

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

**In Service Appeal No.335/2019.**

Mst. Roheela Malik, Warden BPS-12 Regional Training Institute, Abbottabad.

..... (Appellant)

**Versus**

The Secretary, Govt. of Khyber Pakhtunkhwa

Population Welfare Department, Peshawar etc

..... (Respondents)

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Deponent

Ahmad Yar Khan  
Assistant Director (Lit)

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**PARAWISE REPLY/COMMENTS ON BEHALF OF THE RESPONDENTS.**

Respectfully Sheweth,

**PRELIMINARY OBJECTIONS.**

1. That the appellant has got no locus standi to file the instant appeal.
2. That no discrimination / injustice has been done to the appellant.
3. That the instant appeal is bad in the eye of law.
4. That the appellant has not come to this Tribunal with cleaned hands.
5. The appeal is based on distortion of facts and is not tenable in eye of law.
6. That the appellant has been estopped by his own conduct to file the appeal.
7. The present service appeal is based upon malicious/vexations and frivolous grounds.
8. That the service appeal is based on conjecture and surmises.
9. That the service appeal is not maintainable in its present form.
10. That the service appeal is bad due to mis-joinder and non-joinder of the parties.

**ON FACTS:**

1. Para No.1 of the appeal Pertains to record hence need no comments.
2. Para No.2 of the appeal is incorrect. The factual position of the case is that a written complaints filed by the two students of Regional Training Institute Peshawar to Dr. Saadia Nawab, Principal RTI Peshawar respondent No. 3 on 5<sup>th</sup> October 2018 regarding the physical assault of the appellant upon them with iron rod while using abusive language in their room at 12.30 AM falling between 4<sup>th</sup> & 5<sup>th</sup> October, 2018. (Annexure - A) On the basis of the complaints the respondent No. 3 constituted a Committee for the purpose to probe the complaint. The Committee submitted its finding (Annexure- B). After that findings the competent authority on 4<sup>th</sup> Decmber, 2018 constitute a Committee to probe the case as per requirement of rule 10(1)(a) of the Khyber Pakhtunkhwa, Government Servant (Efficiency and Discipline) Rule 20011 (Annexure-

C).Therefore the charge sheet and statement of allegation was served to the appellant.(Annexure-D&E).

3. Para No.3 of the appeal Pertains to record hence needs no comments.
4. Para No.4 of the appeal is incorrect. As per inquiry report the appellant was dealt with according to law and given full opportunity for cross examination. (Annexure-F).
5. Para No. 5 is correct to the extent that after fulfillment of all codal formalities a show cause notice was served to the appellant.
6. Para No. 6 is incorrect. The Competent Authority after having considered the charges, evidence on record, finding of the Inquiry Officer, the explanation of the accused official to the show cause notice and hearing her in person on 21.03.2019, exercising the powers under rule 14 (5) (ii) of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) rules 2011 was pleased to imposed minor penalty of stoppage of one annual increment for three years and full recovery of the illegally/ unauthorizingly collected amount @ the rupees one hundred per month from the students/ trainees residing in the hostel during period as warden. (Annexure-G)
7. Para No. 7 is correct to the extent that the departmental appeal of the appellant was thoroughly examined/ processed and filed by the Competent Authority being devoid of merits. The Replies on the Grounds are as under:-

**ON GROUNDS:**

- A. Para-A is incorrect. The penalty order and final rejection order of the Competent Authority are according to law and fact of the case. The appellant has been dealt with by keeping the norms of justice and law giving full opportunity of defense and no illegality has been committed while passing the order against the appellant.
- B. Para-B is incorrect. As per inquiry report the appellant was dealt with according to law and given full opportunity for cross examination.
- C. Para-C is incorrect. This para is based on concealment of facts from this honorable tribunal as the appellant was heard in person on 21.3.2019. (Annexure-H)
- D. Para-D is incorrect. After fulfillment all codal formalities the Competent Authority issued orders dated 27.3.2019 & 28.11.2019 in accordance with Law.
- E. Para-E is incorrect. the competent authority after considered the charges, evidence on record ,finding of inquiry officers, the explanation of the accused official to the Show Cause notice and hearing her in person on 21.03.2019, exercising the power under rule14(5) ii of Khyber Pakhtunkhwa Government Servant ( Efficiency and Discipline) Rules 2011 was pleased to imposed minor plenty of stoppage of one annual increment for 03 years and full recovery of illegally/unauthorizingly collected amount @ Rs 100 per month from the students/trainees residing in the hostel during in the period as warden. Hence the inquiry committee has observed completely (Efficiency and Discipline) Rules 2011 in their proceedings conducted against the appellant.
- F. Para-F is incorrect, denied as explained in para 6 of the facts.


- G. Para-G is incorrect. There is no complaint whatsoever has been filed/pending in the Department. Moreover the departmental appeal of the appellant was thoroughly examined/ processed and filed by the Competent Authority being devoid of merits.
- H. Para-H needs no comments. Hence denied.
- I. Para-I needs no comments however the Respondents may kindly be allowed to raise further grounds at the time of arguments.

**Prayer:-**

It is therefore most humbly prayed that by acceptance of this reply the Service Appeal of the Appellant may kindly be dismissed with cost.

Any other relief though not specifically prayed for deem fit in circumstances of the case may kindly be granted.

*Taadia Nawab*  
Principal  
Regional Training Institute  
Peshawar  
Respondent No.3

  
Director General  
Population Welfare Directorate  
Khyber Pakhtunkhwa  
Respondent No.2

*Asif*  
Secretary to Govt: of  
Khyber Pakhtunkhwa  
Population Welfare Department,  
Respondent No.1

05.08.20

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

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Population Welfare Department, Peshawar etc ..... (Respondents)

**Affidavit**

I Mr. Ahmad Yar Khan, Assistant Director (Litigation), Directorate General of Population Welfare Department do solemnly affirm and declare that the contents of para-wise comments/reply on behalf of respondents are true and correct to the best of my knowledge and available record and nothing has been concealed from this Honorable Tribunal.

  
Deponent

Ahmad Yar Khan  
Assistant Director (Lit)

مجموعت جناب سرنیل صاحب آریجی صاحب

(5)

جناب عالیہ  
 گزارش بعد گزشتہ واقفہ کے بعد  
 وارڈن صاحبہ ہمیں محکمہ فون کالرز  
 پر دھکیلا دے رہی ہیں وہ ہاسٹل  
 کے کارڈز تو کبھی نہیں توڑے  
 اگر ہمیں دوسرے میں کسی قسم کا نقصان  
 ہو جائی رہا ہے تو اسکی ذمہ دار وارڈن  
 ہونگی۔

الصارفہ

قرۃ العین

لوہیہ لیڈی

فکلس جنرل

5/10/18

Sm

3.10.2018

Dr Aminullah (Instructor),  
 member inquiry committee  
 for reference pl - Sm.

Smario

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②

**INQUIRY REPORT REGARDING COMPLAINT OF STUDENTS OF  
JUNIOR CLASS.**

The inquiry committee was constituted with reference to our office order F.No. 2 (45)/87/RTI dated 05/10/2018 to probe the complaint. The complaint of two students of Junior class regarding (Physical and mental violence) against Miss. Roheela Malik (Warden RTI, Peshawar girls Hostel). The inquiry committee was constituted on the following members.

1. Dr. Uzma Naheed Zia	Senior Instructor	Chairperson
2. Mrs. Naheed Bibi	Sister Tutor	Member
3. Dr. Amin Ullah	Instructor	Member
4. Mr. Muhammad Hussain	Admin Officer	Member

The inquiry committee inquires all the allegations not only from the complainant but also from the other students about the allegations and their problems.

The allegations required are as under:

1) **Physical violence:**

Ms. Qurat ul Ain and Ms. Sobia students of junior class alleged Mst. Roheela Malik Warden RTI, for physical and mental violence on 4<sup>th</sup> of October 2018 at mid night round about 12:30 AM.

Ms. Roheela intruded in to the room of the complainant and start hitting Ms. Qurat Ul Ain and Ms. Sobia with curtain bar rod verified by Ms. Basmina. (Annex attached) B,C, D, E,F, H, J, I

2) **Mental violence:**

The complainants charged the allegations that the Warden teases students by implying base-less charges in the shape of their friendship with boys. Ms. Sobia had complained to Warden about being blamed for buying costly dresses as her father was a poor labourer. (Annex attached) B & D. (Annex attached) B, C, D, E,F, H, J, I, k, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y.

3) **Threats on phone:**

Ms. Sidra and Ms. Qurat-ul-Ain received calls from unknown cell nos and they lodged complaints against warden. She received class from cell No:

Cell#0335-0060603

Nic: 11101-6303913-5

Name: Waqar from Bannu

Cell# 0336-9739699

Nic: 11101-3830038-9 from Bannu

Similarly, Qurat-Ul-Ain also received calls from the later cell no. ASI in Police and stresses for withdrawal of application against warden.  
(recording of the call from the former cell no. is available).

*Imanig*  
*Cal* → *(Signature)*

inquiry record A.D.

Warden flatly rejected the allegations and refused to admit her contact with the persons. However, certain link looks relevant. (Annex attached) E & C

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4) Fines / Security / fund for washrooms cleanliness.

