shehzad, and the afore-mentioned appellants were Master of Pak. Studies (BPS-17), Master of Urdu (BPS-17), Master of Maths. (BPS-18) and Senior Master of Maths. (BPS-19), respectively. in the Peshawar Public School and College, established by the Provincial Government under the N.-W.F.P. Government Education and Training Institutions Ordinance, 1971 (N.-W.F.P. Ordinance III of 1971). According to their appeals, the appellants had some reservations regarding management of the affairs of the School by the Principal (respondent No.3), including promotion of the Bursar, namely, Abdul Malik and upgradation of his post to BPS-18, which led to filing of complaint and lodging of Writ Petition, which was still pending in the High Court. Another irritant in the relations between the appellants and respondent No.3 was further extension in service for three years of the latter after his retirement from service, which was also challenged in the High Court, and the Writ Petition, challenging appointment of the Principal on contract basis, was also still pending in the High Court. The appellants alleged that their concern for the Institution, reflected in their aforesaid steps in accordance with law, infuriated the respondent, who, in sheer desperation, served them with show-cause notice on 13-2-2007, which was duly replied. However, no action was taken on the show-cause notice. Anyhow, in pursuance of decision in the meeting of Board of Governors, the Provincial Inspection Team conducted an inquiry and recommended initiation of departmental proceedings against the appellants. As a result, the appellants were served with charge-sheet and statement of allegations, to which the appellants responded by refuting the allegations. The Authority appointed Mr. Ghulam Jilani, Member, Governor Inspection Team, as Inquiry Officer, who conducted inquiry, as a result of which, the appellants were served with final show-cause notices, to which the appellants also submitted replies: but the Authority, while agreeing with the recommendation of the Inquiry Officer, imposed major penalty of compulsory retirement from service on the appellants vide impugned Notification, dated 31-12-2008. The appellants submitted their departmental appeals, but after getting no response within the statutory period, lodged these appeals, inter alia, on the grounds that the charges against them were false and fabricated and the departmental proceedings were result of personal ill-will and mala fide of the respondents; that the inquiry proceedings were conducted in clear violation of the mandatory provisions of the N.-W.F.P. Removal from Service (Special Powers) Ordinance, 2000, as neither statements of the witnesses were recorded in a proper way nor the appellants were allowed

to cross-examine the witnesses against them; that nothing was brought on record by the Inquiry Officer against the appellants; that the final show-cause notice contained some more allegations which were not part of the charge-sheet and statement of allegations, which also showed mala fide on the part of the respondents; and that the appellants were never allowed personal hearing nor they were allowed to produce defence in support of their case.

3. The respondents vehemently resisted the appeals, and in their written reply, they questioned the status of the appellants as civil servants, besides defending the inquiry and proceedings against the appellants. The respondents alleged that the inquiry proceedings were conducted in accordance with law/rules and ample opportunity was provided to the appellants for cross-examining the witnesses and also recording their evidence in rebuttal. The respondents further alleged that the appellants were also provided opportunity of personal hearing, whereafter, verdict was given by the Authority. The respondents maintained that the appellants were confronted with the relevant documents, and the penalty was imposed after proper and legal proceedings.

4. The appellants also filed replications/rejoinders to the written reply/comments of the respondents, wherein, they reiterated their case and defended their act of lodging appeals in the Service Tribunal in the light of legal provisions as well as pronouncements of the superior courts.

5. Arguments of the learned counsel for the appellants, learned Additional Advocate-General and counsel for respondents heard and record perused.

6. Before entering into discussion on merits of the appeals, it seems appropriate to deal with the issue pertaining to jurisdiction of the Tribunal, which is, indeed, the preliminary objection raised by the respondents and, probably, the most forceful objection during the course of arguments on behalf of the respondents. In their written reply, the respondents raised the plea that the appellants were not civil servants within the meaning of clause (b) of subsection (1) of section 2 of the N.-W.F.P. Civil Servants Act, 1973, hence they could not file appeals under section 4 of the N.-W.F.P. Service Tribunals Act, 1974.

7. The Peshawar Public School and College is a Statutory Body, as the same has been established by the Provincial Government under the N.-W.F.P. Government Education and Training Institutions Ordinance, 1971 (N.-W.F.P. Ordinance III of 1971). The application of North-West

Frontier Province Removal from Service (Special Powers) Ordinance, 2000 (hereinafter referred as the Ordinance) also extends to a person in Corporation who has been defined in section 2(d) as a person in the employment of a corporation, corporate body authority, statutory body or other organization or institutions set up, established, owned, managed or controlled by Government (Government of North-West Frontier Province) by or under any law for the time being in force, or a body or organization in which Government has a controlling share or interest and includes the Chairman and the Managing Director, and the holder of any other office therein. Section 10 of the Ordinance provides for filing of appeal by any person aggrieved by any final order under the Ordinance. Moreover, in section 11 of the Ordinance over-riding effect has been given to the Ordinance. In such a situation, when the appellants were proceeded against under the Ordinance, they had no other choice but to lodge appeals in the Tribunal under section 4 of the N.-W.F.P. Service Tribunals Act, 1974 read with section 10 of the Ordinance, 2000.

8. The respondents, however, questioned the jurisdiction of the Tribunal on the ground that conditions of service of the appellants were not regulated by Statute and were, rather, regulated by internal rules/regulations. Therefore, according to learned counsel for the respondents, the Service Tribunal had no jurisdiction in the light of Muhammad Mubeen-us-Salam and others v. Federation of Pakistan's case reported as PLD 2006 SC 602 and 2007 PLC (C.S.) 1046 (Karachi High Court). It may be observed here that in the cases mentioned above, section 2-A of the Service Tribunals Act, 1973 was involved, which was partially declared invalid; but it is important to note here that even the same High Court in the case of Syed Aijaz Ahmad Shah v. Federation of Pakistan and others, reported as 2009 PLC (C.S.) 817 (Karachi High Court), held the view that remedy of appeal to the Service Tribunal was available to an aggrieved person under section 10 of the Ordinance, 2000. It may also be added here that this judgment of the Karachi High Court is based on the judgment of the august Supreme Court of Pakistan in the case titled 'Anwar Pervez v. Chairman, Board of Intermediate and Secondary Education, Abbotabad and others reported as 2005 SCMR 1603 (Supreme Court of Pakistan), which was, obviously, in the context of N.-W.F.P. Civil Servants Act, 1973 and N.-W.F.P. Removal from Service (Special Powers) Ordinance, 2000. Likewise, in the case of Professor Dr. Nizakat Begum, Ayub Medical College, Abbottabad v. Government of N.-W.F.P. through Secretary Health and 2 others reported as 2005 PLC (S.C) 1247 (Supreme Court of Pakistan); the august Supreme Court of Pakistan held the same view by declaring employee of Ayub Medical College and Ayub Teaching Hospital, a Statutory Body, a "person" within the meaning of N.-W.F.P. Removal

from Service (Special Powers) Ordinance, 2000, and, as such, entitled a remedy under section 10 of the Ordinance before the Service Tribunal of the Province. This Tribunal has also held the same view in the appeal of Mst. Gul Rana v. Frontier Education Foundation through its Manager, Director etc. (Appeal No.768 of 2008). In any case, after proceeding against the appellants under the Ordinance, the respondents cannot turn around and say that the appellants could not invoke the jurisdiction of Service Tribunal, though provided for in section 10 of the Ordinance.

9. The appellants not only questioned the legality of the departmental proceedings on the basis of mala fide on the part of respondents, particularly, Principal, Peshawar Public School/College, but also assailed the inquiry proceedings for being in contravention of the relevant law /rules.

10. As regards mala fide, the appellants pointed out that almost all the charges against them related to alleged vilification campaign against the Principal, who, according to the appellants, remained instrumental in the departmental proceedings against them. In support of their this contention, the appellants have placed on record the first show-cause notice dated 13-2-2007 on similar charges, issued to them by the Principal of the School/College, who, in fact was a complainant against them, but, according to appellants, issued the show-cause notice in sheer desperation without realizing, that he could not do so. The appellants have also placed on file their written reply to this letter/show-cause notice, and alleged that after receipt of the reply, no action was taken on the show-cause notice because the Principal, by then, realized his limitation. The appellants further alleged that the Principal was so desperate in his efforts to get them removed from the College and silence the voices being raised against irregularities and mismanagement in the College that he did not stop there, and prevailed on the Board of Governors, the constitution of which was also defective, and managed to get orders of departmental proceedings against them. The appellants contended that the charge-sheet and statement of allegations also contained exactly the same allegations which were levelled against them by the Principal in his show-cause notice, and clearly reflected the personal ill-will and mala fide of the Principal against them. The appellants further referred to the inquiry report, which, according to them, is loaded with praise of the Principal on the one hand, and condemnations of the appellants on the other, without any proof in support of allegations against them. The learned counsel for the appellants also pointed out that though the so-called complaint, which formed basis for departmental proceedings against the appellants, was also jointly moved by several other staff members, but they were spar-

and the appellants were singled out because they refused to succumb to the pressure tactics of the Principal.

11. Besides pointing out the above instances of mala fide, on the part of the respondents, especially the Principal, the appellant also laid stress on the point that the Inquiry Officer also conducted inquiry proceedings in a manner not admissible under the law/rules, as he not only travelled beyond the scope of inquiry, as laid down in the charge-sheet and statement of allegations, but also converted departmental proceedings against the appellants into fact-finding inquiry, and discussed in detail and recorded finding on matters not relevant to the departmental proceedings. The inquiry report would, inter alia, show non-recording of statements of the witnesses in the presence of the appellants not providing them the opportunity of cross-examination, not confronting the appellants with documents purportedly either scribed by them or written on their direction, and, last but not the least, not bringing any evidence on record relating to running of private hostel by a couple of appellants or other allegations of holding meetings, indulging in character assassination of the Principal and instigating the students to the detriment of the Institution. It is clearly borne out of the inquiry report that the procedure for inquiry was not adopted, as, instead of recording statements, the Inquiry Officer conducted interviews of the appellants, witnesses against the appellants and Principal, the complainant, in privacy, and also received documents against the appellants, produced by the Principal, in the absence of the appellants, without providing them the opportunity of rebuttal and defence. To say the least, the inquiry proceedings were not conducted according to requirements of law/rules, and if authorities are needed, one can readily refer to 2000 PLC (C.S.) 857 (Federal Service Tribunal), 1997 PLC (C.S.) 396 (Peshawar High Court) and 1999 PLC (C.S.) 1332 (Federal Service Tribunal). It is also clear from the record that the 'Authority' did not provide the opportunity of personal hearing to the appellants, and a letter for personal hearing was dispatched to the appellants after more than three months of the order with regard to their compulsory retirement from service and that, too, in connection with their departmental appeals. Moreover, the final show-cause notice also contained certain other allegations which were not part of the charge-sheet and statement of allegations. In order to determine the validity of the inquiry report, it would suffice to refer to the recommendations, wherein, besides suggesting imposition of major penalty on the appellants, the Inquiry Officer has vehemently pleaded the case of the Principal for extension in his service upto his attaining the age of 65 years and also the case of Bursar, Mr. Abdul Malik, for the grant of upgradation to him in BPS-18. All the above facts would go a long way to render the departmental

proceedings against the appellants nullity in the eyes of law, and liable to be set aside.

12. While finding it difficult to defend the defective departmental proceedings, the learned counsel for the respondents referred to certain parts of the inquiry report and some documents made part of the inquiry report, and argued that the Tribunal may take notice of the conduct of the appellants, involvement of some of them even in immoral activities, and the letters, which they never disowned, whereby, they tarnished the image of the Principal and the Institution in the eyes of the staff of the School/College, students of the Institution and also the general public by indulging in activities not commensurate with their status, unbecoming on the part of the senior staff members, and clearly detrimental to an educational institution. To meet this contention of the learned counsel for the respondents, the learned counsel for the appellants pointed out that the complaints/applications against the Principal, if any, were not without reason, as irregularities/mismanagement in the College were destroying the educational environment of the Institution, and that moving such complaints/applications to the higher authorities and bringing to their notice problems being faced by the Institution would not amount to misconduct on the part of the appellants in view of 2007 PLC (C.S.) 222. The learned counsel for the appellants maintained that the complaints/applications were found based on facts in the inquiry conducted by the Government; but the Principal was again able to prevail on the authorities who just administered 'warning' to the Principal despite proof of serious irregularities/illegalities against him. Needless to say that there would possibly be nothing to prevent the department/authorities to proceed against an employee whenever it feels that such an employee has indulged in misconduct and corruption. However, it may not be out of place to point out here that after leaving of the College by the Principal, most of the charges against the appellants have also become redundant. Nevertheless, the authorities are well within their right to proceed against the appellants or any other employee if there are reasons to believe that his/her conduct is not conducive for educational environment of the School/College, while keeping sanctity of the Institution above all other considerations.

