

28.04.2023


Junior to counsel for appellant present counsel.

Muhammad Jan, learned District Attorney for respondents present.

Learned Member Executive (Mr. Muhammad Akbar Khan) is on leave, therefore, case is adjourned. To come up for arguments on 15.05.2023 before D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


Muazem Shah


(Rozina Rehman)
Member (J)

4th Nov. 2022

Lawyers are on strike today.


To come up for arguments on 15.12.2022 before the D.B. Office is directed to notify the next date on the notice board as well as the website of the Tribunal.



(Fareeha Paul)
Member(E)


(Kalim Arshad Khan)
Chairman

15.12.2022

Due to general strike of the Bar, case is adjourned to 27.01.2023 before D.B. Office is directed to notify the next date on notice board as well as the website of the Tribunal.


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

27-1-23

Proper DB is not available
Therefore case is adjourned to
28-4-2023


Reader

12.01.2022

Due to non-availability of the concerned DB, the case is adjourned to 25.04.2022 for the same before D.B.


Reader

25th April, 2022

Junior to counsel for the appellant present. Mr. Kabirullah Khattak Addl. AG for the respondents present.

Junior to counsel for the appellant requested for adjournment on the ground that senior counsel is not available today. Last opportunity is granted subject to cost Rs. 5000/-. To come up for arguments before the D.B on 09.06.2022.


(Fareeha Paul)
Member (E)


Chairman

17th Oct., 2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Learned counsel for the appellant requests for adjournment in order to further prepare the brief. Last opportunity is granted. To come up for arguments on 04.11.2022 before D.B.


(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman


09.06.2022

Counsel are
informed for
the date fixed
30/08/22

Nemo for the appellant. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Notice for prosecution of the appeal be issued to the appellant as well as his counsel through registered post and to come up for arguments on 30.08.2022 before the D.B.



(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

30.08.2022

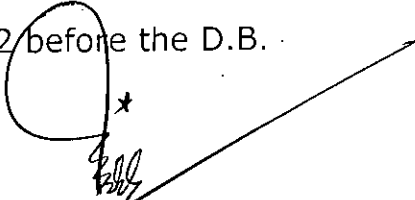
Bench is incomplete, therefore, case is adjourned to 15.09.2022 for the same as before.

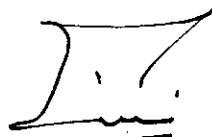

Reader


15.09.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 17.10.2022 before the D.B.


(Mian Muhammad)
Member (Executive)

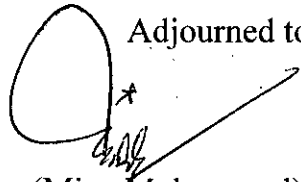

(Salah-Ud-Din)
Member (Judicial)

27.11.2020

Counsel for the appellant present. Additional: AG for respondents present.

Former states that it is a time consuming case and it would be appropriate to post it on a day other than Friday. The request of learned counsel appears to be reasonable, therefore, the instant matter is adjourned.

Adjourned to 15.02.2021 for arguments before D.B.



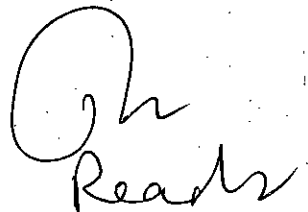
(Mian Muhammad)
Member (E)



Chairman

15-02-2021

Due to pandemic of Covid-19, the case is adjourned to 24-05-2021 for the same.



24.05.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 01.09.2021 for the same as before.



Reader


1-9-21

Due to non availability of D.B to come up for the same on 12-1-22



27.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 18.08.2020 before D.B.



Reader

18.08.2020

Due to summer vacations, the case is adjourned to 20.10.2020 for the same.



Reader

20.10.2020

Appellant in person and Addl. AG for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned to 27.11.2020 for hearing before the D.B.



(Mian Muhammad)
Member



Chairman

13.12.2019

None for the appellant present. Addl: AG for respondents present. Due to general strike of the bar, the case is adjourned. Adjourned. Case to come up for arguments on 07.02.2020 before D.B.


Member


Member

07.02.2020

Appellant with counsel present. Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 13.03.2020 before D.B.


Member


Member

13.03.2020

Imad Ahmad appellant in connected service appeal on behalf of appellant present. mMr. Zia Ullah learned Deputy District Attorney present. Appellant seeks adjournment as his counsel is not available. Adjourn. To come up for arguments on 27.04.2020 before D.B.


Member


Member

11.10.2019

Appellant in person and Mr. Usman Ghani, District Attorney for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned to 07.11.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

07.11.2019


Appellant in person present. Mr. Ziaullah, Deputy District Attorney for respondents present. Appellant seeks adjournment on the ground that his learned counsel was busy before the Peshawar High Court, Peshawar. Adjourn. To come up for arguments on 15.11.2019 before D.B.


Member


Member

15.11.2019

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 13.12.2019 for arguments before D.B.


(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

01.07.2019

Junior counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar and cannot attend the Tribunal today. Adjourned to 22.07.2019 for arguments before D.B.



(HUSSAIN SHAH)
MEMBER



(M. AMIN KHAN KUNDI)
MEMBER

22.07.2019

Learned counsel for the appellant present. 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 19.09.2019 before D.B.



(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

19.09.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 11.10.2019 before D.B.



Member



Member

15.04.2019

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 06.05.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

06.05.2019

Counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present.

Counsel for the appellant requests for adjournment due to over occupation in many cases today.

Adjourned to 11.06.2019 for arguments before D.B.


Member


Chairman

11.06.2019

Counsel for the appellant and Mr. Muhammad Jan, DDA for the respondents present.

Learned counsel for the appellant requests for adjournment due to his engagement in various cases today.

Adjourned to 01.07.2019 for arguments before the D.B.



