

26.08.2019

Nemo for the petitioner. Addl. AG for the respondents present.

Due to general strike on the call of K.P Bar Council learned counsel for the petitioner is not in attendance. Adjourned to 23.09.2019 for further proceedings before S.B.

Chairman



23.09.2019

Nemo for the petitioner. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Shah Nawaz, Clerk for the respondents present.

Due to general strike of Bar learned counsel for the petitioner is also not in attendance. Adjourned to 17.10.2019 before S.B.

CHAIRMAN



17.10.2019

Counsel for the petitioner and Addl. AG alongwith Shah Nawaz, Senior Clerk for the respondents present.

Learned counsel for the petitioner requests for consigning the proceedings in hand to record.

Order accordingly.

Chairman



15.04.2019

Appellant with counsel and Mr. Kabir Ullah Khattak learned Additional Advocate General on behalf of respondents present. Learned counsel for the appellant argued that the respondent department has not conducted de-novo inquiry against the appellant and as such, violated the directions of this Tribunal. Notice be issued to the respondent department with the direction to furnish record of de-novo inquiry against the appellant on the next date fixed as 20.05.2019. To come up for further proceedings on the date fixed before S.B



20.05.2019

Learned counsel for the petitioner present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Razi Ullah Stenographer present. Representative of the respondents submitted record of de-novo inquiry which is placed on file. Adjournment requested. Adjourn. To come up for further proceedings/arguments on 02.07.2019 before S.B.



Member

02.07.2019

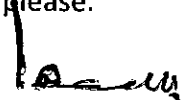



Petitioner in person present. Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the petitioner is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 26.08.2019 for further proceedings before S.B.



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

FORM OF ORDER SHEET

Execution Petition No. 4/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04.01.2019	<p>The Execution Petition of Dr. Lal Zari submitted to-day by Mr. Noor Muhammad Khattak Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This Execution Petition be put up before S. Bench on - <u>28-1-19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
28.01.2019		<p>Counsel for the petitioner present. Notice be issued to the respondents for implementation report for 14.03.2019 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD AMIN KHAN KUNDI) MEMBER</p>
14.03.2019		<p>Petitioner with counsel present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Shah Nawaz AD litigation for the respondents present and submitted a copy of reinstatement order dated 27.12.2018. Adjournment requested. Adjourned. To come up for further proceeding/arguments on 15.04.2019 before D.B.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 4 /2019

In

Appeal No.976/2015

DR. LAL ZARI

VS

GOVT: OF KP & OTHERS

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PETITIONER/APPLICANT

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

MOBILE NO.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Implementation Petition No. 4 /2019

Diary No. 20

Dated 4-1-2019

In

Appeal No.976/2015

Dr. Lal Zari, Deputy Director (BPS-18),
Population Welfare Department FATA (Merged Area), FATA
Secretariat, Warsak Road, Khyber Pakhtunkhwa, Peshawar.

.....PETITIONER

VERSUS

- 1- The Additional Chief Secretary FATA, FATA Secretariat, Warsak Road, Peshawar.
- 2- The Principal Secretary to Governor Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Social Sector Department FATA (Merged Area), FATA Secretariat, Warsak Road, Peshawar.
- 4- The Secretary Finance Department FATA (Merged Area), FATA Secretariat, Warsak Road, Peshawar.
- 5- The Director Population Welfare Directorate FATA (Merged Area), FATA Secretariat, Warsak Road, Peshawar.

..... RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
DATED 31.08.2018 IN LETTER AND SPIRIT

R/SHEWETH:

- 1- That the petitioner filed Service appeal bearing No. 976/2015 before this august Service Tribunal for her re-instatement on the post of Deputy Director (BPS-18).
- 2- That the appeal of the petitioner was finally heard by this august Tribunal on 31.08.2018 and was decided in favor of the petitioner vide judgment dated 31.08.2018 with the view that ***"As a sequel to the above, the appeal in hence is accepted and impugned order is set aside. The respondents are directed to conduct de-novo enquiry against the appellant strictly in accordance with the law and conclude the same within a period of ninety days from the date of receipt of this judgment. The***

issue of back benefits shall be subject to the final outcome of the de-novo inquiry". Copy of the judgment is attached as annexure..... **A.**

- 3- That after obtaining copy of the judgment the petitioner applied to the Department for implementation but the respondent Department is not willing to obey the judgment passed by this august Tribunal.
- 4- That the petitioner has no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may be directed to implement the judgment dated 31.08.2018 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Dated: 02.01.2019.

PETITIONER


DR. LAL ZARI

THROUGH:


NOOR MOHAMMAD KHATTAK

&

**MIR ZAMAN SAFI
ADVOCATES**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2019

In
Appeal No.976/2015

DR. LAL ZARI

VS

GOVT: OF KP & OTHERS

AFFIDAVIT

I Noor Mohammad Khattak, Advocate on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

ATTESTED
Javed Mohammad Advocate
NOTARY PUBLIC
District Court Peshawar


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 976/2015

Date of Institution ... 01.09.2015

Date of Decision ... 31.08.2018



Dr. Lal Zari, Ex: Deputy Director (BPS-18), Population Welfare Department
FATA, FATA Secretariat, Warsak Road, Khyber Pakhtunkhwa Peshawar.
... (Appellant)

VERSUS

1. The Additional Chief Secretary FATA, FATA Secretariat, Warsak Road,
Khyber Pakhtunkhwa, Peshawar and 4 others. ... (Respondents)

Mr. Noor Muhammad Khattak,
Advocate

--- For appellant.

ATTESTED

Mr. Ziaullah,
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

MEMBER (Executive)
MEMBER (Judicial) Peshawar

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the
parties heard and record perused.

FACTS

2. Brief facts of the case are that the appellant was appointed as Women Medical Officer in Population Welfare Department vide notification dated 27.07.2006. That she was promoted as Deputy Director Population Welfare FATA vide notification dated 01.12.2012. That on the basis of an anonymous/pseudonymous complaint/letter, disciplinary proceedings were initiated against her and winding up major penalty of dismissal from service was imposed vide impugned notification dated 21.05.2015. The appellant preferred departmental

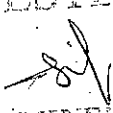
Attested
of


appeal on 25.05.2015, which was rejected on 10.08.2015, hence, the instant service appeal.

ARGUMENTS

3. Learned counsel for the appellant argued allegations leveled against her were unfounded/baseless, hence, denied in her reply to charge sheet/statement of allegations. Proper inquiry in accordance with the procedure laid down in E&D Rules 2011 was not conducted. Show cause alongwith copy of inquiry report was not served on the appellant. It is not clear whether statements of witnesses were recorded by the inquiry committee, as the record is silent. Proper opportunity of cross examination was also denied to the appellant. Purchase committee notified by the respondents was headed by Secretary Social Sector, FATA, alongwith seven other members. However, they were not touched by the inquiry committee, which lend credence to the fact that the appellant was made escapegoat to save the skin of others. Similarly the report is also silent on the role of technical committee. The inquiry committee also recommended disciplinary action against Mr. Fakhar Alam, Store Keeper and Mr. Rashid Ahmad under E&D Rules, 2011, but to no avail. It appears that only the appellant was victimized, which amounts discrimination under Article-25 of the Constitution. Respondents also failed to produce record to substantiate whether Accountant General PR was approached to take action against its officials. Reliance was placed on case reported as 2011 PLC(CS) 1111, 2005 PLC (CS) 311, 2012 TD Tr.(Services) 12, PLJ 2011 Tr.C(Services) 1, PLJ 2008 SC 65 and 2007 SCMR 1860.

