


626/2015

20.11.2018

Appellant with counsel Mr. M. Asif Yousafzai, Advocate present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Sikandar Khan, AD (Legal) for respondents present. Arguments heard. To come up for order on 13.12.2018 before D.B.

  
Member

  
Chairman

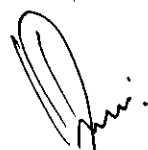
**Order**

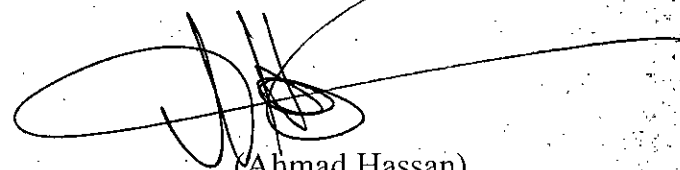
13.12.2018

Appellant alongwith his counsel present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Sikandar Khan, AD (Legal) for respondents present. Arguments heard and record perused

This appeal is also accepted as per detailed judgment of today placed on file in connected service appeal No. 1022/2015 titled "Nawab Zarin -vs- Govt: of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and three others" Parties are left to bear their own cost. File be consigned to the record room.

Announced:  
13.12.2018

  
(Hamid Farooq Durrani)  
Chairman

  
(Ahmad Hassan)  
Member

23.07.2018


Appellant absent. Learned counsel for the appellant is also absent. However, junior counsel for the appellant present and requested for adjournment. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Roman, Senior Clerk for the respondents also present. Adjourned. To come up for arguments on 13.09.2018 before D.B.


08.08.2018

~~Appellant and Mr. Muhammad Hamid Mughal~~  
~~respondent~~  
~~Member~~  
~~Member~~  
~~Member~~  
~~Member~~  
~~Member~~

13.09.2018

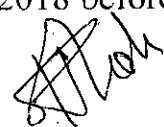
Learned counsel for the appellant and Mr. Muhammad Jan Learned Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 08.10.2018 before D.B.

  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

08.10.2018

Learned counsel for appellant and Mr. Usman Ghani learned District Attorney present. Learned counsel for appellant seeks adjournment. Adjourn. To come up for arguments on 20.11.2018 before D.B.


  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

23.11.2017


Appellant in person present. Learned Deputy District Attorney for the respondents present. Appellant seeks adjournment due to non availability of his counsel. Adjourn. To come up for arguments on 12-1-18 before D.B.

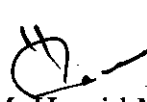
  
(Gul Zeb Khan)  
Member

  
(Muhammad Hamid Mughal)  
Member

12.01.2018


Clerk to counsel for the appellant and District Attorney for respondents present. Clerk to counsel for the appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 09.03.2018 before D.B.

  
(Ahmad Hassan)  
Member(E)

  
(M. Hamid Mughal)  
Member (J)

09.03.2018

Junior counsel for the appellant and Mr. Riaz Ahmed Painsa Kheil, Assistant AG alongwith Muhammad Sikandar Khan, AD (legal) for the respondents present. Junior counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 10.05.2018 before D.B.

  
(Muhammad Amin Khan Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

10.05.2018


The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore, the case is adjourned. To come up on 23.07.2018.

  
READER

09.03.2017


Appellant with counsel and Mr. Liaqat Ali DID (Legal) alongwith Mr. Ziaullah, GP for respondents present. Appellant with counsel requested for adjournment. Request accepted. To come up for arguments on 19.06.2017 before D.B.

  
(MUHAMMAD AMIR NAZIR)  
MEMBER

  
(ASHFAQUE TAJ)  
MEMBER


19.06.2017

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Miss. Sahibzadi Yasmeen Khan, Assistant Director for the respondents present. Arguments could not be heard due to learned member executive is on leave. To come up for argument on 25.09.2017 before D.B.

  
(Muhammad Amin Khan Kundi)  
Member

25.09.2017

Counsel for the appellant and Addl:AG alongwith Mr. Muhammad Ashraf, Senior Clerk for respondents present. Since learned Member (Mr. Ahmad Hassan) is on leave, therefore, arguments could not be heard. To come up for arguments on 23.11.2017 before D.B.

  
Chairman

03.05.2016

Appellant with counsel and Addl: AG for respondents present. Counsel for the appellant requested for time to submit rejoinder. To come up for rejoinder and arguments on 08.06.2016.

Member

Member

08.06.2016

Counsel for the appellant and Mr. Liaqat Ali, Deputy Director (legal) alongwith Addl: AG for respondents present. Rejoinder submitted copy whereof handed over to learned Addl: AG. To come up for arguments on 7-11-16 before D.B.

MEMBER

MEMBER

07.11.2016

Counsel for the appellant and Mr. Liaqat Ali Deputy Director alongwith Mr. Muhammad Jan, GP for respondents present. Learned counsel for the appellant requested for adjournment. Since appeal of Gul Waris Khan linked with the said appeal therefore, both the appeals are adjourned for arguments on 9-3-17

(PIR BAKLISH SHAH)  
MEMBER

(MUHAMMAD AAMIR NAZIR)  
MEMBER

02.07.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as DPP when subjected to inquiry on the allegations of incompetency and vide impugned order dated 29.1.2015 he was granted the punishment in the shape of reduction to lower post regarding which he preferred departmental review petition on 23.2.2015 which was not responded and hence the instant service appeal on 10.6.2015.

That the appellant was not given opportunity of hearing and that the inquiry was not conducted in the prescribed manners.

Point urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 15.10.2015 before S.B.

  
Chairman

15.10.2015

Since 15.10.2015 has been declared as public holiday on account of 1<sup>st</sup> Muharram-ul-Haram, therefore, case is adjourned to 11-2-15 for the same.

  
Reader

11.02.2016

Counsel for the appellant and Mr. Liaqat Ali, Deputy Director (legal) alongwith Addl: A.G for respondents present. Comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 3.5.2016.

  
Chairman




Appellant Deposited  
Security & Process Fee



Form- A  
FORM OF ORDER SHEET

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

Case No. 626/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10.06.2015	<p>The appeal of Mr. Gul Waris Khan presented today by Mr. Muhammad Asif Yousafzai Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	11-6-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>12-06-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	12.06.2015	<p>None present for appellant. The appeal be relisted for preliminary hearing for 2.7.2015 before S.B.</p> <p style="text-align: right;"> Chairman</p>

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

Appeal No. 626 /2015

Gul Waris Khan

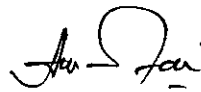
V/S Chief Secretary, KPK etc.

**INDEX**

S.No	Description of Document	Annexure	Pages
1.	Memo of Appeal	-----	01-08
2.	Copy of Impugned Order dt.29.01.2015.	<b>A</b>	09
3.	Copy of Promotion Order dt. 30-4-2014	<b>B</b>	10-11
4.	Copy of the Charge Sheet dated 23-4-2015 and	<b>C</b>	12-13
5.	Copy of Facts Finding Enquiry Report dated 04-2-2014	<b>D</b>	14-15
6.	Copies of the Reply to Charge Sheet dated 13-5-2014	<b>E</b>	16-22
7.	Copy of Enquiry Report dated 09-6-2015	<b>F</b>	23-43
8.	Copy of the Show Cause Notice dated 03-9-2014	<b>G</b>	44
9.	Copy of Reply to Show Cause Notice dated 01-10-2014	<b>H</b>	45-47
10.	Copy of the Appellant's Review Petition dated 23-2-2015	<b>I</b>	48-52
11.	Copy of Minutes of the meeting of ATC Judges.	<b>J</b>	53-57
12.	Wakalat Nama	-----	58

APPELLANT

THROUGH:

  
(M.ASIF YOUSAFZAI)  
ADVOCATE HIGH COURT  
PESHAWAR.

  
(TAIMUR ALI KHAN)  
ADVOCATES, PESHAWAR



**IN THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, AT PESHAWAR**

Appeal No. 626 /2015

Gul Waris Khan s/o Gul Faraz Khan  
Resident of House No. 388-389/C,  
Mohallah Bhatia, Inside Sokari Gate, Bannu City  
Presently serving as;  
District Public Prosecutor, Lakki Marwat.

S.W.F Province  
Service Tribunal  
Diary No. 666  
Dated 10-6-2015

**APPELLANT**

***VERSUS***

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. The Secretary, Home & Tribal Affairs Department, Govt of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
3. The Director General, Prosecution, Govt of KP, Peshawar.

**RESPONDENTS**

.....

SERVICE APPEAL UNDER SECTION: 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT - 1974 AGAINST THE ORDER DATED 29.1.2015 AND NOT TAKING ANY ACTION ON THE DEPARTMENTAL REVIEW PETITION OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

**PRAYER:**

Filed to the  
Registrar  
10/6/15

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 29.01.2015 MAY BE SET ASIDE AND THE RESPONDENT MAY BE DIRECTED TO RESTORE THE APPELLANT TO HIS ORIGINAL POST OF BPS-19 WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

## **RESPECTFULLY SHEWETH:**

Being aggrieved by and dissatisfied with the punishment order dated 29-1-2015 passed by the competent authority against the Appellant and non-disposal of the Appellant's Review Petition dated 23-2-2015 even after expiry of the statutory period of Ninety (90) days compulsory wait, the Appellant above named prefers this service Appeal, inter alia, on the following facts and grounds: Copy of the impugned order dated 29-01-2015 is attached as Annex "A".

## **FACTS**

1. That the Appellant has joined service as Additional Public Prosecutor/Govt. Pleader (BPS-17) on 09-1-2001 and had been promoted to the rank/post of Senior Public Prosecutor (BPS-19) on 30-4-2014. Copy of the Promotion order dated 30.4.2014 is attached as Annexure-B.
2. That it is pertinent to submit that the Appellant has 14 years unblemished service record. However, while serving as DPP Bannu, the Appellant was accused by the competent authority for having failed to supervise and control proper working of the office of Special Public Prosecutor ATC Bannu, vide Charge Sheet and statements of allegations dated 23-4-2014, on the basis of a fact finding report compiled and submitted by the Respondent No. 2 on 04-2-2014 without associating the Appellant with the facts finding enquiry. Copies of the Charge Sheet dated 23-4-2015 and Facts Finding Report dated 04-2-2014 are attached as Annexure-C & D.
3. That the Appellant submitted his reply dated 13-5-2014 (erroneously printed as 13-5-2013) to the Enquiry Officer and participated in the enquiry proceedings and recorded his statements on oath before the enquiry officer, who submitted his enquiry report to the Respondent No. 2 vide letter dated 09-6-2014. Copies of the Reply to Charge Sheet dated 13-5-2014 and Enquiry Officer's Report dated 09-6-2014 are attached as Annexure-E and F.

4. That as a result of the enquiry report dated 09-6-2014, the competent authority issued Show Cause Notice dated 03-9-2014 to the Appellant, which was replied by the Appellant vide his reply dated 01-10-2014. However, the competent authority imposed upon the Appellant the major penalty of "**Reduction to Lower Post**" by way of the impugned punishment order dated 29-1-2015. Copies of the Show Cause Notice dated 03-9-2014 and Appellant's Reply thereto dated 01-10-2014 are attached as Annexure-G & H.
  
5. That since the major penalty had been imposed upon the Appellant without considering his reply to charge sheet dated 13-5-2014 by the enquiry officer as well as the Appellant's reply to show cause notice dated 01-10-2014 by the competent authority, therefore, the Appellant preferred his Review Petition dated 23-2-2015 to the competent authority for review of the impugned penalty order dated 29-1-2015. Copy of the Appellant's Review Petition dated 23-2-2015 is attached as Annexure-I.
  
6. That since submission of the Review Petition dated 23-2-2015, the Appellant has received no information as to whether his Review Petition is being considered by the competent authority or otherwise? Therefore, on expiry of the statutory period of compulsory wait for Ninety (90) days, the Appellant beg to approach this Hon'ble Tribunal for grant of appropriate remedy; amongst others; on the following grounds:-

**GROUND:**

- A) That the impugned order dated 29.01.2015 is against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.
  
- B) That the impugned order of reduction to lower post imposed upon the Appellant is out of all proportion and amounts to punish the Appellant for the inefficiency of others, which is unwarranted in view of the well settled principles of natural justice.

- C) That even the appellant was not given personal hearing by the Competent Authority as envisaged in E&D Rules, 2011, thus, the basic law has been violated which made the whole proceedings null and void.
- D) That the modus operandi adopted by the Inquiry Officer for investigation into the guilt or otherwise of the Appellant was totally unilateral, for, index of the Inquiry Report is evident to show that even a single witness has neither been produced nor examined against the Appellant during the Inquiry. What the Inquiry Officer did was just recording of verbal statement of the Appellant without even confronting him with his reply to the Charge Sheet, submitted by him to the Inquiry officer on 13-5-2014. Therefore, the accusations leveled against the Appellant are totally baseless because of being without any evidence, for:-

(i). The Appellant had explained in his defence reply to the Charge Sheet the entire circumstances in which the Appellant had stated that he had no opportunity of going through the Instructions issued by the Govt of KP to all the DPPs in KP for scrutiny of ATC cases vide No. SO(Pros)HD/1-2/ 2010/Vol-I dated 11-10-2011 but no rebuttal to this effect had been offered by the prosecution either in rejoinder to his reply or through evidence. Hence the Appellant's innocence is admitted and as such he cannot be accused for having neglected to obey the orders.

(ii). That the Appellant has also explained in his reply to the charge sheet dated 13-5-2014 that an independent Public Prosecutor (BPS-18) with special pay/risk allowance @Rs. 20,000/= PM had been appointed by the Provincial Govt for dealing with the ATC cases. Since Article: 3 of the Constitution of Pakistan-1973 dictate payment of remuneration according to the nature of duty and since the PP ATC Bannu was receiving remuneration greater than the Appellant, therefore, it is illogical for the Departmental prosecution to accuse the Appellant for having failed to supervise the working of an officer who is admittedly greater in responsibilities than Appellant but this fundamental and logical explanation to the charge sheet has not been rebutted by the Departmental prosecution either in rejoinder to his reply to the Charge Sheet or through convincing oral/documentary evidence.