13. With the above observations, the appeals are accepted, and, while, setting aside the impugned orders of their compulsory retirement from service, the appellants are reinstated in service with all consequential benefits. No order as to costs.

H.B.T./2/KPKST

Appeal accepted.

Criminal Original Petition No.39 of 2008, decided on 14th October, 2008.

(For implementation of the Court order, dated 10-11-2008 passed in Criminal Original Petition No.69 of 2007)

Constitution of Pakistan---

---Art. 204---Contempt of Court Act (LXIV of 1976), Ss.3/4---
Contempt petition---Supreme Court had directed the Secretary, Establishment Division, to consider the promotion case of petitioner in the regular meeting scheduled to be held in February, 2008---In view of the said direction of Supreme Court case of petitioner was placed in the meeting of the Central Selection Board held on 11-2-2008 and was superseded as he had failed to meet the required aggregate threshold of 70% marks---Case of petitioner was again placed in the meeting held on 17-7-2008 and was deferred on the ground that he had not yet earned PER for one full year after his supersession on 11-2-2008---Contention was that since petitioner was posted as OSD, therefore, PER was not required under Para.2.87 of Guide to Performance Evaluation Report---Central Selection Board, in circumstances, was directed to consider the case of petitioner in its meeting going to be held in November, 2008---Contempt petition was disposed of accordingly. [p. 1120] A & B

Raja Muhammad Ibrahim Satti, Senior Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Agha Tariq Mahmood Khan, D.A.-G., Ch. Akhtar Ali, Advocate-on-Record and Zakauallah, S.O., Estb. Div. for Respondents.

ORDER

ABDUL HAMEED DOGAR, C.J.--- It is, inter alia, contended by Raja Muhammad Ibrahim Satti, learned Senior Advocate Supreme Court that it was observed by the learned Federal Service Tribunal in the

also confers the power of allotment on the Chief Executive. Under sub-rule (1) of rule 6-A allotment of Government residences has to be made on the principle of first come first served which means that the first in time will be the first to get allotment. On the contrary sub-rule (3) lays down that the Chief Executive may order the allotment of a Government residence "at any time". This provision supersedes the provisions in sub-rule (1) that one who is the first in time will be the first to get allotment. These two provisions clearly have overriding effect. This is of course subject to the principle already laid down that the order must be based on some reasons which show that it is equitable and just to exercise this power. There is no other provision of the Accommodation Rules which is inconsistent with sub-rule (3). It is conspicuous that the word "any", which has superlatively overriding effect has neither been prefixed before the word "house" nor before the expression 'Government servant'. We reach the conclusion that sub-rule (3) cannot override any other provision of the Accommodation Rules. All other provisions stand protected from the provisions of sub-rule (3). Some of the conclusions that follow are that a Government servant to whom a Government residence is being allotted out of turn by the Chief Executive must be Government servant whose name appears in the waiting list prepared by the Estate Office, and that a house allotted under the special powers of the Chief Executive has to be of the category to which the concerned Government servant is entitled. Rule 22 also remains intact with the result that a Government servant who owns a house at the place of his posting shall not be entitled to Government accommodation except in the cases contemplated by rule 22 itself and as well as by rule 23.

21. Before parting with the case we may point out that it has pained us to learn that the system of allotment of accommodation to Government servants is in a complete mess. We have already noticed that the Allotment Committee is not allowed to function at all and houses are being allotted by the Secretary Service without any authority. We may also point out that the Estate Officer and the Estate Office also appear to be non-functional. A perusal of the waiting list furnished to us also shows that it has been prepared in total disregard of rule 7, which lays down that the Estate office shall maintain a separate list of Government servants for each class of accommodation. But the list which has been furnished to us, apart from the fact that it has been prepared by the Services Department and not by the Estate Office, has not been prepared in accordance with the basic pay scales of the officers on the waiting list. We desire that the matter of allotment of Government accommodation must be stream-lined and that too within a reasonable time. The Allotment Committee and Estate Office should be made functional in accordance with the Accommodation Rules Applications must be filed with the Estate Office which alone should prepare the priority list. All allotments must be made by the Allotment Committee in its regularly convened meetings. The Committee should also review the existing

allotments step by step and bring them in conformity with the Accommodation Rules, where necessary. It is our earnest desire that such disputes should not come to the Courts of law in future. Therefore, a copy of this order may be sent to the Chief Secretary by name so that he may take necessary action in the matter under his own supervision.

As an upshot of the foregoing conclusion the appeal is partly accepted to the extent that the order of allotment in favour of respondent No.3 is declared to have been passed without lawful authority and of no legal effect. The other part of the relief claimed by the appellant, namely, for issuing a direction for formal orders of allotment in his favour is rejected. Parties will bear their respective costs.

M.B.A./178/SC(AJ&K)

Appeal partly accepted.

1997 P L C (C.S.) 817

[Supreme Court of Pakistan]

Present: Ajmal Mian, Actg. C.J., Irshad Hasan Khan
and Nasir Aslam Zahid, JJ

BASHARAT ALI

versus

DIRECTOR, EXCISE AND TAXATION, LAHORE and another
Civil Appeal No.69 of 1995, decided on 5th June, 1997.

(On appeal from the judgment dated 31-12-1990 of the Punjab Service Tribunal, Lahore, passed in Appeal No.313/913 of 1988).

(a) Punjab Civil Servants (Efficiency and Discipline) Rules, 1975---

---R. 6(3)---Constitution of Pakistan (1973), Art. 212(3)---Misconduct--- Allegation of temporary embezzlement---Regular enquiry---Leave to appeal was granted to consider the question, whether the department was justified on the basis of the material available on record to dispense with regular enquiry. [p. 820] A

(b) Civil service---

---Misconduct---Temporary embezzlement---Regular enquiry---Right of civil servant to be heard in person---Principles---If the allegations against the accused civil servant/employee are of serious nature and if he denies the same, a regular enquiry cannot be dispensed with---Initial burden in such a case is on the department to prove the charge, which cannot be done without

لوہیہ مقابلی
مقامی لوہیہ مقابلی
(ایبداً منقطع)

producing evidence---Technical lapses on the part of an Enquiry Officer while conducting the disciplinary proceedings if have not caused any material prejudice to the accused civil servant/employee, same will not vitiate such proceedings or the order passed in consequence thereof---Where the civil servant had denied the factum of having embezzled procedure adopted in holding the enquiry by the Department on the basis of material available on record to dispense with regular enquiry, Supreme Court set aside the judgment of Service Tribunal as well as order of the Department with full back benefits subject to the right of the Department to ascertain, as to whether during the period commencing from the date of dismissal from service till his re-instatement the civil servant was engaged in any gainful employment---Essentials and procedural requirements in a departmental enquiry dilated upon.

The question, as to whether a regular inquiry is to be held in a case of misconduct against an accused civil servant/employee or not, will depend on the facts of each case. While considering the above question Court should keep in mind the fact that the concept that no person should be condemned unheard (i.e. audi alteram partem) has acquired new dimensions with the passage of time. Nowadays the Courts apply the above cardinal principle of jurisprudence more liberally even to the cases in which there is no statutory requirement of personal hearing. Furthermore, the right of personal hearing does not mean simpliciter hearing, but it should be fair. What is a fair hearing, it will depend on the facts of each case. There cannot be any general criterion for universal application.

If the allegations against the accused civil servant/employee are of serious nature and if he denies the same, a regular inquiry cannot be dispensed with. In such a case, the initial burden is on the department to prove the charge, which cannot be done without producing evidence. If the witnesses are examined in support of the charge by the department before the Inquiry Officer, the accused civil servant/employee has the right to be present at the time of examining of such witnesses and has also the right to cross-examine them to demonstrate that they are not telling the truth. He has further right to produce evidence in rebuttal. The department has the right to cross-examine the accused civil servant/employee if he makes a statement in defence and to cross-examine other witnesses who may appear on his behalf. However, a departmental disciplinary proceeding cannot be equated with a legal proceeding in a Court of law. The technicalities, which are the hallmark of the latter, cannot be pressed into service in judging the legality of the former proceedings. There may be some technical lapses on the part of an Enquiry Officer while conducting the disciplinary proceedings but if such lapses have not caused any material prejudice to the accused civil servant/employee, the same will not vitiate such proceedings or the order passed in consequence thereof. [p. 825] B

In the present case, all along the civil servant had denied the factum of having embezzled. In this view of the matter, the procedure adopted in holding the enquiry by the department on the basis of material available on record and dispensing with regular enquiry was not warranted by law and was contrary to the law. Appeal was allowed by the Supreme Court and judgment of the Tribunal as well as impugned order of the department was set aside and ordered the reinstatement of the civil servant with full back benefits subject to the right of the department to ascertain, as to whether during the period commencing from the date of dismissal from service till his reinstatement, he was engaged in any gainful employment. [p. 826] C

Alamgir v. Divisional Forest Officer, Multan and others 1993 SCMR 603; Deputy Inspector-General of Police, Lahore and others v. Anis-ur-Rehman Khan PLD 1985 SC 134; Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another 1993 SCMR 1440; Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others PLD 1994 SC 222 and Ghulam Muhammad Khan v. Prime Minister of Pakistan and others 1996 PLC (C.S.) 868 ref.

(c) Natural justice, principles of---

---Right of personal hearing---New trends in the concept of application of principles of natural justice with special emphasis on right of personal hearing highlighted. [p. 825] B

Hamid Khan, Advocate Supreme Court for Appellant.

Ehsan Sabri, Assistant Advocate-General, Punjab for Respondents.

Date of hearing: 5th June, 1997.

JUDGMENT

AJMAL MIAN, ACTG. CJ.---This is an appeal with the leave of this Court against the judgment dated 31-12-1990 passed by the Punjab Service Tribunal, Lahore, hereinafter referred to as the Tribunal, in Appeal No.313/913 of 1988, filed by the appellant challenging his dismissal from service in the Excise and Taxation Department on the ground of misconduct arising out of temporary embezzlement of the amount of Rs.9,990 allegedly handed over to him for depositing in the Government Treasury by one Shahid Mahboob Malik, allowing the same partly by substituting the order of dismissal by removal from service.

2. The brief facts are that the appellant was serving as a Junior Clerk in the Excise and Taxation Department, Faridkot Road office, Lahore. The appellant was issued a show-cause notice dated 9-6-1987, in which it was alleged that he received Rs.9,990 from aforesaid Shahid Mahboob Malik for depositing them in Government Treasury but misappropriated the same and

produced a forged receipt. It was further alleged that upon discovery of the aforesaid forgery, the appellant arranged the said amount and deposited the same in the Government Treasury. The aforementioned show-cause notice was contested by the appellant inasmuch as he filed a reply dated 24-6-1987. However, the department, without holding any regular enquiry and adopting a summary procedure, dismissed the appellant from service. Since he failed to get any redress from the department, he filed the aforesaid appeal before the Tribunal, which was disposed of in the above terms.

3. The appellant, being aggrieved by the aforesaid judgment of the Tribunal, filed Civil Petition for Leave to Appeal No.563/L of 1991. It may be observed that in the impugned judgment it was stated that the appellant's counsel had conceded the factum of temporary embezzlement of the above amount before the Tribunal. Alongwith the aforesaid petition, an affidavit of the advocate concerned was filed, averring therein that he had not in fact conceded the above fact. This Court, instead of hearing the aforementioned petition for leave to appeal, referred the matter to the Tribunal by an order dated 12-2-1992 with the direction to the Tribunal to clarify the above controversy. In response to the above order, the Tribunal submitted its order dated 21-2-1994 to this Court (at pages 100 and 101 of the paper book) inter alia stating therein as under:--

"2. While arguing before this Tribunal learned counsel for the appellant explained that what he had said was only an argument, in the alternative that if the Tribunal came to the conclusion that there was any embezzlement, it was temporary and that the penalty of dismissal from service was too harsh.