4. On the other hand, learned Deputy District Attorney argued that impugned notification was issued in accordance with law and rules. All codal formalities were observed during the inquiry proceedings and the appellant was found guilty. Article 4 and 25 of the Constitution were not violated.

ATTESTE

 EXAMINE
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Attested


(6)

CONCLUSION

5. Upon minute examination of the inquiry report some glaring discrepancies were noticed which led us to conclude that it was not conducted in just, fair and transparent manner. Perusal of reply of the appellant to the charge sheet and statements of allegations revealed that purchase committee headed by the Secretary Social Sector (FATA) alongwith seven others members was constituted to oversee the process of procurement. Similarly the technical committee was constituted after obtaining approval from the Secretary Social Sector (FATA). Bids invited were opened on the directions of the Secretary SS by a broad based committee having representation of relevant stakeholders. Comparative statement was signed by the concerned and finally by the Secretary Social Sector (FATA). In case there were deficiencies in the comparative statement was it not the responsibility of Secretary concerned as Head of the department to take corrective measures/stop the process? He can't absolved of his responsibility. The inquiry committee should have recorded statements of members of purchase committee/technical committee and thereafter should have analyzed their role in their findings. While responding to the charge at Sr. No. b of the charge sheet the appellant in her reply stated that representative of A&C Department was included to participate in the proceedings of the procurement committee on the verbal advice of SSS (F). Why this fact was not got verified from the Secretary SS to meet the ends of justice? While in reply to charge at Sr. no. d she leveled certain accusations against Mr. Fakhar Alam, Store Keeper and Mr. Muhammad Kamran. It was the duty of the inquiry committee to have recorded their statements, but the ^{report} ~~report~~ was silent on this issue.

ATTESTED

6. In addition to this reply furnished to the enquiry committee by the official respondents was also worth perusal. In this reply fingers were pointed out towards Secretary Social Sector (FATA) being responsible for certain lapses. It was quite strange why the Secretary Social Sector not associated with inquiry proceedings?

EXAMINED
Cyber Tribunal
Service Tribunal

Attested
G.

⑦

Was it intentional or otherwise? Fairness demanded that his statement should have been recorded to counter the allegations leveled by the appellant and those contained in the official reply. We apprehend that the appellant was made escapegoat to save the skin of others. Action of the enquiry committee also goes against the spirit of E&D Rules 2011. Firstly statements of all concerned, including Secretary should have been recorded in the presence of the appellant and thereafter opportunity of cross examination should have been given to her. It is a serious departure from the laid down procedure and is sufficient for making the proceedings illegal/unlawful. The inquiry committee also proposed disciplinary action against Mr. Fakhar Alam, Store Keeper and Mr. Rashid Ahmad but during the course of hearing official respondents when confronted on this point were clueless. Similarly, no documentary evidence was produced to substantiate that action against the officials of AGPRs as proposed by the enquiry committee was taken.

7. Another glaring illegality noticed in the impugned order was that no show cause notice was served on the appellant and as such Sub-Rule (1) (4) (c) of Rule-14 of E&D Rules 2011 was violated. Reliance is placed on case law reported as 2005 SCMR 678, the Supreme Court of Pakistan held that "according to the principle of natural justice enshrined in "Audi Alteram Partem" is one of the most important principles and its violation is always considered enough to vitiate even most solemn proceedings. Where adverse action^{is} contemplated to be taken against person/persons, he/they would have a right to defend such action, not with^{standing to} the fact that the statute governing their rights does not contain provision of the principles of natural justice and even in the absence thereof, it is to be considered as a part of such statute in the interest of justice". In these circumstances, the opportunity of fair trial was not afforded to the appellant and condemned unheard. Similarly no speaking order was passed on the departmental appeal of the appellant. The competent authority

Attested


ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

was required under the law/rules to give reasons for rejection of appeal. As such Section-24-A of General Clauses Act was violated.

8. As a sequel to the above, the appeal in hand is accepted and impugned order is set aside. The respondents are directed to conduct de-novo enquiry against the appellant strictly in accordance with the law and conclude the same within a period of ninety days from the date of receipt of this judgment. The issue of back benefits shall be subject to the final outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

Sd

Ahmad Hassan
member

Sd

M. Amin Khan Khundi
member

Certified to be true copy
E.A. KHAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application	11-9-2018
Number of Pages	2000
Copying Fee	1200
Urgent	1200
Total	1400
Name of Copyist	Sawtallah
Date of Copying	11-9-2018
Date of Delivery	11-9-2018

Attested
[Signature]

VAKALATNAMA

*Before the Khyber Pakhtunkhwa Service Tribunal
Peshawar*

~~15401-0705985-5~~ No. _____ /2019

Dr. Lal Zari

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Department

(RESPONDENT)
(DEFENDANT)

I/We Dr. Lal Zari

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 02 / 01 / 2019

Lal Zari
CLIENT

ACCEPTED

**NOOR MOHAMMAD KHATTAK
ADVOCATE
15401-0705985-5
(BC-08-0853)**

&

**MUHAMMAD MAAZ MADNI
ADVOCATE**

Mir Zaman Safi
Advocate

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391
Mobile No.0345-9383141



GOVERNMENT OF KHYBER PAKHTUNKHWA,
POPULATION WELFARE DEPARTMENT
02nd Floor, Abdul Wali Khan Multiplex, Civil Secretariat, Peshawar

Dated Peshawar the 27th December, 2018

NOTIFICATION

No. SOE(PWD) Misc/Inquiry/2018/FATA: In pursuance of judgment of the Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 31-08-2018 and in consultation with Establishment Department, Khyber Pakhtunkhwa, the competent authority is pleased to reinstate Dr. Lal Zari, Dy. Director Population Welfare, Directorate Tribal Districts for the purpose of de-novo inquiry, with effect from 24-10-2018.


SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT.

Endst: No. SOE (PWD) Misc/Inquiry/2018/FATA Dated Peshawar the 27th Dec: 2018

5467-7)

Copy for information & necessary action to the: -

1. Additional Chief Secretary, FATA, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa.
3. Director General, Population Welfare, Khyber Pakhtunkhwa, Peshawar.
4. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
5. Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
6. Deputy Director Population Welfare Directorate, Tribal Districts.
7. Officer Concerned.
8. PS to Secretary, PWD, Khyber Pakhtunkhwa, Peshawar.
9. Master file.


SECTION OFFICER (ESTT)
PHONE: NO. 091-9223623

Accountant General
3/1/19
Keep a copy in
record book admin/Accounts
and inquiry files

Against Dr. Lal Zari (BS-18) Deputy Director Population Welfare Tribal Districts formerly FATA Secretariat Peshawar.

Subject: Appeal No. 976/2015: Dr. Lal Zari Vs ACS FATA & Others

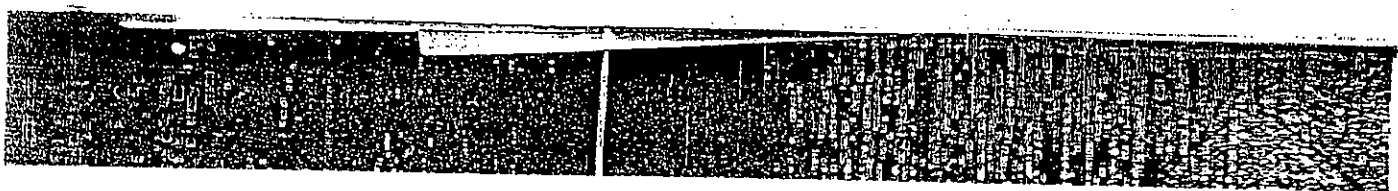
1. **Order of Inquiry:** This de-novo inquiry has been assigned to the undersigned with the approval of the competent authority intimated vide Govt; of Khyber Pakhtunkhwa, Population Welfare Department letter No. SOE (PWD) Misc. /Inquiry/2018 Dated 02/11/2018

This inquiry is against Dr. Lal Zari, the then Deputy Director Population Welfare (PWD) Tribal Districts formerly FATA Secretariat, Peshawar. As an inquiry officer I have to probe into the matter afresh based on available record, statements and those areas which have been left unattended, if any, so as to unearth the facts, draw correct conclusions and put forth some recommendations under E&D Rules 2011.