(iii). That another logical explanation of the Appellant in his reply to the Charge Sheet dated 13-5-2014 is that being DPP Bannu he had scrutinized 7687 criminal cases during the year 2013, out of which 5468 cases were sent for trial, 251 cases were recommended for discharge for want of evidence and 2291 cases were returned for rectification of defects with legal advice for proper investigation. Besides this 275 legal opinions were rendered to local Police and 75 appeals against acquittal were preferred. As yet the Appellant was libeled with the accusation of **"INEFFICIENCY"** and/or **"NEGLIGENCE"**. This is the most unkindest cut of all at the part of the high-ups of the Appellant; who without least considering his overall efficiency; blames him for the inefficiency (if any) of another independent PP ATC Bannu legally and factually exercising jurisdiction over the special criminal cases pertaining to two (02) different districts i.e. Lakki Marwat and Bannu. This clear and unequivocal defence plea on behalf of the Appellant has not been rebutted by the departmental authority/prosecution either through rejoinder to his reply or through oral evidence during enquiry. Hence it is not understood that on the basis of which piece of evidence or paper the Inquiry Officer claims to have found the Appellant guilty of inefficiency or negligence?

(iv). The Appellant has also raised a specific defence plea in his reply to the charge sheet dated 13-5-2014 that because of the tight schedule and/or time frame prescribed under Section: 19 of the ATA-1997 with the prescription of penal consequences even for the Presiding Officer of ATC in case of failure in complying with time frame prescribed under the ATA-1997 read with the instructions dated 25-4-2014 issued by the Hon'ble Administrative Judge of Anti-Terrorism Courts of the Hon'ble Peshawar High Court, it was even not possible for the PP ATC Bannu to have wasted even a single second in consultation with the joint team proposed in the provincial Govt's Instructions issued on 11-10-2011. This defence plea has not been shattered by the departmental authority/prosecution either through rejoinder to the reply or production of oral or documentary evidence during the Inquiry.

(v). The Appellant had taken a specific defence plea in his reply to the show cause notice that departmental disciplinary proceedings against an accused employee are essentially of panel/criminal nature, therefore, the Inquiry Officer was duty bound to have required the departmental authorities for the discharge of their own burden of proof against the Appellant by bringing home the charge against the Appellant through production of convincing evidence either orally or documentary and only then to have required the Appellant to rebut the accusation but in the instant case the Inquiry Officer, without going through the Charge Sheet and its reply by the Appellant, started the session of questioning the Appellant and recorded his answers to his questions. It is pertinent to mention that on the basis of this session of questions/answers the Inquiry Officer has whimsically presumed that the Appellant is negligent and/or inefficient in the performance of his duties unless and otherwise the Inquiry Report is evident to show that no single un-rebutted proof of his guilt has been produced by the department against the Appellant. In this respect reliance is placed upon case law reported as "**PLD 1989 SC 335**" wherein it has been held that "**Proceedings under the E & D Rules 1973 are in the nature of quasi criminal proceedings requiring the establishment of misconduct on the basis of positive evidence beyond reasonable doubt**".

(vi). That the Appellant has also pointed out in his reply to the show cause that earlier portion of findings recorded by the Inquiry Officer in his report contradicts with the later portion of the Inquiry Report because in the findings portion the Inquiry Officer attributes to the Appellant an offence of negligence and/or inefficiency in the performance of his duties while in the portion of recommendations, the Inquiry Officer recommends imposition of major penalty upon the Appellant without least considering the magnitude and/or severity of the alleged offence. This is sufficient to prove legal malafide and/or partiality at the part of the Inquiry Officer in affixing the stamp of his approval to the baseless charges leveled against Appellant by the Department.

- E) That the impugned punishment order of reduction to lower post does not specify the period during which it shall be effective and whether, on restoration, it shall operate to postpone future increments and if so to what extent, while FR-29 makes it obligatory for the competent punishing authority to specify the period during which the penal order of reduction in rank shall be effective and whether on restoration, it shall operate to postpone future increments and if so to what extent. Thus, the impugned punishment order is in violation of the declared law hence not tenable.
- F) That even Para; 2 of the **RECOMMENDATION PORTION** of the Inquiry Report, which speaks as, "**The modus operandi regarding powers of DPP and PP ATC may be brought in conformity with the Proviso of Anti-Terrorism Act-1997, KP Prosecution Service (Constitution, Functions and Powers) Act-2005 and decisions taken by the Administrative Judge of Anti-Terrorism Courts, Khyber Pakhtunkhwa in the meeting held on 25-4-2014. Clear Instructions regarding distribution of work as well as role of District Public Prosecutors and the Public Prosecutors may be notified for all concerned.**", excludes the role of the Appellant in the matter of submission of challan in ATC cases. These recommendations by the enquiry officer also contradicts his reliance over the Respondent No. 2's Notification No. SO(Pros)HD/1/2/2010, Vol-I dated 11-10-2011 in view of the decision of Administrative Judge ATC of the Hon'ble Peshawar High Court. As such even the show cause notice should not have been issued to the Appellant what to say about punishing him with major penalty. Hence the impugned penalty order is baseless, null and void ab-initio and is required to be set aside. Copy of the Minutes of the meeting of the Judges of Anti-terrorism Courts held on 25.04.2014 is attached as Annexure-J.
- G) That the impugned order has not been signed by the competent authority which was required under the rules.
- H) That the Appellant carves leave of this Hon'ble Tribunal to urge more grounds at the time of hearing of this petition.

It is, therefore, humbly prayed that the appeal of the appellant may be accepted as prayed for. Any other relief, which may be deemed proper in the circumstances of the case, may also be granted.



APPELLANT  
Gul Waris Khan

THROUGH:



(M.ASIF YOUSAFZAI)  
ADVOCATE HIGH COURT  
PESHAWAR.

&



(TAIMUR ALI KHAN)  
ADVOCATES, PESHAWAR





A 9

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME & TRIBAL AFFAIRS DEPARTMENT**

**ORDER**

**SO(Com/Eng)/HD/1-31PP/DPP/2014** WHEREAS, The following officers of the Directorate of Prosecution, Khyber Pakhtunkhwa, were proceeded against under rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for the charges mentioned in the show cause notices dated 08/09/2014, served upon them individually.

**AND WHEREAS,** the competent authority i.e the Chief Minister, Government of Khyber Pakhtunkhwa, granted them an opportunity of personal hearing as provided for under Rules ibid.

**NOW THEREFORE,** the competent authority (The Chief Minister, Khyber Pakhtunkhwa) after having considered the charges, evidences on record, the explanation of the accused officers and affording an opportunity of personal hearing to the accused, findings of the enquiry report and exercising his power under rule-3 read with Rule-14 (5) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 has been pleased to pass the following orders noted against the name of each officers with immediate effect;

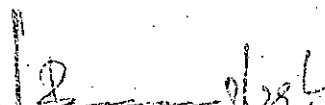
S.No	Name & Designation	Orders
1.	Mr. Gul Waris Khan (BPS-19), District Public Prosecutor Bannu.	Reduction to lower post.
2.	Mr. Nawab Zarin (BPS-18), Public Prosecutor ATC Bannu.	Dismissal from service and recovery of incentive allowance @ Rs.20,000/month for the year 2013.

**SECRETARY TO GOVERNMENT OF  
KHYBER PAKHTUNKHWA HOME DEPARTMENT**

Endst. No. SO(Com/Eng)/HD/1-31/PP/DPP/2014, Dated **Peshawar** the 29/01/2015

Copy of the above is forwarded to the: -

1. Director General of Prosecution, Khyber Pakhtunkhwa Peshawar w/r to his letter No. DP/E&A1(60)/9632 dated 23/10/2015 for information and further necessary action please.
2. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. PS to Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
4. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.
5. Officers concerned.

  
SECTION OFFICER (Com/Eng)

**ATTESTED**



**Government of Khyber Pakhtunkhwa**  
Home & Tribal Affairs Department  
**NO. SO (Pros)/HD/1-10/2010/Vol-I**  
Dated 30/04/2013

**NOTIFICATION**

**NO.SO (Prosecution) HD/1-10/2013:** The Competent Authority on the recommendation of the Provincial Selection Board, is pleased to promote the following officers of Prosecution Service from BPS-18 to BPS-19 on regular/acting charge basis:

S.NO	NAME OF THE OFFICER	REGULAR/Acting CHARGE BASIS
i	Syed Imtiaz ud Din	Regular
ii	Mr. Gul Waris Khan	Regular
iii	Mr. Atta Ullah Shah	Acting charge
iv	Mr. Malik Zaheer ud Din Baber	Acting charge
v	Mr. Fazal Noorani	Acting charge
vi	Mr. Arit Bilal	Acting charge
vii	Mr. Shahid ur Rehman	Acting charge

2. Consequent upon their promotion the Competent Authority is further pleased to order the posting/transfer of the following Prosecution officers in the public interest:

S.#	NAME OF PROSECUTOR	FROM	TO	REMARKS
i.	Tariq Bakhsh (BPS-19)	District Public Prosecutor Kohat	ATC-III, Peshawar	Vice No. VII
ii.	Syed Imtiaz ud Din (BPS-19)	Public Prosecutor D.I.Khan	District Public Prosecutor, Bannu	Vice No. III
iii.	Mr. Gul Waris Khan (BPS-19)	District Public Prosecutor, Bannu	District Public Prosecutor, Lakki Marwat	Vice No. IV
iv.	Mr. Atta Ullah Shah (BPS-19)	District Public Prosecutor, Lakki Marwat	ATC-I, Peshawar	Vice No. VI
v.	Malik Zaheer ud Din Baber (BPS-19)	Public Prosecutor, Kohat	District Public Prosecutor Kohat	Vice No. I
vi.	Mr. Fazal Norani (BPS-19)	ATC-I, Peshawar	ATC-V, Kanju Swat at Buner	Vice No. IX

**AMENDED**



11

FAX NO. : 0927211118

1 May 2014 11:06PM P2

P KARAK

vii.	Mr. Arif Bilal (BPS-19)	ATC-III, Peshawar	ATC-I Swat	Vice No. X
viii.	Mr. Shahid ur Rehman (BPS-19)	District Public Prosecutor Battagram (OPS)	District Public Prosecutor Battagram	-----
ix.	Mr. Nisar Alam (BPS-18)	ATC-V, Kanju Swat at Buner	Public Prosecutor District Public Prosecutor Office Swat	Against the vacant post
x.	Mr. Anwar Khan (BPS-18)	ATC-I Swat	Public Prosecutor District Public Prosecutor Office Buner	Against the vacant post

--SD--

Secretary to Govt of Khyber Pakhtunkhwa,  
Home and Tribal Affairs Department

Endst. No. & Date even

Copy forwarded to:-

1. The Director General Prosecution Khyber Pakhtunkhwa.
2. The Accountant General Khyber Pakhtunkhwa Peshawar.
3. The Advocate General Khyber Pakhtunkhwa.
4. The Chairman Drug Court Peshawar.
5. The District Accounts Officer, Peshawar.
6. P.S to Secretary Home & Tribal Affairs Department Peshawar.
7. The Officers concerned.

*[Signature]*  
Section Officer (Prosecution)

Ph:# 091-9210541  
Fax:# 091-9210201

*[Stamp]*  
ATTACHED

C  
42  
A. Akh...  
B

**CHARGE SHEET**

I, **Pervez Khattak**, Chief Minister, Khyber Pakhtunkhwa Peshawar as competent authority, hereby charge you, **Mr. Gul Waris Khan**, District Public Prosecutor (BPS-18), Bannu as follows:

That you, while posted as District Public Prosecutor, Bannu committed the following omission and commission;

- i. **That you have failed in observing supervision / vigilance over your subordinates especially Public Prosecutor of Anti-Terrorism Court, Bannu by not ensuring liaison with them.**
- ii. **That you have failed to supervise the process of investigation of the cases registered under Anti-Terrorism Act, 1997 and proper implementation of order No. SO (Pros)HD/1-2/2010-Vol-1 dated 11-10-2011 of the Competent Authority. Resultantly, neither proper scrutiny of the high profile cases could be made nor twenty seven (27) appeals were preferred against acquittals (Annex-A).**

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

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

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

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

6. A statement of allegations is enclosed.

*Pervez Khattak*  
**(PERVEZ KHATTAK)**  
CHIEF MINISTER,  
KHYBER PAKHTUNKHWA.  
23.4.2014.

**ATTESTED**

DISCIPLINARY ACTION

I, **Pervez Khattak**, Chief Minister, Khyber Pakhtunkhwa Peshawar as competent authority, am of the opinion that **Mr. Gul Waris Khan**, District Public Prosecutor (BPS-18), Bannu, has rendered himself liable to be proceeded against, as he committed the following acts / omissions, within the meaning of rule 3 of the Khyber Pakhtunkhwa Government, Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

- i. That he has failed in observing supervision / vigilance over his subordinates especially Public Prosecutor of Anti-Terrorism Court, Bannu by not ensuring liaison with them.
- ii. That he has failed to supervise the process of investigation of the cases registered under Anti-Terrorism Act, 1997 and proper implementation of order No. SO (Pros)HD/1-2/2010-Vol-1 dated 11-10-2011 of the Competent Authority. Resultantly, neither proper scrutiny of the high profile cases could be made nor twenty seven (27) appeals were preferred against acquittals (Annex-A).

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

- i. Mr. Abdul Ghafoor Baig. (PCS-EG-BS-20)
- ii. Mr. \_\_\_\_\_
- iii. Mr. \_\_\_\_\_

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

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

*Pervez Khattak*  
**(PERVEZ KHATTAK)**  
CHIEF MINISTER,  
KHYBER PAKHTUNKHWA.  
23.04.2014.

**ATTESTED**

D (14)

**FACT FINDING INQUIRY REPORT**

In pursuance to the direction by the Director General Prosecution Khyber Pakhtunkhwa, we visited the office of the District Public Prosecutor office Bannu on 18-01-2014 to probe into the matter of high ratio of acquittals in the Anti-Terrorism Court Bannu. The Senior Public Prosecutor Anti-Terrorism Court Bannu was also present there along with the record of the cases decided during the year 2013.

The perusal of record reveals that in the year 2013 total number of 67 cases were forwarded to the Court out of which the acquittals were in 37 cases the conviction in only one case. Further 05 cases were transferred to ordinary Courts and 3 were returned to Prosecution. Out of 37 cases the wherein, acquittals were made appeals were preferred in 10 suitable case, to this effect the report is at **Flag-A**.

What irregularity we noticed there was that prior to the submission of the cases to the Court concerned the District Public Prosecutor or the SP Investigation were not consulted as required vide order no. SO (Pros) HD/1-2010-Vol-I dated 11-10-2011 Flag-B and that the Senior Public Prosecutor in Anti-Terrorism Court straight away at his own without holding any meeting with other stake holders forwarded the cases to the Court.


Further we could not find any proper mechanism for the supervision of the Investigation of such high profile cases. It appeared to us that the investigation of the cases registered under Anti-Terrorism Act was not properly managed nor supervised in professional manner resulting into bulky acquittals.