Students complained against fines, security and funds for washrooms cleanliness. When warden was asked about the record, of the above mentioned three heads. She handed over the list of fines on having cell phones. (Annex attached) Annex - I

Findings:

Preliminary investigations under went to probe the matter and bring out actual position in the process. Explanation was called from Warden and complainants also during investigations she was reported to harass the students involved a number of times directly and indirectly as reported by the students in written. A letter was issued to Ms. Roheela Malik and the students involved before the inquiry committee. The allegations inquired were as under:

5) Physical violence:

Miss. Qurat ul Ain and Ms. Sobia students of Junior batch alleged that Mrs. Roheela Warden of Girls hostel intruded into the room of the complainants and started hitting them with curtain bar as verified by Miss. Sobia, / Miss. Basmina verbally as attached annex A, B. She also abused them vigorously:

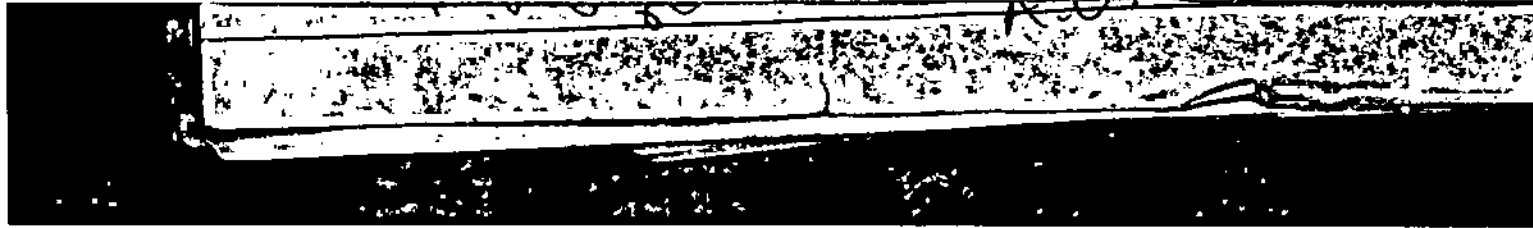
- Ms. Roheela malik was inquired about, but she didn't accept the charges. The detailed of questions answers is attached at Annex G
- When Mrs. Qurat ul Ain and Ms. Sobia were inquired. They provided us telephonic (mobile) pictures of their hurted arms (bruises of arms of Ms. Qurat Ul Ain and Ms. Sobia).
- Furthermore, Miss. Fatima khanum / Miss. Alia Noor of senior batch students of Junior batch another miss. Farina students of junior batch also complained about physical punishment given by miss. Rohella in the past. She said that Miss. Roheela Malik is used to slap the girls even on ordinary mistakes. Statement are attached Annex I, H, W, M
- A large number of students also complaints of frequent verbal abuses of Miss. Roheela against them. As attached Annex E
- They also admitted that Miss. Roheela Malik often not only abuse them verbally but also black mailed them by doing unnecessary phone calls to their parents/ other relatives and made baseless complaints about their character.

6) Sexual harassment

The students also complained that Miss. Roheela malik is used to harass them sexually by blaming dirty charges against their character. She teased them by unnecessary phone calls to their parents and told them false charges about their character and inflicted mental abuse not only to students but also to their parents. Annex attached E

1. Miss. Roheela Malik was also charged by one student that she stressed different students to sleep in her room. She compelled her for homosexuality with her as attached Annex E, B
2. Miss. Roheela Malik was also blamed by students Ms. Sidra and Ms. Qurat ul Ain for illegal telephonic calls received by them from fake ISI captain Waqar phone no. 0335-0060603 Nic. 1110-163039135 district Bannu and Zahirullah Cell# 0336-9739699 Nic: 11101-38300389 from Bannu.

*Handwritten signatures and scribbles at the bottom of the page.*





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The telephonic recordings of these phone calls were provided by Ms. Sidra to the inquiry committee as an evidence. The callers stressed them to make settlement between them and Ms. Roheela Malik. He favored Ms. Roheela Malik and threatened them to prepare for unfavorable circumstances in case of failure. Ms. Roheela Malik was also blamed by these students to harass them through a taxi driver standing in front of RTI, who told them that he was paid by Ms. Roheela for this action. Annex attached F

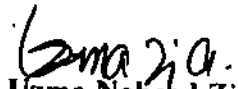
7) Financial corruption:-


All the students of Senior Batch and Junior Batch also complained for illegal fines for telephonic calls and on behalf of hostel cleanness. They have been charged Rs. 500/- per students for keeping mobile phone and Rs. 100/- per month/each student. She was also been reported to take money on behalf of security fees from some students since long. But there is no official record / audit of these funds neither these were returned to students ever. She was reported to take half stipend of Ms. Maimoona student of senior batch from office and also took loans from them but never returned them back to. The girls also complained of unnecessary entry of Chowkidars and drivers till late night at hostel without any necessary official job. The statement of students attached herewith.

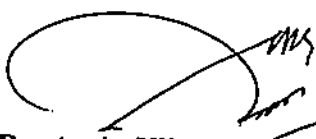
The inquiry committee strongly recommends the complainant should be provided security transport facility till Lary Adda at weekend if desired. Principal should withdraw the charge of Warden post from Ms. Roheela Malik till final decisions of competent authority to remove the fairs of the students.

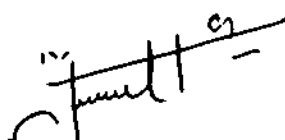
The inquiry committee also inquire deeply the complete past record of accused and found that different previous inquires had also been placed against her and a show cause notice had already been issued to her in the past. Documentary evidences of the complainants and the other students who were accompanying were proved the facts clearly that such incident exactly occurred on 4<sup>th</sup> October, 2018 at midnight in the hostel. Inquiry committee also has noticed that Ms. Roheela Malik is involved in physical mental violence and harassment of not only the complainants but also the other students of RTI Peshawar. Statements of the students are attached please.

Submitted to Principal RTI, Peshawar for information & further necessary immediate action please.

  
Dr. Uzma Naheed Zia  
Senior Instructor RTI  
Peshawar

  
Naheed Bibi  
Sister Tutor RTI  
Peshawar

  
Dr. Amin Ullah  
Instructor RTI  
Peshawar.

  
Muhammad Hussain Khan  
Admin Officer RTI  
Peshawar.

inquiry recommended A.O.

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
DIRECTORATE GENERAL POPULATION WELFARE  
Plot No. 18, Sector E-8, Phase-VII, Hayatabad, Peshawar

Dated Peshawar the 4/12/2018.

OFFICE ORDER

F.No.4(21)/2018/Admn:- The competent authority is pleased to constitute the following committee to probe the case in light of the Charge Sheet and Statement of allegations against Miss. Roheela Malik, Warden (BPS-12) Regional Training Institute, Peshawar as per requirement of Rule 10(1) (a) of the Khyber Pakhtunkhwa, Government Servants ( Efficiency and Discipline) Rules 2011, and submit report within the stipulated time.

- i) Mr. Noor Afzal, Director (PME) PWD, Peshawar.
- ii) Mr. Ghulam Farid, Deputy Director (FWC) PWD, Peshawar.
- iii) Dr. Farina Basit, Deputy Director (Medical), PWD, Peshawar.

(Director General)  
Population Welfare Department

Copy forwarded to the:-

1. The Principal Regional Training Institute, Peshawar to facilitate the inquiry Committee, and to serve the enclosed charge sheet alongwith Statement of allegations upon Miss. Roheela Malik, Warden (BPS-12) and receipt in this respect be furnished to this office for record.
2. Inquiry Committee, copy of Charge sheet and statement of allegations alongwith copy of fact finding inquiry report conducted by Dr. Uzma Naheed, Sr. Instructor, Mrs. Naheed Bibi, Sister Tutor, Dr. Amin Ullah, Instructor (NT) and Mr. Muhammad Hussain (Admn Officer) RTI, Peshawar alongwith all annexures.
3. Miss. Roheela Malik, Warden (BPS-12) RTI, Peshawar for compliance and to appear before the inquiry committee as and when required.
4. PS to Director General, PWD, Peshawar.
5. Master File.

Dir(PME) DDM

(Hidayatullah)  
Deputy Director (Admn)

DD(FWC)  
4/12/18

4/12  
4/12

Issued vide D No. 8744  
Dated 4/12/18.

COMPLIANCE SECTION

o/c

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CHARGE SHEET

I, Fazal Nabi Khan, Director General, Population Welfare Department Khyber Pakhtunkhwa, as competent authority under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, do hereby charge you, Miss. Roheela Malik, Warden (BPS-12), Regional Training Institute, Peshawar as follow:-

That you, while posted as Warden (BPS-12) RTI, Peshawar committed the following irregularities:-

- a) That you physically assaulted Miss. Qurat-ul-Ain and Miss. Sobia with curtain rod by hurting and bruising their arms and abuse them verbally.
- b) That you are involved in collection of illegal funds from hostel students in the name of cleanliness, security and fines.
- c) That you use to take half stipend from Miss. Maimona student of senior batch and also took loans from students and never returned back.
- d) That you allow late entry of Chowkidar and Driver in the hostel without any reason.
- e) That you are involved in sexual harassment, black mailing and character assassination of students.
- f) That you compelled students for homosexuality by inviting them for night stay at your room.
- g) That you threatened Miss. Sidra and Miss. Qurat-ul-Ain through fake ISI Captain i.e. Waqar Cell No. 03330060603 CNIC # 11101-6303913-5 and Mr. Zahir Ullah Cell No. 03369739699 CNIC # 11101-3830038-9 of District Banna to withdraw complaint and make settlement with you.
- h) That you provided personal information regarding hostel students to unauthorized persons to blackmail and harass them.