- (3) The learned D.A. in reply did not raise any objections to the above interpretation of the order dated 31-12-1990.
- (4) On what has been stated before the Tribunal today, it becomes clear that the learned counsel for the appellant made no concession. However, it was his argument in the alternative that if we believed that there was any embezzlement, the same was temporary and that it did not call for the most harsh penalty of dismissal from service.
- (5) The above finding has reported to the Supreme Court as per their direction."

4. Leave to appeal was granted to consider the question, whether in the present case the department was justified on the basis of the material available on record to dispense with regular enquiry.

5. In support of the above appeal Mr. Hamid Khan, learned Advocate Supreme Court for the appellant, has vehemently contended that since the allegation in the charge-sheet against the appellant was serious charge of

embezzlement of public money, which was emphatically denied by the appellant, the respondent department could not have resorted to sub-rule (3) of Rule 6 of the Punjab Civil Servants (Efficiency & Discipline) Rules, 1975, hereinafter referred to as the Rules, and dispensed with the regular enquiry.

On the other hand, Mr. Ehsan Sabri, learned Assistant Advocate-General Punjab, has urged that the dismissal order, which was substituted by the Tribunal by removal order, was in accordance with law.

6. It may be observed that the appellant was served with a show-cause notice dated 9-6-1987, wherein he was charged as under:--

"That a sum of Rs.9,990 was received by you from Mr. Shahid Mahboob Malik husband of owner of P.U. No.SW-101R-66 in cash, in spite of the fact you were not authorised to do so under the provisions of Punjab Urban Immovable Property Tax Act, 1958. You assured Mr. Shahid Mahboob Malik that you will deposit the amount in Government Treasury and delivered him the requisite bank receipt. According to the statement of Mr. Shahid Mahboob Malik, bank receipt showing payment of Rs.9,990 on 13-5-1987 in State Bank of Pakistan, Lahore was delivered to him. A photostat copy of this bank receipt was also given by you to Excise and Taxation Inspector incharge Mr. Hamid Masood for record. Later on, the scrutiny of record revealed that this bank receipt is forged one. Subsequently, you arranged the said amount and deposited Rs.9,990 in Government Treasury vide bank receipt No.23, dated 1-6-1987. Thus, in addition to the deliberate attempt of embezzlement of Government Revenue, your conduct in the matter is prejudicial to good order and service discipline. This tantamount to misconduct on your part within the meaning of rules 2(i)(d) and 3(b) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1975."

7. In response to the above show-cause notice, the appellant submitted his reply alongwith an affidavit of Mr. Shahid Mahboob Malik, the relevant portion of which reads as under:--

"At the very outset I deny the charge in toto. The factual position is that neither I received a sum of Rs.9,990 from the Property Owner namely Mr. Shahid Mahboob Malik, husband of the owner of property in question, nor I delivered him any fake/bogus or fictitious treasury receipt of the sum as alleged in the show-cause-notice. What has been placed before your goodself is a self made story just to harm me. I only prepared the challan/P.T.10 form and that too in routine. The challan form on which he received the bogus

treasury receipt is not filled up with my hand writing. This simple argument can go to show that I am not in the picture. I am also appending herewith written statement from Mr. Shahid Mahboob Malik, the complainant, which will indicate that he did not meet me in any way. From that statement too, it will be clear that I neither received any amount for payment into the treasury nor issued the challan form."

The appellant in his statement dated 28-10-1987 inter alia averred as follows:--

"نمبر ۱۔ جناب عالی امیر نے خلاف تمام کارروائی انتظامی اور مفروضات پر مبنی ہے اور اس کا حقیقت سے کوئی تعلق نہ ہے۔ سب سے پہلی بات یہ ہے کہ میں نے کبھی بھی AETO جناب انور حسین جلوہ صاحب کے سامنے مبینہ رقم مبلغ ۹۹۹۰ روپے کی وصولی کا اقرار نہیں کیا ہے اگر AETO صاحب زبانی کلامی کچھ اور بھی لکھ دیں تو اس کی کوئی قانونی پوزیشن نہیں ہے۔

مزید اہموں نے یہ بھی نہیں منہ مایا کر میں نے مبینہ اقرار کس کے سامنے کیا ہے؟ حقیقت یہ ہے کہ AETO صاحب اصل ملازم کی پشت پناہی کر رہے ہیں اور مجھے خواہ مخواہ بنام کر رہے ہیں۔ اس طرح جناب افسر مجاز صاحب نے AETO انور حسین جلوہ کے سامنے مبینہ اقرار کو درست تسلیم کر لیا ہے اور اس کو بنیاد بنا کر مجھے سخت سزا کی سفارش کی ہے جو انصاف کے تقاضوں کے منافی ہے اور میرے ساتھ سراسر نا انصافی ہے۔

8. In spite of the above categorical stand taken by the appellant, the competent Authority considered appropriate to dispense with holding of a regular enquiry and to take action against the appellant under Rule 8 of the Rules as under:--

"I accordingly in exercise of the powers of an authority as provided under rule 8 of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1975, impose upon Mr. Basharat Ali, Junior Clerk (under suspension) a major penalty of dismissal from service under rule 4(b)(iv) of the rule (ibid), as recommended by the Authorised Officer with immediate effect. The accused official be informed about the decision. Copies of the order should also be forwarded to all concerned quarters."

9. Mr. Hamid Khan has relied upon the case of Alamgir v. Divisional Forest Officer, Multan and others (1993 SCMR 603), in which this Court reiterated the principle of law enunciated by it earlier in the case of Deputy

Inspector-General of Police, Lahore and others v. Anis-ur-Rehman Khan (PLD 1985 SC 134) as under:--

"6. In the Deputy Inspector-General of Police, Lahore and others v. Anis-ur-Rehman Khan PLD 1985 SC 134 it has been pointed out that in what circumstances recourse to the shorter procedure of show cause is justified. For resolving controverted questions of fact where evidence has to be recorded and opportunity of cross-examination has to be given, the proper course is always to hold a full-fledged inquiry. Otherwise, the findings recorded, as in this case, will be based more on conjectures than on evidence/material available on record properly produced and accepted."

10. Besides the above two cases, reference may also be made to the following additional cases on the point in controversy.

(i) Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another (1993 SCMR 1440);

in which the appellant who was, at the relevant time, acting as Head Clerk Phone Branch, Karachi, was suspended on the ground that he disobeyed the orders of his superior officer, which amounted to misconduct. In reply to the above charge, the appellant submitted his defence denying the allegation. However, A.D. Engineering-II proceeded to examine the appellant by directing him to answer a questionnaire, which the appellant did. After that he was given a formal hearing, which followed with the order of compulsory retirement from Government Service though he had put in 28 years service. This Court, while allowing the appeal of the appellant, observed as under as to the infirmity in the departmental proceedings:-

"6. In Government Servants (Efficiency and Discipline) Rules, 1973, 'misconduct' is defined. Rule 4 contemplates minor and major penalties. Compulsory retirement is included in major penalties. Rule 5 empowers authorised officer to direct enquiry against Government servant through an Enquiry Officer or Enquiry Committee or if he is satisfied, may order that there would be no enquiry in the interest of security of the country. If it is decided that there should be enquiry either by Enquiry Officer or Enquiry Committee then procedure laid down in Rule 6 is to be followed and the requirements enumerated therein are that charge shall be framed and Government servant proceeded against would be allowed to reply to the charge after which evidence is to be recorded by examining witnesses in support of the charge allowing opportunity to the affected Government servant to cross-examine the witnesses and he can also produce witnesses in his defence. It appears that in

the instant case this procedure as such was not followed in letter and spirit and witnesses were not examined in support of the charge. It was necessary for that reason that ultimately major penalty has been imposed upon the appellant. The manner in which enquiry proceedings were conducted by way of questionnaire without examination of witnesses in support of charge or defence cannot be approved as it is not consistent with requirements of Rule 6 of the abovementioned Rules."

- (ii) Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others (PLD 1994 SC 222);

This is a judgment rendered by a Full Bench of this Court comprising five Judges headed by the then learned Chief Justice, to which one of us (Ajmal Mian, J. - who happened to be a Member of the Bench and the Judge who authored the judgment), and in which the following observations were made on the point in issue:-

"5."The question, whether any major punishment can be imposed upon a civil servant without holding an enquiry, depends on the facts of each case. Clause (iii) of sub-rule (1) of Rule 5 of the Rules empowers the Authorised Officer to dispense with the enquiry but he is required (by an order in writing) to inform the accused of the action proposed to be taken in regard to him and the grounds of action and to give him a reasonable opportunity of showing cause against the proposed action."

6.

7.

"8. The ratio of the above case seems to be that under Rule 5(1)(iii) of the Rules, an authorised officer has discretion to decide, whether in a disciplinary proceeding against a civil servant in response to his reply to the charge-sheet, a regular inquiry should be held or not. The above discretion is not controlled by any precondition or guideline but nevertheless this discretion like all other discretions is to be exercised fairly and reasonably and not arbitrarily or capriciously with the object to deny the civil servant the right of fair defence. So, if the charge is founded on admitted documents/facts, no full-fledged inquiry is required but if the charge is based on disputed questions of fact, a civil servant cannot be denied a regular inquiry, as the same cannot be resolved without recording evidence and providing opportunity to the parties to cross-examine the witnesses. In such a matter if findings of fact are recorded without recording any evidence, the same will be based on surmises and

conjectures, which will have no evidentiary value as to warrant imposition of any punishment on the civil servant concerned'."

- (iii) Ghulam Muhammad Khan v. Prime Minister of Pakistan and others (1996 PLC (C.S.) 868);

in which one of us (Ajmal Mian, J.), who happened to be a Member of the Bench and the Judge who authored the judgment, reiterated the above principle in the following words:-

"5. It has been consistently held by this Court that there is a marked distinction between Rule 5 and Rule 6 of the Rules, inasmuch as under the former Rule, a regular inquiry can be dispensed with, whereas the latter Rule envisages conducting of regular inquiry which will necessitate the examination of witnesses in support of the charges brought against the accused civil servant, his right to cross-examine such witnesses and his right to produce evidence in rebuttal. The question, as to whether the charge for a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the alleged misconduct is such on which a finding of fact cannot be recorded without examining the witnesses in support of the charge or charges, the regular inquiry could not be dispensed with. Reference may be made in this behalf to the case of Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others (PLD 1994 SC 222)."

11. By now it seems to be a well-settled principle of law that the question, as to whether a regular inquiry is to be held in a case of misconduct against an accused civil servant/employee or not, will depend on the facts of each case. We may observe that while considering the above question we should keep in mind the fact that the concept that no person should be condemned unheard (i.e. audi alteram partem) has acquired new dimensions with the passage of time. Now-a-days the Courts apply the above cardinal principle of jurisprudence more liberally even to the cases in which there is no statutory requirement of personal hearing. Furthermore, the right of personal hearing does not mean simpliciter hearing, but it should be fair. What is a fair hearing, it will depend on the facts of each case. There cannot be any general criterion of universal application.

If the allegations against the accused civil servant/employee are of serious nature and if he denies the same, a regular inquiry cannot be dispensed with. In such a case, the initial burden is on the department to prove the charge, which cannot be done without producing evidence. If the witnesses are examined in support of the charge by the department before the Inquiry Officer, the accused civil servant/employee has the right to be

present at the time of examining of such witnesses and has also the right to cross-examine them to demonstrate that they are not telling the truth. He has further right to produce evidence in rebuttal. The department has the right to cross-examine the accused civil servant/employee if he makes a statement in defence and to cross-examine other witnesses who may appear on his behalf. However, we may clarify that a departmental disciplinary proceeding cannot be equated with a legal proceeding in a Court of law. The technicalities, which are the hallmark of the latter, cannot be pressed into service in judging the legality of the former proceedings. There may be some technical lapses on the part of an Enquiry Officer while conducting the disciplinary proceedings but if such lapses have not caused any material prejudice to the accused civil servant/employee, the same will not vitiate such proceedings or the order passed in consequence thereof.

12. In the present case as highlighted hereinabove in para. 7, all along the appellant had denied the factum of having embezzled Rs.9,990. In this view of the matter, the procedure adopted in holding the enquiry by the department was not warranted by law and was contrary to the law as enunciated by this Court in the above reports. We would, therefore, allow the instant appeal, set aside the impugned judgment of the Tribunal as well as impugned order of the department and would order the reinstatement of the appellant with full back benefits subject to the right of the department to ascertain, as to whether during the period commencing from the date of dismissal from service till his reinstatement, the appellant was engaged in any gainful employment. However, there will be no order as to costs.