2. **Background:** Background of the case is that Dr. Lal Zari DD PWD (BS-18) was initially appointed as Woman Medical Officer (WMO) in the year 2006 on the recommendation from Khyber Pakhtunkhwa Public Service Commission and got posted in the Department of Population Welfare FATA Secretariat, Peshawar. Later on, she was promoted as Deputy Director Population Welfare Department (PWD) in the year 2012.

2.1. The available record reveals that the concerned officer while posted as DD population welfare floated Tender Notice in print media on 04/04/2013 for purchase of medicines, equipment and furniture for the family welfare centres of population welfare department for the fiscal year 2012-13. Copy of Tender Notice along with approval is at (ANNEX-I). While procurement process was completed and supplies were made, District Administration Peshawar along with Drug Inspector and media team on the basis of some complaint (anonymous/pseudonymous) raided the warehouse of Population welfare Directorate FATA situated at Abshar Colony Warsak Road Peshawar and seized some drugs. The warehouse was sealed and the matter was referred to FATA Secretariat for further enquiry in the matter.

2.2. An Inquiry committee was constituted for fact finding by Secretary Social Sector vide Notification No. FS/SO (H)/SSD/1-9/2013/584-90 dated 03/10/2013. The inquiry committee was comprised of Dr. Sartaj Khan, Acting Director Health Services FATA, Mr. Imran Hamid, Additional Political Agent, Bajaur Agency and Mr. Miraj Muhammad, Section Officer (C-III) AL&C Department FATA. The committee submitted its report to the Secretary Social Sector Department FATA on 30/10/2013. Copy of inquiry report is at (ANNEX-II). On the basis of recommendations of fact-finding inquiry committee, Secretary Social Sector Department submitted the case to the Governor Khyber Pakhtunkhwa in his capacity as Competent Authority for



initiating disciplinary proceedings against the accused officer. The competent authority was pleased to order suspension of the accused officer and she was served with charge sheet & statement of allegations. Copy of suspension order along with charge sheet & statement of allegation is at (ANNEX-III).

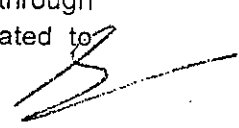
2.3. As per recommendations, the competent authority ordered constituting an inquiry under Revised Efficiency & Discipline Rules 1973 to probe into the allegations levelled against the officer. An Inquiry Committee was constituted vide Social Sector Department FATA Secretariat Notification No. FS/SO (H)/SSD/1-9/2014/739-46 dated 19/03/2014 to probe into the charges levelled in charge sheet & statement of allegations against Dr. Lal Zari, the then Deputy Director Population Welfare Directorate FATA. The committee comprised of Mr Hasham Khan, Additional Director Education and Dr. Muhammad Nazir, Deputy Director (Admin) FATA Secretariat, Peshawar. The Inquiry committee submitted its report on 15/05/2014. Copy of the report is at (ANNEX-IV).

2.4. The record reveals that there has been another inquiry in the instant case. The inquiry titled "*Inquiry into supply of Misbranded Medicines*" was conducted in compliance with Administration, Infrastructure & Coordination Department FATA Secretariat Notification No. FS/E/100-98/(Inq-Medicines)/15913-15 dated 17/10/2014 by a two-member enquiry committee comprising of Mr Sikander Qayyum, Secretary Finance FATA and Mr Shâkeel Qadir, Secretary Law & Order, FATA Secretariat Peshawar. The committee submitted a detailed report with recommendations on 10/12/2014. Inquiry report is at (ANNEX-V).

2.5. On the basis of recommendations of Inquiry Committee, major penalty was imposed and the Services of Dr. Lal Zari were dismissed vide Notification No. dated 21/05/2015. (ANNEX-VI). Consequently, the officer concerned filed departmental appeal before the competent authority i.e. Governor Khyber Pakhtunkhwa which was also rejected vide No. letter dated 10/08/2015. (ANNEX-VII).

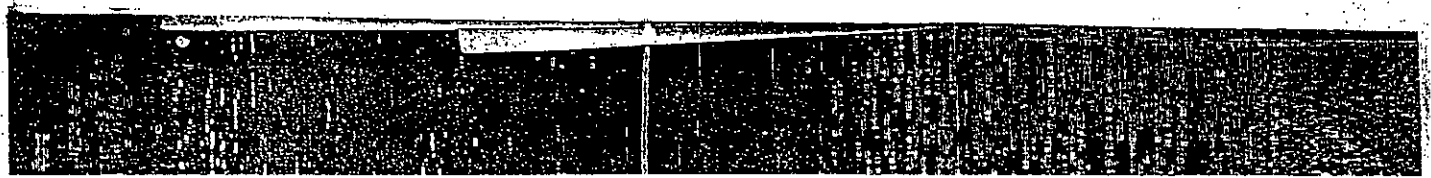

2.6. Feeling aggrieved, the officer concerned filed an appeal in the Services Tribunal for the purpose to revoke the impugned order. (ANNEX-VIII). The department filed Para wise comments before the Services Tribunal. The case was defended through the District Attorney General. (ANNEX-IX). The Services Tribunal set aside the impugned order in its judgement dated 31/08/2018 and directed for reinstatement of Dr. Lal Zari and initiation of de-novo inquiry against her. (ANNEX-X).

3. **Inquiry Proceedings:** The inquiry proceedings mainly based on available record, statements of the accused officer, witnesses and earlier inquiry reports. The charge sheet and statement of allegation was served upon the accused officer. She was called for statement and any other information, which could help leading to just and fair recommendations. (ANNEX-XI). Statements of members of procurement committee were also recorded. (ANNEX-XII). Along with Deputy Secretary AIC was also recorded. (ANNEX-XIII). Similarly chairman of the procurement committee i.e. the then Secretary Social Sector Development was requested to record his statement in compliance to court orders. (ANNEX-XIV). It has been strived to fill in the gaps as identified in the court judgement, information gathered through discussions/explanations with all the concerned and efforts were coordinated to arrive at correct and logical conclusions.