Member


Chairman

12.12.2018


Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourn. To come up for arguments on 30.01.2019 before D.B.


Member


Member

30.01.2019

Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 13.03.2019 before D.B.


Member


Member

03.03.2019

Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Clerk to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not available. Adjourn. To come up for arguments on 15.04.2019 before D.B.


Member


Member

Service Appeal No. 06/2016

01.08.2018

Appellant with counsel and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 10.10.2018 before D.B.


(Ahmad Hassan)
Member (E)


(Muhammad Hamid Mughal)
Member (J)

10.10.2018

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Naraish Kumar Senior Clerk present. Learned counsel for appellant seeks adjournment as counsel for appellant is not in attendance. Adjourn. To come up for arguments on 26.11.2018 before D.B.


Member


Member

26.11.2018

Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 12.12.2018 before D.B.


Member


Member

09.05.2018.

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for the same on 24.5.2018.


Reader

24.05.2018 Clerk of the counsel for appellant and Addl: AG for the respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 12.06.2018 before D.B.



(Muhammad Amin Khan Kundi)
Member

12.06.2018 Appellant in person and Mr. Zia Ullah, learned Deputy District Attorney present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 12.07.2018 before D.B



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

12.07.2018

Clerk of the counsel for appellant present. Mr. Usman Ghani, District Attorney for the respondents present. Arguments could not be heard due to general strike of Bar Council of Pakistan on account of killing of a lawyer Barrister Haroon Bilour in a suicide attack during the election campaign. To come up for arguments on 01.08.2018 before D.B.


Member


Chairman

08.1.2018

Counsel for the appellant and Addl. AG alongwith Abdul Haleem, Assistant for the respondents present. Counsel for the appellant seeks adjournment. To come up for arguments on 30.1.2018 before the D.B.

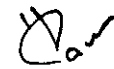

Member


Chairman

30.01.2018

Clerk of the learned counsel for appellant and Mr. Riaz Ahmed Pinda Kheil, Assistant AG alongwith Mr. Abdul Haleem, Assistant for the respondents present. Clerk of the learned counsel for appellant seeks adjournment as learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 19.02.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member (J)


(Muhammad Hamid Mughal)
Member (J)

19.02.2018


Due to non availability of D.B. Adjourned. To come up on 23.04.2018 before D.B.


(Gul Zeb Khan)
Member

23.04.2018

Learned counsel for the appellant and Mr. Muhammad Jan, Learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 09.05.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

15.08.2017

Counsel for the appellant and Asstt. A.G alongwith Noor Wazir, SO (Litigation) for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 13.09.2017 before the D.B. *The restraint order shall continue.*


Member


Chairman

13.09.2017

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. The learned Member Executive, Mr. Gul Zeb Khan is on leave therefore, arguments could not be heard. Adjourned. To come up for arguments on 12.10.2017 before D.B. The restraint order shall continue.


Chairman

12.10.2017


Junior to counsel for the appellant and Mr. Muhammad Jan, DDA for the respondents present. The learned counsel for the appellant is not in attendance. Seeks adjournment. Granted. To come up for arguments before the D.B on 22.11.2017.


Member


Chairman

22.11.2017 Appellant with counsel present. Mr. Muhammad Jan, Deputy District attorney for the respondents present. Counsel for the appellant submitted rejoinder which is placed on file and requested for adjournment. Adjourned. To come up for arguments on 08.01.2018 before D.B.


(Gul Zeb Khan)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

06/2016

23.05.2017

Mr. Khaled Rehman, Advocate submitted Wakalatnama on behalf of the appellant and requested for adjournment. Wakalatnama placed on record. Mr. Abbas, Junior Clerk alongwith Mr. Ziaullah, Deputy District Attorney for the respondents also present. Adjourned. To come up for arguments on 20.06.2017 before D.B. The restraint order shall continue.



(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

20.06.2017

Counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondents present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 21.07.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

21.07.2017

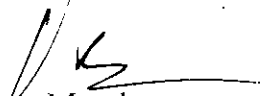
Clerk of the counsel for appellant present. Mr. Noor Wazir, SO (litigation) alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 15.08.2017 before D.B. The restraint order shall continue.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

24.01.2017

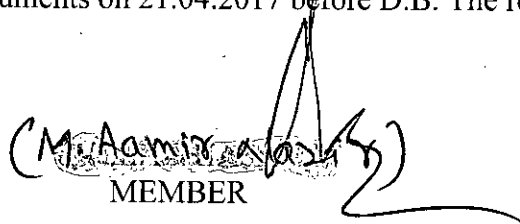
Agent of counsel for the appellant and Assistant A.G for the respondents present. Counsel for the appellant is stated busy before the august Supreme Court of Pakistan. Requested for adjournment. To come up for final hearing before the D.B on 13.3.2017. The restraint order shall continue.

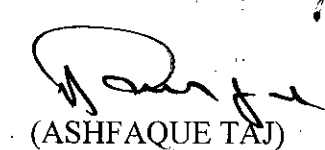

Member


Chairman

13.03.2017

Mr. Yasir Saleem, learned counsel for appellant and Mr. Noor Wazir, Superintendent (litigation) alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Learned counsel for appellant requested for adjournment. Adjournment granted. To come up for arguments on 21.04.2017 before D.B. The restraint order shall continue.


(M. Amir)
MEMBER



(ASHFAQUE TAJ)
MEMBER

21.04.2017

Appellant alongwith his counsel present. Mr. Usman Ghani, Senior Government Pleader for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 23.05.2017 before D.B. The restraint order shall continue.




(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

04.11.2016

Mr. Saleem Abdullah, Advocate, junior to counsel for the appellant and Mr. Saleem Shah, Sudpt alongwith Mr. Muhammad Jan, GP for respondents present. Junior to counsel for the appellant requested for adjournment as his senior counsel was busy before the Hon'able Peshawar High Court, Peshawar. Adjournment granted. To come up for arguments on 26.12.2016. The restraint order shall continue.