M.B.A./B-2/S

Appeal allowed.

1997 P L C (C.S.) 826

[Lahore High Court]

Before Sh. Amjad Ali, J

MUHAMMAD GHAFFAR and 37 others

versus

GOVERNMENT OF THE PUNJAB through Secretary,
Basic Democracies, Social Welfares and Local
Government Department and another

Writ Petition No. 316 of 1981, decided on 7th May, 1997.

(a) Interpretation of statutes---

---No rule or notification issued under a statute could be enforced with retroactive operation unless statute expressly so provides. [p. 829] A

Faizullah Khan v. Government of Pakistan PLD 1974 SC 290 and
Hashwani Hotels v. Federation of Pakistan PLD 1997 SC 315 rel.

(b) West Pakistan Municipal Committees (Grades and Pay) Rules,
1964---

---Preamble---West Pakistan Municipal Administration Ordinance (X of 1960), S.121---Constitution of Pakistan (1973), Arts. 25 & 199---
Notification No.SO IV(LG)-I(6)/70, dated 18th July, 1972---Constitutional
petition---Equality of citizens---Salary scale of municipal employees, fixation
of---Discrimination---Petitioners' grievance was that they being employees of
Municipal Committee, were in same category as in other Municipal
Committees, therefore, they were also entitled to be paid same scale of pay---
Scales of salary of municipal employees were issued in pursuance of
recommendations of respective Municipal Committees or Municipal
Corporations---Concerned Municipal Committee or Municipal Corporation
was responsible to pay salaries to their employees from its own resources---
Some of the smaller cities Municipal Committees were paying higher salaries
to their employees while Municipalities of big cities are paying much less to
their employees performing similar duties, according to their resources---
Refusal of Municipal Committee to pay equal pay scale as to other employees
of same category in other Municipal Committees, held, was not
discriminatory as the latter municipality might have better resources than the
employees of petitioners' municipality. [pp. 830, 831] B & C

Each Municipal Committee or Municipal Corporation is a separate entity and its officials have to be paid in accordance with its resources. No doubt the salaries of the employees of various corporations have been fixed under the West Pakistan Municipal Committee (Grades of Pay) Rules, 1964, issued by the Government of the Punjab by virtue of section 121 of the Municipal Administration Ordinance, 1960, but such scales are evidently issued in pursuance of the recommendations of the respective municipal committees or as the case may be, municipal corporations. From the scales as specified in the Rules for each municipal committee, it is clear that some of the smaller cities municipal committees such as Burewala and Bahawalnagar, are paying higher salaries to their octroi clerks while municipalities of big cities, like Bahawalpur and Montgomery (Now Sahiwal) are paying much less than the scale of Rs.115--5--175 to their employees performing similar duties. It is true that quite often the Provincial Governments provide financial assistance to the Local Governments from time to time, but because of such assistance the Provincial Governments are not under an obligation to enforce payment of enhanced salaries or give effect to the policy of uniform scales of salaries for all employees of the municipal committees of municipal corporations. Primarily, it is the responsibility of the concerned municipal committees and municipal corporations to pay salaries to their employees from its own resources. [p. 830] B

Constitution, whereunder the only two things binding on a Governor are:-

- (a) Directives of the President under Article 101(5) and;
- (b) The Advice of the Cabinet (or the Chief Minister) under Article 105(1).

Therefore, we are of the considered view that the correct/feasible relief to the appellant is to amend the impugned order dated 17th April, 1998 to the extent of grant of appropriate 'Notice Pay' for search of another job as enunciated in PLD 1962 Page (W.P.) Kar 899. We may point out here that before his appointment as Vice Chancellor, the appellant retired from service (of NED University after completion of 26 years of qualifying service, as per Resolution No.SYN-74.8 Annexure 'D' of the written statement of the respondent No.2). After Administrative Reforms of 1973 in the country there is no provision for extension in service of a retired civil servant --- but he can be re-employed for specific period --- on such terms and conditions as may be notified by the employer. One of the usual terms and conditions of such re-employment is notice period of 30 days or one month from either side or payment/deposit of the salary of the notice period in lieu thereof. Had the respondents taken care of this aspect and notified proper terms and conditions of appellant's appointment instead of the using the vague words 'on usual terms and conditions', unnecessary litigation in this appeal with consequent unnecessary expenditure to either side could have been avoided. Since the period for which the appellant was technically re-employed is of four-(4) years, this notice period in our considered opinion cannot be more than 90 days or three months from either side with payment of salary/deposit of salary in lieu thereof.

We, therefore, modify the impugned order to the extent that the appellant shall be entitled to 3 months' salary in lieu of notice.

We are in agreement with the counsel for the respondents that grant of 'damages' if any is outside the jurisdiction of Sindh Service Tribunal and lies within the domain of appropriate civil Court. However, the appellant undoubtedly incurred unnecessary substantial financial expenditure for the omission of the respondents to notify the 'specific' terms and conditions of his re-employment/re-appointment as Vice-Chancellor of the said University particularly the omission of notice clause from either side, resulting in the 1st round of litigation before the Hon'ble High Court of Sindh and Supreme Court of Pakistan and therefore order the payment of Rs.1,00,000 (Rupees one lac only) as costs by the respondent No.2 to the appellant. Undoubtedly it was the duty of the ministerial officers of the respondent particularly the Registrar of the said University to get prepared an appropriate draft of the exact terms and conditions of the appointment of the appellant as Vice-Chancellor of the said University and get it approved/notified accordingly. Undoubtedly it was not so done.

Announced in open Court this 29th day of January, 1999, at Karachi.

H.B.T./25/K(S.Trib)

Order accordingly.

2003 P L C (C.S.) 497

[Supreme Court of Pakistan]

Present: Nazim Hussain Siddiqui,
Syed Deedar Hussain Shah and Hamid Ali Mirza, JJ

PRESIDENT, UNITED BANK LTD.

and others

versus

IFTIKHAR HUSSAIN KHAN and another

Civil Appeal No.1324 of 1999, decided on 13th December, 2002.

(On appeal from the judgment of the Federal Service Tribunal, Islamabad, dated 3-12-1998, passed in Appeal No.40(K) of 1998).

United Bank Limited (Staff) Service Rules, 1981---

---R. 37---Dismissal from service---Allegation of misconduct involving misappropriation of funds by employee of the Bank---Service Tribunal reinstated the employee on appeal with all back-benefits---Validity---Employee having refunded the amount at a very late stage had violated the Rules of the Bank, as such, keeping in view R.37, United Bank Limited (Staff) Service Rules, 1981 total exoneration of the employee from charge was uncalled for but dismissal from service was not warranted---Supreme Court, allowed the appeal of the employee partly and awarded penalty of postponement of promotion of the employee for a period of three years from the date of his reinstatement in service, [p. 499] A

WAPDA v. Abdul Waheed 2002 SCMR 753 distinguished.

Ikram Ahmad Ansari, Advocate Supreme Court and M. Shabbir Ghauri, Advocate-on-Record for Appellants.

Abdul Mujeeb Pirzada, Advocate Supreme Court for Respondents
No.1.

Date of hearing: 13th December, 2002.

JUDGMENT

SYED DEEDAR HUSSAIN SHAH, J.--This appeal by leave of the Court is directed against the judgment of the Federal Service Tribunal, Islamabad (hereinafter referred to as the Tribunal) dated 3-12-1998, passed in Appeal No.40(K) of 1998.

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2. Briefly stated the facts of the case are that Iftikhar Hussain Khan respondent No.1, who was Manager of a branch of the United Bank Limited was dismissed from service vide order dated 13-9-1997, on the allegation of misconduct involving misappropriation of funds amounting to Rs.9,06,648. Respondent No.1 preferred a departmental appeal, which was not disposed of till the filing of Service Appeal No.40 (K) of 1998, which came to be instituted on 8-1-1998. The Tribunal vide impugned judgment dated 3-12-1998, allowed the appeal, and reinstated the respondent into service with all back benefits. Hence, this appeal.

3. Mr. Ikram Ahmad Ansari, learned counsel for the appellants, initially contended that the Tribunal has decided the appeal on surmises and conjectures rather than on the evidence on record; that respondent No.1 was custodian of the U.B.L. funds and he had no right or authority to misuse public money for personal benefit; and that he had not only failed to submit reply to the charge-sheet duly served upon him but also intentionally avoided to face the inquiry proceedings against him. Learned counsel has relied on WAPDA v. Abdul Waheed (2002 SCMR. 53).

4. Conversely, Mr. Abdul Mujeeb Pirzada, learned counsel for respondent No.1, strongly controverted the contentions raised by the learned counsel for the appellants and submitted that the Tribunal, after carefully examining the material available, has passed the impugned judgment with sound and cogent reasons, which is entirely based on the law laid down by this Court, and the same may be maintained.

5. We have considered the arguments of the learned counsel for the parties and carefully examined the material available on record. The Court enquired from the learned counsel for the appellants as to whether regular audit of the Bank was conducted, as required under the rules, his reply was in affirmative. On another question he admitted that the advance drawn by respondent No.1 was sanctioned by the competent Authority, but the learned counsel pointed out that he deposited the amount beyond the prescribed period, which has wrongly been condoned by the Tribunal in its impugned judgment. The other amount i.e. Rs.898 pertains to petty stationery items, Rs.3,939 belongs to light refreshment/entertainment expenses, Rs.75,955 relate to payment of special duty, Rs.32,900 to casual labour. The Tribunal has compared all these figures and found that average of these items of expenditure was reasonable and it rightly did not interfere. The plea of the respondent is that he took active part in the union activities on his promotion as Officer and due to that reason he was dismissed from service. In the case-law cited hereinabove by the learned counsel for the appellants charge of corruption/misappropriation was proved against the civil servant; whereas in the case in hand the aforesaid charge was not proved against respondent No.1 and the Bank also allowed to refund the amount drawn by him and no other action was taken against him. So far the order of the Tribunal that respondent No.1 has been exonerated from the charges is concerned, in our considered

view, the Tribunal has not considered the provision of United Bank Limited (Staff) Service Rules, 1981 (hereinafter referred to as the "Rules"). It would be advantageous to refer here its rule 37, which reads as under:--

"37. Punishment.---Without prejudice to the other provisions contained in these rules where an employee who commits breach of the regulations of the Bank or of discipline or contravenes instructions/orders issued to him in connection with his official work or who displays negligence, inefficiency, or indolence or who knowingly does anything detrimental to the interest of the Bank or is guilty of any other act of misconduct or insubordination the competent Authority may impose on him one or more of the following penalties:--

- (a) reprimand;
- (b) postponement or stoppage of increment or promotion;
- (c) forfeiture of pay for any period of unauthorized absence from duty;
- (d) recovery from pay of the whole or part of any pecuniary loss caused to the Bank by the employee;
- (e) degradation to a lower stage of pay in his grade or to a lower grade;
- (f) compulsory retirement from service;
- (g) removal from service which does not disqualify for future employment or calls upon an employee to resign from was service; and
- (h) dismissal which will involve permanent disqualification for future employment in the Bank."

6. Since it is proved through record that the respondent refunded the amount very late and he has violated the Rules of the Bank, as such, keeping in view the above provisions, we are of the considered opinion that total exoneration of the respondent from charge was uncalled for. However, the dismissal from service in our opinion is also not warranted.

7. For the facts, circumstances and reasons stated hereinabove, we partly allow this appeal and award penalty of postponement of promotion of respondent No.1 for a period of three years from the date of his reinstatement in service. He is also not entitled to the back-benefits and the intervening period may be treated as extraordinary leave without pay.

M.B.A./P-93/S

Appeal partly allowed.

favour in respect of order dated 7-8-2002 was without jurisdiction and of no legal effect. The allotment of the quarter concerned would be made strictly in accordance with the Pakistan Allocation Rules, 1993 keeping in view the seniority list for the candidates for allotment.

S.A.K./M-2366/L

Order accordingly.

2004 P.L.C (C.S.) 328

(Supreme Court of Pakistan)

Before Sh. Riaz Ahmad, C.J.,

Qazi Muhammad Farooq

and Abdul Hameed Dogar, JJ

FEDERATION OF PAKISTAN through
Secretary, Establishment Division, Government
of Pakistan, Islamabad and another

versus

NOOR JAMAL, EX-EXECUTIVE ENGINEER

Civil Appeal No.838-L of 2000, decided on 20th October, 2003.