4. Findings/ Observations: The examination of available record, statements and cross examinations of the members and thus connecting dots lead to following findings and observations:

- a. The Tender Notice was forwarded with prior approval of Secretary SSD to Director Media Cell FATA for publication in the two Newspapers vide letter No. F.No. 1(1) 2012-13/PoP/7523-27 dated 29/03/2013. (ANNEX-XV). It was the duty of Media Cell to ensure the observance of relevant Rules/Policies/Instructions etc. for publication of the same. The departments have been restrained to publish their advertisements in press directly through a Notification No. & dated: (ANNEX-XVI). Thus the violation/lapse cannot be attributed to the accused officer.
- b. The perusal of Tender Notice reveals that it was fundamentally faulty as no date for bid opening was explicitly mentioned rather as per NIT **"it was to be communicated later"**. Thus bid was opened after a lapse of more than one-month time from the date of bid submission/opening. This is violation of Rule 28 of PPRA Rules 2004 under which the last date of bid submission & opening shall be the same. (ANNEX-XVII). It is also important to note that neither any member nor chairman of the committee opted for course correction. Thus the committee shares the responsibility.
- c. The Advertisement was floated whereas the funds were NOT available at the time of floating Tender Notice but Secretary Social Sector granted prior approval for the purpose. It is, however, important to note that no procurement regime including PPRA forbids floating tender notice just because funds are not available. The procurement process can be carried out except award of contract/issuance of work/ purchase order.
- d. PPRA Ordinance was not extended but for all practical purposes an Administrative Notification of the AL&C Department has taken effect and was to be observed by the lower formations including Directorate of Population Welfare. (ANNEX-XVIII).
- e. The record reveals that the bids of Wajid & Co. and Nasir & Sons were initially rejected as no CDR was found attached rather CDR was submitted later with tampered dates. It is the discretion/choice of the procuring entity to ask for CDR under Rule 25 of PPRA and not mandatory but the way facts and record has been twisted, it establishes the malafide intension. It is, however, astonishing to note that the minutes of bid opening are silent about it and duly signed by all the members. No bidding documents' including an unambiguous evaluation criterion was developed and thus this gap area led to mis-procurement under Rule 50 read with Rule 29 & 30 of PPRA Procurement Rules 2004. (ANNEX-XIX).
- f. As far violation of Rule 39 relating to obtaining Performance guarantee is concerned; it is not mandatory rather it is on the discretion of Procuring entity to secure the risk of contract abandonment by the bidder. The same is reproduced: **"Where needed and clearly expressed in the bidding documents, the procuring agency shall require the successful bidder to furnish a performance guarantee which shall not exceed ten per cent of the contract amount"**.
- g. As per Notification, the number of committee members is seven (07). There are few other signatures on comparative statements by those officers/officials who are not notified members of the committee. There is no formal approval

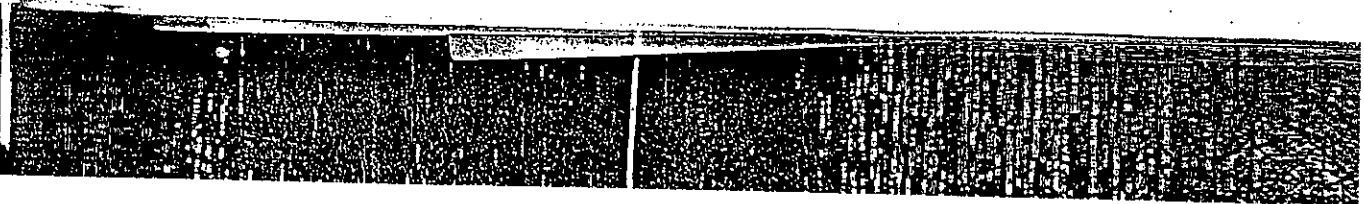


- for inclusion of these members in the committee. The plea of the accused officer is that they have been included on verbal directives of the Secretary SSD. The same should have been confirmed from the chairman of the committee but ironically none of the inquiry committee/ officers have done it. The accused officer however produced an email report/reply of the secretary concerned, which supports the plea of the accused officer. (ANNEX-XX)
- h. Only last page of comparative statements was signed whereas members should have affixed their signatures on each page. The accused officer being secretary of purchase committee by virtue of being head of the Directorate population welfare should have ensured it. Other members also share this negligence but major share can be attributed to the accused officer being secretary of purchase committee and administrative head of PWD. On cross-examination, she was clueless.
- i. The technical committee was notified with the approval of Secretary SSD. (ANNEX-XXI). It is however added that there is no bar in formation of technical committee but it has to assist the procurement committee as per its notified TORs. The claim of the accused officer regarding formation of technical committee can further be proved by the Email as mentioned above. (ANNEX-XXII).
- j. The inclusion of Dr. Naila wadood AD PWD instead of Dr. Rooh ul Ala WMO Khyber Agency in the procurement committee is based on the claim that it was done on the verbal orders of the Secretary SSD. Record is silent as there is no proper notification for the purpose and hence the accused officer could not prove her claim. Statements of both the officers were recorded and the charge is proved against the accused officer. Statements of Dr. Naila & Dr. Roohul Ala (ANNEX-XXIII)
- k. As far as maintenance of stock record is concerned, the record exhibit that primarily it was the duty of the storekeeper to take medicines on stock as they were duly inspected by the inspection committee constituted for the purpose. (ANNEX-XXIV). The storekeeper was directed vide letter dated 28/06/2013 to take the received medicines on stock as these were properly examined and evaluated by the technical committee. The storekeeper failed and thus on the basis of the accused officer report, he was suspended by Secretary SSD vide office order No. SO (SSD) FS/5-1/2012-13/5253-60 dated 03/09/2013. (ANNEX-XXV). The Email report of Secretary SSD can also verify the fact that supplies were made whereas stock was not taken on register by the storekeeper. (ANNEX-XXVI)
- l. As per Drug Act 1976 and Drug Labelling Packing Rules 1986, the medicines should have been supplied with certain mark of identification so as to differentiate them as "*Govt Property*" or "*Not for Sale*". The medicines were unbranded in this sense. There were some items, which were not marked as such and thus this charge is established. The record reveals that chairman Technical Committee vide letter No. _ dated 04/07/2013 under her signatures pointed out the issue and directed the supplier for the needful. (ANNEX-XXVII). It is further to add here that AD (Medical) being chairperson of technical committee should have reported the matter regarding both the *Quality and labelling* of the medicines to the competent authority though she directed the supplier for course correction to the extent of labelling only. (ANNEX-XXVIII). AD (Medical) failed to point out the quality of the medicines if they were sub standard and hence she is more responsible for the lapse. To

the extent of member purchase committee, the accused officer along with other members including chairman of the committee share the responsibility. Here at this point the report of Dr. Ihsan ul Haq need to be looked into but unfortunately the report is not available on record.

- m. No formal agreement has been signed which should have been signed/approved by Secretary social sector as under Delegation of financial powers an officer of BS-18 being category III officer cannot sign an agreement of such huge amount. It is however added that submission of performance guarantee @10% is not mandatory as it is obtained to protect the procuring entity against the risk of contract abandonment. Fortunately no mishap happened, however violation has been occurred as Rule 11 and Rule 44 were violated. The accused officer along with Accounts Section is responsible for the lapses.
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- q. As far as the charge of submitting the files directly to the Secretary Social Sector is concerned, it is a customised approach and the record reveals that most of the approvals have been obtained via Deputy Secretary. The plea of the accused officer for maintaining secrecy and for prompt decision making, the files were submitted to the secretary SSD being chairman of the committee is valid. The earlier inquiry reports are also of the same viewpoint. (ANNEX-XXXV).
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5. **General Analysis:** It is also astonishing to note that:

- A fact finding inquiry was ordered by Secretary SSD vide Notification No. SO (SSD)/FS/5-1/2012-13/5149-56 dated 29/08/2013 but no report is available on record. The same has not been shared with the accused officer either.
- It is also important to note that Secretary SSD ordered the inquiry but at the same time he was chairman of the purchase committee. Similarly one member i.e. Mr. Tashfeen Haider DS (Admin) AI&C was appointed as inquiry officer/member of inquiry committee whereas at the same time he was also a member of the same purchase committee.
- Similarly a second inquiry committee was constituted vide No. FS/SO (H)/SSD/1-9/2014/498-99 dated 24/02/2014 for fact finding regarding furniture and equipment of the PWD store situated at Abshar colony Warsak Road Peshawar. No report of this inquiry committee is available on record.
- It is important to note that medicines of more than 12million Rupees are lying dumped in the sealed store since 2013 and never used for the purpose they were procured and thus caused a colossal loss to public exchequer. These medicines should have been utilised by constituting a technical committee as per recommendations of inquiry conducted by Mr Sikander Qayyum and Mr Shakeel Qadir. No action has been taken till date.
- It is also an issue to be properly responded that why no inquiry committee have approached the chairman of the purchase committee i.e. Secretary social sector departments for the purpose to record statement and facilitate the legal proceedings.
- This Email has never been shared or placed before any inquiry committee; the accused officer has to explain that why the same had not been shared earlier with previous inquiry committees?
- It appears that NAB has recovered the amount from the accused on account of procedural lapses and violation of Rules whereas no case of embezzlement and misappropriation of funds have been proved, prima facie it appears a case of double jeopardy.