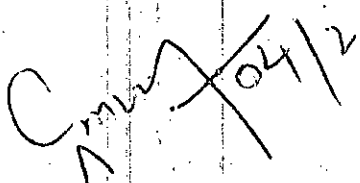
The Senior Public Prosecutor ATC Bannu when confronted with the situation regarding non-consulting the other stake holders prior to forwarding the case to the Courts and non-supervision of the investigation of such cases, he appeared to be helpless. The statement of the concerned was also recorded which is **Flag-C** wherein the Prosecutor tried to justify his stance but failed to manage the same. We also found lack of coordination between the office of the District Public Prosecutor Bannu and the Senior Prosecutor ATC Bannu.

In the given circumstances the following recommendation are formulated for the approval of the Director General Prosecution.

ATTACHED

1. The Senior Public Prosecutor ATC Bannu who has failed to manage properly the Prosecution of the cases in the Court is required to be transfer from the same.
2. The Senior Public Prosecutor ATC Bannu is required to explain the reasons for ignoring the order no. SO (Pros) HD/1-2010-Vol-I dated 11-10-2011 by the competent authority and forwarding the cases at his own to the Court resulting into acquittals.
3. The District Public Prosecutor Bannu may be asked to improve his liaison with the Senior Public Prosecutor ATC Bannu.
4. The District Public Prosecutor Bannu to personally supervise the process of investigation of the cases registered under Anti-Terrorism Act 1997 and to ensure the proper implementation of the order No. SO (Pros) HD/1-2010-Vol-I dated 11-10-2011 by the competent authority.

  
04/2  
**(IRSHAD ULLAH AFRIDI)**  
Deputy Director Legal

  
04/2  
**(ZAFAR ABBAS MIRZA)**  
Deputy Director Monitoring

**ATTENDED**



To,

**Mr. Abdul Ghafoor Baig ( Enquiry Officer)  
Special Secretary, Higher Education,  
Archives and Libraries Department,  
Govt of Khyber Pakhtunkhwa, Peshawar**

Subject: REPLY TO CHARGE SHEET DATED 23-4-2014

Respected Sir,

It is respectfully submitted that the captioned Charge Sheet was mailed to the office of DPP Lakki Marwat for serving on me but since I had not yet joined my duties at Lakki Marwat and since Your Private Secretary has addressed his letter No. PS/Spl:Secy/HEDAI/Bannu/1553-57 dated 06-5-2014 to me through the Office of DPP Bannu where I had relinquished my charge on 07-5-2014, therefore, the call for appearance before your good self with my reply to the Charge Sheet was delivered to me at my residence at Bannu on 08-5-2014. Since by then I had not yet received the Charge Sheet, therefore, I had to approach the office of DG (Prosecution) KP Peshawar on 09-5-2014 for knowing about the facts of the case. There, I was informed about mailing of the Charge Sheet to me at the address of my new assignment as DPP Lakki Marwat. Therefore, I had to request and obtain a copy of the Charge Sheet from the office of DG (Prosecution) KP Peshawar on 09-5-2014, for submission of my reply to the Charge Sheet.

2. Your good self may kindly be pleased to appreciate that in the above circumstances I had no opportunity of consulting the relevant bulky record for submission of my proper reply to the charge sheet. However, in a bid to show my eagerness for obeying your worthy order, I am trying to submit a tentative reply to the captioned Charge Sheet in the succeeding paragraphs.

ATTACHED

3. Sir, prior to submission of my allegation-wise reply, I crave for your leave to explain that at the time of issue of Order No. SO(Pros)HD/1-2/2010-Vol-I dated 11-10-2011, I was serving as Public Prosecutor Karak, therefore, I had no occasion of implementing the order dated 11-10-2011 with respect of ATA cases at Karak. Accordingly when I assumed my duties as DPP Bannu, the practice in vogue was that DPP was not being associated with the finalization of police reports submitted in ATC. It is pertinent to submit that a Special Public Prosecutor in BPS-18 was appointed for dealing with the ATC cases with the incentives/risk allowance @Rs. 20,000/=PM, therefore, it was/is expected of such a responsible Officer to have implemented the relevant orders by associating the DPP on the issue. However, the concerned Special Prosecutor did not ~~not~~ associate me with the preliminary scrutiny and submission of police reports in ATC. Therefore, I had no opportunity of scrutinizing the cases unless it was brought in my notice by the concerned special Prosecutor and wherever, the concerned Prosecutor consulted me then I had rendered advise/supervision specially in drafting 10 x Appeals against acquittal by ATC during the year 2013. As far as my commitment/pre-occupation as DPP Bannu is concerned, I may humbly submit that during the year 2013 I have scrutinized 7687 ordinary cases out of which 5468 cases were sent for trial and 251 cases were recommended for discharge for want of evidence in public interest with rendition of cogent reasons for the discharge of each individual case while 2219 cases were returned for removal of deficiencies with advice for proper investigation. Besides this, 275 legal opinions were rendered to police and 75 appeals were preferred against acquittal during the year 2013. It may also be appreciated that all the above performance was not possible during routine office hours; therefore, I had not only to sit late in office but had to take files even to residence for study and preparation of drafts at night for timely disposal of the cases.

**ATTESTED**

4. As far as work load of PP ATC at Bannu is concerned, it is respectfully submitted that during the year 2013 total 37 acquittals were recorded by ATC Bannu out of which 19 cases pertained to District Bannu while 18 cases pertained to District Lakki Marwat. Out of the 19 cases of acquittal pertaining to District Bannu, 08 cases were put in court prior to 26-12-2012 (i.e. the date of assumption of my charge as DPP Bannu). Hence the same pertain to the period of my predecessor in office and as such I can not be blamed for the omission if any committed by my predecessor in office. Moreover, the PP ATC Bannu has neither associated my predecessor in office nor me while forwarding cases for trial to court and used to do so in view the mandatory provisions of Section: 19(1&2) of the ATA-1997, which requires direct submission of report to court within seven days and makes it clear that any delay shall amount to disobedience and punishable as contempt of court. Perhaps because of this legal provision and th tight time frame for submission case to court the Administrative Judge of Anti -Terrorism Courts in Peshawar High Court Mr. Justice Yahya Afridi has also stressed upon submission of ATC cases on completion of investigation directly to the PP ATC instead of routing the same through DPP. Copy of the Minutes of the Meeting of the Judges of ATC held on 25-4-2014 in the Conference Room of Peshawar High Court Peshawar is submitted herewith as Annex "A" for your kind consideration please.

5. All registered cases at District Lakki and Bannu were directly forwarded to the court by PP ATC. None of the cases was routed through me (District Public Prosecutor Bannu) and perhaps same would be the position of DPP Lakki Marwat. Even otherwise, DPP Lakki who is equally responsible for those cases which pertains to Distt: Lakki but he has been spared and entire responsibility has been shifted to me, which amounts to discrimination against me. It is pertinent to submit that the facts finding inquiry has neither associated me in the process of inquiry nor recorded my statements and as such any findings of the

ATTESTED

inquiry which affects of my service interest adversely will be in flagrant violation of the well settled principles of natural justice which requires that **“no one should be condemned unheard”**.

6. In view of the above humble submissions, your good self may kindly be pleased to appreciate that:-

(a) The allegations/accusation of **“my failure in observing, supervision/vigilance over subordinate prosecutors specially PP ATC”**, is misconceived firstly because PP ATC is equal in rank/status with me and has been posted independently by the provincial govt to conduct ATC cases for which he is remunerated @Rs. 20,000/= PM and since PP ATC gets Rs. 20,000/= PM more than me, therefore, according to the fundamental principle **“from each according to his ability to each according to his work”** as enshrined in Article: 3 of the Constitution of Pakistan-1973, it can not be presumed that a person getting more may be subordinate to a person with lesser remunerations. However, even then I kept Liaison with PP ATC and was asked his opinion cases of ATA whenever the investigation agency sought for such opinion. Myself also tendered legal opinion in ATA. Similarly, workshop and meetings were held in collaboration with the local police. Therefore, it is earnestly requested that the allegations/accusations may kindly be withdrawn being baseless and misconceived.

The second allegation/accusation with regard to my failure **“to supervise the process of investigation of the ATC case and proper implementation of order dated 11-10-2011”** is also misconceived, firstly because of the fact that a competent and independent Public Prosecutor has been appointed by the Provincial Govt U/S: 18 of the ATA-1997; secondly because ATC Bannu tries the cases of two districts i.e. Bannu & Lakki Marwat, therefore, I can not be

ATTESTED

held responsible for the default in scrutiny of cases pertaining to Distt; Lakki Marwat. Confronted with the above legal and factual problems as to how PP ATC Bannu with an independent legal status having equal rank with jurisdiction over two districts can be subjected to the authority of DPP Bannu and as to how DPP Bannu can be made responsible for the flaw in scrutiny of cases pertaining to Lakki Marwat, I dare to suggest that modus operandi of the order dated 11-10-2011 may please be revisited, brought in conformity with various provisions of the ATA-1997 and at least one out of the four officers may be made responsible for arranging joint scrutiny of ATC cases, which in my humble opinion PP ATC can be the best one having limited work load, with full time devotion to ATC case and immediately responsible for proper scrutiny/prosecution of the case during trial. In view of above, the basic order dated 11-10-2011 is defective with respect to the ground realities and legal requirements of various provisions of ATA-1997. It is clarified that I remained posted at Distt Karak at the time of issuance of order No. SO ( Pros) HD/1 -2/2010-VOL-1 dated 11/10/11. I remained posted there till late of the December 2012. I assumed charge of DPP Bannu on 26<sup>th</sup> December 2012. Neither during the period of my predecessor in office, the said order was implemented nor brought into my notice. No case was initiated by the PP ATC in accordance with the dictate of the said order for further action of the other stack holders despite of the fact that in all cases relating to ATA the supervision of investigation, scrutiny of cases and forwarding of case files was falling with in his domain. Similarly, the order ibid never implemented by my predecessor in Office or PP ATC so that it could be noticed by me and to continue its implementation. Though the said order was issued so long before my assumption of office as DPP but this order was not found implemented even from the very inception of its issuance. Even this order was not implemented by the office of DPP at Bannu as well as Lakki Marwat before my assumption of office as District Public Prosecutor, therefore,

ATTESTED

only myself has been dragged into the matter while others who equally share their job have been spared.

So far, non-preferring of appeals in 27 cases is concerned, only 19 cases pertain to the jurisdiction of Bannu, but even then appeals in 10 cases were preferred after forwarding the same by the PP ATC before the August High court through proper channel which figures is more than that of the previous years. Figures are given below as under:-

2010	01
2011	01
2012	04
2013	10

(b) The above figures clearly show that during my tenure i.e 2013, about 10 times more appeals especially with reference to the figures pertaining to the years 2010 and 2011 were preferred. Similarly, in 2012 only 4 appeals were preferred while the ratio of acquittal is the same. It is again clarified that during the year 2012 I was posted at Karak. Therefore, it will be the most unkindest cut of all to accuse for the non-implementation of the order. Hence, the charge/allegation may please be withdrawn being misconceived. (Copy of the letter showing statistics of acquittal and conviction of the special courts throughout the province in 2012, are attached).

7. It is pertinent to submit that I have tried my best to explain most of the aspects of my defense in the preceding paragraphs, but your good self may kindly appreciate that it is not possible for me to comprehend each and every aspect of my defense, therefore, I earnestly request for

ATTESTED

grant of an opportunity of personal hearing so that I may answer each and every question which the authority may feel to ask me.

Prayed accordingly in the interest of justice.

Peshawar

Dated:- 13-5-2013

Accused



(Gul Waris Khan)  
The then DPP Bannu  
Now DPP Lakki  
Marwat

h  
ATTESTED



**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT**

No. PS/SS/HED/1-1/ER/DPP&PP/Bannu

Dated Peshawar, the 09/06/2014

To

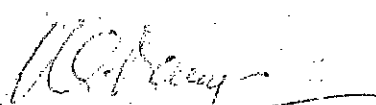
The Secretary,  
Government of Khyber Pakhtunkhwa,  
Home & Tribal Affairs Department,  
Peshawar.

Subject: - **ENQUIRY REPORT**  
Dear Sir,

Reference your letter No. SO (Com/Enq)/HD/1-31/2014/KC dated  
05/05/2014.

I am enclosing herewith combined enquiry report alongwith enclosures,  
conducted against M/S Gul Waris Khan, District Public Prosecutor and Nawab Zarin, Public  
Prosecutor, ATC, Bannu for further necessary action, please.

**Encl. (Attached)**

  
(Abdul Ghafoor Baig) 9/6/14  
Special Secretary, Higher Education,  
Khyber Pakhtunkhwa, Peshawar /  
(Enquiry Officer)

ATTESTED

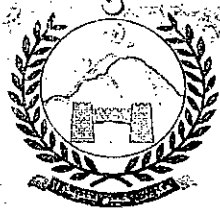


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AC

ATTESTED



**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT**

**CERTIFICATE**

Certified that the Enquiry Report consists upon Nine (09) pages and every page is duly signed by me. The enquiry report is also supported by relevant Annexures (some of which contain several pages).

**(Abdul Ghafoor Baig)**  
**Special Secretary, Higher Education,**  
**Khyber Pakhtunkhwa, Peshawar /**  
**(Enquiry Officer)**

9/8/14

**ATTESTED**

26

Combined Enquiry Report of District Public Prosecutor & Public Prosecutor ATC, Bannu.

The Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa (*hereinafter referred to as "the Department"*) had initiated disciplinary proceedings against M/S. Gul Waris Khan, District Public Prosecutor and Nawab Zarin, Public Prosecutor, Bannu (*hereinafter referred to as "both the accused"*). Charge sheet and Statement of Allegations were issued to both the accused under the signature of Chief Minister, Khyber Pakhtunkhwa (*The Competent Authority*). The Competent Authority appointed Mr. Abdul Ghafoor Baig, Special Secretary (PCS EG BS-20), Government of Khyber Pakhtunkhwa, Higher Education Archives & Libraries Department, Peshawar as Enquiry Officer. The Department issued formal order, in this regard, vide No. SO (Com/Enq)/HD/1-31/2014/KC dated 11/02/2014.