(PIR BAKHSH SHAH)
MEMBER


(ABDUL LATIF)
MEMBER

26.12.2016

Clerk to counsel for the appellant and Mr. Salim Shah, Supdt. alongwith Mr. Ziauallah, GP for respondents present. Arguments could not be heard due to incomplete bench. Case adjourned to 24.01.2017 for arguments before D.B. The restrain order shall continue.


Chairman

02.06.2016

Counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Addl: AG for respondents present. Learned counsel for the appellant requested for adjournment. Adjourned for arguments to 28.7.16 before D.B. The restraint order shall continue.

MEMBER

MEMBER

28.07.2016

Agent to counsel for the appellant and Mr. Saleem Shah, Superintendent alongwith Mr. Ziaullah, GP for the respondents present. Member copy of the appeal is not available on file. Directed to submit the same on or before the next date of hearing. To come up for arguments on 23.8.16 before D.B. The restraint order shall continue.

MEMBER

MEMBER

23.08.2016

MEM: Agent to counsel for the appellant and Mr. Saleem Shah, Superintendent alongwith Mr. Muhammad Jan, GP for respondents present. Rejoinder on behalf of the appellant submitted and requested for adjournment. Copy of rejoinder also handed over to learned GP. To come up for arguments on 23-9-16 before D.B. The restraint order shall continue.

Member

Member

23.09.2016

Appellant in person and Addl: AG for respondents present. Appellant requested for adjournment due to general strike of the Bar. Adjournment granted. To come up for arguments on 04.11.2016. The restraint order shall continue.

Member

Member

22.03.2016


Appellant with counsel and Mr. Saleem Shah, Supdt. alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 21.4.2016. The restraint order shall continue.


Chairman

21.04.2016

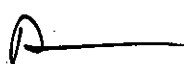
Counsel for the appellant and Mr. Gul Nawaz, Senior Clerk alongwith Addl: AG for respondents present. Rejoinder not submitted and requested for further time. To come up for rejoinder and arguments on 1-6-16. The restraint order shall continue.


MEMBER


MEMBER

01.06.2016

Counsel for the appellant and Mr. Muhammad jan, GP for the respondents present. Counsel for the appellant stated before the Court that similar nature of appeal No. 6/2016 titled Muhammad Shoukat-vs-Govt. of Khyber Pakhtunkhwa which is fixed for today before the Bench-II. Since the Hon'able Bench-II passed an order to put up the above mentioned appeal before the worthy Chairman for further order, therefore, the instant appeal may also be put up before the worthy Chairman on 02.06.2016.


Member


Member

ordin

Be placed before Bench I today

02.06.16

05.01.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Sub-Engineer in C & W Department when subjected to inquiry on the allegations of appearing as a witness but not properly defended the interest of the state in a civil case and vide impugned order dated 29.9.2015 penalty in the shape of reduction in time scale of pay by three steps for three years and recovery of Rs. 774116/- was imposed against the appellant where-against he preferred departmental appeal on 13.10.2015 which was rejected on 4.12.2015 and hence the instant service appeal on 4.1.2016.

Appellant Deposited
Security & Process Fee

That the appellant was a record witness and not found involved in giving any concessional statement in Court and that the inquiry officer proposed censure to all concerned while in the show cause notice penalty in the shape of reduction in time scale was tentatively proposed while the penalty of recovery was also imposed without any mention of the same in the show cause notice. That the appellant is innocent and the findings are against facts and law.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 11.2.2016 before S.B. Till then no recovery shall be made from the appellant.

Chairman

11.02.2016

Counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 22.3.2016 before S.B. The restraint order shall continue.

Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 06/2016

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 01.01.2016 | <p>The appeal of Engineer Muhammad Shaukat presented today by Mr. Ijaz Anwar Advocate be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p><i>[Signature]</i> REGISTRAR</p> |
| 2 | 04-01-2016 | <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>05-1-16</u>.</p> <p><i>[Signature]</i> CHAIRMAN</p> |

SCANNED
KFST
Peshawar

10

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2015

Muhammad Shaukat O/O XEN C&W Division Shangla.
(Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa Civil Secretariat Peshawar and others.
(Respondents)

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| 4 | Copy of the enquiry report | C | 15-23 |
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Through


Appellant

(IJAZ ANWAR)
Advocate, Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. _____/2015

Muhammad Shaukat O/O XEN C&W Division Shangla.
(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa Communication & Works Department Civil Secretariat Peshawar.
3. Chief Engineer (Centre) Communication & Works Department Khyber Pakhtunkhwa Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 29.9.2015 whereby the appellant has been awarded the major punishment of reduction of time scale of pay by three stages for three years besides recovery of alleged pecuniary loss of Rs. 774116 against which the departmental appeal dated 13.10.2015 has been regretted vide order dated 4.12.2015 communicated to the appellant on 8.12.2015.

Prayer in Appeal: -

On acceptance of this appeal the orders dated 29.9.2015 & final order dated 4.12.2015 may please be set aside and the appellant may please be restored to his original position with all back benefits.

Respectfully Submitted:

1. That the appellant is serving as Sub Engineer in the C&W department, and is presently posted in C&W Division Shangla. It is pertinent to mention here that ever since my appointment the appellant performing his duties as assigned with great zeal and devotion and without there being complaint regarding my performance.