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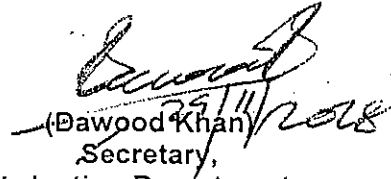


6. **Conclusions:** in view of the detailed analysis, examination of record and the inquiry proceedings, which also dawned upon some new findings, I do hereby conclude as under:

- The accused officer cannot be held responsible for publication of the Tender Notice in the Newspaper.
- Partially responsible along with purchase committee for not opening the bids on closing date of bid submission.
- Responsible for twisting the facts & tampering the record by accepting the CDR in back dates whereas, the same were prepared after cut off date.
- Responsible for not having the comparative statements duly signed by all the members
- Responsible to the extent of member purchase committee along with technical committee for accepting those medicines, which were not properly labelled or branded
- Responsible for inclusion of Dr. Naila AD (Medical) in purchase committee without any formal approval
- The accused officer along with Accountant is responsible for violation of Rule 11 and Rule 44 in terms of not executing a formal agreement.
- Responsible along with Accountant as well as AGPR officials at sub-office Peshawar for the lapse in terms of making cash payments and also making full payments despite the fact that 1/6th of the supplies) were yet to be made.

7. **Recommendations:** In view of the above findings/ deliberations, it is recommended that:

- The officer has committed some serious irregularities in procurement process and thus section 04 of E&D Rules 1973 may be invoked and it is recommended that major penalty of reduction to lower grade/post may be imposed on the accused officer.
- Disciplinary proceedings against AD (Medical) may also be initiated.
- Censure has been served upon Mr Shahid Account Assistant and Mr Fakhre Alam, storekeeper, which is not commensurate looking at the gravity of negligence they committed. Disciplinary proceedings are recommended against both the officials.
- KPPRA may also be approached to initiate a full throttle capacity building program for the officers/officials of newly merged tribal districts of Khyber Pakhtunkhwa.


(Dawood Khan)
Secretary,
Irrigation Department,
Govt. Of Khyber Pakhtunkhwa
(Inquiry Officer)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 874 /ST

Dated 30 - 4 - / 2019


To

The Director Population Welfare, Directorate FATA (Merged Area),
Government of Khyber Pakhtunkhwa,
FATA Secretariat Warsak Road Peshawar.

SUBJECT: - ORDER IN APPEAL NO. 4/2019, DR. LAL ZARI.

I am directed to forward herewith a certified copy of order dated 15.04.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Submitted. 20/05/2019



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

No. PS/Secretary Irrigation/2018
Peshawar the, 29th November, 2018

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Population Welfare Department Peshawar.

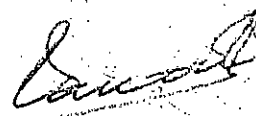
Subject.

APPEAL NO.976/2015 DR. LAL ZARI VS ACS FATA AND OTHERS.

Kindly refer to your letter No. SOE(PWD)Misc/Inquiry/2018/4470
dated 2nd November, 2018 on the subject noted above.

2. Please find enclosed herewith De-novo Inquiry Report in Respect of
Lal Zari, Ex-Deputy Director, Population Welfare, Merged Area Secretariat, Peshawar
and Original Note for Chief Secretary Khyber Pakhtunkhwa for perusal and further
necessary action please.

Encl. As above


(Dawood Khan)
Secretary Irrigation
(INQUIRY OFFICER)

Copy of the above is forwarded to:-

1. The Additional Chief Secretary, FATA Secretariat Peshawar for information please.
2. The Secretary, A,I&C/Social Sector, FATA Secretariat Peshawar.

(Dawood Khan)
Secretary Irrigation

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De-novo Inquiry

Against Dr. Lal Zari (BS-18) Deputy Director Population Welfare Tribal Districts formerly FATA Secretariat Peshawar.

Subject: Appeal No. 976/2015: Dr. Lal Zari Vs ACS FATA & Others

1. **Order of Inquiry:** This de-novo inquiry has been assigned to the undersigned with the approval of the competent authority intimated vide Govt. of Khyber Pakhtunkhwa, Population Welfare Department letter No. SOE (PWD) Misc. /Inquiry/2018 Dated 02/11/2018

This inquiry is against Dr. Lal Zari, the then Deputy Director Population Welfare (PWD) Tribal Districts formerly FATA Secretariat, Peshawar. As an inquiry officer I have to probe into the matter afresh based on available record, statements and those areas which have been left unattended, if any, so as to unearth the facts, draw correct conclusions and put forth some recommendations under E&D Rules 2011.

2. **Background:** Background of the case is that Dr. Lal Zari DD PWD (BS-18) was initially appointed as Woman Medical Officer (WMO) in the year 2006 on the recommendation from Khyber Pakhtunkhwa Public Service Commission and got posted in the Department of Population Welfare FATA Secretariat, Peshawar. Later on, she was promoted as Deputy Director Population Welfare Department (PWD) in the year 2012.

2.1. The available record reveals that the concerned officer while posted as DD population welfare floated Tender Notice in print media on 04/04/2013 for purchase of medicines, equipment and furniture for the family welfare centres of population welfare department for the fiscal year 2012-13. Copy of Tender Notice along with approval is at (ANNEX-I). While procurement process was completed and supplies were made, District Administration Peshawar along with Drug Inspector and media team on the basis of some complaint (anonymous/pseudonymous) raided the warehouse of Population welfare Directorate FATA situated at Abshar Colony Warsak Road Peshawar and seized some drugs. The warehouse was sealed and the matter was referred to FATA Secretariat for further enquiry in the matter.

2.2. An Inquiry committee was constituted for fact finding by Secretary Social Sector vide Notification No. FS/SO (H)/SSD/1-9/2013/584-90 dated 03/10/2013. The inquiry committee was comprised of Dr. Sartaj Khan, Acting Director Health Services FATA, Mr. Imran Hamid, Additional Political Agent, Bajaur Agency and Mr. Miraj Muhammad, Section Officer (C-III) AL&C Department FATA. The committee submitted its report to the Secretary Social Sector Department FATA on 30/10/2013. Copy of inquiry report is at (ANNEX-II). On the basis of recommendations of fact-finding inquiry committee, Secretary Social Sector Department submitted the case to the Governor Khyber Pakhtunkhwa in his capacity as Competent Authority for

initiating disciplinary proceedings against the accused officer. The competent authority was pleased to order suspension of the accused officer and she was served with charge sheet & statement of allegations. Copy of suspension order along with charge sheet & statement of allegation is at (ANNEX-III).