Background of the case

Mr. Gul Waris Khan was posted as District Public Prosecutor in District Bannu (*hereinafter referred to as "the accused DPP, Mr. Gul Waris Khan"*) and Mr. Nawab Zarin was posted as Public Prosecutor Anti-Terrorism Court, Bannu (*hereinafter referred to as "the accused PP, ATC, Bannu Mr. Nawab Zarin"*). During period of both the accused as many as 37 acquittals & only one conviction out of 67 high profile cases remained under trial in the Anti-Terrorism Court, Bannu (*hereinafter referred to as "the ATC, Bannu"*) was reported to the Directorate of Prosecution. Out of these 37 cases appeals were preferred in ten (10) cases only. The Directorate of Prosecution took serious notice of such a high ratio acquittals in the ATC, Bannu, therefore, conducted facts finding enquiry into the matter through Dy; Director, Legal and Dy; Director, Monitoring. The Departmental Enquiry Committee visited the office of both the accused, ascertained the matter and submitted report wherein certain deficiencies with regard to submission of the cases into the Court as well as administrative loopholes were pointed out. The Department, on the basis of the said report, charge sheeted both the accused. Mr. Liaquat Ali, Dy; Director (Administration/Finance) was nominated as Departmental Representative by the Director Prosecution vide order dated 08/05/2014 (**Annexure-A**).

Proceedings

The Departmental Representative, on the directions of the Enquiry Officer, made all necessary record available. The Enquiry Officer, in light of the available record, summoned both the accused. Both the accused submitted written reply to the charge sheet. The Enquiry officer, besides their written reply, also examined both the accused thoroughly, and their statements were recorded on oath. Gist of written reply as well as statements recorded on oath of both the accused is reproduced hereunder for convenience:-

ATTESTED

1. Statement on oath in respect of the accused Mr. Gul Waris Khan, District Public Prosecutor

The accused officer stated on oath that;

"I have been posted as District Public Prosecutor (*hereinafter referred to as "the accused DPP, Bannu"*) from 26/12/2012 to 07/05/2014. I am fully aware of my job description as well as powers entrusted to me under Section 4 & 7 of Khyber Pakhtunkhwa Prosecution Act, 2005. I was in charge of the prosecution of District Bannu & responsible for supervision and monitoring of performance of my subordinate staff with regard to their official duties / submission of cases and preferring appeals in Courts. As far as the acquittal of the 36/37 cases is concerned, the Public Prosecutor Mr. Nawab Zarin (*hereinafter referred to as "the PP ATC, Bannu"*) neither consulted me nor routed the cases through my office. On my verbal query, he referred Section 19(1) of Anti-Terrorism Court, 1997 under which he was competent to file cases in the court. Besides this, the PP under Section 19 (1) of Anti-Terrorism Act, 1997 do not consider sub-ordination of DPP, however I could not pay attention to the matter due to rush of work. It is fact that I was remained unaware about the acquittal of 18 cases by the ATC, Bannu that is why I could not fulfill my official responsibilities. Prior to the initiation of this enquiry, I have not seen/perused the order No.SO(Pros) HD/1-2/2010-Vol-1 dated 11/10/2011 mentioned in the Charge Sheet."

Statement of the accused officer is enclosed in original at (*Annexure-B*).

2. Statement on oath in respect of the accused Mr. Nawab Zarin Public Prosecutor, ATC, Bannu

The accused officer stated on oath that;

"I have been posted as Public Prosecutor ATC, Bannu from 24/11/2011 to 03/05/2014. I have complied with the order No. SO (Pros) HD/1-2/2010-Vol-1 dated 11/10/2011, in letter and spirit, however, I could say nothing about receipt and implementation of the said order. It is correct that since 2011 to 2014 all the cases I had filed in the ATC, Bannu under the powers conferred upon me in Section-19(1) (A) and the DPP, SP Investigation and IO were not consulted. It is correct that the 26 cases in which the Hon'able Court has issued acquittal orders were neither fit for filing nor I had consulted the stakeholders. It is also correct that I had not informed the SP Investigation regarding acquittal of the cases during the year, 2013 because he had not paid any attention to my previous correspondence made with him in similar cases from 2004 to 2011. However, It is correct that under section-4 & 7 of the Anti-Terrorism Act, 1997 I was abide by taking opinion of the DPP but I didn't consult him under Section-25 (4) of the Act *ibid*. My predecessor in office had also not filed any appeal against the acquittal orders of the ATC, Bannu till my taking over charge (i.e. November, 2011). During the year 2013, I have filed as many as 10 appeals against the total 66/67 acquittals."

Statement is enclosed in original at (*Annexure-C*).

ATTESTED

Issues

The charges levelled against both the accused in the charge sheet and statements of allegations seem identical, therefore, the matter is looked into jointly. The following two charges are levelled against the accused DPP, Bannu, Mr. Gul Waris Khan in the charge sheet & statement of allegations:-

**A) Charges Levelled in the Charge Sheet against Mr. Gul Waris Khan, DPP, Bannu**

- a) *That he has failed in observing supervision / vigilance over his subordinates especially Public Prosecutor of Anti-Terrorism Court, Bannu by not ensuring liaison with them.*
- b) *That he has failed to supervise the process of investigation of the cases registered under Anti-Terrorism Act, 1997 and proper implementation of order No. SO (Pros) HD/1-2/2010-Vol-1 dated 11-10-2011 of the Competent Authority. Resultantly, neither proper scrutiny of the high profile cases could be made nor twenty seven (27) appeals were preferred against acquittal.*

After going through the above mentioned two allegations levelled against the accused DPP, Mr. Gul Waris Khan in the charge sheet, the following issues are, therefore, derived from these charges:-

The accused DPP, Mr. Gul Waris Khan failed to;

- i) Observe supervision / vigilance over PP, ATC Bannu,
- ii) Ensure liaison with PP, ATC Bannu,
- iii) Supervise process of investigation of cases registered under ATA, 1997 &
- iv) Implementation of order No. SO (Pros) HD/1-2/2010-Vol-1 dated 11-10-2011.

Analysis

In light of the available record, I found that the accused DPP, Bannu Mr. Gul Waris Khan had been performing his duty at District Bannu in the capacity of District Head of Prosecution with effect from 26/12/2012 to 07/05/2014. During the year 2013 (i.e. tenure of the accused DPP, Bannu), total number of 67 cases were decided by the Anti-Terrorism Court, Bannu (**hereinafter referred to as ATC, Bannu**) out of which the acquittals were in 37 cases with only one conviction (Annexure-D) wherein appeals against 10 cases into the Competent Courts out of 37 acquittals were preferred.

ATTESTED

It was found that the Directorate of Prosecution, Khyber Pakhtunkhwa has issued the following orders / circulars, from time to time, to the District Public Prosecutors / Public Prosecutors for the purpose of smooth transaction/function of the public prosecution process:-

- 1) Circular No. DP/E&A/ 4031-62 dated 30/06/2010

Excerpts of the circular is given hereunder for convenience:-

*"The District Public Prosecutor being District Head of the Prosecution are legally authorized to supervise and guide all Investigation Officer(s) in all criminal cases including cases registered under Anti-Terrorism Act, 1997 during investigation process till the submission of challan inter-alia to add or delete Section(s) of Law wherever it is necessary in the light of facts and circumstances of each cases".*

- 2) Circular No. DP/E&A/ 9032-57 dated 02/07/2012

Extract of the circular is given hereunder for convenience:-

*"to distribute the scrutiny work of the case files amongst the subordinate prosecutors keeping in view their capabilities and specific role to be played by the District Public Prosecutors in order to ensure the timely of case file before the courts in accordance with Section-173 Cr. PC."*

- 3) Circular No. DP/E&A/ 1 (16) /1531-55 dated 27/07/2012  
 4) Circular No. DP/E&A/ 1 (4) /11237-62 dated 11/09/2012  
 5) Circular No. DP/E&A/ 1 (88) /14558-83 dated 19/09/2012  
 6) Circular No. DP/E&A/1 (4) 12/ 17802-29 dated 18/10/2012  
 7) Circular No. DP/E&A/ (110)/ 2708-40 dated 13/03//2013

Besides the above mentioned circulars / guidelines, the Department has also notified a proper mechanism for institutions of cases into the Competent Courts vide order No. SO (Pros) HD/1-2/2010-Vol-1 dated 11-10-2011 for proper submission of cases to the Anti-Terrorism Courts as well as proper procedure alongwith different proformae for the purpose of effective public prosecution.

Excerpt of the order is given hereunder for convenience:-

"b) Decisions in Anti-Terrorism cases whether to prosecute or not to prosecute will be taken by the District Public Prosecutor, Head of Investigation in the District, a Senior Prosecutor and the Investigation Officer and all will have to sign and stamp the specified Proforma-B.

ATTESTED

- c) **Decisions regarding submission of appeals against acquittal or not will be taken by District Public Prosecutor and Prosecutor who conducted the trial and both will have to sign and stamp the specified Proforma-C.**

In light of the foregoing factual position, the accused DPP, Mr. Gul Waris Khan, being District Head of Prosecution is responsible for supervision and monitoring the performance of his entire subordinate staff regarding their official duties, especially the duty of the accused PP, ATC, Bannu Mr. Nawab Zarin. But it was found that the accused PP, ATC, Bannu Mr. Nawab Zarin had neither submitted nor routed the cases through his office and processed them on his own under the powers conferred upon him in Section 19 (1) of Anti-Terrorism Court, 1997 as is evident from his own statement, too.

By reason of the above, **the accused DPP, Mr. Gul Waris Khan be held responsible directly for the Issues No. (i) & (iii) derived from the Charges levelled against him in the charge sheet.** However, being District Head of Prosecution, he not had only to abide by the orders issued by the Provincial Government from time to time but to keep informed his subordinates also. He neither called any meeting with the Prosecutors of the District or sought briefing regarding his cases pendency, Investigation and Acquittals/Convictions etc nor explanation of the accused PP, ATC, Bannu, Mr. Nawab Zarin or others for not routing the cases through his office as clearly mentioned in the Home Department order issued vide No. SO (Pros) HD/1-2/2010-Vol-1 dated 11-10-2011 nor informed the competent authorities about his deviation from that order.

**Findings in respect of the accused DPP, Bannu Mr. Gul Waris Khan.**

By reason of the above slackness on the part of the accused DPP, Mr. Gul Waris Khan held him responsible for the Issue No. (ii) & (iv) derived from the Charges levelled against him in the charge sheet. The accused DPP, Mr. Gul Waris Khan has proved himself "inefficient" and "negligent" within the meaning of *Rule-3 (a) of Khyber Pakhtunkhwa Efficiency & Discipline Rules, 1973*. Charges levelled against the accused DPP, Mr. Gul Waris Khan stand proved.

**B) Charges Levelled in the Charge Sheet against Mr. Nawab Zarin, PP, ATC, Bannu**

- a) *That you have failed to manage properly the prosecution of the cases in the Anti-Terrorism Court, Bannu and ignoring order No. SO (Pros) HD/1-2/2010-Vol-1 dated 11-10-2011 issued the Competent Authority and forwarded the cases at your own to the Anti-Terrorism Court by passing the Head of Investigation and District Public Prosecutor, resulting into acquittals.*

**ARRESTED**

- b) *The you failed to file appeals against acquittals in the competent Court in twenty seven (27) high profile cases without any justification.*

Issues

After going through the above mentioned two allegations levelled against the accused PP, ATC, Bannu Mr. Nawab Zarin in the charge sheet, the following issues are, therefore, derived from these charges:-

The accused PP, ATC, Bannu Mr. Nawab Zarin failed to;

- i. *Manage properly the prosecution of cases in the ATC Bannu,*
- ii. *Ignoring the order No. SO (Pros) HD/1-2/2010-Vol-1 dated 11-10-2011.*
- iii. *By passing the DPP, Bannu &*
- iv. *To file appeals against acquittals in 27 high profile cases.*

Analysis

In light of the available record it was found that the accused PP, ATC, Bannu Mr. Nawab Zarin had been performing his duty as Public Prosecutor in the Anti-Terrorism Court, of District Bannu & Lakki Marwat (**hereinafter referred to as ATC, Bannu**) with effect from 24/11/2011 to 03/05/2014. The ATC, Bannu, during the year 2013 decided 67 cases out of which 37 were acquittals and only one was conviction (Annexure-D). The accused PP, ATC, Bannu Mr. Nawab Zarin did not prefer appeals in 27 cases into the Competent Courts.

It was further found that the Directorate of Prosecution, Khyber Pakhtunkhwa, from time to time, has issued several orders to the District Public Prosecutors / Public Prosecutors, ATC for adopting proper mechanism regarding institution of cases into the ATCs and in case of acquittals preferring of appeals in the competent courts. During the course of enquiry proceedings, the following orders/ circulars of the Directorate as well the Department, issued to the DPPs and PPs ATC in this regard, was taken into consideration:-

1. **Circular No. DP/E&A/ 1 (16) /1531-55 dated 27/07/2012**

In this circular direction has been given to all Public Prosecutors for assistance in scrutiny work. Extract of the circular is given hereunder for convenience:-

*"You are directed to assist him (i.e. the DPP) in the scrutiny work, filling of proformas and any other ancillary work assigned to you by the DPP concerned."*

2. **Circular No. DP/E&A/1 (4) /11237-62 dated 11/09/2012**

Extract of the circular is given hereunder for convenience:-

ACQ  
APPROVED



"on certain occasions the court issue directions for completion of file which speaks of inefficiency on the part of concerned prosecutors on two scores:- (i) that the case file was not scrutinized properly; and (b) that the prosecutors concerned are least interested in the performance of duties assigned to them and have not even gone through the relevant record."

3. Circular No. DP/E&A/1 (4) 12/ 17802-29 dated 18/10/2012
4. Circular No. DP/E&A/ (110)/ 2708-40 dated 13/03/2013

Extract of the circular is given hereunder for convenience:-

"All Prosecutors functioning the Anti-Terrorism Courts are under the administrative control of District Public Prosecutor. Though the Prosecutors attached with the Anti-Terrorism Courts are notified under Section-18 of Anti-Terrorism Act, 199. However, the DPP being Administrative Head of the District is empowered to assign any work to the Prosecutors attached with the Anti-Terrorism Courts in addition to their own duties. Thus the Prosecutors are required to comply with all lawful orders of the District Public Prosecutor."

5. Order No. SO (Pros) HD/1-2/2010-Vol-1 dated 11-10-2011.

Excerpt of the order is given hereunder for convenience:-

- "b) Decisions in Anti-Terrorism cases whether to prosecute or not to prosecute will be taken by the District Public Prosecutor, Head of Investigation in the District, a Senior Prosecutor and the Investigation Officer and all will have to sign and stamp the specified Proforma-B.
- c) Decisions regarding submission of appeals against acquittal or not will be taken by District Public Prosecutor and Prosecutor who conducted the trial and both will have to sign and stamp the specified Proforma-C."