2. That An ADP Scheme No. 28/80448 (2008-09) up-gradation of 100 Middle Schools to High Level (B&G) on need basis in Khyber Pakhtunkhwa was reflected in the ADP for the year 2008-09. Up-gradation of Govt. Middle School Shangla TOP was part of this Umbrella Scheme. The Govt. Contractor started the work as per direction of the officer/official of Works & Services Department and subsequently payments were made to the Contractor as per Govt. procedure and policy. The contractor received the payment up to 4th Running bill according to his measured work done at site. There was no dispute in between the department and contractor up to 4th running bill. The department measured the contractor work done up to the 5th running bill and the total amount of work done comes to Rs. 10376880.00 the measurement of 5th running bill was carried on 10.5.2011. Due to less funds available with the Divisional Office an amount of Rs. 2032000.00 were paid to the contractor on 30.6.2011 and an amount of Rs. 3866360.00 was withheld from the 5th running bill and the scheme was carried over to the next financial year. After June, 2011 some damages were noticed by the department due to land sliding in the vicinity of the project area. The department re-measured the whole work in the 6th running bill and deducted an amount of Rs. 1548233.00 from already withheld amount of contractor in 5th running bill i.e Rs. 3866360.00 and contractor bill reduced from Rs. 10376880.00 to Rs. 8828847.00.
3. That since the contractor was not happy due to withholding of the amount, therefore, he filed a civil suit for the recovery in the court of Senior Civil Judge Shangla on 25.06.2012. which was decided in favour of the Contractor vide order dated 27.07.2013, thereafter appeals filed in the Honourable High Court/Darul Qaza Swat and Supreme Court of Pakistan by the Government /C &W Department were also dismissed vide judgment and orders dated 10.07.2014, and 04.05.2015, respectively. However, the Honorable Supreme Court, has also directed that the case has since not been presented/defended properly by the department in the Lower Court, therefore, disciplinary action may be taken against the concerned officials/DWs.
4. That the appellant since appeared as defendant witness (DW) in the court at the lower forum, therefore, the appellant was served with the charge sheet, containing certain baseless and unfounded allegations so leveled are reproduce below:

- i. *That you admitted the claim of the contractor as correct during cross examination in the Court*
- ii. *Your statement regarding the correctness of the contractor claim clearly shows your slackness and inefficiency resultantly the Government petition dismissed by the Supreme Court of Pakistan*
- iii. *You badly failed in the defense of Government interest due to which the Govt exchequer is being sustained huge loss, besides a poor show on the part of C&W Department in the eye of Supreme Court of Pakistan”*

The appellant duly replied the charge sheet and refuted the allegation leveled against him as false and baseless. (Copies of the Charge sheet & Statement of allegation & reply are attached as Annexure A & B)

5. That a an inquiry committee was also constituted to probe into the matter, however without properly associating the undersigned with the inquiry proceedings, the inquiry committee conducted the inquiry in a hasty manner and submitted its report wherein besides certain other recommendations, only censure or any other appropriate disciplinary proceedings were recommended against the undersigned and other officials. (Copy of the enquiry report is attached as Annexure C)
6. That though the appellant was only recommended for censure by the inquiry committee, however when show cause notice was issued, in this regard of the recommendation of the inquiry, major penalty of reeducation of time scale of pay by three stages for three years was proposed. The show cause notice was communicated to the appellant vide letter dated 17.09.2015. (Copy of the show cause notice is attached as Annexure D)
7. That the appellant duly submitted the detailed reply to the show cause notice wherein besides denying the allegation, appellant also explained my position in detail, thereafter though a personal hearing notice was issued on 02.10.2015, however no proper personal hearing was allowed to the undersigned. (Copies of the reply to the show cause notice and the personal hearing notice are attached as Annexure E)
8. That without considering defense reply the appellant has been awarded the major punishment of time scale of pay by three stages for three years and recovery of Rs. 7,74,116, vide the impugned order dated 29.9.2015. (Copy of the order dated 29.9.2015 is attached as Annexure F)

9. That the appellant submitted his departmental appeal dated 13.10.2015 against the order of penalty, however it was regretted vide order dated 4.12.2015 communicated to the appellant on 8.12.2015. (Copies of the departmental appeal and regret letter are attached as Annexure *G-11*)
10. That the penalty so imposed upon appellant is illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

GROUND OF APPEAL

- A. That the appellant has not been treated in accordance with law hence my rights secured and guaranteed under the law are badly violated.
- B. That no proper procedure has been followed before awarding me the penalty, no proper inquiry has been conducted, appellant have not been properly associated with the inquiry proceedings, statement of witnesses if any were never recorded in the presence of appellant nor appellant have been allowed opportunity of personal hearing thus the whole proceedings are defective in the eye of law.
- C. That the appellant have not been allowed proper opportunity of personal hearing thus appellant have been condemned unheard.
- D. That during the inquiry no witness has been examined of if so examined, neither his statement has been recorded in my presence nor the appellant have been allowed opportunity to cross examine those witnesses who may have deposed against appellant.
- E. That the charges leveled against appellant were never proved during the inquiry proceedings, the inquiry officer gave its findings on surmises and conjunctures.
- F. That the penalty of recovery of Rs.7,74, 116/- has also wrongly been imposed upon the appellant, neither in the show cause notice the said amount was mentioned nor it was proposed by the inquiry committee.
- G. That it was alleged that "*You admitted the claim of the contractor as correct during cross examination in the court*" In this regard it is submitted that the appellant had not admitted the claim of the contractor as correct during the cross examination in the court but since appellant was not the SDO In-charge, who had supervised, made expenditure, and completed the scheme as well as submitted the written reply on behalf of the government, once the contractor sued against the government, the appellant only appeared as witness on the orders of the then Executive Engineer because of the absence of the SDO In-charge, recorded statement of appellant according to the

factual position of the site and in the light of available records in the department which the appellant could not have denied/concealed. (Annex-I, Vouchers of the 5th & 6th Running Bills and the written reply of the Government in the court case bearing the signs of the concerned SDOs). It is further added that during cross examination of the appellant in the court, he had submitted an application to the court to summon the concern officials of the C&W Department who were well versed with the case owing to which the court summoned Sub-Engineer Shaukat from the District Torghar (Sub-Engineer Shaukat was posted to District Torghar at that time).