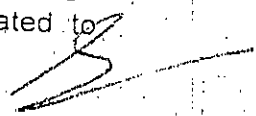
2.3. As per recommendations, the competent authority ordered constituting an inquiry under Revised Efficiency & Discipline Rules 1973 to probe into the allegations levelled against the officer. An Inquiry Committee was constituted vide Social Sector Department FATA Secretariat Notification No. FS/SO (H)/SSD/1-9/2014/739-46 dated 19/03/2014 to probe into the charges levelled in charge sheet & statement of allegations against Dr. Lal Zari, the then Deputy Director Population Welfare Directorate FATA. The committee comprised of Mr Hasham Khan, Additional Director Education and Dr. Muhammad Nazir, Deputy Director (Admin) FATA Secretariat, Peshawar. The Inquiry committee submitted its report on 15/05/2014. Copy of the report is at (ANNEX-IV).

2.4. The record reveals that there has been another inquiry in the instant case. The inquiry titled "*Inquiry into supply of Misbranded Medicines*" was conducted in compliance with Administration, Infrastructure & Coordination Department FATA Secretariat Notification No. FS/E/100-98/(Inq-Medicines)/15913-15 dated 17/10/2014 by a two-member enquiry committee comprising of Mr Sikander Qayyum, Secretary Finance FATA and Mr Shakeel Qadir, Secretary Law & Order, FATA Secretariat Peshawar. The committee submitted a detailed report with recommendations on 10/12/2014. Inquiry report is at (ANNEX-V).

2.5. On the basis of recommendations of Inquiry Committee, major penalty was imposed and the Services of Dr. Lal Zari were dismissed vide Notification No. dated 21/05/2015. (ANNEX-VI). Consequently, the officer concerned filed departmental appeal before the competent authority i.e. Governor Khyber Pakhtunkhwa which was also rejected vide No. letter dated 10/08/2015. (ANNEX-VII).

2.6. Feeling aggrieved, the officer concerned filed an appeal in the Services Tribunal for the purpose to revoke the impugned order. (ANNEX-VIII). The department filed Para wise comments before the Services Tribunal. The case was defended through the District Attorney General. (ANNEX-IX). The Services Tribunal set aside the impugned order in its judgement dated 31/08/2018 and directed for reinstatement of Dr. Lal Zari and initiation of de-novo inquiry against her. (ANNEX-X).

3. Inquiry Proceedings: The inquiry proceedings mainly based on available record, statements of the accused officer, witnesses and earlier inquiry reports. The charge sheet and statement of allegation was served upon the accused officer. She was called for statement and any other information, which could help leading to just and fair recommendations. (ANNEX-XI). Statements of members of procurement committee were also recorded. (ANNEX-XII). Along with Deputy Secretary AIC was also recorded. (ANNEX-XIII). Similarly chairman of the procurement committee i.e. the then Secretary Social Sector Development was requested to record his statement in compliance to court orders. (ANNEX-XIV). It has been strived to fill in the gaps as identified in the court judgement, information gathered through discussions/explanations with all the concerned and efforts were coordinated to arrive at correct and logical conclusions.



4. Findings/ Observations: The examination of available record, statements and cross examinations of the members and thus connecting dots lead to following findings and observations:

- a. The Tender Notice was forwarded with prior approval of Secretary SSD to Director Media Cell FATA for publication in the two Newspapers vide letter No. F.No. 1(1) 2012-13/Pop/7523-27 dated 29/03/2013. (ANNEX-XV). It was the duty of Media Cell to ensure the observance of relevant Rules/Policies/Instructions etc. for publication of the same. The departments have been restrained to publish their advertisements in press directly through a Notification No. & dated: (ANNEX-XVI). Thus the violation/lapse cannot be attributed to the accused officer.
- b. The perusal of Tender Notice reveals that it was fundamentally faulty as no date for bid opening was explicitly mentioned rather as per NIT "*it was to be communicated later*". Thus bid was opened after a lapse of more than one-month time from the date of bid submission/opening. This is violation of Rule 28 of PPRA Rules 2004 under which the last date of bid submission & opening shall be the same. (ANNEX-XVII). It is also important to note that neither any member nor chairman of the committee opted for course correction. Thus the committee shares the responsibility.
- c. The Advertisement was floated whereas the funds were NOT available at the time of floating Tender Notice but Secretary Social Sector granted prior approval for the purpose. It is, however, important to note that no procurement regime including PPRA forbids floating tender notice just because funds are not available. The procurement process can be carried out except award of contract/issuance of work/ purchase order.
- d. PPRA Ordinance was not extended but for all practical purposes an Administrative Notification of the AL&C Department has taken effect and was to be observed by the lower formations including Directorate of Population Welfare. (ANNEX-XVIII).
- e. The record reveals that the bids of Wajid & Co. and Nasir & Sons were initially rejected as no CDR was found attached rather CDR was submitted later with tampered dates. It is the discretion/choice of the procuring entity to ask for CDR under Rule 25 of PPRA and not mandatory but the way facts and record has been twisted, it establishes the malafide intension. It is, however, astonishing to note that the minutes of bid opening are silent about it and duly signed by all the members. No bidding documents including an unambiguous evaluation criterion was developed and thus this gap area led to mis-procurement under Rule 50 read with Rule 29 & 30 of PPRA Procurement Rules 2004. (ANNEX-XIX).
- f. As far violation of Rule 39 relating to obtaining Performance guarantee is concerned; it is not mandatory rather it is on the discretion of Procuring entity to secure the risk of contract abandonment by the bidder. The same is reproduced: "*Where needed and clearly expressed in the bidding documents, the procuring agency shall require the successful bidder to furnish a performance guarantee which shall not exceed ten per cent of the contract amount*".
- g. As per Notification, the number of committee members is seven (07). There are few other signatures on comparative statements by those officers/officials who are not notified members of the committee. There is no formal approval

- for inclusion of these members in the committee. The plea of the accused officer is that they have been included on verbal directives of the Secretary SSD. The same should have been confirmed from the chairman of the committee but ironically none of the inquiry committee/ officers have done it. The accused officer however produced an email report/reply of the secretary concerned, which supports the plea of the accused officer. (ANNEX-XX)
- h. Only last page of comparative statements was signed whereas members should have affixed their signatures on each page. The accused officer being secretary of purchase committee by virtue of being head of the Directorate population welfare should have ensured it. Other members also share this negligence but major share can be attributed to the accused officer being secretary of purchase committee and administrative head of PWD. On cross-examination, she was clueless.
- i. The technical committee was notified with the approval of Secretary SSD. (ANNEX-XXI). It is however added that there is no bar in formation of technical committee but it has to assist the procurement committee as per its notified TORs. The claim of the accused officer regarding formation of technical committee can further be proved by the Email as mentioned above. (ANNEX-XXII).
- j. The inclusion of Dr. Naila wadood AD PWD instead of Dr. Rooh ul Ala WMO Khyber Agency in the procurement committee is based on the claim that it was done on the verbal orders of the Secretary SSD. Record is silent as there is no proper notification for the purpose and hence the accused officer could not prove her claim. Statements of both the officers were recorded and the charge is proved against the accused officer. Statements of Dr. Naila & Dr. Roohul Ala (ANNEX-XXIII)
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- Similarly a second inquiry committee was constituted vide No. FS/SO (H)/SSD/1-9/2014/498-99 dated 24/02/2014 for fact finding regarding furniture and equipment of the PWD store situated at Abshar colony Warsak Road Peshawar. No report of this inquiry committee is available on record.
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6. Conclusions: in view of the detailed analysis, examination of record and the inquiry proceedings, which also dawned upon some new findings, I do hereby conclude as under:

- The accused officer cannot be held responsible for publication of the Tender Notice in the Newspaper.
- Partially responsible along with purchase committee for not opening the bids on closing date of bid submission.
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- Responsible to the extent of member purchase committee along with technical committee for accepting those medicines, which were not properly labelled or branded
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- Responsible along with Accountant as well as AGPR officials at sub-office Peshawar for the lapse in terms of making cash payments and also making full payments despite the fact that 1/6th of the supplies) were yet to be made.