(On appeal from the judgment dated 3-7-1999 of the Federal Service Tribunal, Islamabad, passed in Appeal No.244-L of 1999).

(a) Constitution of Pakistan (1973)---

---Art.185(3)---Leave to appeal was granted by the Supreme Court to consider whether judgment of Service Tribunal was sustainable as the main judgment written by its Member appeared to be based on reactionary approach rather than the legal one for not filing the parwise comments; that whether the inquiry report which was quite in detail and wherein the civil servant fully participated, could be brushed aside by the Tribunal as no reference was made to it in the judgment made by the Tribunal and that whether the civil servant in view of the charges against him was entitled to reinstatement in service with all consequential benefits. [p. 330] A

(b) Government Servants (Efficiency and Discipline) Rules, 1973---

---Rr.2(4), 3(b) & 6---Service Tribunals Act (LXX of 1973), S.4---Reinstatement---Imposing of major penalty---Failure to conduct proper inquiry---Civil servant was dismissed from service on the charge of misconduct---Fact finding inquiry proceedings pertaining to two charges against the civil servant were conducted by the Department and on the basis of such inquiry report major penalty of dismissal from service was awarded---Civil servant, on the contrary, was exonerated in the inquiry

conducted by Federal Investigation Agency as there was no material available against him---Service Tribunal allowed the appeal and the civil servant was re-instated in the service---Validity---In case of awarding major penalty, a proper inquiry was to be conducted in accordance with R.6 of Government Servants (Efficiency and Discipline) Rules, 1973, wherein a delinquent officer was to be provided an opportunity of defence and personal hearing after issuing him show-cause notice and obtaining his reply thereto and if the charges were proved in the regular inquiry, he was to be penalized---Judgment passed by the Service Tribunal was based on valid reasons and was in consonance with the law laid down by Supreme Court---Neither there was misreading or non-reading of material evidence, nor misconstruction of facts or law was involved in the judgment of the Service Tribunal, appeal was dismissed by the Supreme Court. [pp. 331, 332] B & C

Jan Muhammad v. General Manager, Karachi
Telecommunication Region, Karachi and another 1993 SCMR 1440 and
Inspector-General of Police, Police Headquarters Office, Karachi and 2
others v. Shafiqat Mehmood 2003 SCMR 207 ref.

Ms. Naheeda Mehboob Elahi, Advocate Supreme Court Ch.
Akhtar Ali, Advocate-on-Record for Petitioners.

Malik Azam Rasool, Advocate Supreme Court for Respondent.

Date of hearing: 20th January, 2003.

JUDGMENT

ABDUL HAMEED DOGAR, J.---This appeal with the leave of the Court is directed against the judgment dated 3-7-1999 passed by learned Federal Service Tribunal, Islamabad, (hereinafter referred to as the Tribunals), whereby Appeal No.244-L of 1999 filed by the respondent was accepted and he was reinstated in service with all consequential benefits. It would be pertinent to mention here that Mr. Muhammad Ayub Khan, Member who authored the judgment accepted the appeal with costs and reinstated the respondent in service with all consequential benefits. He, however, burdened the competent authority (Secretary, Ministry of Housing and Works) with special costs of Rs.15,000. The other Member Syed Zafar Babar agreed on the main judgment but expressed his reservation as regards the imposition of special costs. The Chairman of the Tribunal Mr. Justice (R) Gulbaz Khan concurred with the view of Syed Zafar Babar, Member and by majority passed the following order:--

By virtue of proviso (b) to subsection (2) of section 3-A of the Service Tribunal Act, 1973, the appeal is accepted with all consequential benefits, but the competent authority (the

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concerned Secretary, Ministry of Housing and Works, Islamabad(shall not be burdened with special costs of Rs.15,000.”

2. The facts leading to the filing of the instant appeal are that respondent Noor Jamal while working as Executive Engineer in Central Civil Division No.2, Pak PWD, Lahore, was dismissed from service on 28-7-1992 on the charge of inefficiency. Against which he preferred a departmental appeal to the Prime Minister of Pakistan on 12-8-1997 which was withheld on the ground that the President of Pakistan being competent Appellate Authority should have been approached. Accordingly, he preferred his appeal to the President of Pakistan on 2-11-1997 which remained un-responded, as such, he filed above mentioned appeal before the Tribunal. At the relevant time, respondent being the Divisional Head was entrusted with the development work to be carried on under Tameer-e-Watan Programme in addition to other duties, as such, the volume of works pending was huge as against the available paucity of funds. Being Incharge of the above mentioned work, he was under great pressure from the officers as well as the public representatives. As development schemes relating to Tameer-e-Watan Programme were being executed under the guidance of M.N.As./M.P.As. in their respective areas, consequently, a sum of Rs.29,00,000 was spent in excess of the allocated funds. Anyhow, there was no complaint of whatsoever nature from any quarter and on the contrary, all M.N.As. and M.P.As. appreciated his performance in execution of development schemes in their constituency. Instead of appreciation, he, however, was charged-sheeted in the year 1995 for inefficiency for incurring above mentioned excess amount on the above mentioned works. The respondent denied the charges and submitted his reply but the same was not considered satisfactory and was ultimately dismissed from service on 28-7-1997.

3. This Court granted leave to appeal to consider the following points:--

- “(i) Whether the impugned judgment of the learned Federal Service Tribunal is sustainable as the main judgment written by its learned Member (Mr. Muhammad Ayyub Khan), appears to be based on reactionary approach rather than the legal one, for not filing the parawise comments by the petitioners to the appeal of the respondent?
- (ii) Whether the inquiry report which is quite in detail and wherein the respondent fully participated, could be brushed aside by the learned tribunal as no reference was made to it in the impugned judgment?

(iii) Whether the respondent in view of the charges against him, was entitled to reinstatement in service with all consequential benefits? A

4. Ms. Naheeda Mehboob Elahi, learned A.S.C. for the appellant vehemently contended that the impugned judgment is not sustainable in law as the same is based on wrong assumption of facts and law. According to her, the main reason which weighed with the Tribunal to allow the appeal was that the department had failed to file parawise comments which in fact was not correct as the same were filed on 26-12-1998 a month earlier to 29-1-1999 on which date, the arguments were heard. Respondent had committed serious financial irregularity by misusing the financial powers thus failed to perform duties diligently which resulted in financial loss to the Government exchequer which act fell within the purview of misconduct as contemplated and under Rules 2(4) and 3(b) of the Government Servants (E&D) Rules, 1973, (hereinafter referred to as the Rules) and was thus rightly dismissed from service.

5. On the other side, Malik Muhammad Azam Rasool, learned A.S.C. for the respondent, controverted the above contentions of the learned counsel for the appellant and contended that the learned Tribunal has fully dealt with all the legal as well as factual aspects of the case. According to him, neither any show cause notice was issued nor a regular inquiry was conducted; as such, the entire proceedings took place in violation of rule 6 of the Rules. He next contended that the said works were thoroughly examined and inspected by F.I.A. and Special Team deputed by the Prime Minister's Secretariat and were found satisfactory and no allegation of corruption or corrupt practices was proved against the respondent. As regards the inquiry proceedings, the same were not conducted in accordance with the rules but were conducted by way of questionnaire without examination of witnesses in support of charge or defence. He emphasized that the principle of natural justice was ignored completely in the case of respondent inasmuch as he was even not allowed to summon the witnesses in defence of the charge levelled against him. The only allegation against the appellant was that of inefficiency, as such, the penalty of dismissal from service was too harsh and unjustifiable.

6. It is by now well-settled principle of law that in case of awarding major penalty, a proper inquiry is to be conducted in accordance with rule 6 of the Rules wherein a delinquent officer is to be provided an opportunity of defence and personal hearing after issuing show cause notice, obtaining reply whereof and if the charges are proved in the regular inquiry, thereafter he is to be penalized. In the instant case, the inquiry proceedings pertaining to two charges were conducted B

simultaneously by the Deputy Secretary (Admn) being Enquiry Officer and it was on the basis of said fact finding inquiry report, appellant No.2 Secretary, Ministry of Housing and Works took disciplinary action against him and awarded him major penalty of dismissal from service. The respondent, on the contrary, was exonerated in an inquiry conducted by F.I.A. meaning thereby that there was no material available against him. In this context, reference can be made to the case of Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another 1993 SCMR 1440, wherein this Court on similar aspect of the case did not approve inquiry proceedings by way of questionnaire without examining the witnesses in support of charge or defence, being not consistent with the requirement of section 6 of the Rules. Similarly, in the case of Inspector-General of Police, Police Headquarters Office, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 207. It has been held that in the case of imposing a major penalty, the principle of natural justice requires that regular inquiry is to be conducted in accordance with rule 6 of the Rules and an opportunity of defence and personal hearing is to be provided to civil servant proceeded again.

7. For what has been discussed above, we are of the considered opinion that the impugned judgment is based on valid and sound reasons and is entirely in consonance with the law laid down by this Court. Neither, there is misreading, or non-reading of material evidence, nor misconstruction of facts and law. Moreover, the question of general public importance as contemplated under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973, is not involved in this case.

8. Resultantly, the appeal fails and is thus dismissed with no order as to costs.

M.H./F-123/S

Appeal dismissed.

2004 P L C (C.S.) 332

[Lahore High Court]

Before Tassaduq Hussain Jilani, J

ZAKA ULLAH BAJWA

versus

DISTRICT COORDINATION OFFICER, GUJRANWALA and another

Writ Petition No.6526 of 2003, decided on 23rd October, 2003.

(a) Constitution of Pakistan (1973)---

Art. 199---Constitutional petition---Unclean hands of petitioner--- Contractual appointment---Manipulation of record---Grievance of the petitioner was that his dismissal from service was illegal and based on mala fides---Plea raised by the Authorities was that the petitioner had manipulated the record and had substituted the first page of his appointment letter wherein he had added certain favorable terms and conditions which were not stipulated in the original orders---Validity--- Petitioner was not a civil servant, the appointment was contractual and in terms of the contract the same could be dispensed with on one month's notice or payment of one month's salary in lieu thereof---No jurisdictional defect existed in the order to warrant interference in the Constitutional jurisdiction of High Court---Petitioner having come to High Court with unclean hands, therefore, he could not seek any relief in equitable jurisdiction of High Court---Plea raised by the Authorities was not without substance---Petition was dismissed in circumstances. [pp. 339, 340] A & C.

(b) Mala fides---

Allegation of mala fides---Proof---Such allegation cannot be alleged in vague terms---Mala fides is one of the most difficult things to prove and the onus is entirely upon the person alleging the same to establish---Presumption of regularity, existed with regard to all official acts and until such presumption is rebutted, the action cannot be challenged merely upon a vague allegation of mala fides. [p. 340] B.

Federation of Pakistan v. Saeed Ahmad PLD 1974 SC 152 ref.

Petitioner in person.

Raja Abdul Rehman, A.A.-G. for Respondents.

Date of hearing 17th October, 2003.

JUDGMENT

A newly-established semi-autonomous college by the name of Rachna College of Engineering and Technology, Gujranwala advertised certain posts. (Daily Dawn dated 28-10-2002). Petitioner applied for the post of Administrative Officer in BS-17. After the site interview he was appointed vide order dated 27-11-2002. Vide notification dated 20-2-2003 he was dismissed from service and the said notification stipulated as under:--

"The Board of Governors of the College in its second meeting held on 15-2-2003 decided dismissed from service Mr. Zaka Ullah Bajwa, Administrator Officer on account of

impugned judgment is plainly correct and the same does not call for interference by this Court.

6. For the foregoing reasons, we do not find any merit in this petition which is dismissed and leave to appeal is refused accordingly.

The Secretary Local Government and Rural Development Department, Government of the Punjab, Civil Secretariat, Lahore, is directed to review whole system of awarding the contracts by various Local Governments and to take steps, so that the chances of corruption, maladministration, lack of transparency and fairness, misuse of power and authority on the part of Local Governments are eliminated. He shall submit report compliance of this order through Deputy Registrar Judicial of this Court, within a period of six weeks.

S.A.K./S-51/SC

Leave refused.

2008 S C M R 608

[Supreme Court of Pakistan]

Before *Iftikhar Muhammad Chaudhry, C.J., Faqir Muhammad Khokhar and M. Javed Buttar, JJ*

COMMISSIONER OF INCOME TAX/WEALTH TAX, COMPANIES ZONE ISLAMABAD---Petitioner

versus

Miss NAHEED KHAN--- Respondent

Civil Petition No. 1300 of 2003, decided on 22nd December, 2005.