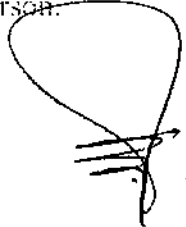
2. By reasons of the above, you appear to be guilty of "Misconduct" under rule-3 of the rules Khyber Pakhtunkhwa Govt Servants "Efficiency & Discipline Rules" 2011 and have rendered yourself liable to all or any of the penalties specified in rule-4 of the rules ibid.

3. You are therefore required to submit your written defense within 07 days of the receipt of this charge sheet to the inquiry committee.

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

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

6. A statement of allegation is enclosed.

  
COMPETENT AUTHORITY

o/c

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## DISCIPLINARY ACTION

1. Fazal Nabi Khan, Director General, Population Welfare Department, Khyber Pakhtunkhwa, as competent authority, am of the opinion that Miss. Roheela Malik, Warden (BPS-12), Regional Training Institute, Peshawar has rendered herself liable to be proceeded against as she has committed the following acts /omission within the meaning of Rule-3 of the Khyber Pakhtunkhwa, Govt. Servants (Efficiency and Discipline) Rules, 2011:-

### STATEMENT OF ALLEGATIONS

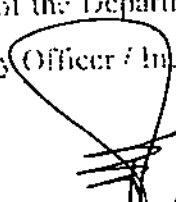
- a) That she physically assaulted Miss. Qurat-ul-Ain and Miss. Sobia with curtain rod by hurting and bruising their arms and abuse them verbally.
- b) That she involved in collection of illegal funds from hostel students in the name of cleanliness, security and fines.
- c) That she use to take half stipend from Miss. Maimona student of senior batch and also took loans from students and never returned back.
- d) That she allow late entry of Chowkidar and Driver in the hostel without any reason.
- e) That she is involved in sexual harassment, blackmailing and character assassination of students.
- f) That she compelled students for homosexuality by inviting them for night stay at her room.
- g) That she threatened Miss. Sidra and Miss. Qurat-ul-Ain through fake ISI Captain i.e. Waqar Cell No. 03330060603 CNIC # 11101-6303913-5 and Mr. Zahir Ullah Cell No. 03369739699 CNIC # 11101-3830038-9 of District Bannu to withdraw complaint and make settlement with her.
- h) That she has provided personal information regarding hostel students to unauthorized persons to blackmail and harass them.

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 ibid rules.

- i. Noor Afzal DPME
- ii. Ghulam Farid DDLFWCI
- iii. Dr Farina Basit DD(M)

3. The Inquiry Officer /Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make report within thirty days of the receipt of this order.

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

  
Competent Authority

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**INQUIRY REPORT/ CHARGE SHEET AGAINST MISS. ROHEELA MALIK, WARDEN (BPS-12)  
REGIONAL TRAINING INSTITUTE PESHAWAR**

**BACKGROUND**

1. A written complaint was submitted by Miss. Qurat Ul Ain & Miss. Sobia Bibi students of Junior Class, FWW Basic Training Course to Dr. Saadia Nawab, Principal RTI Peshawar dated 5<sup>th</sup> October, 2018 regarding the physical assault of Miss. Roheela Malik, Warden RTI Hostel upon them with Iron Rod while using abusive language in their room at 12:30 AM during night falling between 4<sup>th</sup> & 5<sup>th</sup> October, 2018. The students pleaded that they were compelled to submit a written application as Miss. Roheela is giving direct and indirect threats through private individuals in the garb of Captain ISI and some Police Official and that a solution may be sorted out through disciplinary action against the responsible.
2. In light of the written complaint Principal RTI has constituted a fact finding Inquiry committee dated 5<sup>th</sup> October, 2018 consisting of Dr. Uzma Naheed (Senior Instructor), Dr. Amin Ullah (Instructor), Ms. Naheed Huzor (Sister Tutor) and Muhammad Hussain (Admn Officer) RTI Peshawar to investigate the matter. **(Annex: A)**
3. Director General Population Welfare Department (PWD) Office Order No. 4(21)/2018/Admn dated 4<sup>th</sup> December, 2018, being Competent Authority has constituted a formal Inquiry to probe the case in light of the Charge Sheet and Statement of Allegations against Miss. Roheela Malik, Warden (BPS-12) Regional Training Institute Peshawar. The Inquiry team includes the following members. **(Annex: B)**
  - i. Mr. Noor Afzal, Director (PME) PWD, Peshawar.
  - ii. Mr. Ghulam Farid Khan, Deputy Director (FWC) PWD, Peshawar.
  - iii. Dr. Farina Basit, Deputy Director (Medical), PWD, Peshawar.

**PROCEEDINGS**

4. To determine the credibility of the allegations contained in the Charge Sheet issued to Miss. Roheela Malik, Warden RTI Hostel issued by Director General PWD, members of the Inquiry Committee paid visits to RTI Peshawar dated 12/12/2018, 18/12/2018 & 17/01/2019. Statements of the complainants i.e. students of FWW Basic Training Course as reflected in the charge sheet including Ms. Qurat Ul Ain, Miss. Sobia, Miss. Maimoona and statement of the accused i.e. Miss. Roheela Malik, Warden RTI Hostel were recorded. Statements of Chowkidars, drivers were also recorded. Besides members of the fact finding inquiry committee constituted by Principal RTI were also questioned and written statement were also obtained from Dr. Sadia Nawab, Principal RTI Peshawar. Lastly some 10 hostel students selected on random basis both from senior and junior batches were interviewed and their statements were recorded regarding the incident of physical violence committed by Miss. Roheela and her overall behavior in the hostel. The following facts were revealed during the process of Inquiry;

- (i) Miss. Qurat Ul Ain is a student of junior batch FWW Basic Training Course hailing from District D.I.Khan and is working as a Female Assistant (BS-05) at DPWO D.I. Khan. In her verbal statement before the inquiry committee, she told that I was feeling uneasy with my roommates i.e. Shagufta and Adeela and requested Miss. Roheela, warden for some directions regarding my room issue dated 4<sup>th</sup> October, 2018. According to her, that aforementioned students have communicated to Miss. Roheela that Qurat ul Ain had submitted an application to Principal RTI against Miss. Rahat (Sister of Roheela), Assistant Tutor at RTI Peshawar that she is not teaching properly. She mentioned that although we have requested that few of the topics already taught by Sister Tutor may again be taught by some medical doctor. She further stated that Miss. Roheela, Warden along Miss. Sobia (Student of Junior Class) came to our room and after knocking my other roommates opened the door. Warden and my roommates Shagufta & Adeela ordered me to vacate the room at once. Miss. Roheela Malik, Warden RTI Hostel became very furious and she was having an iron rod in her hands, locked the door from inside and started beating me and Sobia for some 45 minutes and that we swore on Holy Quran but she did not stop. When the committee questioned that whether you people offered any resistance, she told that we did not. Next day we met Dr. Saadia Nawab, Principal RTI and verbally complained regarding this incident and she assured that I will take remedial measures but you people should not bring the issue in writing nor you should tell your parents.

Principal did not take any action but rather Miss. Roheela, Warden started giving direct and indirect threats through phone calls by private individuals in various garbs like some was calling as ISI Captain, and others were talking as police officials and warned not to write anything in written against Miss. Roheela otherwise consequences will be very dangerous for you. We submitted a written complaint to the Principal dated 5<sup>th</sup> October, 2018. A written statement was also obtained from Qurat Ul Ain. **(Annex: C)**

(ii) Another student named as Sobia Gul of Junior Class FWW Basic Training Course belonging to District Bannu recorded her statement before the Inquiry Committee. Her mother named as Hussan Bano is currently working as FWW in DPWO Bannu. She told that prior to the incident, Miss Roheela Warden RTI Hostel was hurling abusive kind of remarks on my character and was telling other hostelites that how she is managing expensive clothes to wear although her father is a rickshaw driver. Besides this she was leveling immoral allegations on me like she is spending nights with her boy friends. She narrated that warden is calling girls to their room for cleaning her room and utensils including me and also demands from us for bringing gifts etc.