7. Recommendations: In view of the above findings/ deliberations, it is recommended that:

- o The officer has committed some serious irregularities in procurement process and thus section 04 of E&D Rules 1973 may be invoked and it is recommended that major penalty of reduction to lower grade/post may be imposed on the accused officer.
- o Disciplinary proceedings against AD (Medical) may also be initiated.
- o Censure has been served upon Mr Shahid Account Assistant and Mr Fakhre Alam, storekeeper, which is not commensurate looking at the gravity of negligence they committed. Disciplinary proceedings are recommended against both the officials.
- o KPPRA may also be approached to initiate a full throttle capacity building program for the officers/officials of newly merged tribal districts of Khyber Pakhtunkhwa.


(Dawood Khan)
Secretary,
Irrigation Department,
Govt. Of Khyber Pakhtunkhwa
(Inquiry Officer)

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TENDER NOTICE

Population Welfare Program FATA needs to invite tender for the purchase of medicines, Furniture, Equipments and Miscellaneous items for its different components.

Tender will be opened in the office of Secretary Social Sectors Department FATA Secretariat Peshawar. The date and time of opening will be intimated to the bidder later.

The bidders should submit their proposal to the undersigned within 15 days after the publication in newspaper.

The lowest bidder will be awarded the contract.

The competent authority reserves the right to reject any or all tenders without assigning.

The tender notice is also available at FATA Website www.fata.gov.pk

Detail specification can be obtained from the office of the undersigned on the following addresses

1. Deputy Director Population Welfare Directorate
FATA Street No. 05, House No. 05
Abshar Colony Warsak Road Peshawar
Phone No. 091-9212711
2. Deputy Director Population Welfare Directorate
FATA Secretariat Warsak Road Peshawar
Phone No. 091-9212711

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No: 976/2015

Date of Institution ... 01.09.2015

Date of Decision ... 31.08.2018



Dr. Lal Zari, Ex: Deputy Director (BPS-18), Population Welfare Department
FATA, FATA Secretariat, Warsak Road, Khyber Pakhtunkhwa Peshawar. (Appellant)

VERSUS

1. The Additional Chief Secretary FATA, FATA Secretariat, Warsak Road,
Khyber Pakhtunkhwa, Peshawar and 4 others. (Respondents)

Mr. Noor Muhammad Khattak, Advocate	---	For appellant.
Mr. Ziaullah, Deputy District Attorney	---	For respondents.
MR. AHMAD HASSAN,	---	MEMBER (Executive)
MR. MUHAMMAD AMIN KHAN KUNDI	---	MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER. Arguments of the learned counsel for the

parties heard and record perused.

ATTEST

[Signature]
EXAMINE
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

FACTS

2. Brief facts of the case are that the appellant was appointed as Women Medical Officer in Population Welfare Department vide notification dated 27.07.2006. That she was promoted as Deputy Director Population Welfare FATA vide notification dated 01.12.2012. That on the basis of an anonymous/pseudonymous complaint/letter, disciplinary proceedings were initiated against her and winding up major penalty of dismissal from service was imposed vide impugned notification dated 21.05.2015. The appellant preferred departmental

appeal on 25.05.2015, which was rejected on 10.08.2015, hence, the instant service appeal.

ARGUMENTS

3. Learned counsel for the appellant argued allegations leveled against her were unfounded/baseless, hence, denied in her reply to charge sheet/statement of allegations. Proper inquiry in accordance with the procedure laid down in E&D Rules 2011 was not conducted. Show cause alongwith copy of inquiry report was not served on the appellant. It is not clear whether statements of witnesses were recorded by the inquiry committee, as the record is silent. Proper opportunity of cross examination was also denied to the appellant. Purchase committee notified by the respondents was headed by Secretary Social Sector, FATA, alongwith seven other members. However, they were not touched by the inquiry committee, which lend credence to the fact that the appellant was made scapegoat to save the skin of others. Similarly the report is also silent on the role of technical committee. The inquiry committee also recommended disciplinary action against Mr. Fakhar Alam, Store Keeper and Mr. Rashid Ahmad under E&D Rules, 2011, but to no avail. It appears that only the appellant was victimized, which amounts discrimination under Article-25 of the Constitution. Respondents also failed to produce record to substantiate whether Accountant General PR was approached to take action against its officials. Reliance was placed on case reported as 2011 PLC(CS) 1111, 2005 PLC (CS) 311, 2012 TD Tr.(Services) 12, PLJ 2011 Tr.C(Services) 1, PLJ 2008 SC 65 and 2007 SCMR 1860.

4. On the other hand, learned Deputy District Attorney argued that impugned notification was issued in accordance with law and rules. All codal formalities were observed during the inquiry proceedings and the appellant was found guilty. Article 4 and 25 of the Constitution were not violated.

ATTES
 EXAMINER
 Khyber Pakhtun
 Tribal
 Peshawar

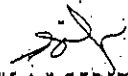
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CONCLUSION

Upon minute examination of the inquiry report some glaring discrepancies were noticed which led us to conclude that it was not conducted in just, fair and transparent manner. Perusal of reply of the appellant to the charge sheet and statements of allegations revealed that purchase committee headed by the Secretary Social Sector (FATA) alongwith seven others members was constituted to oversee the process of procurement. Similarly the technical committee was constituted after obtaining approval from the Secretary Social Sector (FATA). Bids invited were opened on the directions of the Secretary SS by a broad based committee having representation of relevant stakeholders. Comparative statement was signed by the concerned and finally by the Secretary Social Sector (FATA). In case there were deficiencies in the comparative statement was it not the responsibility of Secretary concerned as Head of the department to take corrective measures/stop the process? He can't absolved of his responsibility. The inquiry committee should have recorded statements of members of purchase committee/technical committee and thereafter should have analyzed their role in their findings. While responding to the charge at Sr. No. b of the charge sheet the appellant in her reply stated that representative of A&C Department was included to participate in the proceedings of the procurement committee on the verbal advice of SSS (F). Why this fact was not got verified from the Secretary SS to meet the ends of justice? While in reply to charge at Sr. no. d she leveled certain accusations against Mr. Fakhar Alam, Store Keeper and Mr. Muhammad Kainran. It was the duty of the inquiry committee to have recorded their statements, but the ^{report} ~~report~~ was silent on this issue.