(On appeal from judgment dated 28-3-2003, passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Tax Appeal No. 139 of 2001).

Income Tax Ordinance (XXXI of 1979)---

---S.136---Limitation Act (IX of 1908), S.5---Constitution of Pakistan (1973), Art.185(3)---Appeal to High Court---Application for condonation of delay---Dismissal of application by High Court holding that reasons advanced for extending period of limitation were not sufficient---Supreme Court refused to grant/leave to appeal against impugned judgment. [p. 609] A

M. Bilal, Senior Advocate Supreme Court for Petitioner.

Dr. Babar Awan, Advocate Supreme Court for Respondent.

ORDER

Learned High Court vide impugned judgment declined to entertain appeal as the same was barred by time. Reasons given for condonation of delay in application under section 5 of the Limitation Act were not considered sufficient for condonation of delay. The High Court after having taken into consideration such grounds, declined to agree with the contention of the appellant on the question of extending the period of limitation, therefore, in our considered opinion, no point is made out for interference.

2. Petition dismissed, leave declined.

S.A.K./IC-7/SC

Leave refused.

2008 S C M R 609

[Supreme Court of Pakistan]

Present: *Abdul Hameed Dogar, C.J., Ijaz-ul-Hassan Khan and Ch. Ejaz Yousof, JJ*

MUHAMMAD ISMAIL SHAHID---Appellant

versus

EXECUTIVE DISTRICT OFFICER (REVENUE), LAHORE and another---Respondents

Civil Appeals Nos.2140 and 2141 of 2006, decided on 12th February, 2008.

(On appeal from the judgment, dated 16-3-2006 passed by Punjab Service Tribunal, Lahore, in Appeal Nos.2612 and 2656 of 2005).

Punjab Removal from Service (Special Powers) Ordinance (IV of 2000)---

Ss. 3(1)(c), 5(1)(a) & 6---Punjab Service Tribunals Act (IX of 1974), S.4---Reduction in ranks---Charge of corruption---Dismissal of civil

servant's appeal by Service Tribunal---Validity---Inquiry proceedings conducted in absence of statement of allegations on civil servant would be void and nullity in eyes of law as civil servant was not confronted with them---Evidence recorded prior to regular inquiry, in

absence of civil servant, would not be of any value as right of cross-examining witnesses had been denied to civil servant resulting in manifest injustice---Inquiry had not been conducted according to mandatory provisions of law so much so that even statements

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was not supplied to civil servant to meet charges---Supreme Court set aside impugned judgment and directed reinstatement of civil servant with all back-benefits while giving liberty to department to initiate fresh inquiry in accordance with law, if so advised. [p. 611] A & B

Sheikh Masood Akhtar, Advocate-on-Record for Appellant.

Raja Muhammad Saeed Akram, Astd. A.-G., Punjab for Respondents.

Date of hearing: 12th February, 2008.

JUDGMENT

IAZ-UL-HASSAN KHAN, J.--- The above captioned appeals, with the leave of this Court, filed by Muhammad Ismail Shahid and Muhammad Sharif, appellants, arise out of a common judgment, dated 16-3-2006 passed by Punjab Service Tribunal, Lahore, dismissing Service Appeals Nos.2612 and 2656 of 2005 preferred by the appellants.

2. Relevant facts of the case are, that while posted as Naib Tehsildar Settlement, Cantt. Lahore, appellant Muhammad Ismail Shahid demanded illegal gratification through his Reader appellant Muhammad Sharif, from one Muhammad Hussain, complainant, for attestation of mutations of complainant's land. A complainant was made to District Co-Ordination Officer, Lahore, in pursuance whereof disciplinary proceedings were initiated and appellants were served with charge-sheets. The replies of the appellants, having been found unsatisfactory, they were awarded penalty of reduction in their ranks from the post of Naib Tehsildar to Stenographer and from the post of Junior Clerk to Naib Qasid, respectively. Appellants filed departmental appeals which did not succeed. Appeals of the appellants before the Tribunal also met the same fate necessitating the filing of instant appeals.

3. Leave was granted in both the cases by order, dated 14-11-2006 to consider the contentions, inter alia, that in the disciplinary proceedings carried out by the respondents the appellants were not given any opportunity to cross-examine the witnesses produced by the department and that adequate opportunity was also not afforded to the appellants to produce their evidence; that the statement of allegation was also not provided to them and that various contentions raised by the appellants were not attended to by the Tribunal.

4. Sheikh Masood Akhtar, Advocate representing the appellants bitterly criticized the impugned judgment and attempted to argue the same has been recorded in a mechanical manner without application of independent judicious mind and in total disregard to the law on the point and that evidence recorded prior to the regular inquiry

in absence of the appellants, could not be treated as evidence of any worth, as a result whereof right of cross-examination has been denied to the appellants.

5. Raja M. Saeed Akram, learned Additional Advocate-General, Punjab representing the respondents, on the other hand, refuted the arguments of learned counsel for the appellants and supported the impugned judgment on the grounds more or less the same incorporated in the judgment itself.

6. Having heard the arguments from both sides in the light of the material on file, we find that submissions made by learned counsel for the appellants carry weight and must prevail. Learned Tribunal has erred in law and facts in dismissing the appeals of the appellants as in the absence of service of statements of allegations, required under section 5(1)(a) of the Punjab Removal from Service (Special Powers) Ordinance, 2000, the proceedings were void and nullity in the eyes of law as appellants were not confronted with the same. Again the evidence recorded prior to the regular inquiry in the absence of appellants could not be treated as evidence of any value as right of cross-examining the witnesses has been denied to the appellants, resulting in manifest injustice. We also find that inquiry was not conducted according to the mandatory provisions of law so much so statements of allegations were not supplied to the appellants to meet the charges.

7. In view of the above, appeals are allowed, impugned judgment is set aside and appellants are directed to be reinstated to their positions with all back-benefits. However, the department shall be at liberty to initiate fresh inquiry in the matter in accordance with law, if so advised. No order as to costs.

S.A.K./M-135/SC

Appeals accepted.

2008 S C M R 611

[Supreme Court of Pakistan]

Present: Rana Bhagwandas and Hamid Ali Mirza, JJ

MUSTAFA LAKHANI---Petitioner

versus

PAKISTAN DEFENCE OFFICERS HOUSING
AUTHORITY, KARACHI---Respondent

Civil Petition No.631-K of 2004, decided on 1st November, 2005.

included therein nor the Court can issue any such direction. Reference made by the learned counsel to precedents relating to the grant of allowance to civil servants/employees of different organizations, is wholly inappropriate and inapt as the matter of promotion cannot be equated with the grant of allowance nor similar treatment can be claimed.

In such view of the matter, the petitioners cannot be granted any relief by the Court. The petition is dismissed accordingly.

M.I./S-262/L

Petition dismissed

2005 P L C (C.S.) 4

[Lahore High Court]

Before Mian Saqib Nisar, J

ZAFAR MAHMOOD MALIK

versus

WATER MANAGEMENT SPECIALIST and 5 others

Writ Petition No. 12249 of 2004, decided on 21st October, 2004.

Constitutional of Pakistan (1973)---

Arts. 199 & 9---Civil service---Stoppage of salary on allegation of inefficiency without initiating departmental inquiry against civil servant---Validity---Respondent Officer was neither competent authority nor had power to direct stoppage of salary---Main source of livelihood of a civil servant was his salary, without which he could not sustain his family needs---Such illegal and unlawful action of respondent Officer was a classical case of abuse and misuse of authority and in breach of fundamental right/life of civil servant as enshrined by the Constitution---High Court set aside impugned order being void ab initio and directed immediate payment of salary to civil servant while imposing costs of Rs.25,000 upon respondent Officer to be recoverable from his personal pocket as arrears of land revenue. [p. 5] A, B & C

Petitioner in person.

Muhammad Sohail Dar, A.A.G.

Muhammad Shafique, Ex-Water Management Coordinator (NDP)/Respondent No.2 in person.

ORDER

The petitioner is an employee of the Government of Punjab, Agriculture Department and was posted at Water Management Project, a wing of the above department, and was performing his duties in the office of respondent No.1, wherefrom he was relieved and he reported to the office of respondent No.2 on 10-1-2004. On 16-2-2004, the respondent No.2 wrote a letter to the District Accounts Officer Toba Tek Singh, which reads as follows:--

"It is informed that Water Management Specialist, Field Team, Toba Tek Singh made a series of correspondence with Mr. Zafar Mahmood Malik, Water Management Officer, Field Team, Toba Tek Singh to take interest in Govt. duties i.e. watercourse improvement and On-Farm Field Drainage scheme and also tried to make him punctual but all in vain.

During the visits of Mr. Muhammad Saleem Arshad (Director), member inspection team, Secretary Agriculture, Punjab, Lahore the field progress of the officer regarding watercourse improvement and field drain was found unsatisfactory. Water Management Specialist, Toba Tek Singh, relieved the officer vide letter No.772/WMS/TTS: dated 10-1-2004 and advised to report this office for further necessary action.

To control the situation it is requested to please withhold the pay of officer as he has been relieved by the Water Management Specialist, Toba Tek Singh, to avoid financial complication till decision from departmental authorities."

2. Since the above letter, the petitioner is running from pillar to post to seek the release of his salary, but without any success; no departmental inquiry of any sort regarding his alleged inefficiency or misconduct has been initiated at any level. When questioned in the Court, as to under what authority of law, he has the power to direct for withholding the salary of the petitioner, the respondent No.2 has not been able to answer, but repeatedly submitted that because the petitioner failed to achieve the target, therefore, to stop his salary is a justified action.

3. Heard. If the petitioner has been inefficient in his working, obviously, there are rules to proceed against him, but I have not come across any law according to which, respondent No.2, who otherwise is not the competent authority, has any power at all to direct for the stoppage of the petitioner's salary. This is a classical case of the abuse and misuse of the authority, otherwise not vested with the said respondent and the action can thus be validly termed as the arrogant and

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supercilious exercise of an authority, which is lacking. In the above manner, the respondent No.2 has illegally and unlawfully prevented the petitioner to draw his subsistence allowance the bread and butter of his family, the main source of their livelihood, for the last eight months. And during the days of financial crunch, it is inconceivable, as to how a salaried employee would have his two ends meet and sustain his family needs. The stoppage of the petitioner's salary, to my mind, by the respondent No.2, is also in breach of the fundamental right to life of the petitioner, as enshrined by the Constitution of Pakistan, and on this account as well, the action is void ab initio. Anyhow, before parting, as I am of the view that respondent No.2 has acted capriciously and in a most fanciful manner, therefore, he should pay the special costs as a compensation to the petitioner. Resultantly, I impose the costs of Rs.25,000 upon the respondent No.2, which shall be paid by him from his personal pocket and recoverable as arrears of land revenue.

In the light of above, this petition is accepted and the order dated 16-2-2004 is set aside, with the result that the petitioner is entitled to immediately receive his salary, from the day it had been stopped. The salary must be paid to him before the coming "Eid" and the Secretary Irrigation is directed to ensure about the release of the petitioner's salary in time.

H.B.T./Z-56/L

Petition accepted.

2005 P L C (C.S.) 6

[Federal Service Tribunal]

Before Akbar M. Memon and
Barkat Ali Baloch, Members

NASREEN PERVEZ

versus

ELECTION COMMISSIONER and another

Appeal No.16(K)(CS) of 2002, decided on 13th August, 2003.

Civil service---

---Deputation---Parent department---Determination of---Civil servant, who initially was an officer in Grade-17 in the Provincial Information Department, Government of Sindh applied for the post of Director (Public Relations) BPS-19 in the office of Chief Election Commissioner

PLC (Service)

and in open competition was selected against post of Director (Public Relations) in BPS-19 in the office of Chief Election Commissioner--- Civil servant was permanently absorbed in that office and became an officer in BPS-19---During tenure of civil servant with Chief Election Commissioner as Director (Public Relations) she, in consequence of her request was sent on deputation to Government of Sindh where she was posted as Additional Secretary, Population Welfare---No document was on record showing that civil servant had succeeded to said post of Director Public Relations BPS-19 on deputation from Government of Sindh but Employee had been appointed in open competition--- Employee, in circumstances was Officer of Chief Election Commissioner and office of Chief Election Commissioner was her parent department and Civil servant was not on deputation with Chief Election Commissioner---Notification in dispute whereby Election Commission of Pakistan had repatriated civil servant to Provincial Government as her parent Department, was infructuous, ab initio and civil servant was declared to be an Officer of Election Commission which was her parent office/department. [pp. 8, 10, 11, 16, 18, 19, 20] A, B, C, D, E, F, G & H.