During the course of enquiry proceedings it was found that jurisdiction of the accused PP, ATC, Bannu, Mr Nawab Zarin was extended in two Districts (i.e. District Bannu and Lakki) and as many as 19 cases out 37 acquittals pertain to District Bannu while 18 cases pertain to Lakki. The accused PP, ATC, Bannu Mr. Nawab Zarin, for attachment with the Anti-Terrorism Court, is paid monthly honorarium @ Rs. 20,000/- as an incentive / risk allowance in addition to his due salary package. The accused PP, ATC, Bannu Mr. Nawab Zarin was required to comply with the orders / instructions of the Government issued from time to time. But despite the clear orders / instructions, mentioned in the above circulars, especially the order dated 11/10/2011 he accused PP, ATC, Bannu Mr. Nawab Zarin

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forwarded all the cases directly to ATC, Bannu without consulting the committee constituted therein. In his statement on oath (annexed herewith as Annexure-C) the accused PP, ATC Bannu Mr. Nawab Zarin stated that he neither routed the cases to the ATC, Bannu through the DPP, Bannu Mr. Gul Waris Khan nor other stakeholders of the committee mentioned in the order dated 11/10/2011. The accused PP, ATC, Bannu, in his defence, referred Section-19 (1) of Anti-Terrorism Act but ignored the instructions of the Government issued to him from time to time, being a civil servant. Had the accused PP, ATC, Bannu was in ambiguity of compliance with the clear instructions of the Government contained in letter dated 11/10/2011 read with Section-19 (1) of the Act *ibid* he should have to seek advice of the Department.

**Findings in respect of the accused PP, ATC, Bannu Mr. Nawab Zarin.**

In view of the foregoing account, the accused PP, ATC, Mr. Nawab Zarin, in the capacity of civil servant, has by-passed his immediate boss (i.e. District Public Prosecutor, Bannu) and instituted the cases directly in the ATC, Bannu and thereafter preferred few appeals in the Competent Courts. He neither filed appeals against 26 acquittals on his own nor did inform the higher authorities inspite of clear instructions issued in this regard. The accused PP, ATC, Bannu, Mr. Nawab Zarin thus has, thus, committed misconduct in utter disregard of the clear instructions of the Government contained in order dated 11/10/2011. The accused PP, ATC, Bannu Mr. Nawab Zarin has proved himself "*guilty of misconduct*" within the meaning of *Rule-3 (b) of Khyber Pakhtunkhwa Efficiency & Discipline Rules, 1973*.

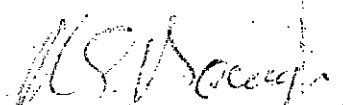
**Recommendations**

1. (a) On the basis of findings, the accused DPP, Bannu, Mr. Gul Waris Khan has rendered himself liable for major penalty to be imposed upon him within the meaning of *Rule-4 (1) (b) (i) of Khyber Pakhtunkhwa Efficiency & Discipline Rules, 1973* (Reduction to lower grade).
- (b) On the basis of findings, the accused PP, ATC, Bannu, Mr. Nawab Zarin has rendered himself for major penalty to be imposed upon him within the meaning of *Rule-4 (1) (b) (i) of Rules ibid* (Reduction to lower grade) and recovery of incentive allowance @ Rs. 20,000/- PM drawn for the whole year 2013 by the accused PP.
2. The *modus operandi* regarding powers of the DPP and PP, ATC may be brought in conformity with the Proviso of Anti-Terrorism Act, 1997, PK Prosecution Service (Constitution, Functions and Powers) Act, 2005 and decisions taken by the Administrative Judge of Anti-Terrorism Court, Khyber Pakhtunkhwa in the

ATTESTED

meeting held on 25/04/2014. Clear instructions regarding distribution of work as well as role of District Public Prosecutors and the Public Prosecutors may be notified for all concerned.

3. The District Public Prosecutors and the Public Prosecutors attached with the Anti-Terrorism Courts may be provided with fool proof security and attractive salary packages like Police Personnel, in order to, check such a large scale of acquittals. The DPPs may also be made entitled for the monthly incentive / risk allowance @ Rs. 20,000/- as drawn by the Public Prosecutors attached with the Anti-Terrorism Courts.
4. The Director General, Prosecution may arrange quarterly meetings with all Districts to review the performance of all District Formations.

  
(Abdul Ghafoor Baig) 9/6/14  
Special Secretary, Higher Education,  
Khyber Pakhtunkhwa, Peshawar /  
(Enquiry Officer)

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بیان برطانیہ کی وزارت داخلہ DPP جنرل علی گل کو

تاریخ 27/05/14

بیان برطانیہ میں 2012ء تا 7/5/2014ء DPP جنرل آغا حسین علی

درست ہے کہ میں محبت DPP جنرل آغا حسین علی کا ایجنڈا ہے  
یہ حالت DPP کے لئے ہے کہ وہ کسی کو قید نہ  
کریں اور وہ کسی کو قید نہ کرے اور وہ کسی کو قید نہ  
کریں اور وہ کسی کو قید نہ کرے اور وہ کسی کو قید نہ

میں 13/5/14 کو اس کا written statement داخل کیا  
گیا ہے اور اس کے خلاف کارروائی ہو رہی ہے  
میں 15/5/14 کو اس کا written statement داخل کیا  
گیا ہے اور اس کے خلاف کارروائی ہو رہی ہے

C-2

درست ہے کہ میں نے 2005 Act کے تحت کارروائی

کیا ہے اور 447-Section کے تحت کارروائی

DPP کیس ان سے کوئی واقف نہیں ہے درست ہے کہ

67/66 Regulated 37/37

میں 2013 میں جوئی کے لئے  
وہ نہ تو درکار کرتا وقت اور نہ  
میں اس کے لئے Regulated ہے کہ اس میں  
میں اس کے لئے Regulated ہے کہ اس میں  
میں اس کے لئے Regulated ہے کہ اس میں  
میں اس کے لئے Regulated ہے کہ اس میں

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از خود کیا کریم ضلع ہونے سے متعلق *securities* کے لیے

18) گزریں ہیں میں سے باقی (17) کے

ضلع کے سے متعلق ہیں۔ اس میں سے (8) کے

کے لیے سے بدلے کے حالات ہیں۔ (11) کے

سے سے متعلق کے لیے *securities* دائرہ کے لیے ہے۔ جس میں سے

ATC, PP کے ATC, 1987 کے (1901) کے

کے تحت دائرہ کے لیے ہے۔ اس میں سے

کوئی بھی ہے جو اب طلب نہیں کیا گیا ہے۔ اس میں سے

کے اس بار میں سے سے متعلق کیا کریں

درست ہے کہ ATC کے (11) کے

تحت دائرہ کے لیے ہے۔ اس میں سے

متعلقہ کے لیے ہے۔ اس میں سے

کے لیے ہے۔ اس میں سے

کے لیے ہے۔ اس میں سے

کے لیے ہے۔ اس میں سے

کے لیے ہے۔ اس میں سے

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از خود کیا PP دینے آئی DPP کے ماتحت لکھنے میں کرتے  
 عدالت میں اس کا ثبوت ہے۔ اس کو کلا شہادت میں لکھ  
 کی تھی۔ درست ہے کہ علم حاصل کر کے لکھنے میں (18)  
 در ATC میں Regular ہو چکی ہیں۔

درست ہے ATC کے ساتھ ساتھ  
 کارڈ کے ساتھ سے میں ان کے درجہ پر زیادہ تو جہ میں  
 کے ساتھ اور اس کے درجہ وار اعلان کیا ہے اور اس میں کر سکا۔  
 از خود کیا ہے آرڈر بتا رہے ہیں 11/2011 میری نظر سے نہیں لکھ رہا  
 از خود کیا ہے قطعاً ہی تمام اس کے ساتھ ساتھ  
 جو اس کے ساتھ ساتھ وہ موجود تھا اور اس میں عمل درآمد  
 ہی ہو رہا تھا۔

در درست ہے یہ کہ DPP کے ساتھ ساتھ اور اس کے ساتھ ساتھ  
 خود لکھ کر دینے اور اس کے ساتھ ساتھ لکھ کر دینے۔

No. of A.C. - 27/05/11

مگر وارنٹ میں DPP میں  
 1/4 1/4

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بیان لبرالف اور اب زریں PP، ATC، اور ملی خورد

39 حروف 27/05/14

بیان دیا کہ میں عرصہ 2011 سے بطور PP کی اس بنوں  
کام کر رہا ہوں اور اب PP، ملی خورد 2014 سے  
تعمینات ہو گیا ہوں۔

C-2 یہ درست ہے کہ میں ATC کوڑے بنوں کے ساتھ 2004 سے 2008  
تک منسلک رہا ہوں لہذا دوبارہ میں بحیثیت PP 2011 سے  
20/4/2014 تک بطور PP ATC بنوں رہ گیا ہوں۔  
مجھے معلوم ہے کہ جن 27/5 کے بارے میں مجھے حل شدہ کیا گیا ہے ان کے  
بارے میں مجھے

C-2 یہ درست ہے کہ میں 2011 سے 2014 تک جو کہ ATC کوڑے  
بنوں میں دائرے آئے ہیں وہ PP اور الٹریسٹیشن لبر اور DPP کے ساتھ  
مشورہ / مشاورت میں کی گئی اور خود کہا کہ میں وقتاً فوقتاً PP  
جو اور DPP کے ساتھ <sup>دو</sup> Case کا مشورہ کرتا ہوں  
اور خود کہا کہ میں 1980-1985 کے تحت با اختیار تھا کہ میں  
PP کے ساتھ عدالت میں دائرہ کر سکتا اور میں وہ  
اسی اختیار کے تحت عدالت میں دائرہ کر سکتا ہوں۔

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نے طرہ سبب سے متذکرہ آرڈر / ڈائریکٹوریٹ کے مطابق پوری اور اس کی شہادت  
 کی ہے کہ اس کے روح امہ مقصد کے لئے پوری شہادت راہداری کو جس کی  
 ہے اور میں نے کسی Stakeholder کو نفاذ انداز نہیں کیا۔  
 میں متذکرہ لکھنے والا ڈاکٹر طرہ سبب سے ہے کہ بار سے مہول  
 وقت اور عمل درآئندہ کے بار سے یہ بار سے کوئی ہوا۔ میں ہے  
 از خود کہ یہ درست ہے کہ 2013 میں فیصلہ شدہ <sup>طام آہ</sup>  
 وقت میں نے کسی سے مشاورت نہیں کی۔ اس وقت وہ کہ  
 عدالت میں دائر کرنے کے لئے بالکل <sup>26</sup> fit تھے البتہ ان کے  
 Acquit کے آرڈر دیتے تھے Appeal دائر کرنے  
 کے بعد میں غزوں میں سمجھتا تھا۔ اگر <sup>26</sup> کوئی نہ دوران  
 شہادت contradiction اور بہت زیادہ تضادات آجاتے  
 تھے۔

یہ بھی درست ہے کہ میں نے ان Acquit کو کاٹا سمجھتے  
 ہوئے ان کے صلہ Appeal کرنے کے لئے DP کا  
 De Prosecution کے ساتھ کوئی دستورہ میں کیا کیونکہ یہ کہ  
 Appeal کے لئے fit ہیں تھے۔ فیصلہ میں نہ خود کیا تھا

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۱۔ یہ درست ہے کہ میں 2013 میں *attorney* بنا کر  
 کے بارے میں *DP* انویسٹیشن کو کوئی اطلاع نہیں دی تھی اس لیے  
 میں 2014 سے 2017 تک تمام خطوط *DP* انویسٹیشن کو  
 لکھتا تھا۔ یہ درست ہے کہ *Appeal* دائر کرنے کا ارادہ  
 نہ تھا میں *DP* کی رائے لیتا صاحب میں سمجھتا ہوں کہ  
 اس معاملہ میں تھا۔ از خود کہا کہ میں نے *reply* دیا ہے۔ یہ  
 میں دہرا ہے کہ میں *confuse* تھا کہ کوئی ہمارے پاس  
 ہے 3/4 دن تھا۔

۲۔ یہ درست ہے کہ *attorney* کا *attorney* تجربے کے وقت  
*weak* انویسٹیشن / *attorney* کا نتیجہ ہے۔

۳۔ یہ درست ہے کہ مجھے 2012 میں بھی *attorney* کے  
 سے متعلق جو *attorney* بنا کر *attorney* کیا تھا مجھ  
 میں اطلاع نہ تھی از خود کہا کہ وہ *attorney* تھی اسی عمر  
 شروع ہوئے کہ وہ ہے۔

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۴.۲ میری رائے ہے کہ یہ فیصلہ صحیح ہے اور اس میں کوئی ترمیم کی جا سکتی ہے۔  
 میں دیکھتا ہوں کہ Appeal اس کے عدالت میں دائر نہیں کی جاسکتی  
 کہ وہ fit نہیں ہے اور اس میں Appeal  
 نہ کر سکتے ہیں اطلاق نہ تو DP کو دی اور نہ ہی کوئی  
 مکتوبہ 1966 Act کی (4) - 25 - Section کے تحت یہاں  
 نہیں اسکا دیکھا گیا ہے۔  
 Prosecution Act 2005  
 کا لغو مطالبہ ہے اور اس میں 497 Section (ب) کے  
 تحت جو اختیارات ہیں وہ لغو ہو چکے ہیں۔

۴.۳ میری رائے ہے کہ یہ فیصلہ 497 - Section اور Prosecution Act کے تحت  
 اختیار Prosecution جو DP کے لئے ہے کو نہ تو عدالت  
 داخل کرتے وقت اور نہ ہی Section کے تحت Appeal  
 نہ کرنے کے بارے میں اسکو اختیار ہے۔ عدالت یہ کہتی ہے  
 Prosecution Act کے تحت اور Section 7 Prosecution Act کے تحت  
 کس داخل کرتے وقت اور Appeal کرتے وقت یہ ثابت کرنے کے وقت  
 DPP کے عمل میں لانا چاہئے تھا۔ از خود یہاں 2010 میں جب  
 میں طرح میں لیا تھا تو اس وقت یہ Appeal ہو سکتی

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صوبہ میں آیا تو موسم 2011 تک 77 سے زائد کیسز

میں فیجے سے ملے۔ 77 کیسز میں 10 کیسز اور ایک

اپریل 2012 سے 2013 میں 77 کیسز میں 10 کیسز

نسبتاً دیگر سالوں سے کام زیادہ سے زیادہ کیسز

میں 77 کیسز سال 2010 میں 77 کیسز میں

Required کیسز میں 61 کیسز میں Required

کیسز میں 73 کیسز میں Required کیسز

میں 2013 میں 66/66 کیسز میں 37 کیسز

Required کیسز میں 37 کیسز میں Required

PW-1/10/10/10

Required

NOTE -

نوٹ: 77 کیسز میں 10 کیسز

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**SHOW CAUSE NOTICE**

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(44)  
Annex  
(5)

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I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Gul Waris Khan, District Public Prosecutor (BPS-19), Bannu, as follows:

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing by the Inquiry officer on 27-05-2014; and.
- (ii) on going through the findings and recommendations of the inquiry officer/inquiry committee, the material on record and other connected papers including your defence before the inquiry officer;-

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules.