On 4<sup>th</sup> October 2018, there was a birthday party of Miss. Sidra in the hostel and Miss. Roheela again questioned my dress code that now you have become a VIP girl and wear costly dresses. After the party I went to warden room and complained that you are always passing illegal remarks against me, she responded that I have not told anyone and took me to Qurat Ul Ain room and there she beat severely me and Quart Ul Ain with iron rod. When the inquiry officers asked her to put all your arguments in a written statement, she became reluctant but later on she was convinced by her colleagues and thus she gave a written statement. (Annex: D)

(iii) Sidra Amir Khan, student of Junior Class FWW Basic Training Course belonging to District Bannu narrated before the Inquiry committee that Warden's dress is highly objectionable and she is compelling hostel students to do menial jobs for her in her room like cleaning utensils, cooking and pressing her clothes. We have done such duties initially for two or three months but then became tired and upon this she became personal with me and gave my cell number to outsiders like taxi drivers and other private people who started harassing me. She used to give cell numbers of hostel students to outsiders for the purpose of blackmailing. According to her that Ms. Roheela, Warden RTI is drugs addict and use injections. Sidra Imran behaved rudely before the inquiry committee. ( Annex: E)

(iv) Miss. Maimoona, student of Junior Class FWW Basic Training Course belonging to District D.I.Khan explained before the Inquiry Committee that Miss. Roheela has taken my stipend for the month of October 2018 when I was on leave due to my father's illness but later on she returned me. She also mentioned that she complained to the principal as Mr. Basit Saeed guided me to do so. (Annex: F)

(v) All Chowkidars working at RTI Peshawar including Mr. Izhaar Ahmad, Farhaad Khan, Sajid Riaz and Shehryaar Khan were called individually and were questioned regarding their late entry into the hostel premises without any reason. All of them strongly denied the allegations and mentioned that no male is allowed inside the girls' hostel and that they perform duties on the main entrance only. Further that they allow hostel students only on weekends and only those having proper gate passes. Almost all of the Chowkidars complained that some hostel students try to leave the institute without gate pass and one way or other way they are facilitated by some faculty members including Dr. Amin Ullah, Mrs. Naheed and Dr. Uzma. They also requested that lady searchers may be deputed along them for duty on the main gate so that every female may be checked by female searcher only. Some of the students including Miss. Sadaf, Miss. Alia Nasreen, Miss. Sajeela Begum, Miss. Sobia, Miss. Shazia and Miss. Suneela were reported previously by Chowkidar, Mr. Izhar, Mr. Sheheryar, Mr. Farhad Khan and Mr. Sajid Riaz respectively, that they have left the institute without gate passes. These were reported to Principal Regional Training Institute Peshawar, however they were exonerated. (Annex-G)

(vi) Two drivers Mr. Taimoor and Mr. Aziz ur Rehman were also interviewed and they also denied their unauthorized entry into the hostel.

(vii) Mr. Taimoor highlighted that I have been called by warden and allowed by the Principal for any needful like repairing hostel electric appliances etc. I have installed electric capacitors in some 14 rooms of the hostel upon the direction of warden and Principal. A group of students including Miss. Qurat Ul Ain, Sobia Khanum and Sidra Noor were instigated by some officers of the institute to lodge a complaint against me because I don't accept the illegal demands of those faculty members like cleaning and repairing their cars. According to him some faculty member like Dr. Amin and Mrs. Naheed Huzor Sister Tutor are instigating a group of students including Ms. Qurat Ul Ain, Miss. Sobia Khanum and Miss. Sidra to create problems for Dr. Sadia and even they have openly stated that we will disseat the principal. He mentioned that one day Miss. Qurat ul Ain student of junior section came to me to replace their room light and when I told that after taking tea I will come, She became angry and warned me that I am a female assistant and I will teach you a lesson.

(viii) Another Driver Mr. Aziz Ur Rehman told that I am driving RTI coaster bearing No. AA 6432 and I have no problems in my duties and perform duty as directed by my seniors. (Annex-H)

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- 1
- (ix) About 10 No. of students, randomly selected five each from junior and senior sections were interviewed by Dr. Farina Basit Deputy Director (Medical) (member inquiry committee) and were questioned regarding overall behavior of the warden and especially with reference to allegations on sexual harassment. Student named Farah, Alia Nasreen, Kainaat, Urooj Fatima, Shazia narrated that overall behavior of Miss. Roheela Malik warden RTI is positive and they have no problem with her however sometime she becomes very harsh and angry and talks in an abusive manner and calling names. **(Annex-I)**
- (x) A student, Mehreen Bibi told that warden has beaten two girls of the hostel very severely and injury marks were also there on their bodies and those injury marks are saved by someone in mobile phone. Besides this she keeps care of us however sometimes she becomes very angry she loses her temper and then has no control over herself. **(Annex-J)**
- (xi) Student named Naima Kanwal told that her behavior depends upon her mood and she remains very good when her mood is OK and speaks foul language when students make a mistake. She has also beaten some students in the past and one such student was beaten due to cell phone issue. She stated that on the day of this incident, there was a birthday party of Sidra in her room in which girls were celebrating the function and after the party at 12:00 A.M, Miss. Roheela warden went into their room and she remained there for 10-15 minutes and shouting sound of Miss Roheela Malik and abusive language was heard by us. She became unconscious when she came out of their room. She receives Rs. 100/- per month for wash room cleanliness from all the hostel residents. **(Annex-K)**
- (xii) Farah Rashid told that we have no complaint regarding warden however she speaks foul language when she becomes angry. She use injections however I don't know the injection type etc. Besides this she is a good lady and treats students on emergency basis in the hospital when they become ill. **(Annex-L)**
- (xiii) Dr. Sadia Nawab was asked, that upon receiving verbal and written complaints what immediate action has been taken and whether allegations leveled against Miss. Roheela Malik Warden RTI Hostel are justified? She told that upon receiving written complaint from Miss. Qurat Ul Ain and Miss. Sobia (Junior Class students), she immediately constituted a fact finding inquiry committee and Miss. Roheela was directed to stop duty as warden and another official Miss. Rahat Sister Tutor was deputed to perform the duties as a warden. Principal RTI also mentioned that Inquiry committee members were reluctant to submit their report to her. The committee members did not even bother to discuss the report with me and after a lot of delay the inquiry report was submitted and I forwarded the same to Director General through Dr. Uzma to keep its confidentiality. **(Annex-M)**
- (xiv) According to Dr. Sadia, Warden RTI Miss. Roheela is a senior employee of this institute and was performing her duty in a satisfactory manner. Although I have heard some allegations against her in the past but no proof was ever provided. Regarding corporal punishment given by her to students, that she called warden in person and counseled her and directed not to come to office till the final outcome of inquiry.
- (xv) Dr. Sadia also stated that I have warned the staff members to be punctual and official timings be strictly followed and no lax in this regard will be allowed. Some of the faculty members have demanded official vehicle for private purposes and I have refused straightaway. She thinks that such staff members have made a group against me and my orders are not obeyed.
- (xvi) Inquiry Committee members including Dr. Uzma Naheed, Dr. Amin Ullah, Mrs. Naheed Huzoor and Muhammad Hussain were also called and were asked to give some input so that a real picture of the incident can be realized. When they were asked that some of the findings like financial and sexual harassment was not part of the complaint then why they have included such conclusions in the fact finding inquiry report. They replied that actually they were informed by students during the course of inquiry. During this discussion, it was revealed that there is a poor coordination between principal and faculty/ administrative staff.

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(xvii) A reasonable opportunity of hearing was provided to the accused, Mrs. Roheela Malik, Warden (BPS-12) Regional Training Institute Peshawar by providing statement of allegations & Charge Sheet. The accused appeared in person before the inquiry committee.

- a) She explained that on 4<sup>th</sup> October 2018, a birthday party of Miss. Sidra Amir Khan, Junior Class student was arranged in the hostel and she was also invited but due to her hostel duties being a warden, she did not attend the party. That She also directed them to conclude the function by 9:00PM positively in order to avoid any kind of disturbance in the hostel.
- b) According to Miss. Roheela Malik, Warden RTI Hostel stated that prior to this incident; Miss. Qurat ul Ain Junior class student complained regarding serious differences with her roommates i.e. Adeela and Shagufta. Miss. Qurat ul Ain has already changed room on her request and this time a separate room was allotted as she was not adjusting to any other student.
- c) Another student of junior section Miss. Sobia, a close friend of Miss. Qurat Ul Ain came to her room and blamed her that you are talking ill of me by passing remarks that Sobia's father is a Rikshaw driver; I became quite angry and told that your father is a driver not a pilot. Miss. Sobia told that Miss. Qurat Ul Ain has instigated her to raise this issue with warden. After this I went to my room and strictly instructed to stop such kind of activities at once as they have made a group against me in collaboration with some faculty members.
- d) I went to the room of Miss. Qurat Ul Ain and asked that why are you misguiding Miss. Sobia against me, she took the Holy Quran in her hands and swore that I have never instigated anyone against you. I became very disturbed and became unconscious as I am hypertensive and my blood pressure was very high and I was taken to Hayatabad Medical Complex by night duty staff. I got up very late next day and these students have already submitted a complaint to Dr. Sadia Principal Regional Training Institute Peshawar that Miss. Roheela Malik has physically tortured them with Iron Rods and false allegations were leveled against her.
- e) She also mentioned that many other hostel students are given relaxation to go out of hostel without gate pass by faculty members and once such student Miss. Alia Nasreen was facilitated by Dr. Ameen Ullah. The same faculty member had also helped Miss. Sajeela in allowing her going out of the institute without gate pass as when she was stopped by Mr. Sheharyar Chowkidar RTI, Dr. Ameen Ullah intervened and closed the matter forcefully.
- f) Besides this Miss. Roheela Malik, in her written defense in response to the charges leveled against her as per statement of allegations; **(Annex: N)**

3/1/19

- I. Initial inquiry conducted by RTI staff have no legal effect as Inquiry Officers Dr. Uzma Naheed , Dr. Amin Ullah, Mrs. Naheed Huzoor and Mr. Muhammad Hussain have personal grudges and very hostile towards me.
- II. That allegation of physical assault reflected at para-a of the charge sheet is wrong and fabricated and that I have never made any physical assault upon Miss. Qurat Ul Ain and Miss. Sobia.
- III. That I have an immaculate 25 years service as Warden RTI but ever since the arrival of Dr. Uzma, Mr. Basit and Mr. Amin to the RTI, they have formed an axis against me for maligning my character.
- IV. That, Miss. Qurat Ul Ain, Miss. Sobia and Miss. Sidra has long licentious history of insubordination and disobedience ever since their admission into the hostel. These students are involved in various violations of hostel rules. They make late night video calls through their smart phones, meeting with unauthorized and shady visitors other than family members, the arrivals of expensive gifts (clothes etc) and food parcels from their friends and paramours.