6. In addition to this reply furnished to the enquiry committee by the official respondents was also worth perusal. In this reply fingers were pointed out towards Secretary Social Sector (FATA) being responsible for certain lapses. It was quite strange why the Secretary Social Sector not associated with inquiry ~~was not associated~~

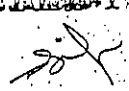

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

77

CONCLUSION

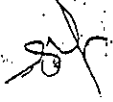
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EXAMINER
Khushal Khan
Service Tribunal

intentional or otherwise? Fairness demanded that his statement should have been recorded to counter the allegations leveled by the appellant and those contained in the official reply. We apprehend that the appellant was made scapegoat to save the skin of others. Action of the enquiry committee also goes against the spirit of E&D Rules 2011. Firstly statements of all concerned, including Secretary should have been recorded in the presence of the appellant and thereafter opportunity of cross examination should have been given to her. It is a serious departure from the laid down procedure and is sufficient for making the proceedings illegal/unlawful. The inquiry committee also proposed disciplinary action against Mr. Fakhar Alam, Store Keeper and Mr. Rashid Ahmad but during the course of hearing official respondents when confronted on this point were clueless. Similarly, no documentary evidence was produced to substantiate that action against the officials of AGPRs as proposed by the enquiry committee was taken.

7. Another glaring illegality noticed in the impugned order was that no show cause notice was served on the appellant and as such Sub-Rule (1) (4) (c) of Rule-14 of E&D Rules 2011 was violated. Reliance is placed on case law reported as 2005 SCMR 678, the Supreme Court of Pakistan held that "according to the principle of natural justice enshrined in "Audi Alteram Partem" is one of the most important principles and its violation is always considered enough to vitiate even most solemn proceedings. Where adverse action contemplated to be taken against person/persons, he/they would have a right to defend such action, not with ^{standing to} the fact that the statute governing their rights does not contain provision of the principles of natural justice and even in the absence thereof, it is to be considered as a part of such statute in the interest of justice". In these circumstances, the opportunity of fair trial was not afforded to the appellant and condemned unheard. Similarly no speaking order was passed on the departmental appeal of the appellant. The competent authority

ATTESTE

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 PESHAWAR

as required under the law/rules to give reasons for rejection of appeal. As such
Section-24-A of General Clauses Act was violated.

In sequel to the above, the appeal in hand is accepted and impugned order
is set aside. The respondents are directed to conduct de-novo enquiry against the
appellant strictly in accordance with the law and conclude the same within a period
of ninety days from the date of receipt of this judgment. The issue of back benefits
shall be subject to the final outcome of the de-novo inquiry/Parties are left to bear
their own costs. File be consigned to the record room.

Sd-
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Sd-
(AHMAD HASSAN)
MEMBER

ANNOUNCED

13.03.2018

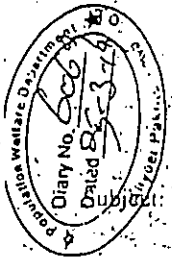
to be made copy

Date of Presentation of Application 11-9-2018
 Number of Words 2000
 Copying Fee 1200
 Urgent 200
 Total 1400
 Name of Copyist Saniullah
 Date of Completion of Copy 11-9-2018
 Date of Delivery of Copy 11-9-2018



GOVERNMENT OF KHYBER PAKHTUNKHWA
INFORMATION & PUBLIC RELATIONS
DEPARTMENT.

No. SO.Estt.(INF) 4-115/2017/Enquiry
Dated Peshawar the 25th March, 2019



Dr Lal Zari,
Deputy Director Population Welfare,
Directorate Tribal Districts,
Khyber Pakhtunkhwa, Peshawar

PERSONAL HEARING IN APPEAL NO.976/2015 DR. LAL ZARI VS ACS
FATA AND OTHERS.

I am directed to refer to the Section Officer (Estt), Population Welfare Department,
Govt of Khyber Pakhtunkhwa notification No.SOE(PWD)/Misc/Inquiry/2018/FATA: dated 27-12-
2019 and to state that Chief Minister Khyber Pakhtunkhwa has authorized Secretary Information &
Public Relations Department, Govt of Khyber Pakhtunkhwa to hear you personally on his behalf.

In order to proceed further in the matter, you are hereby directed to attend the office
of Secretary Information & PRs Department on 02nd April, 2019 at 1400 hours for personal hearing
alongwith relevant record and evidence, if any.

Section Officer (Establishment)

Ends: No & date:

Copy forwarded to the:

1. Section Officer (Estt), Population Welfare Department, Khyber Pakhtunkhwa for similar necessary action for assistance during the personal hearing.
2. PS to Secretary Information & PRs, Khyber Pakhtunkhwa for information.

Section Officer (Establishment)

SO (E)
for M.A. Pk
26.3.19



GOVERNMENT OF KHYBER PAKHTUNKHWA,

POPULATION WELFARE DEPARTMENT

3rd Floor, Abdul Wali Khan International Centre, Peshawar

No. SOE/PWD/INFORMATION/INQUIRIES/2015/PATA

Dated Peshawar: 15th March 2019

To: Mr. [Name],
Deputy Director,
Population Welfare Directorate,
Merged Area, Warsak Road, Peshawar.

Subject: - PERSONAL HEARING IN APPEAL NO. 975/2015 DR. LAL ZARI VS ACS PATA AND OTHERS

I am directed to refer to the subject noted above and to state that the Chief Minister, Khyber Pakhtunkhwa has authorized Secretary, Information & Public Relations Department, Government of Khyber Pakhtunkhwa to hear Dr. Lal Zari, Ex-Deputy Director Population Welfare, Directorate Tribal Districts, Khyber Pakhtunkhwa personally in a court.

2. Personal hearing of the above mentioned officer has been fixed on 27/4/2019 at 1400 hours in office of Secretary Information & Public Relations Department.

3. I am therefore directed to request you to attend the subject personal hearing on the above mentioned date, time and venue alongwith complete records to extend assistance during a personal hearing please.

SECTION OFFICER (ESTT)

Copy 1/5, vide 3 Date

Copy forwarded to:

1. Section Officer (ESTT), Government of Khyber Pakhtunkhwa, Information & Public Relations Department, Peshawar w.r to his letter No. SOESTT/INFL-115/2017/5-sec-19 Dated 25/03/2019 for information.
2. PS to Secretary Population Welfare Department, Khyber Pakhtunkhwa.

28/3/19
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SECTION OFFICER (ESTT)



POPULATION WELFARE DIRECTORATE
MERGED AREA
WARSAK ROAD PESHAWAR
Phone & Fax# 091-9212711
Email: populationfata@gmail.com

F.No: DD/PWSA/46/2018/INQUIRY
Date: 28.03.2019

To,

The Section Officer (Estab)
Population Welfare Department,
Khyber Pakhtunkhwa,
Peshawar.

Subject: PERSONAL HEARING IN APPEAL NO. 976/2015 DR. LALZARI VS
ACS FATA AND OTHERS

Reference your office letter No. SOE (PWD) MISC/Inquiries/2018/FATA dated 28.03.2019 on the above noted subject and to request you that all inquiries/disciplinary proceedings regarding Dr. Lal Zari Ex-Deputy Director Population Welfare erstwhile FATA have either been conducted at Administration Infrastructure & Coordination Department erstwhile FATA Secretariat or at provincial level. Therefore, the relevant record of above mentioned inquiries/disciplinary proceedings is not available at this directorate.

This directorate shall manage to get photocopies of the earlier inquiries/disciplinary proceedings from Admin, Infrastructure & Coordination Department Merged Area. However, your good office is requested to provide the record of recent inquiry /disciplinary proceedings to the undersigned for assisting the Secretary Information & Public Relations Department Khyber Pakhtunkhwa during personal hearing on the date and venue, please.

dc
Deputy Director
Population Welfare Directorate
Merged Area

Copy forwarded for information please:

1. Section Officer (Estab), Government of Khyber Pakhtunkhwa Information & Public Relations Department Peshawar for information please.
2. PS to Secretary Population Welfare Department Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

dc
Deputy Director
Population Welfare Directorate
Merged Area