- (a) Inefficiency / Negligence.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Dismissal from Service. under rule 4 of the said rules.

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

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

5. A copy of findings of the inquiry officer/inquiry committee is enclosed.

*Pervez Khattak*  
**(PERVEZ KHATTAK)**  
CHIEF MINISTER,  
KHYBER PAKHTUNKHWA.

08.09.2014

**ANNEXED**

To,  
The Honorable  
The Chief Minister Khyber Pakhtunkhwa,  
C.M's Secretariat, Peshawar

Through Proper Channel

REPLY TO SHOW CAUSE NOTICE DATED 08-09-2014

Your Honour;

Prior to submission of my accusation-wise reply to the show cause notice, I may respectfully submit that the modus operandi adopted by the Inquiry Officer for investigation into my guilt or otherwise was totally unilateral, for, index of the Inquiry Report is evident to show that even a single witness has neither been produced nor examined against me during the Inquiry. What the Inquiry Officer did was just recording of my verbal statement without even confronting me with my reply to the Charge Sheet, submitted by me to the Inquiry officer on 13-5-2014. Therefore, the accusations leveled against me are totally baseless because of being without any evidence, for:-

- (a). I have explained; in my reply to the charged sheet dated 13-5-2014; the entire circumstances in which I had no opportunity of going through the Instructions issued by the Govt of KP to all the DPPs in KP for scrutiny of ATC cases vide No. SO(Pros)HD/1-2/ 2010/Vol-I dated 11-10-2011 but no rebuttal to this effect has been offered by the prosecution either in rejoinder to my reply or through evidence. Hence my innocence is admitted and as such I cannot be accused for having neglected to obey the orders.
- (b). I have also explained in my reply to the charge sheet dated 13-5-2014 that a Public Prosecutor (BPS-18 with special pay/risk allowance @Rs. 20,000/= PM) had been appointed by the Provincial Govt for dealing with the ATC cases. Since Article: 3 of the Constitution of Pakistan-1973 dictate payment of remuneration according to the nature of duty and since the PP ATC Bannu was receiving remuneration greater than me, therefore, it is illogical for the Departmental prosecution to accuse me for having failed to supervise the working of an officer who is admittedly greater in responsibilities than me. My this logical explanation to the charge sheet has not been rebutted by the Departmental prosecution either in rejoinder to my reply or through convincing oral/documentary evidence.
- (c). Another logical explanation to the charge offered by me in my reply to the Charge Sheet dated 13-5-2014 is that being DPP Bannu I have scrutinized 7687 criminal

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cases during the year 2013, out of which 5468 cases were sent for trial, 251 cases were recommended for discharge for want of evidence and 2291 cases were returned for rectification of defects with legal advice for proper investigation. Besides this 275 legal opinions were rendered to local Police and 75 appeals against acquittal were preferred. As yet I am being libeled with the accusation of "INEFFICIENCY" and/or "NEGLIGENCE". This is the most unkindest cut of all at the part of my high-ups, who without least considering my overall efficiency blames me for the inefficiency PP ATC Bannu who is unfortunately posted at the station of my duty but is legally and factually exercising jurisdiction over the special criminal cases pertaining to two (02) different districts i.e. Lakki Marwat and Bannu. This clear and unequivocal defence on my behalf has not been rebutted by the departmental authority/prosecution either through rejoinder to my reply or through oral evidence during enquiry. Hence it is not understood that on the basis of which piece of evidence or paper the Inquiry Officer blames me to have been guilty of inefficiency or negligence?

- (d). I have also raised a specific defence in reply to the charge sheet dated 13-5-2014 that because of the tight schedule and/or time frame prescribed under Section 19 of the ATA-1997 with the prescription of penal consequences even for the Presiding Officer of ATC in case of failure in complying with time frame prescribed under the ATA-1997 read with the instructions dated 25-4-2014 issued by the Hon'ble Administrative Judge of Anti-Terrorism Courts of the Peshawar High Court, it was even not possible for the PP ATC Bannu to have wasted even a single second in consultation with the joint team proposed in the provincial Govt's Instructions issued on 11-10-2011. This defence has not been shattered by the departmental authority/prosecution either through rejoinder to the reply or production of oral or documentary evidence during the Inquiry.
- (e). Since departmental disciplinary proceedings against an accused employee are essential of panel/criminal nature, therefore, the Inquiry Officer was duty bound to have required the departmental authorities to discharge its own burden of proof by bringing home the charge against me through production of convincing evidence either oral or documentary and only then to have required me to rebut the accusation but in my case the Inquiry Officer, without going through the Charge Sheet and my reply to the Charge, started the session of questioning me and recorded my answers to his questions. It is pertinent to mention that on the basis of this session of questions/answers the Inquiry Officer has whimsically presumed that I am negligent and/or inefficient in the performance of my duties unless and otherwise the Inquiry Report is evident to show that no single irrebutted proof of my guilt has been produced by the department against me.

ATTESTED

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That earlier portion of findings recorded by the Inquiry Officer in his report contradict with the later portion of the Inquiry Report because in the findings portion the Inquiry Officer attributes to me the offence of negligence and/or inefficiency in the performance of my duties while in the portion of recommendations, the Inquiry Officer recommends major penalty without least considering the magnitude and/or severity of the alleged offence. This is sufficient to prove legal malafide and/or partiality at the part of the Inquiry Officer in affixing the stamp of his approval to the baseless charges leveled against me by the Department.

- (g). In the above circumstances, I am unable to understand as to why the baseless Show Cause Notice has been issued to me when even the Inquiry Officer himself recommends in Para: 2 of the Recommendation portion of his Inquiry Report that the “modus operandi regarding powers of DPP and PP, ATC may be brought in conformity with the Proviso of Anti-Terrorism Act-1997, KP Prosecution Service (Constitution, Functions and Powers) Act-2005 and decisions taken by the Administrative Judge of Anti-Terrorism Courts, Khyber Pakhtunkhwa in the meeting held on 25-4-2014. Clear instructions regarding distribution of work as well as role of District Public Prosecutors and the Public Prosecutors for all concerned.”
2. In view of above, the dictates of justice requires that I may kindly be exonerated from the charges/accusations and the Show Cause Notice issued to me may please be consigned to record because of being baseless and without convincing evidence.
3. I also request for grant of personal hearing to explain any aspect of the case, which may be deemed unexplained.

Prayed accordingly in the interest of justice.

Yours faithfully,



GUL WARIS KHAN  
District Public Prosecutor  
Lakki Marwat

LAKKI MARWAT

DATED:- 01/10/2014.

ATTESTED



To,

The Honorable  
The Chief Minister Khyber Pakhtunkhwa,  
C.M's Secretariat, Peshawar

I  
=

(48)

Parvez,  
Amir  
24/2/15

REVIEW AGAINST THE ORDER SO(COM/ENG)HD/1-31PP/DPP/2014  
DATED 29.01.2015 WHEREBY THE MAJOR PENALTY OF  
REDUCTION TO LOWER POST HAS BEEN IMPOSED UPON THE  
UNDERSIGNED.

Office of the PSCM

D. No: 367

Date: 24/2/15

Prayer in Review petition:-

*On acceptance of this review petition the order dated 29.01.2015 may please be set aside and the undersigned may please be exonerated of the charges and be restored to my original position with all back benefits.*

Respected Sir

I humbly submit my review petition against the order dated 29.01.2015 as under:-

1. That I was proceeded departmentally and ultimately I am awarded the penalty of reduction to lower scale vide order dated 29.01.2015.
2. That I pray for the setting aside/ review of the order dated 29.01.2015 inter alia on the following grounds: -

Grounds of Review

1. That the review petitioner has not been treated in accordance with law, his rights secured and guaranteed under the law have been violated.
2. That the order of reduction to lower post imposed upon the undersigned is too harsh and does not commensurate with the unproven allegations so leveled against the undersigned.

ATTACHED

3. That the modus operandi adopted by the Inquiry Officer for investigation into my guilt or otherwise was totally unilateral, for, index of the Inquiry Report is evident to show that even a single witness has neither been produced nor examined against me during the Inquiry. What the Inquiry Officer did was just recording of my verbal statement without even confronting me with my reply to the Charge Sheet, submitted by me to the Inquiry officer on 13-5-2014. Therefore, the accusations leveled against me are totally baseless because of being without any evidence, for:-
- (a). That the undersigned has explained in his defence replies the entire circumstances in which I had no opportunity of going through the Instructions issued by the Govt of KP to all the DPPs in KP for scrutiny of ATC cases vide No. SO(Pros)HD/1-2/ 2010/Vol-I dated 11-10-2011 but no rebuttal to this effect has been offered by the prosecution either in rejoinder to my reply or through evidence. Hence my innocence is admitted and as such I cannot be accused for having neglected to obey the orders.
- (b). That the review petitioner has in his defence replies also explained to the charge sheet dated 13-5-2014 that a Public Prosecutor (BPS-18 with special pay/risk allowance @Rs. 20,000/= PM) had been appointed by the Provincial Govt for dealing with the ATC cases. Since Article: 3 of the Constitution of Pakistan-1973 dictate payment of remuneration according to the nature of duty and since the PP ATC Bannu was receiving remuneration greater than me, therefore, it is illogical for the Departmental prosecution to accuse me for having failed to supervise the working of an officer who is admittedly greater in responsibilities than me. My this logical explanation to the charge sheet has not been rebutted by the Departmental prosecution either in rejoinder to my reply or through convincing oral/documentary evidence.
- (c). Another logical explanation to the charge offered by me in my reply to the Charge Sheet dated 13-5-2014 is that being DPP Bannu I have scrutinized 7687 criminal cases during the year 2013, out of which 5468 cases were sent for trial, 251 cases were recommended for discharge for want of evidence

ATTESTED

and 2291 cases were returned for rectification of defects with legal advice for proper investigation. Besides this 275 legal opinions were rendered to local Police and 75 appeals against acquittal were preferred. As yet I am being libeled with the accusation of "INEFFICIENCY" and/or "NEGLIGENCE". This is the most unkindest cut of all at the part of my high-ups, who without least considering my overall efficiency blames me for the inefficiency PP ATC Bannu who is unfortunately posted at the station of my duty but is legally and factually exercising jurisdiction over the special criminal cases pertaining to two (02) different districts i.e. Lakki Marwat and Bannu. This clear and unequivocal defence on my behalf has not been rebutted by the departmental authority/prosecution either through rejoinder to my reply or through oral evidence during enquiry. Hence it is not understood that on the basis of which piece of evidence or paper the Inquiry Officer blames me to have been guilty of inefficiency or negligence?

(d). I have also raised a specific defence in reply to the charge sheet dated 13-5-2014 that because of the tight schedule and/or time frame prescribed under Section: 19 of the ATA-1997 with the prescription of penal consequences even for the Presiding Officer of ATC in case of failure in complying with time frame prescribed under the ATA-1997 read with the instructions dated 25-4-2014 issued by the Hon'ble Administrative Judge of Anti-Terrorism Courts of the Peshawar High Court, it was even not possible for the PP ATC Bannu to have wasted even a single second in consultation with the joint team proposed in the provincial Govt's Instructions issued on 11-10-2011. This defence has not been shattered by the departmental authority/prosecution either through rejoinder to the reply or production of oral or documentary evidence during the Inquiry.

(e). Since departmental disciplinary proceedings against an accused employee are essential of panel/criminal nature, therefore, the Inquiry Officer was duty bound to have required the departmental authorities to discharge its own burden of proof by bringing home the charge against me through production of convincing evidence either oral or documentary and only then to have required me to rebut the accusation but in my case the Inquiry Officer,

ATTESTED

without going through the Charge Sheet and my reply to the Charge, started the session of questioning me and recorded my answers to his questions. It is pertinent to mention that on the basis of this session of questions/answers the Inquiry Officer has whimsically presumed that I am negligent and/or inefficient in the performance of my duties unless and otherwise the Inquiry Report is evident to show that no single un-rebutted proof of my guilt has been produced by the department against me, reference can be made to PLD 1989 SC page 335 wherein it has been held that "Proceedings under the E & D Rules 1975 are in the nature of quasi criminal proceedings requiring the establishment of misconduct on the basis of positive evidence beyond reasonable doubt".

- (f). That earlier portion of findings recorded by the Inquiry Officer in his report contradict with the later portion of the Inquiry Report because in the findings portion the Inquiry Officer attributes to me the offence of negligence and/or inefficiency in the performance of my duties while in the portion of recommendations, the Inquiry Officer recommends major penalty without least considering the magnitude and/or severity of the alleged offence. This is sufficient to prove legal malafide and/or partiality at the part of the Inquiry Officer in affixing the stamp of his approval to the baseless charges leveled against me by the Department.
- (g). In the above circumstances, since I have explained my position albeit my defence replies were not considered and I am served a show cause notice alleging the same allegations again, which was uncalled for and not tenable.
- h. That the order of reduction to lower post is in violation of FR 29 as no period has been specified, thus the order is violative of law and not tenable.
- I. That the recommendations of the enquiry officer regarding imposition of the penalty against the undersigned is in conflict with the general recommendations as contained in para 2, I quote "modus operandi regarding powers of DPP and PP, ATC may be brought in conformity with the Proviso of Anti-Terrorism Act-1997, KP Prosecution Service (Constitution, Functions and

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Powers) Act-2005 and decisions taken by the Administrative Judge of Anti-Terrorism Courts, Khyber Pakhtunkhwa in the meeting held on 25-4-2014. Clear Instructions regarding distribution of work as well as role of District Public Prosecutors and the Public Prosecutors for all concerned."

Thus minimizing the role of the undersigned regarding the submission of challan etc in ATC cases, even if the decisions taken by the Administrative Judge of Anti-Terrorism Courts is perused it completely exclude the role of the DPP in the matter of submission of challan. Besides the reliance of the Enquiry officer on the letter SO (Pros) HD/1/2/2010 vol-1 dated 11.10.2011 of the Secretary Home and Tribal Affairs is misplaced and uncalled for in the presence of the decisions taken by the Administrative Judge of Anti-Terrorism Courts.