1994 SCMR 2232 ref.

Appellant in person.

Niaz Ahmed Khan, Standing Counsel for Respondent along with
D.R. Rashid Muhammad Section Officer.

Date of hearing: 9th July, 2003.

JUDGMENT

BARKAT ALI BALOCH (MEMBER).---The Appellant has preferred this appeal making number of prayers, which are listed below:--

"PRAYER

In view of the above it is humbly prayed that the Hon'ble Tribunal may graciously be pleased:--

(i) To declare that the issuance of the impugned order is infructuous, ab initio.

And also declare that Pakistan Election Commission is my parent office.

(ii) To direct the AGPR office-to restore payment and continuation of my salary.

(iii) To direct the Election Commission of Pakistan to withdraw its impugned order of 15th August, 2001 and consider my case for

PLC (Service)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR

تاریخ: 19/02/2015

سروس اپیل نمبر: 206/14

نوید اقبال بنام گورنمنٹ آف خیبر پختونخوا وغیرہ

- ۱- مورخہ 01.02.2010 تا 30.11.2011 تک سائل کی تنخواہ عرصہ 12 ماہ بند رہی۔
- ۲- مورخہ 08.04.2011 کو سائل کو w.e.f 23.11.2010 سے ملازمت سے برخواست کر دیا گیا جبکہ سائل مورخہ 08.04.2011 تا 23.11.2010 تک اپنے فرائض منصبی سرانجام دیتا رہا۔ (Annexure "B" page No.22-23)
- ۳- یہ کہ مورخہ 28.07.2011 کو سائل کو ملازمت پر w.e.f 23.11.2010 سے بحال کر دیا گیا۔ (Annexure "C" page No.24)
- ۴- یہ کہ مورخہ 01.03.2012 تا 30.04.2012 تک سائل کی تنخواہ ایک بار پھر عرصہ 2 ماہ کے لئے بند رہی جبکہ سائل اپنی ڈیوٹی سرانجام دے رہا تھا۔
- ۵- یہ کہ سائل نے جملہ بقایا جات کے لئے محکمہ کو متعدد درخواستیں دیں جن پر کوئی عمل درآمد نہیں ہوا جس پر سائل نے پشاور ہائی کورٹ میں رٹ دائر کی اور مورخہ 24.05.2012 کو پشاور ہائی کورٹ نے سائل کی Writ سیکرٹری ایجوکیشن کو ارسال کر دی کہ قانون کے مطابق اس پر فیصلہ کیا جائے۔ (Annexure "G" page No.28-35)
- ۶- یہ کہ مورخہ 16.06.2012 کو سیکرٹری ایجوکیشن نے ڈائریکٹر ایجوکیشن اور ڈسٹرکٹ ایجوکیشن آفیسر کو ہدایات دیں کہ مذکورہ Writ پر فیصلہ کرتے ہوئے ایڈیشنل رجسٹرار پشاور ہائی کورٹ کو مطلع کریں۔ (Annexure "J" page No.36)
- ۷- یہ کہ مورخہ 09.06.2012 کو سائل کا ٹرانسفر آرڈر منسوخ کرتے ہوئے سائل کو GMS "ٹو ڈومیرا" تعینات کیا گیا جہاں پر سائل نے مورخہ 01.07.2012 کو چارج لے لیا۔
- ۸- یہ کہ مورخہ 01.05.2012 تا 30.06.2012 تک عرصہ 2 ماہ سائل کی تنخواہ جاری رہی اور پھر نامعلوم وجوہات کی بناء پر مورخہ 01.07.2012 سے سائل کی تنخواہ پھر Stop کر دی گئی۔
- ۹- یہ کہ ڈسٹرکٹ ایجوکیشن آفیسر ضلع ایبٹ آباد کو معطل کر کے مورخہ 01.10.2012 سے عرصہ 2 ماہ کے لئے جبری Leave پر بھیج دیا گیا۔
- ۱۰- یہ کہ ستمبر 2012ء میں ظفر ارباب عباسی DDO ڈل سکولز نے سائل کی تنخواہ جاری کرنے کے لئے ڈسٹرکٹ اکاؤنٹ آفس کو Source form II ارسال کیا جس پر اکاؤنٹ آفیسر نے اعتراض لگایا کہ مذکورہ ٹیچر کی تنخواہ کی بندش کی وجہ بیان کی جائے۔ (Annexure "K" page No.37)
- ۱۱- یہ کہ اکتوبر 2012ء میں DDO صاحب ڈل سکولز ظفر ارباب عباسی نے سائل کے سابقہ 5 ماہ یعنی مارچ، اپریل 2012 اور جولائی، اگست، ستمبر 2012ء کے بقایا جات شامل کر کے Source form II ڈسٹرکٹ اکاؤنٹ آفس ارسال کی جہاں اکتوبر کی تنخواہ کے ساتھ سائل کو 5 ماہ کے بقایا جات وصول ہو گئے۔ (Annexure "K" page No.38)
- ۱۲- یہ کہ اسی دوران DDO ظفر ارباب عباسی صاحب کا تبادلہ ہو گیا تو ان کی جگہ قاضی تجل حسین نے DDO تعینات ہو گئے۔
- ۱۳- یہ کہ نومبر 2012ء میں قاضی تجل حسین نے ہائی کورٹ کی writ پر فیصلہ کرتے ہوئے سائل کو مورخہ 01.12.2010 تا 30.11.2011 تک کے جملہ بقایا جات Source form II میں شامل کر کے ڈسٹرکٹ اکاؤنٹ آفس بھیج دیئے جو سائل کو وصول ہو گئے۔ (Annexure "K" page No.39)
- ۱۴- یہ کہ سائل کے غیر قانونی آرڈرز پر سروس Tribunal نے اپنا فیصلہ سناتے ہوئے تمام غیر قانونی آرڈرز منسوخ کرتے ہوئے سائل کو IGHS No. 3 ایبٹ آباد میں تعینات کرنے کے احکامات صادر کئے۔ (Annexure "O" page No. 48-50)

- ۱۵۔ یہ کہ اسی دوران ڈسٹرکٹ ایجوکیشن آفیسر نے سائل پر یہ الزام عائد کر دیا کہ آپ نے مبلغ 17 ماہ کی تنخواہ دونوں DDOs کے بگس دستخط کر کے وصول کی۔
- ۱۶۔ یہ کہ DEO نے مورخہ 09.04.2013 کو سائل کو لیٹر نمبر: 2653 کے تحت سروس بک جمع کروانے کا حکم دیا گیا جس میں 2 دن کا وقت دیا گیا۔ مذکورہ لیٹر 14.04.2013 کو سکول میں موصول ہوا جبکہ مورخہ 09.04.2013 کو ہی لیٹر نمبر: 2654 کے تحت سائل کو ملازمت سے معطل کر دیا گیا۔ (Annexure "L & M" page No.42-43)
- ۱۷۔ یہ کہ سروس Tribunal کے آرڈر پر عمل درآمد نہ ہونے کی صورت میں سائل نے DEO صاحب اور پرنسپل ہائی سکول نمبر 3، ایبٹ آباد کے خلاف COC دائر کر دی۔ (Annexure "W" page No.74-75)
- ۱۸۔ یہ کہ سائل کے خلاف محکمانہ انکوائری کا آغاز کیا گیا اور سائل نے چارج شیٹ کا جواب انکوائری کمیٹی کے پاس جمع کروا دیا۔ جبکہ DEO، ایبٹ آباد نے سائل کا انکوائری آفیسر اس شخص کو مقرر کیا جس کے خلاف سائل نے عدالت میں COC دائر کر رکھی تھی۔ (Annexure "Q" page No.58)
- ۱۹۔ یہ کہ انکوائری آفیسر کے خلاف سائل نے DEO، ایبٹ آباد کو ایک درخواست گزار کی کہ انکوائری آفیسر جانبداری کا مظاہرہ کر رہا ہے لہذا اس انکوائری آفیسر کو تبدیل کیا جائے مگر DEO نے سائل کی درخواست کو کئی اہمیت نہ دی اور اسی شخص کو سائل کی انکوائری کے لئے مقرر کئے رکھا۔
- ۲۰۔ یہ کہ انکوائری کمیٹی نے اپنی رپورٹ کو مکمل کرتے ہوئے درج ذیل Recommendations دیں:
- Annexure "R" page No.60-62)
- ۱۔ کہ نظر آرہا باب عباسی کا دستخط اصل تھا۔ اگر لاپرواہی ہے تو وہ Dealing کلرک کی ہے۔
- ۲۔ مزید کارروائی کرنے سے پہلے قاضی قتل حسین کے دستخط کو تصدیق کے لئے لیبارٹری بھیجا جائے۔
- ۳۔ متعلقہ ٹیچر کی سابقہ سروس کا جائزہ لیا جائے۔
- ۲۱۔ یہ کہ انکوائری رپورٹ مکمل ہونے کے بعد DEO صاحب اور انکوائری کمیٹی نے انکوائری کمیٹی کی درج بالا سفارشات کو ملی بھگت کے ساتھ تبدیل کر دیا۔ (Annexure "S" page No.63)
- ۲۲۔ یہ کہ DEO نے انکوائری کمیٹی سفارشات کو نظر انداز کرتے ہوئے سائل کو شوکانہ نوٹس جاری کر دیا۔
- Annexure "T" page No.64-66)
- ۲۳۔ یہ کہ سائل نے شوکانہ نوٹس کا جواب دینے کے لئے انکوائری رپورٹ کا مکمل ریکارڈ طلب کیا تو DEO صاحب ریکارڈ دینے سے انکاری ہو گئے اس کے باوجود سائل نے شوکانہ نوٹس کا بدلہ جواب جمع کروا دیا۔ (Annexure "U & V" page No.67-73)
- ۲۴۔ یہ کہ سائل کو Personal hearing کے لئے طلب کیا گیا چہ جائیکہ وہاں قانون کے مطابق سائل کے ساتھ برتاؤ کیا جاتا اور سائل کو اپنے دفاع کا موقع فراہم کیا جاتا مگر ایسا نہیں ہوا۔
- ۲۵۔ یہ کہ انکوائری رپورٹ کی سفارشات اور شوکانہ نوٹس کے جواب کے بعد DEO اپنی سازش میں ناکام ہوئے تو انہوں نے سائل کی 17 ماہ کی تنخواہ واپس جمع کروانے کا دباؤ ڈالا اور تنخواہ واپس نہ کرنے کی صورت میں انٹی کرپشن کے پاس کیس رجسٹرڈ کروانے اور سروس سے برطرف کرنے کی دھمکیاں دیں اور سائل کے ساتھ یہ کمیٹنٹ کی کہ آپ 17 ماہ کی تنخواہ جمع کروادیں تو آپ کو ملازمت پر بحال کر کے ہائی سکول نمبر 3 مین کر دیا جائے گا۔
- ۲۶۔ یہ کہ مورخہ 11.09.2013 کو سروس Tribunal نے سختی کے ساتھ ہدایات جاری کیں کہ مورخہ 31.10.2013 کو ٹریبونل کے آرڈر کی تعمیل کرتے ہوئے رپورٹ جمع کروائیں۔ (Annexure "Z" page No.78)
- ۲۷۔ یہ کہ سروس ٹریبونل کی ہدایات کے بعد DEO نے زبردستی سائل کو مجبور کیا اور سائل نے 17 ماہ کی تنخواہ واپس جمع کروادی جس میں سائل کی نیک نیتی کو Admission کارنگ دے دیا اور DEO اپنی کمیٹنٹ سے مکر گیا۔
- ۲۸۔ یہ کہ سروس ٹریبونل کی کارروائی سے بچنے کے لئے مورخہ 19.10.2013 کو سائل کو ملازمت سے جبری ریٹائر کر دیا گیا۔
- Annexure "AB" page No.80-81)
- ۲۹۔ یہ کہ مورخہ 22.10.2013 کو سائل نے محکمانہ ایپل کی اور 90 دن پورے ہونے کے بعد مزید ایک ماہ کی معیاد کے اندر مورخہ 15.02.2014 کو سائل نے سروس ٹریبونل میں ایپل جمع کروادی۔ (Annexure "AC" page No.82-88)