- H. That it has been further alleged that *“Your statement regarding the correctness of the contractor claim clearly shows your slackness and inefficiency, resultantly the government petition dismissed by the Supreme Court of Pakistan.”* As stated above, since statement of the appellant was based on the available records of the case so the appellant had not shown any slackness and inefficiency in the defense of the government interest as far as the dismissal of the government petition in the apex court is concerned; the appeal was refused by the court because it had not been properly produced/prepared before the Apex Court (reference to Clause 29 and 25 of the contract agreement had not been made in the respondent’s claim), owing to which a fact finding inquiry had already been in the process against the officials at fault vide No. SOE/C&WD/8-5-2015 dated: 6-4-2015.
- I. That it has also been alleged that *“You badly failed in the defense of government interest due to which the government exchequer is being sustained huge loss, besides a poor show on the part of C&W Department in the eye of Supreme Court of Pakistan.”* Since written reply on behalf of the department was submitted by the then SDO Yasir Jadoon moreover the appellant had not incurred any expenditure in the construction of the said school (all the expenditure had been made by SDO Shah Nawaz), so the appellant didn’t fail in the defense of the government interest and subsequent loss to the government exchequer, as far as the loss of dignity of the department in the eyes of the apex court is concerned; so it is stated that the case was produced before the Supreme court vide RFA NO. 83-M/2013 dated: 10.07.2014 after the transfer of appellant from District Shangle to the Office of Chief Engineer Center as SDO (E&M) vides Order No. SOE/C&WD/4-7/2014, so how could appellant be held responsible/accounted for the poor show of C&W Department in the eye of Supreme Court of Pakistan.

- J. That in contrary to the inquiry report findings at Sr. # 9, it is stated that the appellant have not shown any laxity or negligence while defending the case because the appellant have duly attended the court in time as per the orders/summon of the court Notice and concerned officers and recorded my statement as per factual positions and available departmental records, whenever it was required.
- K. That the appellant have never recorded statement in favor of contractor's claim, neither in my examination in chief nor in my cross examination, statement of the appellant recorded in the court is based on actual facts know to him and the available record without any concealments. As any concealment from the court constitutes criminal offence.
- L. That neither the written statement on behalf of the department was prepared by the appellant, nor the appellant was the signatory of the same, therefore if the case is not presented properly at the initial stages on behalf of the department, how can be the undersigned held responsible for the same only on the basis of recording statement in the court according to available record.
- M. That the base of every case/ proceedings in the court is formed on the pleadings of the parties to the case/proceedings, i.e. plaint and written statement and it is also established principle of law that parties cannot go beyond their pleadings. As is observed by the inquiry committee that it was the responsibility of the Executive Engineer, Divisional Accountant and Head Clerk with consultation with the government pleader to prepare proper Jawab Dawa / written statement mentioning all factual and legal positions. Hence the appellant cannot be held responsible for the acts/ omissions of others.
- N. That it was the responsibility of the then defending officers to file the case/written in lower court in the first instance on correct lines in pursuance of the relevant clauses of Contract agreement, however nothing was mentioned in the pleadings/written statement regarding the relevant clauses of the contract agreement, therefore responsibility for the same cannot be fixed on the undersigned.
- O. That with utmost respect it is submitted that the inquiry committee has not conducted the inquiry in accordance with law and rules. The procedure prescribed under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 has not been followed during the inquiry. The inquiry committee itself admitted in the inquiry report that proper/relevant material has not been presented in the inquiry, thus the inquiry so conducted is defective in the eye of law and findings based on such defective proceedings have no legal

support as a single iota of evidence has not been brought on record to fix responsibility upon me of the alleged charges.

- P. That the inquiry committee did not associate me properly with the inquiry proceedings. Not a single witness has been examined during the enquiry, or if so examined, neither their statements has been recorded in my presence nor the appellant have been given opportunity to cross examine those who may have said anything against me during the inquiry.
- Q. That the report of the inquiry committee is self contradictory as at the one hand in para-14 it admits the fact that the case was not properly presented at the initial stage in the court i.e proper Jawab-e-Dawa was not presented in the court, while at the other hand it fixes responsibility on the undersigned, ignoring the fact that the undersigned was neither the signatory of the jawab-e-dawa, nor had he prepared the same.
- R. That similarly Para-13 of the inquiry report wherein the inquiry committee has observed that the statements recorded by Imad Ahmad, Sub Divisional Officer i.e the undersigned and Muhammad Shaukat Sub Engineer, in the lower court is also dubious, which is the direct denial of the first charge leveled against the undersigned i.e admission of the claim of the contractor.
- S. That Para 9 to 16 of the inquiry report are self contradictory and confusing, a careful reading of the same would suggest that the inquiry report is ambiguous and general in nature, and has not reached to a definite conclusion. Moreover the recommendations are also vague and not clear.
- T. That it has also been admitted by the inquiry committee in its report that deduction in payment for damaged work from the contractor was rightly made and endeavor was made to save the Govt. Exchequer from loss, thus their arise no question that the appellant would admit the claim of the contractor in the court when it has rightly been done by the department. Moreover this Para also show contradictions in the inquiry as at one hand the efforts of the department have been appreciated while on the other hand the appellant have been recommended for penalty.
- U. That the appellant have been discriminated against as other senior officials on whose shoulders, responsibility was though fixed by the inquiry committee have let free and no disciplinary action has been taken against them.