d p a l e. ye



- V. That, on the date of the alleged incident, these students had arranged Woofers Speakers for their dance party in their room. They were dancing to the loud music after 12:00 am and I received complaints against disturbance and when I went into their room they were found as hysterical, intoxicated and frenzied. I ordered to stop them however instead of stopping the music and dance, they started arguing with her and gave her threats and Miss. Qurat Ul Ain categorically stated that my friend is an Army Major and will make you disappear like Missing Persons.
- VI. That the allegation of physical torture with curtain rod is also grotesque and travesty of the actual fact. Had these students been hit with the curtain rod, they should have sustained injuries or at least some bruises. There is no medical evidence on record proving that they had been subjected to physical torture.
- VII. That, the charge at Para-b of the charge sheet is wrong and against facts; hence denied. The allegation of collection of funds from students is baseless. As per direction of the principal of RTI all hostel students, after their arrival, contribute Rs. 100 in the fund, specifically collected to purchase necessary items for their wash rooms etc. This fund is collected and maintained on the direction of the Principal and it is being managed under her supervision. All the purchases are recorded in a dedicated register along with all receipts of the purchased items.
- VIII. That, the charge at Para-c is wrong and against facts, hence denied. The allegation of embezzlement of few thousand rupees of stipend is absurd and baseless. The reality of the matter is that Miss. Maimoona was absent in the month of October 2018 and her stipend was handed over to me by the accountant to be given to her on arrival and I returned her by obtaining a receipt as token for receiving her stipend. But unfortunately, Mr. Basit twisted the episode as he called the student to his room and coerced her to distort the facts. That Mr. Basit Saeed earned the reputation of friendly teacher among charming students and principal has received several complaints against him of being a womanizer and a person of lecherous character.
- IX. That, the charges at para-d are wrong and against facts and Chowkidars or the drivers have never entered the hostel premises unnecessarily or without plausible and probable cause. The entry gate is locked from the outside and inside, from every evening till morning. It is also necessary to mention that under the direction of the principal, the employees in question are obliged to help me in taking care of the students in cases of emergencies, like taking the ailing ones to the hospital for emergency medical treatment and other emergencies like fixing problems of water, electricity, gas etc in the hostel a night. My communication with these employees is part of my job descriptor and the same is unavoidable.
- X. That, the charge at Para-e is wrong and against cogent facts as no iota of material, oral or documentary evidence is presented in supported of sexual harassing, blackmailing or torturing hostel students. That I have always considered these students as my own children.
- XI. That, the charge at Para-f is wrong, disgusting and horrendous and that She is ashamed and deeply hurt to even discuss the disgusting word of homosexuality. These allegations have put the honor of my family at stake as was all fabricated and brainchild of the minds of members of initial fact finding inquiry committee members while the original complaint was not having any such allegation. Although it was not a part of the complaint and was not the subject of the scope of fact finding inquiry committee, Mrs. Naheed, Dr. Uzm and Mr. Basit showed a keen interest in lecherous topic of homosexuality. That during the inquiry particularly the questions of Mrs. Naheed were most focused on sex and homosexuality.
- XII. That the reason of Mrs. Naheed's hostility towards me has also a background and the same needs to be understood in regard to her strained relationship with her young husband. Since she is unable to perform her marital obligations, therefore, her husband has now started looking outside his house. Being our neighbor, he used to sexually harass her by sending her obscene and abominable messages and pictures along with a marriage proposal.

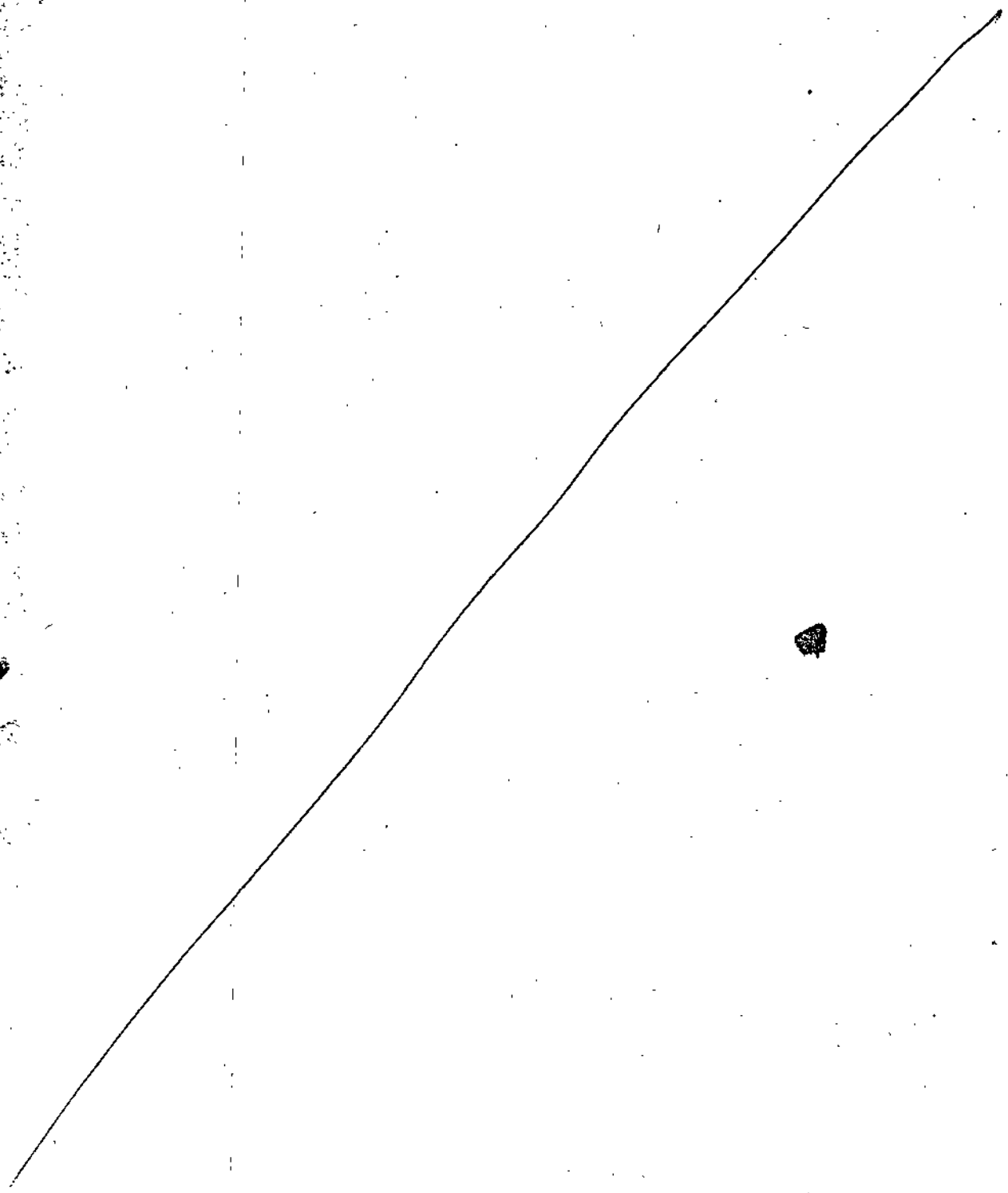
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 A R B  
 [Signature]

XIII. That, the charge at Para-g is also wrong and that students are not allowed to possess cell phones during their stay at hostel and this rule is not only written in the admission form but has been reiterated from time to time through official notices. Therefore any allegation receiving calls on these illegal phones and other things related thereto is inadmissible in evidence.

XIV. Possession of cell phones with Miss. Sidra and Miss. Qurat Ul Ain is yet another proof of their licentious conduct towards hostel rules and disciplines. It is pertinent to mention that before the alleged incident, she has confiscated two smart phones (iphone 7 and Nokia from Miss. Sidra and Samsung Smartphone from Miss. Sobia; whereas before my inspection of the rooms, Miss. Qurat Ul Ain managed to return her smart phone to her boy friend through Mr. Sheryaar watchman. Mrs. Naheed and Mr. Basit intervened and phones were returned to them with impunity.

XV. That, the charge at para-h is absurd and preposterous. It is relevant to mention that I have ensured strict implementation of the rules regarding prohibition on keeping cell phones and deposited the same with the principal.

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**FINDINGS**

From the aforementioned proceedings and after examining verbal and written statements of complainants, accused Miss. Roheela Malik, Warden RTI Peshawar, staff members including Faculty & Chowkidars, Drivers and Principal RTI, Dr. Sadia Nawab were cross examined and the following findings were drawn.