It is therefore prayed that on acceptance of this review petition the order dated 29.01.2015 may please be set aside and the undersigned may please be exonerated of the charges and be restored to my original position with all back benefits.

Yours faithfully,

Dated: 23-02-2015



**GUL WARIS KHAN**  
District Public Prosecutor  
Lakki Marwat

  
ATTACHED



The  
**PESHAWAR HIGH COURT**  
Peshawar

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.

Exeh: 9210149-58  
Off: 9210135  
Fax: 9210170

www.peshawarhighcourt.gov.pk  
info@peshawarhighcourt.gov.pk  
phcpsh@gmail.com

No 197200 /Admn/MIT dated Peshawar the 215 /2014

To

1. Secretary to Govt. of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Peshawar
2. D.I.G (Investigation), Khyber Pakhtunkhwa, Peshawar
3. D.I.G., Counter Terrorism Department, Peshawar
4. Director General, Prosecution Department, Khyber Pakhtunkhwa, Peshawar

Subject: - MINUTES OF THE MEETING OF THE JUDGES OF ANTI-TERRORISM COURTS

Dear sir,

I am directed to forward herewith copy of the minutes of the meeting of the Judges of Anti-Terrorism Courts, held on 25.04.2014, for your information and necessary action, please.

(Muhammad Arshad)  
**REGISTRAR**

Office of the Director Central Prosecution	
D. No. 3987 5/5/14	
CG Prosecution	
Dir. Legal	
Rep. It.	

*discuss*  
*D.K.*

*DDCM)*  
*Spoken. Copies of the*  
*Minutes be circulated*  
*to DPPs, Pesh, Mardan, Swat*  
*D.I. Khan and ATCS*  
*Directors in the Province*  
*for necessary information*  
*and necessary action*

ATTESTED

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~~15/04/14~~

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**MINUTES OF THE MEETING OF THE JUDGES OF ANTI-TERRORISM COURTS HELD ON 25.04.2014**

A meeting was held in the Conference Room of Peshawar High Court, Peshawar, under the Chairmanship of Mr. Yahya Afridi, the Hon'ble Judge of Peshawar High Court, Peshawar, Monitoring/Administrative Judge of Anti-Terrorism Courts in Khyber Pakhtunkhwa on 25.04.2014 at 02.30 p.m.

The meeting had two sessions, first was exclusively of ATC Judges, whereas in the later session invitees on special invitation joined the meeting.

The following attended the meeting :-

1. Mr. Anwar Ali, Judge, ATC, Abbottabad
  2. Mr. Salim Jan, Judge, ATC-I, Peshawar
  3. Mr. Muhammad Asim Imam, Judge, ATC, Kohat
  4. Syed Asghar Ali Shah, Judge, ATC-III, Peshawar
  5. Mr. Shoaib Khan, Judge, ATC-I, Swat
  6. Mr. Abdur Rauf Khan, Judge, ATC-II, Peshawar
  7. Mr. Abdul Ghafoor Qureshi, Judge, ATC-IV, Matta Swat
  8. Mr. Muhammad Younas Khan, Judge, ATC, Mardan
  9. Mr. Muhammad Asif Khan, Judge, ATC, Malakand at Swat
  10. Khawaja Wajihuddin, Judge, ATC, D.I.Khan
  11. Mr. Azhar Khan, MIT, Peshawar High Court, Peshawar (Secretary Committee)
  12. Syed Alamgir Shah, Special Secretary, Home & Tribal Affairs Department, Peshawar.
  13. Mr. Javed Zameer-ur-Din Farooqui, SSP (Investigation), Peshawar.
  14. Mr. Asmatullah Khan Gandapur, DG (Prosecution), Peshawar.
  15. Mr. Alam Shiniwari, DIG, Counter Terrorism Department, Peshawar
- } On special invitation

On welcoming the participants, the Chair took up the figures of institution and disposal of ATC cases of March, 2014. He

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**ATTESTED**

pointed out, low disposal rate in terms of judgments rendered. He solicited suggestions for a logical/practical time line for a disposal of a case; and 30-days time for a trial was held sufficient.

On taking the 1<sup>st</sup> agenda item and going through the suggestions/proposals of the Judges the Chair stressed on avoiding unnecessary adjournments, suggesting that it should not exceed 07-days. The Chair also wondered whether the existence of 13 courts for 132 cases in Khyber Pakhtunkhwa was justified. He laid stress on a few courts preferably established within the secure jail premises, packed with all modern tools to ensure safety of Judges, court staff and witnesses alike on the pattern of those in U.K.

The learned ATC Judges spoke about insufficient budget for payment of TA/DA to the retired PWs and difficulties of service in tribal areas. Similarly, it was also unanimously stressed that the ATC case, on completion of investigation should be directly submitted with the Public Prosecutor ATC Court, instead of rerouting it through DPP, for prompt channelization and expert opinion. The need for specialized training to Public Prosecutors attached to ATC courts, was particularly stressed.

The Chairman told the ATC Judges to feel free to approach him directly or through the MIT for any problem/issue which require his indulgence.

The DIG, Counter Terrorism Department apprised the meeting about his newly established setup, which is mandated to be a

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ADMITTED



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specialized branch with highly trained staff, equipment and expertise to handle exclusively terrorism related cases.

The DG, Prosecution informed that ATC Prosecutors are being given specialized training at Lahore under a donor funded programme and he is trying his level best to enhance the professional capability of the department which is presently under staffed and ill-equipped.

The Special Secretary Home, on the query of the Chair, apprised that for housing hardened criminals, there is no standard policy, rather they are moved from a prison to prison on the basis of threat perception; though high risk prisons are being raised to keep hardened criminals in a secure environment.

The SSP, Investigation informed the meeting that at the moment there is no special cell/section centrally located for terrorism cases, rather the investigation is carried out on local basis in a routine format.

The Chair emphasized for practical approach towards alleviation of mutual problems of the ATC Judges and allied departments. He suggested that the office of MIT be the focal point vice-versa, for interaction on any issue requiring prompt attention.

The Chair further suggested that Counter Terrorism Department should keep a healthy interaction with the Prosecution Department for effective and meaningful investigation. He also referred to proformas, prepared through mutual deliberations by all the stakeholders i.e. Courts, Prosecution and Investigation representatives,

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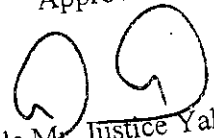
ATTACHED

in a previous meeting ment to improve tracking process at their respective levels and suggested to revisit the same with further inputs in make it meaningful.

In the concluding remarks, the Chair suggested to have the next follow up meeting after two months in the light of administrative/functional reforms, suggested and currently being under taken by the police and prosecution departments for strengthening their capabilities in aid of criminal justice system particularly the ATC cases.

The meeting ended with the thanks to and from the Chair.

Approved by



Hon'ble Mr. Justice Yahya Afridi,  
Administrative/Monitoring Judge,  
Anti-Terrorism Courts,  
Khyber Pakhtunkhwa

  
ATTESTED

# VAKALAT NAMA

NO. \_\_\_\_\_/20

IN THE COURT OF Service Tribunal, Peshawar

Gul Wazir Khan

(Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Govt. of KPK.

(Respondent)  
(Defendant)

I/We Gul Wazir Khan

Do hereby appoint and constitute **M.Asif Yousafzai, 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/20



( CLIENT )

ACCEPTED



**M. ASIF YOUSAFZAI**

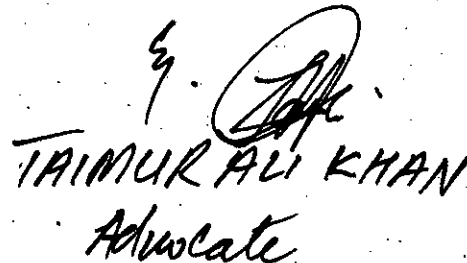
Advocate

**M. ASIF YOUSAFZAI**

Advocate High Court,  
Peshawar.

**OFFICE:**

Room No.1, Upper Floor,  
Islamia Club Building,  
Khyber Bazar Peshawar.  
Ph.091-2211391-  
0333-9103240



**TAIMUR ALI KHAN**  
Advocate

original

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

APPEAL NO: 626 /2015

GUL WARIS KHAN .....

APPELLANT

VERSUS

1. THE GOVERNMENT OF KHYBER PAKHTUNKHWA  
Through Chief Secretary, Civil Secretariat, Peshawar.
2. THE SECRETARY, HOME & TRIBAL AFFAIRS DEPARTMENT  
Government of Khyber Pakhtunkhwa, Peshawar.
3. THE DIRECTOR GENERAL PROSECUTION,  
Government of Khyber Pakhtunkhwa Peshawar ..... RESPONDENTS

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

Respectfully Sheweth,

**PRELIMINARY OBJECTIONS:**


1. That the present appeal is not maintainable in the eye of law.
2. That the appellant has got no cause of action.
3. That the appellant has got no locus standi to file the appeal in hand.
4. That appellant has not come to this Honourable Tribunal with clean hands.
5. That the appeal is bad for mis joinder and non-joinder of necessary parties.
6. That the appellant has concealed material facts from this Honourable Tribunal.
7. That the appellant is estopped by his own conduct to bring the present appeal before this Honourable tribunal.

**PARAWISE REPLY:-**

1. Para No.1 of the appeal is a matter of record, hence needs no comments.
2. Para No.2 is correct to the extent that the appellant was made accused by the competent authority for having failed to supervise and controls working of the office of Special Public Prosecutor ATC, Bannu vide charge sheet and statements of allegations on the basis of facts finding inquiry, while rest of the para is denied. The high ratio of acquittals in the Anti-Terrorism Court, Bannu and

- non-preferring of appeals itself proves the association of appellant with the facts finding inquiry.
3. Para No.3 of the appeal is a matter of record, hence needs no comments.
  4. Para No.4 pertains to record, hence needs no comments.
  5. Para No.5 is incorrect. The inquiry officer considered the reply of the appellant to the charge sheet and provided full opportunity to produce evidence. Similarly with respect to show cause notice by the competent authority, he was heard personally and after that penalty was imposed.
  6. Para No.6 is correct to the extent that the appellant filed his Review Petition dated 23-02-2015 to the competent authority for review of the impugned penalty dated 29-01-2015, while rest of the para is incorrect. The Directorate of Prosecution informed the DPP Bannu vide letter dated 19-08-2015 regarding order of dismissal of review petition by the competent authority (Annexure-A & B).

#### GROUNDS

- 
- A) Incorrect. The appellant has been treated as per law rather a lenient view has been taken in his case by reduction to lower post for illegal omission, poor performance and negligence.
  - B) Incorrect. During the year 2013, the ATC, Bannu decided 67 cases out of which in 37 cases accused were acquitted, 03 cases were returned to Prosecution for removal of deficiency, 21 cases were proceeded U/S 512 CrPC, 05 cases were returned to ordinary criminal courts not falling within the jurisdiction of ATC and only one case was of conviction. However, in only 10-cases appeals were filed in the appellate court.
  - C) Incorrect. The appellant was given the opportunity of personal hearing by the competent authority as per Khyber Pakhtunkhwa Government Servants (E & D) Rules, 2011.
  - D) Incorrect. Proper inquiry proceedings as per E & D Rules have been conducted against the appellant by the inquiry officer. The inquiry officer recorded the statement of the appellant which was duly signed by the appellant.
    - i) Incorrect. It is just a lame exercise towards his official obligations being a District Public Prosecutor as "ignorance of law is no excuse".

- ii) Correct to the extent that the Provincial Government is granting a sum of Rs.20,000/- per month to the prosecutor working in Anti-Terrorism Courts as incentive allowance, however, the rest of para is denied. The District Public Prosecutor being head of the District Prosecution, responsible for supervision and monitoring the performance of his entire staff including the prosecutors of Anti-Terrorism Court. Under the Prosecution Act, 2005 the appellant is the reporting officer of all the officers/officials of the district and the appellant also admitted in his written statement before the inquiry officer regarding in-charge of the Prosecution work of the district.
- iii) Incorrect. It is the fore most duty of the District Public Prosecutor being in-charge of the Prosecution in the District concerned to inspect, scrutinize and supervise the whole investigation process of various cases so registered in the District as envisaged by section 8(2) of Prosecution Act, 2005. Moreover, the competent authority has also circulated necessary instructions/ guidelines to all the Prosecutors for effective Prosecution work in the district.
- iv) Incorrect, this para clearly shows his slackness and inefficiency / incompetency, because the appellant on one hand preaches his efficiency by citing ordinary nature of cases for his performance while on other hand show his ignorance about his duties and liabilities being head of independent office at a district.
- v) Incorrect. It is for the appellant to rebut the allegations leveled against him by the Department after approval by the competent authority. The statement and questions put forwarded by the inquiry officers show that the appellant has no defence to rebut the allegations and there is no need of other evidence to show the inefficiency of the appellant.
- vi) Incorrect. As no malafide taken place in the instant inquiry.

E) Incorrect, the impugned punishment order of reduction to lower post has rightly been imposed upon the appellant as per Rules.

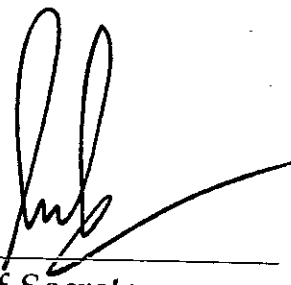
F) Incorrect. The applicant has misconceived Para No.2 of the Recommendation issued by the inquiry officer and ignoring his

administrative function being District head of Prosecution. Rest of the para is denied, show cause notice has been issued to the applicant and duly signed by the applicant alongwith comments as token of receipt (Annexure-C)

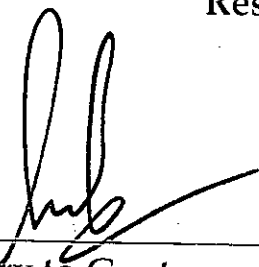
- G) Incorrect. This para is unwarranted, baseless and therefore, denied.
- H) The respondents seek formation to raise additional grounds at the time of arguments.

**PRAYER:**

In the wake of above submissions the appeal of appellant is devoid of merit, legal footing and has become infructuous which may kindly be dismissed with special cost.

*For*  


Chief Secretary  
Government of Khyber Pakhtunkhwa  
Respondent No.1



Secretary to Govt.  
Home & Tribal Affairs Department  
Khyber Pakhtunkhwa  
Respondent No.1

  
27/11/15

Director General Prosecution  
Khyber Pakhtunkhwa  
Respondent No.2



**DIRECTORATE OF PROSECUTION**  
**KHYBER PAKHTUNKHWA**

No. DP/Ed A(60) 7565

Dated Peshawar 19 August, 2015

Office Phone # 091-9212559/ 091-9212542

Fax # 091-9212559

E-mail: kpprosecution@yahoo.com

To

The District Public Prosecutor,  
Bannu.