- V. That the appellant have never committed any act or omission which could be termed as misconduct, the appellant have duly performed my duties as assigned with full devotion, zeal and loyalty. Statement of the appellant recorded in the court was based on available record hence cannot be termed as admission of the claim of the contractor.
- W. That the charges leveled against the appellant were neither attributable to the appellant nor any proof/ evidence has been brought before the inquiry committee that could associate the undersigned with the alleged charges, as such the charges remained unproved during the inquiry. Throughout the findings of the inquiry committee, it has not been mentioned nor proved that the appellant have admitted the claim of the contractor as correct which is the operative part of the charge sheet. Moreover in their findings, the inquiry committee has stated that the case was lost by the department owing to the reasons that it has not been properly produced before the court (i.e. Reference to the Clause #25 and 29) had not been made in the written reply, whereas the inquiry committee itself admitted the fact that preparation of Written reply from the department is the duty of the Executive Engineer, Divisional Accountant and Head clerk in consultation with the Government Pleader, as the written statement was neither prepared by me nor the appellant signed the same, therefore how could the undersigned be made to suffer for the acts and omissions which are not committed by the appellant.
- X. That the appellant has at his credit an unblemished and spotless service career at his credit, during entire service career of the appellant he has never given any chance of complaint whatsoever regarding his performance. The appellant always preferred the interests of the Government/Department over and above my personal interests. The penalty imposed upon me is too harsh and is a stigma on my bright and spotless service career.
- Y. That it is pertinent to point out here that it later transpired that the proceedings have been initiated on the direction of the Supreme Court, however the allegations were not enquired independently but simply compliance to the orders were made, awarding the penalty unnecessarily to the appellant.

Z. That the Appellant seeks the permission of this Honourable Court to rely on additional grounds at the hearing of this appeal

It is, therefore, humbly prayed that On acceptance of this appeal the impugned order No. SOE/C&WD//8-16/2015, dated 29.09.2015 & the final order dated 4.12.2015 may kindly be set aside and pay of the appellant may very kindly be restored to its original position i.e before the imposition of penalty with all back/ consequential benefits.

Through

m/s SEE
Appellant

IJAZ ANWAR
Advocate Peshawar

AFFIDAVIT

I, **Muhammad Shaukat** O/O XEN C&W Division Shangla, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.

m/s SEE
DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. ____/2015

Muhammad Shaukat O/O XEN C&W Division Shangla.
(Appellant)

VERSUS

Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa Civil Secretariat Peshawar and others.
(Respondents)


**Application for the maintenance of status quo
and staying recovery from the pay of the
appellant till the decision of the above noted
Appeal**

Respectfully Submitted:

1. That the appellant has filed today the above noted appeal in this Honourable Tribunal in which no date of hearing has been fixed so far.
2. That the facts and ground mentioned in the accompanied appeal may be read as integral part of this application.
3. That the applicant has got a good prima facie case and there is likelihood of it success.
4. That the applicant would be exposed to great hard ship and inconvenience in case the order is not suspended or is implemented.
5. That till date no recovery has been started from the pay of the appellant.
6. That it will also serve the interest of justice if the order impugned is suspended till the final decision of the appeal.

It is, therefore, prayed that on acceptance of this application the respondents may please be restrained from effecting recovery from the pay of the appellant and maintenance of status quo till the decision of the appeal.

Through

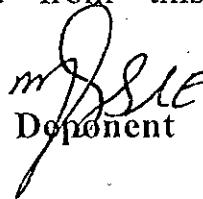

Applicant

IJAZ ANWAR
Advocate, Peshawar
&

SAJID AMIN
Advocate, Peshawar

AFFIDAVIT

I, **Muhammad Shaukat** O/O XEN C&W Division Shangla, do hereby solemnly affirm and declare on oath that the contents of the above Appeal as well as application are true and correct to best of my knowledge and believe and that nothing has been kept back or concealed from this Honourable Tribunal.


Deponent

(12)

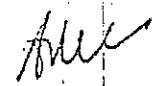
ANNEX: A

CHARGE SHEET

Whereas, I, Amjad Ali Khan Chief Secretary Khyber Pakhtunkhwa, as Competent Authority, charge you Mr. Shoukat Sub Engineer (BS-11) C&W Department; presently working as Sub Engineer O/O XEN C&W Division Shangla.

"That you as Sub Engineer C&W Sub Division Shangla, pursuing the case as Defendant Witness (DW) on behalf of the Government of Khyber Pakhtunkhwa C&W Department in the Civil Appeal No.553-P of 2014 Govt of Khyber Pakhtunkhwa through Chief Secretary & others V/S Saranzeb Govt Contractor, committed the following act/omissions.

- i. You admitted the claim of the contractor as correct during cross examination in the Court.
 - ii. Your statement regarding the correctness of the contractor claim clearly shows your slackness and inefficiency, resultantly the Government petition dismissed by the Supreme Court of Pakistan.
 - iii. You badly failed in the defence of Government interest due to which the Govt exchequer is being sustained huge loss, besides a poor show on the part of C&W Department in the eye of Supreme Court of Pakistan.
2. By reason of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 ibid.
3. You are, therefore, required to submit your written defence within ten (10) days of the receipt of this charge sheet to the Inquiry Officer/Committee.
4. Your written defence, if any, should reach the Inquiry Officer/ Committee within specified period, failing which it shall be presumed that you have no defence to make and in that case exparte action shall be taken against you.
5. The Statement of Allegations is enclosed.



(Amjad Ali Khan)
Chief Secretary
Khyber Pakhtunkhwa

____/06/2015

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DISCIPLINARY ACTION

I, Amjad Ali Khan Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Mr. Shoukat Sub Engineer (BS-11) C&W Department, presently working as Sub-Engineer 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 & Discipline) Rules, 2011:

STATEMENT OF ALLEGATIONS

"That he posted as Sub Engineer C&W Sub Division Shangla, pursuing the case as Defendant Witness (DW) on behalf of the Government of Khyber Pakhtunkhwa C&W Department in the Civil Appeal No.553-P of 2014 Govt of Khyber Pakhtunkhwa through Chief Secretary & others V/S Saranzeb Govt Contractor, committed the following act/omissions:


- i. He admitted the claim of the contractor as correct during cross examination in the Court
- ii. His statement regarding the correctness of the contractor claim clearly shows his slackness and inefficiency, resultantly the Government petition dismissed by the Supreme Court of Pakistan
- iii. He badly failed in the defence of Government interest due to which the Govt exchequer is being sustained huge loss, besides a poor show on the part of C&W Department in the eye of Supreme Court of Pakistan.