- i. From the verbal and written statements of the complainants, personal hearing and written defense of the accused, statements of Principal RTI, faculty members, other hostel students, it has become proved that the accused Miss. Roheela Malik, has committed "physical assault" upon Miss. Qurat Ul Ain & Miss. Sobia Junior Class students of FWW Basic Training Course. Further that according to accused; the complainants Miss. Qurat Ul Ain, Miss. Sobia and Mrs. Sidra Amir Khan have long licentious history of insubordination, disobedience, violation of hostel rules, meeting and outing with unauthorized and shady visitors other than family members, receiving expensive gifts and food Parcels from their friends and paramours. Question arises that why such kind of illegal actions of students have not been reported to principal and why a timely disciplinary action has not been taken. This proved that Mrs. Roheela Malik has become personal and is blaming students, faculty members.
- ii. Miss. Roheela Malik has mentioned in her verbal and written statements that she is receiving Rs. 100/- from each student upon their arrival in the hostel for purchasing necessary items for washroom cleanliness. That this fund is maintained on the direction of the principal and it is being managed under her supervision, however upon confirmation from Dr. Sadia Nawab Principal RTI Peshawar, she responded that no such direction has been given in this regard. Dr. Sadia further stated that once I have inquired from the said warden regarding collection of this fund, she replied that the said practice is in vogue since past and it is being used for petty purchases like replacing bulbs, tube lights being broken by hostel students and wash room cleanliness. So it is hereby proved that warden is collecting Rs.100/- per month from each student and administration is aware of the situation.
- iii. It has also been observed that Miss. Roheela Malik has received half stipend of Miss. Maimoona, student of senior class when she was on leave but later on the said amount has been returned, hence allegation in this regard has not been proved.
- iv. Entry of Chowkidars and drivers in the hostel was not found proved and not supported by any evidence.
- v. Sexual harassment, blackmailing, providing personal information of students to unauthorized persons, character assassination of students and allegation of homosexuality is also not supported by any kind of evidence and therefore not proved.

*Ghulam Farid Khan*  
 31/01/2019  
 (Ghulam Farid Khan)  
 Deputy Director/ Inquiry Officer

*Dr. Farina Basit*  
 (Dr. Farina Basit)  
 Deputy Director/Inquiry Officer

*Noor Afzal*  
 (Noor Afzal)  
 Director/Inquiry Officer

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
DIRECTORATE GENERAL POPULATION WELFARE  
Plot No. 18, Sector E-8, Phase-VII, Hayatabad, Peshawar  
\*\*\*\*\*

Dated Peshawar the 27/3/2019.

**OFFICE ORDER**

**F.No.4(21)/2017/Admn/KC:-** Whereas, Miss Rohila Malik, previously posted as Warden (BPS-12) in R.T.I, Peshawar was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the statement of allegations;

**AND WHEREAS**, inquiry committee comprising of Mr. Noor Afzal, Director (PME), Mr. Ghulam Farid, Dy. Director (FWC) and Dr. Farina Basit, Dy. Director (Medical) was constituted to conduct inquiry against the said official for charges leveled against her in accordance with rules;

**AND WHEREAS**, The inquiry committee, after having examined charges, evidence on record and explanation of the accused official, submitted their report.

**AND WHEREAS**, on the basis of findings of the inquiry committee, Show Cause Notice was serve upon the accused official to which she replied;

**NOW, THEREFORE**, The Competent Authority after having considered the charges, evidence on record, findings of the inquiry officer, the explanation of the accused official to the Show Cause Notice & hearing her in person on 21/03/2019 and exercising the powers under Rule-14 (5) (ii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has been pleased to impose minor penalty of stoppage of one annual increment for three years & full recovery of the illegally/unauthorizingly collected amount @ Rs. One hundred per month from the students/trainees residing in the Hostel during period as Incharge Warden upon Miss. Rohila Malik, Warden (BPS-12) with immediate effect.

(Director General)  
Population Welfare Department  
Khyber Pakhtunkhwa  
Peshawar.

Copy to:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Principal, R.T.I, Peshawar with the request that as per direction of the Competent Authority, "calculation be made @ Rs. 50/- Per month trainee for the period of her stay as warden before 2016 and @ Rs.100/- per month per trainee for the period there after" and submit report to this office within 03-days positively for further necessary action please.
3. Director Technical, Directorate General of Population Welfare, Peshawar.
4. PS to Director General, PW, Khyber Pakhtunkhwa, Peshawar.
5. Accountant (local), R.T.I, Peshawar for necessary action.
6. Official concerned for compliance.

o/c Assistant Director (Admn)

H. A. V. Iqbal

No. 1649  
27/3/19

## Attendance

I the undersigned Ms. Roheela Malik Ex-Warden/FWC BPS-12 attended my Personal Hearing in the office of Director General Population Welfare Department Khyber Pakhtunkhwa today on 21/03/2019.

*R. Malik*

(Ms. Roheela Malik)  
Ex-Warden/Family Welfare Councilor BPS-12  
CNIC No. 17301-1419672-2



Appellant

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
CAMP COURT SWAT

No. (Cross-Examined)

Service Appeal No. 68/2017

Date of institution... 25.01.2017

Date of decision... 06.11.2017



Amir Zaman S/O Hawaws Khan R/O Aryan Court, Dargai Malakand Agency.  
... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others.  
... (Respondents)

MR. BAKHTYAR KHAN,  
Advocate. ... For appellant.

MIAN AMIR QADAR,  
District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN  
MR. MUHAMMAD HAMID MUGHAL, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned  
counsel for the parties heard and record perused.

FACTS

2. The appellant was awarded major punishment of reversion in rank on  
18.11.2016 against which he filed departmental appeal on 5.12.2016 which was  
rejected on 12.01.2017 and thereafter, the present service appeal on 25.01.2017.

ARGUMENTS

3. ~~The learned counsel for the appellant argued that no witness was examined  
by the enquiry officer. That no charge of gross examination was given to the  
appellant. That the appellant was given no charge of defence. That the star witness  
Dr. Elahi Jan was not examined.~~

Signature and Stamp

4. On the other hand, the learned District Attorney argued that proper enquiry was conducted. That the appellant managed to settle the issue with Dr. Elahi Jan. That there is no illegality in the whole proceedings.

CONCLUSION

5. The allegations against the appellant was that he had made threatening call to Dr. Elahi Jan from his Mobile number posing to be militant and demanding extortion. ~~On record there is no statement of any witness so much so that the star witness namely Dr. Elahi Jan was also not examined. The enquiry officer has~~ mainly based his findings on DSB report. In the conclusion the enquiry officer had opined that the allegations to the extent of threatening call to Dr. Elahi Jan has been proved against the appellant while the allegations to the extent of posing as a militant and demanding the extortion have not been proved.

6. ~~Since no witness was examined by the enquiry officer nor he was given the chance to defend himself by producing defence evidence. The findings in the present shape is defective and could not be based for the major penalty.~~

7. Consequently, this appeal is accepted and the major penalty of reversion is set aside. The department is at liberty to hold de novo enquiry if deem fit. Parties are left to bear their own costs. File be consigned to the record room.

(Sd/- Muhammad Khan)  
Chairman  
Camp Court, Swat

(Muhammad Hamid Mughal)  
Member

ANNOUNCED

06.11.2017

Camp Court

*Inquiry Report not provided*  
*Class Examination*  
*Appellants*

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	21.05.2019	<p align="center"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b></p> <p align="center">Appeal No. 1415/2015</p> <p>Date of Institution ... 22.12.2015  Date of Decision ... 21.05.2019</p> <p>Amir Hussain Son of Wahid Gul Bachaq Patwari Halqa Mardan resident of Village Harkai Tehsil Katlang District Mardan.  <p align="right">-----Appellant</p> <p>Chief Secretary Khyber Pakhtunkhwa Peshawar and Three (03) others.  <p align="right">-----Respondents</p> <p>Mr. Hamid Farooq Durrani.....Chairman  Mr. Hussain Shah.....Member</p> <p><b><u>JUDGMENT</u></b>  <b><u>HUSSAIN SHAH, MEMBER (E):</u></b> - Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney for the respondents present.</p> <p>2. The instant appeal has been preferred by the appellant. Being aggrieved by the order of respondent No. 2 dated 01.10.2015 and 03.12.2015. According to the fact of the case as noted in the memo of appeal the appellant was appointed as Patwari on 16.12.1982 in settlement of operation Mardan. Later on he was readjusted vide order dated 18.08.2009 and posted as Patwari Halqa Katti Ghari Tehsil Katlang District Mardan. Respondent No.2 issued charge sheet and statement of allegation and appointed Assistant Commissioner Mardan as inquiry Officer to conduct a <del>detail</del> inquiry in the charges/allegation leveled against the appellant in accordance with the provision of Khyber</p> </p></p>



Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011. The inquiry officer in the conclusion of his inquiry report stated that the appellant and Ex- Tehsildar Katlang were found guilty and recommended the competent authority to impose any penalty as deemed fit. Accordingly the competent authority i.e. respondent No.2 issued order dated 01.10.2015 wherein the penalty of compulsory retirement from service was imposed on the appellant. The appellant preferred departmental appeal to respondent No. 1 on 09.10.2015 which was filed by respondent no.2 vide letter dated 03.12.2015 thereafter the instant appeal was preferred on 22.12.2015 with the prayer of that on acceptance of the instant appeal the order of respondent No.2 dated 01.10.2015 and 03.12.2015 may pleased be set aside and the appellant may be reinstated in service with all back benefits.