- ☆ سروس بک محکمہ کے پاس موجود تھی محکمہ ایسا کوئی ثبوت پیش نہ کر سکا کہ سروس بک سائل کے پاس تھی۔
- ☆ DDO قاضی جمل حسین اپنی تحریر میں اقراری ہیں کہ سروس بک بابو خالد سابق ڈیپنگ کلرک کے پاس موجود تھی اور وہ دستخطوں کے لئے میرے پاس لاتا تھا۔
- ☆ دوران انکوائری ڈسٹرکٹ اکاؤنٹ آفیسر نے دونوں DDOs کے دستخطوں کو Specimen Signature قرار دیا۔
- ☆ انکوائری کمیٹی کی سفارشات کی تعمیل میں قاضی جمل حسین کے دستخطوں کو تصدیق کے لئے لیبارٹری کیوں نہیں بھیجا گیا؟
- ☆ دوران انکوائری سائل کو قاضی جمل حسین اور ظفر باب (Ex-DDOs) پر Cross Examination کا موقع کیوں فراہم نہیں کیا گیا؟
- ☆ سائل اپنے فرائض منصبی سرانجام دیتا رہا اس کے باوجود سائل کی تنخواہ کیوں بند کی جاتی رہی۔
- ☆ ڈائریکٹر ایجوکیشن ایبٹ آباد نے DEO کو لیٹر لکھا کہ وہ ہائی کورٹ کے آرڈر کی تعمیل کریں مگر DEO نے ہائر اتھارٹی کے آرڈر کو بھی نظر انداز کیا۔
- ☆ پروموشن کمیٹی نے جو سناریو پیش کیا ہے، سائل کا Bio-data انہوں نے کس جگہ سے نقل کیا؟
- ☆ سروس بک میں تمام تر اندراجات موجود ہیں متعلقہ DDO کے دستخط بھی موجود ہیں اگر سروس بک سائل کے پاس تھی تو اندراجات کس نے کئے؟
- ☆ اگر 17 ماہ کی تنخواہ بگس ہے تو پھر سائل کی 17 ماہ کی ڈیوٹی کا معاوضہ کہاں گیا؟
- ☆ سائل کا جبری ریٹائرمنٹ کا آرڈر اس بات کا نتیجہ ہے کہ DEO نے تو بین عدالت سے بچنے کا ایک ناکام راستہ تلاش کیا۔
- ☆ چارج شیٹ میں لگائے گئے الزامات اور فائل آرڈر میں ذکر کئے گئے الزامات ایک دوسرے سے مختلف ہیں
- ☆ انکوائری کمیٹی نے جہاں Dealing clerk کی لاپرواہی کو ذمہ دار قرار دیا، سوال یہ ہے کہ DEO نے اس کے خلاف بھی کوئی کارروائی کیوں نہ کی؟
- ☆ سروس بک کے متعلق ڈیپنگ کلرک پر Cross-examination کا موقع کیوں نہیں فراہم کیا گیا؟
- ☆ ڈسٹرکٹ اکاؤنٹ آفس جیسا کہ انتہائی ذمہ دار اور حساس ادارہ ہے، کیا یہ ادارہ بگس دستخطوں کے ساتھ بھی کوئی تنخواہ یا بقایا جات جاری کرتا ہے؟ کیا ان کے پاس Specimen Signatures موجود نہیں ہوتے؟ اگر جواب ہاں میں ہے تو یہ ذمہ داری سائل پر ڈال کر اپنے آپ کو بری الذمہ نہیں قرار دے سکتے۔
- ☆ سائل کی تنخواہ کا بار بار بند ہونا کیا یہ آئین کے آرٹیکل 11 کے منافی نہیں؟ کیا DEO سائل سے جبری ڈیوٹی لینے کے خواہشمند تھے؟
- ☆ یہ کہ ہر ماہ بجٹ پر نظر ثانی ہوتی ہے تو DEO کو 7 ماہ بعد کیسے خیال آیا کہ گذشتہ سال جاری ہونے والی رقم بگس تھی۔

نوید اقبال۔۔۔ ایپلانٹ

بذریعہ: سردار محمد اکمل ایڈووکیٹ ہائی کورٹ

المرقوم: 19.02.2015

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OFFICE OF THE DISTRICT ACCOUNTS OFFICER, ABBOTTABAD

No. Pay Roll-II/57-58 Dated Abbottabad, the 13-6-2013

To

The District Education Officer (Male),
Abbottabad

Subject: - REQUEST FOR PROVISION OF PHOTOCOPIES OF SOURCE FORMS

Memo:

Please refer to the Principal, GHS No. 3, Abbottabad letter No. 166 dated 12.06.2013 on the subject cited above.

In this connection it is stated that multidimensional views of the signatures of the above Officer have been taken and it has been ascertained that all the signatures of the signatories bear some what difference at any other angle or degree, however, a set of the signatures is being appended for further analysis and examination at your end.

So far the claims advertently or inadvertently signed by the above Officer are concerned. It is stated that the claim that has been admitted by the Officer, but the adjustment has been objected by the signatory does not indicate as to why he did not put a cross on the empty space of the claim and as such his objection seems to be frivolous.

It is further elaborated that mutatis mutandis set of the signatures of the above Officer is being processed and followed in this office.

The objection of the signatories to the extent of disowning their signatures may cause problem for this office and may affect the fluent performance of this office because there is not even a single jota between the signature on the claim and in our record.

It is therefore requested that the instrument designed to check the signature may please be communicated enabling this office to carry on official business. However, the vouchers requested ibid can not be entertained without permission of the Accountant General, KPK, Peshawar.

000
677
RECEIVED

~~By D/O (M)~~
~~Discuss PR~~

~~A. H.~~
District Accounts Officer
Abbottabad
13/6/13

No. _____

Copy to the Mr. Abdul Rashid, Principal, GHS No. 3, Abbottabad for information.

~~sd~~
District Accounts Officer
Abbottabad

Reviewed
on 25/6/13
Hi
25/6/13

D/A -
put up
on file to
Accounts
office local
office
Hi
25/6/13

2
12

6 - 16

Annexure
9



PAYROLL SYSTEM
AMENDMENT FORM
SINGLE EMPLOYEE ENTRY

FORM: PAY02

Date: _____

Page No: _____

OFFICE OF THE District Education Officer (M) Alwar

FOR THE MONTH OF October 1 200-2012

DDO Code (Cost Center) - - 6 0 2 8 Description DEO (M) Alw

Personnel Number 0 0 0 1 3 4 7 5 Employee Name Naveed Syed (AT) National ID Card Number _____

Grade (Pay Scale Group) 15 Salary Start Stop

GENERAL DATA CHANGE ¹³			CHANGE IN PAYMENTS / DEDUCTIONS ¹⁷					Effective Date ²¹	Remarks ²²
Info ¹⁴ Type	Field ID ¹⁵	New Contents ¹⁶	Wage Type ¹⁸	Rupees ¹⁹	Paise	Ad			
		Basic Pay	5801	84500	0	-		Agreeing pay	
		House Rent All=	5002	7830	-	-		100% F	
		Medical Allow =	5012	5000	0	-		3-3-2012	
		Addl-Relief (10)=	5898	24600	0	-		to	
		ARA (2011)	5910	7380	0	-		30-4-2012	
		ARA (2012)	2118	10140	0	-		1-7-2012	
		CONV = Allow :	5011	9400	0	-		to	
		UAA	5096	5000	0	-		30-9-2012	
		Total		153450	0	=		(5, month)	

Alwar
SUPERINTENDENT
District Education Office, Alwar

Rupees = one lac fifty three thousand eight hundred and fifty -

Prepared By: _____

Audited/Checked By: _____

Entered/Verified By: _____

53

PAYROLL SYSTEM
 AMENDMENT FORM
 SINGLE EMPLOYEE ENTRY



OFFICE OF THE DO (M) Abbottabad

FOR THE MONTH OF 9 1-2012

DDO Code (Cost Center) AD6028 Description

Personnel Number 13475 Employee Name Maveed Iqbal

Grade (Pay Scale Group) 15 A-T

Salary Status

GENERAL DATA CHANGE ³		CHANGE IN PAYMENTS / DEDUCTIONS ⁷				Effective Date ⁸
Field ID ¹³	New Contents ¹⁸	Wage Type ¹⁸	Amount			
			Rupees ¹⁹	Paisa	Adj ²⁰	
	Basic Pay	0007	16900			01-9-12
	H-R-A	1000	1566			
	C-A	1210	2000			
	M-A	1300	1000			
	A-A-2010 (50%)	1948	4920			
	A-R 2011 (15%)	1970	1476			
	A-R 2012 (20%)	2118	3380			
	Inct. All =	1968	1000			

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OFFICER

Entered/Verified By

PAYROLL SYSTEM
AMENDMENT FORM
SINGLE EMPLOYEE ENTRY

Date

Page No.

OFFICE OF THE D9: M/S ABBOTABAD

FOR THE MONTH OF 11 / 2000

DDO Code (Cost Center) AD6028 Description D/O MS AIA

Personnel Number 13475 Employee Name NAVEED IQBAL National ID Card Number

Grade (Pay Scale Group) 15 AT Salary Status Start Stop

my wage 1/12/2010 to 30/11/2010 has not been drawn through

GENERAL DATA CHANGE ¹³			CHANGE IN PAYMENTS / DEDUCTIONS ¹⁷				Effective Date ²¹	Remarks ²²
Info ¹⁴ Type	Field ID ¹⁵	New Contents ¹⁶	Wage Type ¹⁸	Amount				
				Rupees ¹⁹	Paisa	Adj ²⁰		
		B.Pay	5801	149880	-	00	1-11-12	Amount of pay w/e/f
		HRA	5002	18792	-	00		1-12-10 to 30-11-2011
		MA	5012	12000	-	00		(12-months)
		SP. AR. All	5081	3612	-	00		
		SP. AR. All	5244	4767	-	00		
		AR ⁷	5255	6289	-	00		
		DA	6142	13776	-	00		
		AR ⁹	5884	5904	-	00		
		AR ¹⁰	5898	8500	-	00		
		Ch Allow	5013	7380	-	00		
		Green live All	5016	5500	-	00		
		G.TOTAL		293723	-	00		

-DISTRICT OFFICER (Male)
ELEM. & SECY. EDU. DEPT.
Prepared By

Audited/Checked By

Entered/Verified By

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ARREARS OF PAY & ALLOWANCE IN RESPECT OF MR. NAVEED IQBAL A.T WEF 01-12-2010 TO 30-11-2011.

Period	B.Pay	HRA (1201)	M.A (1217)	Spl Addl Alw (1209)	SRA (1244)	AROS (1244)	D.A (1205)	AR09 (120P)	AR2010 (120X)	CA (1203)	AR11 (121A)	Incst ALL (8515)	Total
01-12-2010 to 30-06-2011	9840 X 7 = 68880-	1566 X 7 = 10962-	1000 X 7 = 7000-	516 X 7 = 3612-	681 X 7 = 4767-	681 X 7 = 4767-	887 X 7 = 6209-	1968 X 7 = 13776-	4920 X 7 = 34440-	00	00	00	154413-
01-07-2011 to 30-11-2011	16200 X 5 = 81000-	1566 X 5 = 7830	1000 X 5 = 5000-	00	00	00	00	00	4920 X 5 = 24600-	1700 X 5 = 8500-	1476 X 5 = 7380-	1000 X 5 = 5000-	139310-
Total	149880-	18792-	12000-	3612	4767-	4767-	6209-	13776-	59040-	8500-	7380-	5000-	293723-

DEDUCTIONS

GPF 925 X 8 = 7400-
 GPF 1520 X 4 = 6080-
 BF 180 X 12 = 2160-
 AGI 13 X 12 = 156-
 GI 115 X 12 = 1380-
 EEF 20 X 12 = 240-
TOTAL 17416-

TOTAL PAY ACCUMULATED = 293723-
 TOTAL DEDUCTIONS TO BE MADE = 17416-

NET AMOUNT PAYABLE = 276307- (Rs. Two lac seventy six thousand three hundred seven only)

Pay wef 1/12/10 to 30/11/11 has not been drawn through system
Signature Accountant
Approved

[Signature]
 DISTRICT OFFICER (Male)
 ELEMS & SCY, SOU, DEPT
 Seal & signature
 ACCOUNTABLE