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)(c) of the ibid rules:-

- i. MR. Sandan Asad Hanson
- ii. Engr. Muhsin Khan

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, within thirty days of 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 proceedings on the date, time and place fixed by the Inquiry Officer/ Inquiry Committee.


(Amjad Ali Khan)
Chief Secretary
Khyber Pakhtunkhwa

___/06/2015

To

Dated 04/08/2015.

1. Sardar Asad Haroon (PMS BS-18).
Addl: Political Agent Khyber Agency.

2. Engr. Musrim Khan
Executive Engineer
Irrigation Department.

Subject: - CIVIL APPEAL NO. 557-P OF 2014 GOVT. OF KHYBER
PAKHTUNKHWA THOROUGH CHIEF SECRETARY & OTHERS VS
SARANZEB.

Hon'able Sir,

In response to the Charge Sheet & Statement of Allegations received vide Secretary C&W Department memo NO. SOE/C&WD/8-16/2015 dated 07-07-2015, I hereby submit that I remained posted as Sub Engineer in C&W Division Shangla w.e.f 04-03-2009 upto 09-02-2012 (orders copy & entries in Service Book attached for ready reference). My reply chargewise is as under: -

- i. I have never recorded statement in favour of contractor's claim, but at both the times before the lower court, I stated the factual position of work at site even in x-examination.
- ii. It is to say that Mr. Saranzeb who was awarded the contract of Up-gradation of Middle School to High Status at Shangla, was paid for work done as measured at site through 5th R/bill and finally 6th R/Bill, deducting/recouping an amount of Rs. 15,48,233/- for those works which were executed at site but damaged due to the settlement of land scape. I was called for before the court of Civil Judge / Alaqa Qazi as Defendent witness by the Court Notice, the same statement was recorded as of its factual position. Here to say that when the contractor lodged his suit in 06/2012 in lower court I was not present there, I was transferred to C&W Division Battagram vide Chief Engineer (Centre) orders No. 18-E/275/CE/C&WD dated 09-02-2012.
- iii. I was not holding the position to file comments as my own against the plaintiff suit. That was the then defending officers to file and defend the case in lower court in the first instance on correct lines in pursuance of the relevant clauses of Contract Agreement for which the then officers are held responsible. Any loss if sustained to Govt. Exchequer is not on my part and as such I negate the charge please.

In view of the above explained position, it is earnestly requested to absolve me of the charges.

Sincerely Yours,

(Muhammad Shaukat)
Sub Engineer
C&W Division Shangla.

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ANNEX: C



GOVERNMENT OF KHYBER PAKHTUNKHWA
ADMINISTRATION DEPARTMENT

No. PA/DS(Estate/Aviation)/Ad/1-2/2015

Dated: 11th September, 2015

16449
17/09/2015

To

The Section Officer (Establishment),
C & W Department,

SUBJECT: CIVIL APPEAL NO. 553-P OF 2014 GOVERNMENT OF KHYBER
PAKHTUNKHWA THROUGH CHIEF SECRETARY AND OTHERS VS
SERANZAB

Reference: - Your office letter No.SOE/C&W/8-16/2015, dated 07.07.2015

The undersigned along with Musrim Khan, Executive Engineer, Mardan Irrigation Division, Mardan were appointed as Inquiry Committee for conducting formal inquiry in the subject noted case.

The inquiry has been conducted and the report is enclosed herewith for further necessary action, please.

Enclosure
As above

SARDAR ASAD HAROON,
Deputy Secretary (Estate/Aviation)
Enquiry Officer

Please Process early.

SA

am 17-9-15

(16)

FORMAL INQUIRY REGARDING CIVIL APPEAL NO. 553-P OF 2014
GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF
SECRETARY AND OTHERS VS SERANZAB

Subject: - CIVIL APPEAL NO. 553-P OF 2014 GOVERNMENT OF KHYBER
PAKHTUNKHWA THROUGH CHIEF SECRETARY AND OTHERS
VS SERANZAB

In compliance of the Chief Secretary Khyber Pakhtunkhwa order No. DE/C & WD/8-16/2015 dated Peshawar the July 07, 2015 constituted an inquiry committee to conduct formal inquiry under Khyber Pakhtunkhwa servants (Efficiency & Disciplinary) Rules, 2011 in the subject case against the following officer / officials of C&W Department.

- 1) Engr: Imad Ahmad, Assistant Engineer (BS-17) C&W Department
(S.D.O High Way Sub Division, Peshawar.
 - 2) Muhammad Shoukat, Sub Engineer (BS-11) C&W Department
(Working as Sub Engineer C&W)
- i- The copy of order for inquiry is annexed at "A"
 - ii- Copy of charge sheet and statement of allegations of both the officer/officials is annexed at "B" & "C" respectively

BACKGROUND

An ADP Scheme No. 28/80448 (2008-09) Up-Gradation of 100 Govt: Middle School to High Level (B&G) on need basis in Khyber Pakhtunkhwa" was included in the ADP for the year 2008-09. Up-gradation of Govt: Middle School

Shangla TOP was part of this Umbrella Scheme. The detail of this sub scheme may be summarized as under:-

- 1- Estimated Cost Rs.9.586 (M)
- 2- Administrative Approval Issued 20.04.2009
- 3- Tender date 12.10.2009
- 4- Contractor M/S Seranzab Govt: Contractor
Distt: Shangla
- 5- Agreement No. 94-SH 92009-10) dated 28.11.2009
- 6- Work Order No 17/7/4-M, dated 28.11.2009
- 7- Date of Commencement of work 28.11.2009