Subject: - **ORDER.**

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith the order no SO(com/HD/1-31/DPP/2014, Dated of section officer (Com/Enq) passed by Secretary Home & Tribal Affairs Khyber Pakhtunkhwa in respect of Mr. Gul Waris Khan, District Public Prosecutor (BPS-19) & Mr. Nawab Zarin, Public Prosecutor (BPS18) which is Self explanatory for further necessary action please.

(Enclosed as above)

Yours' faithfully

**(MUHAMMAD MUZAFAR)**  
Assistant Director Admin/ Finance,





GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME & TRIBAL AFFAIRS DEPARTMENT

**ORDER**

**SO(Com/Eng)/HD/1-31/DPP/2014** The Competent Authority (Chief Minister, Khyber Pakhtunkhwa) in exercising his powers under rule-2 read with Rule-17 (2) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 while disposing off review petitions of Mr. Gul Waris Khan, District Public Prosecutor (BS-19) and Mr. Nawab Zarin Public Prosecutor (BS-18) against the order dated 29.01.2015 has been pleased to regret review petition of Mr. Gul Waris Khan District Public Prosecutor (BS-19) and accepted review petition of Mr. Nawab Zarin Public Prosecutor (BS-18) to the extent that the penalty of his dismissal from service is converted into "Reduction to lower grade and recovery of incentive allowances @ Rs. 20,000/- PM drawn for the whole year 2013".

**SECRETARY TO GOVERNMENT OF  
KHYBER PAKHTUNKHWA HOME DEPARTMENT**

Endst. No. SO(Com/Eng)/HD/1-31/DPP/2014, Dated Peshawar the August 10, 2015

Copy of the above is forwarded to the: -

1. Director General Prosecution, Khyber Pakhtunkhwa Peshawar.
2. PS to Chief Secretary, Khyber Pakhtunkhwa Peshawar.
3. PS to Principal Secretary to Chief Minister, Khyber Pakhtunkhwa Peshawar.
4. PS to Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
5. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.
6. PS to Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa.
7. Officers concerned.

SECTION OFFICER (Com/Eng)

Ph. No. 091-9214149

(10815)

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## SHOW CAUSE NOTICE

I, **Pervez Khattak**, Chief Minister, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, **Gul Waris Khan**, District Public Prosecutor (BPS-19), Bannu, as follows:

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing by the Inquiry officer on 27-05-2014; and.
- (ii) on going through the findings and recommendations of the inquiry officer/inquiry committee, the material on record and other connected papers including your defence before the inquiry officer;-

I am satisfied that you have committed the following acts/omissions specified in **rule 3** of the said rules.

(a) Inefficiency / Negligence.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Dismissal from Service. under rule 4 of the said rules.

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

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

5. A copy of findings of the inquiry officer/inquiry committee is enclosed.

Copy of Show Cause notice,  
letter of Home Dept: dt  
H-9-2014 of the S.O Inquiry  
Index, Certificate of  
1-0, and combined inquiry report  
without annexures as mentioned  
in index received.

Pervez Khattak  
(PERVEZ KHATTAK)  
CHIEF MINISTER,  
KHYBER PAKHTUNKHWA.  
08.09.2014.

22-09-14  
GUL WARIS KHAN

**IN THE HON'BLE KP SERVICE TRIBUNAL, PESHAWAR**

Appeal No. 626 of 2015

**GulWaris Khan-----Appellant**

**VERSUS**

**The Chief Minister KPK & Others-----Respondents**

**REJOINDER TO THE PARAWISE COMMENTS**

**R.SHEWETH.**

The Appellant above named respectfully submits his rejoinder to the para wise comments filed on behalf of the Respondents as under;-

1. That the contents of Para: 1 to 7 of the Preliminary Objections are evasive, unspecific and have not been corroborated. Therefore, the Respondents may not be allowed to advance any corroboration at the time of hearing of this Appeal as the same may take the counsel for the Appellant into surprise, which is not permissible under the law contained in Order-VIII, Rules; 2 to 6 of the Civil Procedure Code.
2. That in rejoinder to the contents of Para: 2 of the comments on facts of the memo of Appeal, the Appellant respectfully submits that no statements of the Appellant whatsoever were recorded during the facts finding inquiry unless and otherwise the Respondents may please be put to strict proof thereof. Moreover, the jurisdiction of SPP ATC Bannu spreads over the entire Bannu Division which includes District Lakki Marwat while the Appellant had been working at the relevant point of time as DPP Bannu which is a District level post. Therefore, it cannot be expected of a District level Officer to supervise and control the working of a Division level officer. Hence what to say of the legality of the charges levelled against the Appellant?
3. That the contents of Para: 5&6 of the comments are highly evasive and misleading, for, the Appellant had explained; in Para: 3 to 6 of his reply to the Charge Sheet dated 13-5-2014 (erroneously types as

13-5-2013) and reply to Show Cause Notice dated 01-10-2014; the circumstances and law, which did not allow the Appellant to intervene in the working of SPP ATC who was not only equal in rank with the Appellant but was higher in status than the Appellant because SPP ATC was dealing with case pertaining to Bannu Division (i.e. the Districts of Bannu and Lakki Marwat) while the Appellant was appointed for District Bannu only. Moreover, SSP ATC was compensated with special incentive of Rs. 20,000/= PM only because he was performing duties more onerous in nature than those entrusted to the Appellant. Therefore, it is not only illegal but also illogical to punish the inferior for the alleged negligence if any of a superior, whereas in the instant case the Appellant has been punished for the alleged negligence of SPP ATC, who was responsible for the special cases to the entire territorial jurisdiction of ATC Bannu which spread over the entire Bannu Division. In case these submissions of the Appellant contained in his reply to charge sheet and reply to show cause notice were considered either by the Inquiry Officer or by the competent authority then the outcome would surely have been altogether different. As far as contention of the Respondents; to the effect that **“the Directorate Prosecution informed the DPP Bannu vide letter dated 19-8-2015 regarding order of dismissal of review petition by the competent authority”**, is concerned; the Appellant respectfully submits that the contents of the comments are whimsical because at the relevant point of time the Appellant had long before been transferred from Bannu to Lakki Marwat, vide Para: 2(ii) of the Respondent No. 2's own Notification dated 30-4-2014 (erroneously typed as 30-4-2013) then why the letter dated 19-8-2015 was sent to the office of DDP Bannu instead of DPP Lakki Marwat? This smells malafide at the part of the Respondents and it is apprehended that the letter dated 19-8-2015 might have been issued in back date for getting rid of their statutory shortcomings. Even otherwise, the instant appeal has been filed on 10-6-2015 after expiry of the statutory period of 90 days' compulsory wait long before disposal of his review petition by the Respondents vide letter dated 19-8-2015. Therefore, no illegality or irregularity may be pointed out at the part of the Appellant in instituting the instant appeal.

**Copy of the Respondent No. 2's Notification dated 30-4-2014 is filed herewith and marked as Annex "A".**

4. That the comments on **Ground (A)** of the Appeal are whimsical because from the Facts Finding Inquiry Report it is very much clear to say that the appellant has not been associated with the fact finding proceedings despite of the fact that the both inquiries officers ( Junior in rank to the appellant) visited office of the appellant at Bannu. Moreover, the Inquiry Officer namely Mr. Abdul Ghafoor has rendered conflicting recommendations at page No. 8&9 of his Inquiry Report dated 09-6-2014, for, in Para: 2 of his recommendation, the Inquiry Officer suggests that **“modus operandi regarding powers of the DPP and PP ATC may be brought in conformity with the proviso of Anti-Terrorism Act, 1997, KP Prosecution Service (Constitution, Functions and Powers) Act-2005 and decisions taken by the Administrative Judge of Anti-Terrorism Court, Khyber Pakhtunkhwa in the meeting held on 25-4-2014. Clear instructions regarding distribution of work as well as role of District Public Prosecutors and Public Prosecutors may be notified for all concerned”**, which mean that instructions on the subject are neither clear nor in accordance with relevant law and unless an order/instruction is clear and in accordance with the relevant law no one can be punished for its non-compliance on the touchstone of the substantive penal law contained in Section: 188 of the Pakistan Penal Code. Moreover, the Appellant is employed to prosecute ordinary criminal cases in ordinary criminal courts pertaining to District Bannu only while the SPP ATC Bannu is employed to prosecute special cases under the Anti-Terrorism Act-1997 pertaining to the entire Bannu Division. Therefore, the Appellant (being a District level officer) cannot be expected to look after cases pertaining to District Lakki Marwat. As such the impugned penalty of reduction in rank imposed on the Appellant is not only unwarranted in view of the substantive penal law prevailing in the State of the Islamic Republic of Pakistan but is also illogical in view of administrative hierarchy of District and Division level responsibilities.

5. That the comments on **Ground (B)** of the Appeal are also whimsical because basic responsibility of the Appellant was of District

level while the Respondents are penalizing the Appellant for the failure of a Divisional level officer i.e. SPP ATC Bannu who was responsible for prosecution of special cases of the entire Bannu Division which includes District Lakki Marwat also. Therefore, it is not understood as to how a District level Officer can be penalized for the inefficiency of a Division level Officer? And that too without analyzing the volume of work performed by the District level officer in his own sphere of duties as compared to the performance of the Divisional level Officer. This is the most unkindest cut of all at the part of the Respondents.

6. That the comments on Grounds (C) to (F) of the appeal are also whimsical because no doubt the opportunity of personal hearing was granted to the Appellant by the Inquiry Officer and Secretary Establishment Division on behalf of the Competent Authority (and not by the authority himself as required under Rule: 15 of the E&D Rules-2011) but that was only a formality, for, neither the inquiry Officer nor representative of the Competent Authority has considered the submissions of the Appellant with an unbiased independent/quasi judicial mind in accordance with the relevant law, as elaborated herein the preceding paragraphs.

### PRAYER

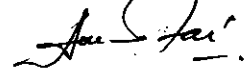
7. In view of the above humble submissions, it is earnestly prayed that this Hon'ble Tribunal may graciously be pleased to allow the instant appeal as prayed for.

Peshawar

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



APPELLANT

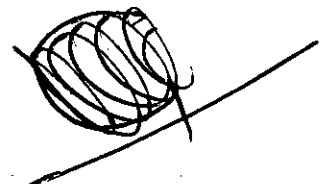
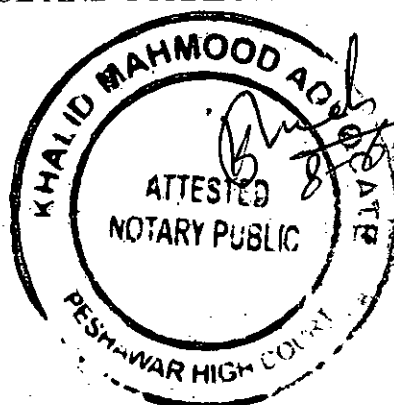


M.ASIF YOUSAFZAI

Advocate for the Appellant

### AFFIDAVIT.

IT IS AFFIRMED THAT THE CONTENTS OF APPEAL AND REJOINER ARE TRUE AND CORRECT.





**Government of Khyber Pakhtunkhwa**  
Home & Tribal Affairs Department  
NO. SO (Pros)/HD/1-10/2010/Vol-I  
Dated 30/04/2013

**NOTIFICATION**

**NO.SO (Prosecution) HD/1-10/2013:** The Competent Authority on the recommendation of the Provincial Selection Board, is pleased to promote the following officers of Prosecution Service from BPS-18 to BPS-19 on regular/acting charge basis:

S.NO	NAME OF THE OFFICER	REGULAR/Acting CHARGE BASIS
i	Syed Imtiaz ud Din	Regular
ii	Mr. Gul Waris Khan	Regular
iii	Mr. Atta Ullah Shah	Acting charge
iv	Mr. Malik Zaheer ud Din Baber	Acting charge
v	Mr. Fazal Noorani	Acting charge
vi	Mr. Arif Bilal	Acting charge
vii	Mr. Shahid ur Rehman	Acting charge

2. Consequent upon their promotion the Competent Authority is further pleased to order the posting/transfer of the following Prosecution officers in the public interest:

S.#	NAME OF PROSECUTOR	FROM	TO	REMARKS
i.	Tariq Bakhsh (BPS-19)	District Public Prosecutor Kohat	ATC-III, Peshawar	Vice No. VII
ii.	Syed Imtiaz ud Din (BPS-19)	Public Prosecutor D.I.Khan	District Public Prosecutor, Bannu	Vice No. III
iii.	Mr. Gul Waris Khan (BPS-19)	District Public Prosecutor, Bannu	District Public Prosecutor, Lakki Marwat	Vice No. IV
iv.	Mr. Atta Ullah Shah (BPS-19)	District Public Prosecutor, Lakki Marwat	ATC-I, Peshawar	Vice No. VI
v.	Malik Zaheer ud Din Baber (BPS-19)	Public Prosecutor, Kohat	District Public Prosecutor Kohat	Vice No. I
vi.	Mr. Fazle Norani (BPS-19)	ATC-I, Peshawar	ATC-V, Kanju Swat at Buner	Vice No. IX

vii.	Mr. Arif Bilal (BPS-19)	ATC-III, Peshawar	ATC-I Swat	Vice No. X
viii.	Mr. Shahid ur Rehman (BPS-19)	District Prosecutor Battagram (OPS)	District Public Prosecutor Battagram	-----
ix.	Mr. Nisar Alam (BPS-18)	ATC-V, Kanju Swat at Buner	Public Prosecutor District Public Prosecutor Office Swat	Against the vacant post
x.	Mr. Anwar Khan (BPS-18)	ATC-I Swat	Public Prosecutor District Public Prosecutor Office Buner	Against the vacant post

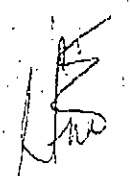
--SD--

Secretary to Govt of Khyber Pakhtunkhwa,  
Home and Tribal Affairs Department

Encl: No. & Date even

Copy forwarded to:-

1. The Director General Prosecution Khyber Pakhtunkhwa.
2. The Accountant General Khyber Pakhtunkhwa Peshawar.
3. The Advocate General Khyber Pakhtunkhwa.
4. The Chairman Drug Court Peshawar.
5. The District Accounts Officer, Peshawar.
6. P.S to Secretary Home & Tribal Affairs Department Peshawar.
7. The Officers concerned.

  
Section Officer (Prosecution)

Ph:# 091-9210541

Fax:# 091-9210201