3. Learned counsel for the appellant argued that the appellant was innocent and falsely. Further argued that the impugned orders were issued on the basis of improper inquiry without giving the opportunity of personal hearing to the appellant and issuing any show cause notice. The appellant was not giving the opportunity of cross examine the witnesses during the inquiry proceeding which is mandatory not only in law but also reflected in the judgment of August Supreme Court of Pakistan in SCMR 2004 P-316, PLC 2004 P-524 (CS), PLC 2004 P-57, SCMR 2001 P-1566, SCMR 2000 P-1321&1868, PLC 1994 P-1717 (CS) & SCMR 1993 P-603. The learned counsel also stated that the penalty imposed to the appellant is too harsh. Moreover the competent authority of the appellant was respondent No.3 while all the proceedings were conducted on the order of respondent No.2. In this regard the learned counsel also argued that the Department appeal of the appellant is though address to

the respondent No.1 were disposed of at the level of the respondent No.2 hence on acceptance of this appeal the impugned order of respondent No. 2 dated 01.10.2015 & 03.12.2015 may please be set aside and the appellant may be reinstated into service with all back benefits.

4. Learned District Attorney contested the facts, grounds of the appeal and the argument of the learned counsel for the appellant and stated that the disciplinary proceeding were taken against the appellant in accordance with the provision of Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011. The appellant failed to satisfy the inquiry officer during the impartial inquiry proceeding properly recorded his statement and giving him opportunity of defense. The appellant was proved guilty in Assistant Patwar, Khana and for getting attested notation No. 733 with wrong entry of sale consideration or Rs. 100000/- instead of actual amount which was Rs. 1100000/- hence causing loss of rupees 42000 to the government ex-cheaquer. He also stated that proper show-cause notice was issued to the appellant and he was asked to appear before the respondent No.2 for personal hearing on 22.05.2015 at 10.00 A.M hence the appeal may dismissed.

5. Arguments heard. File Perused.

6. This Tribunal examined the facts and grounds mention in the memo of the appeal and the documents annex there to as well as the Para wise comments of the respondent department, and the arguments of the learned counsel for the parties in detail. ~~It appears from the perusal of the inquiry report conducted by the Assistant Commissioner Mardan that the opportunity of recording the statement of the witness in the presence of the appellant and their cross examination by the appellant was not given to the appellant.~~ Moreover the copy of the inquiry report as also not been

4

mention in the show cause notice therefore this Tribunal is convince that the same has not been provided to the appellant so he could challenge the same in his reply to the show cause notice. Only these Two (02) points ~~are sufficient for this Tribunal to reach to the conclusion that the appellant has not been given appropriate opportunity of defending himself against the charges leveled against him. As such this Tribunal~~ allowed the appeal with direction to the concern competent authority to conduct De-novo inquiry within Ninety (90) days positively on the receipt of this judgment. It is further added that the benefits as prayed by the appellant in his appeal may be subjected to the outcome of De-novo inquiry proceeding. Parties are left to bear their own costs. File be consigned to the record room.

(HAMID FAROOQ DURRANI)  
CHAIRMAN

(HUSSAIN SHAIH)  
MEMBER

ANNOUNCED  
21.05.2019

inquiry with show cause

CBR lay

Acquitted in criminal case

Appellant

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Copy of  
Summons

Appeal No. 1077/2019.

Date of Institution ... 22.08.2019

Date of Decision ... 13.01.2021

Waleed Mehmood, Ex-Constable Investigation Branch, District Hangu.  
... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others.  
... (Respondents)

Present.

Syed Numan Ali Bukhari,  
Advocate. ... For appellant

Mr. Muhammad Rashid,  
Deputy District Attorney, ... For respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN  
MR. ATIQ-UR-REHMAN WAZIR, ... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. Instant appeal has been preferred against the order dated 11.06.2019 passed by respondent No. 3, whereby, major penalty of dismissal from service was awarded to the appellant. The appellant is also aggrieved of order dated 29.07.2019, issued by the respondent No. 2. Through the order his departmental appeal was rejected.

2. The appellant joined the Police Department as Constable on 12.05.2015. It is claimed that he was on bed rest due to fracture in his leg when falsely implicated in FIR No. 380 dated 27.02.2019 u/s 381-A PPC. He was charge sheeted on the allegation of recovery of two motorcycles from his godown. The appellant submitted reply to the charge sheet and denied the ownership of



godown. Final show cause notice was issued to the appellant where-after the impugned order dated 11.06.2019 was passed. His departmental appeal also could not find favour and was rejected on 29.07.2019.

3. Learned counsel for the appellant as well as learned Deputy District Attorney, on behalf of the respondents, heard and available record gone through.

4. It was the argument of learned counsel that the allegation against the appellant was based solely on the factum of having been charged in criminal case. On the other hand, he was acquitted under section 249-A Cr.PC on 01.10.2019. Speaking about the illegalities committed by the respondents during the departmental proceedings, it was emphasized that no enquiry report was provided to the appellant alongwith show cause notice. He was of the view that mere allegations could not form basis for penalty also in view of principles of natural justice, which were part of every statute. Learned counsel also contended that the appellant was penalized on the basis of presumptions which was not allowable under the law. In support of his arguments learned counsel referred to judgments reported as PLD 1981-Supreme Court-186, 2007-SCMR-192, 2008-SCMR-1516, 2002-SCMR-579, PLD 2010-695, 1998-SCMR-1993, PLD 2003-Supreme Court-187 and 2002-PLC(C.S) 503. Judgments of this Tribunal in Service Appeals No. 666/2016 and 847/2017 were also relied upon.

Learned DDA, while attempting to dislodge the arguments from other side, firstly referred to paragraph-2 in the Parawise comments by the respondents. He contended that the stolen motorcycles were duly recovered from the godown of the appellant; therefore, the departmental proceedings were rightly initiated against him. He further argued that the acquittal in criminal proceedings had no bearing upon the merits of departmental proceedings,

therefore, the acquittal of appellant was to be disregarded in the instant case. He relied on 2007-SCMR-562 and 2006-SCMR-554. Decision in Service Appeal No. 1049/2015 was also referred to by him. It was the argument of learned DDA that all codal formalities were completed by the respondents in conducting proceedings against the appellant. The impugned orders were, therefore, not to be interfered with.

4. We have considered the available record in the light of arguments on behalf of the parties. On the record there is a copy of FIR dated 17.04.2019, wherein, the complainant Ziaul Haq did not charge anyone directly for theft of motorcycle(s). Needless to note, that the FIR was registered after about two months of the occurrence and upon recovery of incriminating articles. It was noted that the recovery was effected from the godown of the appellant. In the said context, it is important to note that no statement of any person from the locality, regarding the ownership of godown, was ever recorded. The respondents also failed to place on record any copy of the recovery memo in that regard. On the record, the appellant categorically denied the ownership/occupation of the godown and stated in his statement that the same was rented out to his uncle namely Wazir Khan son of Nasar Khan who paid the rent thereof. Wazir Khan was not included in the investigation proceedings, which was an act not very normal on the part of respondents.

5. We have also gone through the enquiry report dated 13.05.2019, wherein, interalia, it has been noted that had the appellant been innocent, he should have attempted to complete the trial and awaited the decision on merits. It is useful to iterate that the criminal proceedings/charge against the appellant was dropped u/s 249-A CPC. The view of enquiry officer, noted hereinabove, was based absolutely on conjectures and presumptions. The Enquiry Officer also

grudged the exercise of his legal-right by the appellant. He, therefore, could not be penalized in the matter by the competent authority.

6. The provision of copy of enquiry report alongwith the show cause notice has not been claimed by the respondents nor the stance of appellant in that regard is denied. Seeking guidance from 1987-SCMR-1562 and PLD-1981 Supreme Court-176, it is not unsafe to hold that the act on the part of respondents was fatal to the validity of orders passed against the appellant. The record is also silent regarding placing of appellant under suspension till the decision of criminal case. Thus the violation of CSR by the respondents is established through the record.

7. We are mindful of the fact that the charge against the appellant was squarely based on contents of FIR. The criminal proceedings ensuing there-from resulted in acquittal of appellant. In the said manner the substratum of departmental proceedings vanished, therefore, the impugned orders lost validity. The judgments reported as PLD-2003-Supreme Court-187, 2007-SCMR-192 and 2008-SCMR-1516 are respectfully followed in the above context.

8. For what has been discussed above, the appeal in hand is allowed and the appellant is reinstated into service with back benefits. The absence period of appellant, however, shall be treated as leave of the kind due. The parties are, however, left to bear their respective costs. File be consigned to the record room.

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

  
(HAMID FAROOQ DURRANI)  
CHAIRMAN

ANNOUNCED  
13.01.2021----

For Appellate

Complainant

SA

Appellant

Not seeing the record  
which is

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.

Appeal No. 1300/2015

Date of Institution... 19.11.2015

Date of decision... 26.12.2017

Khizar Hayat, Ex-Sub Inspector Police Lines, Peshawar. ... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

MR. Rizwanullah,  
Advocate.

For appellant.

MR. Kabecrullah Khattak,  
Addl. Advocate General

For respondents.

MR. NIAZ MUHAMMAD KHAN,  
MR. GUL ZEB KHAN,

CHAIRMAN  
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned  
counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service on 07.09.2015, against which he filed departmental appeal on 11.09.2015 which was rejected on 02.11.2015 and thereafter he filed the present service appeal on 19.11.2015. The allegations against the appellant were his connection with criminal professionals and terrorists etc. The allegations were based on a complaint filed by one Manzoor Hussain, Advocate. Prior to this complaint another complaint was also filed by one Azam Khan. The first enquiry was conducted on the basis of a complaint filed by Azam Khan and the



same was found baseless and not proved. The second enquiry was initiated on the basis of complaint of Manzoor Hussain, Advocate which culminated into present dismissal.

### ARGUMENTS

3. The learned counsel for the appellant argued that complainant was not examined nor the appellant was given any chance of cross-examining the complainant. That the enquiry officer has not recorded the statement of any witness except the appellant. That opinion of the enquiry officer is based on the report of some Intelligence Agency. That none from the Intelligence Agency was examined by the enquiry officer. That the record and material of the report of the Intelligence Agency were not provided to the appellant, nor he was given any chance to controvert the report of the Intelligence Agency. In this regard the learned counsel for the appellant relied upon a judgment reported in 2009-SCMR-605. That no penalty can be imposed on the basis of such enquiry. The learned counsel for the appellant relied upon certain judgments on the point that whenever any charge is levelled against a civil servant that must be proved through some evidence and in case of failure to adduce legal evidence the findings of the enquiry officer was termed as perverse and of no weightage. Reliance was placed on judgments reported as 1994-SCMR-418, 2003-PLC(C.S)759. The learned counsel for the appellant further relied upon a judgment reported as 2010-PLC(C.S)-435 on the point that heinousness or gravity of the charge alone is no ground for imposing penalty unless sufficient legal evidence is brought on record. The learned counsel for the appellant further relied upon judgments reported as 1980-SCMR-850 and 2003-SCMR-1140 on the point that reports of the Intelligence Agency are not

sufficient for imposition of penalty unless same are subjected to scrutiny under the law and are made part of the record by giving full right to the accused to cross examine the witnesses.

4. On the other hand, the learned Addl. Advocate General argued that the charges against the appellant are heinous in nature. That the enquiry officer in his findings had given reasons of involvement of his bodyguards in murders, extortion of money and linkage with smugglers. That all the requirements of due process were fulfilled in the enquiry proceedings.

### CONCLUSION

5. Admittedly, the enquiry officer has recorded the statement of appellant only and nobody else. His total reliance is on the reports of some Agency which have not been supplied to the appellant nor he was given chance to controvert the same. Such enquiry reports have not been approved by the settled jurisprudence on the subject and some of the judgments pressed into service by the learned counsel for the appellant as referred to in his arguments part above. Mere examination of the appellant without any admission or confession cannot be made ground of penalty to the appellant. Mere heinousness or gravity is no ground for penalty unless it is proved as held in a judgment relied upon by the learned counsel for the appellant as discussed above. The proper course for the enquiry officer was to have had examined the complainant, other witnesses mentioned in the report of Intelligence Agency and then to have had given the chance of cross-examining those witnesses by the appellant. No copy of the enquiry report was supplied to the appellant. All these violations are of due process and the penalty cannot be sustained on the basis of such proceedings.

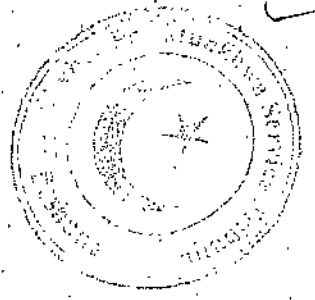
6. As a sequel to the above discussion, the appeal is accepted and the department is directed to hold denovo proceedings against the appellant in accordance with law within a period of ninety days of receipt of copy of this judgment, failing which the appellant shall be reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No. 1035/2012

Date of Institution 18.09.2012

Date of Decision 13.09.2017



Under appeal  
Appellant

Robina Syed, Ex-PST, Government Girls Primary School,  
Ward No.1 Takht Bhai District Mardan.

(Appellant)

VERSUS

1. Secretary, Elementary & Secondary  
Peshawar, and 2.others.

Education, Khyber Pakhtunkhwa  
(Respondents)

MR. SYED NOMAN ALI BUKHARI,  
Advocate

For appellant.

MR. MUHAMMAD ADEEL BUTT,  
Additional Advocate General

For respondents.

MR. AHMAD HASSAN,  
MR. MUHAMMAD HAMID MUGHAL

MEMBER (Executive)  
MEMBER (Judicial) Service Tribunal  
Peshawar

JUDGMENT

AHMAD HASSAN. MEMBER.-

Arguments of the learned counsel for the

parties heard and record perused.

FACTS

2. The brief facts are that the appellant was appointed as PST in 1988. That in 1999 due to domestic problems, the appellant applied for Earned Leave for one year. Her application was properly processed and informed that leave was sanctioned. That the said leave was accordingly extended till 2003. After completion of the leave, the appellant joined her duty at her previous place of posting. The appellant performed duty at the same school from 01.01.2003 to 28.02.2003. She was informed that service record of the appellant was not available in the office of District Education officer, and another teacher had been appointed against the post of the appellant. That there-after the inquiry

Committee was constituted and upon conclusion of inquiry, major penalty of removal from service was imposed impugned order dated 18.06.2012 against which the appellant preferred a departmental appeal but was not responded within the statutory period, hence, the instant appeal.

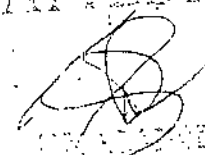
### ARGUMENTS

3. The Learned Counsel for the appellant argued that due to some domestic problems she applied for 365 days Earned Leave and was informed that leave had been sanctioned. There-after extension was granted in leave upto 2003. On expiry of leave she reported for duty at GGPS Ward No. 1 Takht Bhai. She continued to perform duty in the above school from 01.01.2003. to 28.02.2003. Afterwards the appellant was informed that her service record was not available in the office of EDO District Mardan and another <sup>teacher</sup> had been appointed against the post occupied by her. That an enquiry was conducted and upon culmination major penalty of removal from service was imposed on her vide impugned order dated 18.06.2012. On the one hand the Headmistress as well as the enquiry committee admitted that she performed duty upto 08.09.1999 while in the impugned order she had been shown absent w.e.f 27.01.1999. Enquiry was not conducted in the mode and manner prescribed in the rules. She was not afforded opportunity of cross examining the witnesses. Copy of enquiry report was not annexed with the show cause notice served on the appellant.

4. On the other hand the Learned Additional Advocate General argued that the appellant remained absent willfully and after conducting enquiry major penalty of removal from service was imposed on her. Letter through which leave was sanctioned later on proved as fake. All codal formalities were completed before imposition of penalty.

### CONCLUSION

ATTESTED

  
Sd/-  
Secretary,  
District Mardan,  
Fazlana

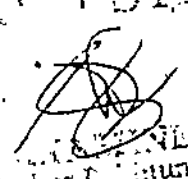
was sanctioned later on proved as fake. All codal formalities were completed before imposition of penalty.

### CONCLUSION

5. Careful perusal of record reveals that on account of willful absence from duty disciplinary proceedings were initiated against the appellant and upon conclusion major penalty of removal from service was imposed on her vide impugned order dated 18.06.2012. Without adverting to factual controversies, inquiry proceedings were not conducted in the mode and manner prescribed in the rules. Charge sheet and statement of allegations served on the appellant were without any date. Inquiry was conducted in questionnaire form in violation of judgments of superior courts. Neither witnesses were produced nor appellant was afforded an opportunity to cross examine those who deposed against her. She was also not afforded opportunity of personal hearing. Similarly, at the time of serving show cause notice on the appellant a copy of inquiry report was not annexed with it. Show cause notice is also silent about the rules under which it was issued. Hence, procedure prescribed in the rules was violated. Impugned order was passed under the repealed laws, hence, is void ab-initio. As such opportunity of fair trial and due process was denied in the case in hand. The appellant was condemned unheard.

6. In view of the fore-going, the instant appeal is accepted. The impugned order dated 18.06.2012 is set aside and the appellant is reinstated to service.

The respondents are at liberty to conduct *de-novo* inquiry in accordance with law. Since it is not disputed that the appellant has not performed duty from 09.09.1999 to 01.01.2003. Plea of the appellant is she applied for leave for the said period and was informed about sanction of leave, but learned counsel for

ATTESTE  
  
 MEMBER  
 Service Tribunal  
 Ferozshah

the appellant was unable to substantiate the plea that leave was sanctioned in favour of the appellant for the said period. Afterwards the appellant was not adjusted in any school. Moreover, the appellant also approached this Tribunal belatedly in the year 2012. Consequently instant appeal has been accepted on technical grounds. Hence, this Tribunal is of the view that the appellant is not entitled for financial back benefits for the period she did not perform duty. However in case *de-novo* inquiry is conducted against the appellant the issue of payment of financial back benefits to the appellant shall be dependent upon the outcome of the *de-novo* inquiry. Parties are left to bear their own costs. File be consigned to the record room.

SD/- Ahmad Hassan, Member  
 SD/- M. Harish Mehra, Member

MEMBER

ANNOUNCED  
 13.09.2017

Certified to be true copy

*[Signature]*  
 Secretary  
 State Tribunal,  
 Patna

Date of Presentation of Petition 09-10-17  
 Number of Pages 1600  
 Copying Fee 10  
 Urgent 2  
 Total 12  
 Name of Petitioner [Signature]  
 Date of Filing 09-10-17  
 Date of Disposal 09-10-17