The Govt: Contractor started the work as per direction of the officer/official of Works & Services Department and subsequently payments were made to the contractor as per government procedure and policy. The contractor received the payment up to 4th Running Bill according to his measured work done at site. There was no dispute in between the department and contractor up to 4th running bill. The department measured the contractor work done up to the 5th running bill and the total amount of work done comes to Rs.10376880.00. The measurement of 5th running bill was carried by Sub Engineer/Sub Divisional Officer on 10.05.2011. Due to less funds available with the Divisional Office an amount of Rs.2032000.00 were paid to the contractor on 30.06.2011 and an amount of Rs.3866360.00 was withheld from the 5th running bill and the scheme was carried over to the next financial year. (Copy of 5th Running Bill Annexed At "D").

After June 2011 some damages were noticed by the officer/official of the department due to land sliding in the vicinity of the project area. The Sub Divisional Officer and Sub Engineer re-measured the whole work in the 6th running bill and deducted an amount of Rs.1548233.00 from already withheld amount of contractor in 5th running bill i.e Rs.3866360.00 and contractor bill reduced from Rs.10376880.00 to Rs. 8828847.00 (Copy of 6th Running Bill is Annexed "E").

The contractor deemed it as injustice to him and sued the department in the court. The details are as under:-

| Court | Appellant | Defendants | Date of institution | Date of Decision |
|-------------------------|-------------------------|-------------------------|---------------------|------------------|
| District Court Shangla | M/S Saranzeb Contractor | C&W Department | 25.06.2012 | 27.07.2013 |
| High Court (Darul Qaza) | C&W Department | M/S Saranzeb Contractor | 10.11.2013 | 10.07.2014 |
| Supreme Court Pakistan | C&W Department | M/S Saranzeb Contractor | | 04.05.2015 |

As evident from the above statement the Lower Court (District Court Shangla), Darul Qaza (High Court) and Supreme Court of Pakistan decided the case against the department. The Supreme Court dismissed the civil petition dated 04.05.2015.

The operative part of the order is reproduced hereunder:-

"...The officials of the Department had admitted the claim of the respondent as correct. In these circumstances, we do not find any merit in this petition, which is dismissed and leave.

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refused. However, the Competent Authority in the Department is directed to initiate disciplinary proceedings against the said DWs and conclude the same within a period of 30 days from the receipt of this order. A report of the proceedings shall be submitted before this court for our perusal in Chambers".

PROCEEDINGS:

- 1- The Inquiry Committee commenced its proceedings by summoning both the accused i.e Mr.Imad Ahmad, Sub Divisional Officer and Muhammad Shoukat, Sub Engineer. They submitted their written reply which are annexed at "F" & "G".
- 2- Despite repeated requests in written and telephonically, the relevant documents e.g parawise comments of the department, verdict of the courts etc; were not provided, which resulted in inordinate delay in the inquiry (copy of correspondence attached).
- 3- The so called "well conversant" representative of the department was not aware of the facts at all and did not provide the inquiry committee with any helping materials/documents (Copy of correspondence attached).
- 4- Engr: Kifaytullah, who was deputed to assist the Inquiry Committee never turned up with the relevant record and instead sent Ghulam Rahim, Sub Divisional Officer (OPS) Battagram who was not aware of the case details.

THE PROBE FINDINGS

- 1- The contractor started the work on 28.11.2009

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- 2- The contractor were paid up to 4th running bill amounting to Rs.4478514/- without any dispute in between the department and contractor.
- 3- The total work done measured in the 5th running bill is amounting to Rs.10376880/- due to non availability of funds only an amount of Rs.2032000/- were paid and an amount of Rs.3866360/- were withheld.
- 4- Some damages occurred due to land sliding/erosion and the Sub Engineer/Sub Divisional Officer re-measured the whole work and deducted an amount of Rs.1548233/- from the already withheld amount of Rs.3866366/- in the 6th running bill.
- 5- Total payment made to the contractor is Rs.8828847/- against the estimated cost of Rs.9586000/-
- 6- The contractor sued the department in the District Court Shangla and the case decided in favour of contractor.
- 7- The department did appeal in Dauri Qaza and the case decided in favour of contractor.
- 8- The department submitted an appeal in the Supreme Court and the case dismissed in favour of contractor.
- 9- It is evident that the department has shown criminal negligence and laxity in defending the case at the lower court, which resulted in decision against the government in higher court as well.

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- 10- Moreover, had Executive Engineer, Sub Divisional Officer and Sub Engineer concerned presented the actual facts in front of the lower court, the verdict eventually could have been different. Since cogent facts were not revealed before the court, the decision/verdict was in favour of contractor.
- 11- Further more, the department failed to invoke clause 25 (Arbitration clause) and clause 29 of the contract agreement in the lower court. An issue which could have been settled through arbitration under clause 25 eventually went into the court, which could have been avoided, had the department exercised caution.
- 12- Similarly, clause 29 should have been presented before the court to defend the department, which says that "The Government will accept no responsibility on account of damages". The department failed to properly present this clause in the court of law, as a result, court decided the matter in favour of the contractor.
- 13- From perusal of the available record, it is apparent that the statement recorded by Imad Ahmad, Sub Divisional Officer and Muhammad Shoukat, Sub Engineer in the lower court is also dubious. The signatures of Civil Judge/Iliaqa Qazi Alpuri on both the statements do not match. It needs to be verified from the court whether the statement reproduced here are exact/original copies of the court record or have been forged by somebody.

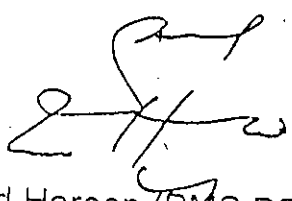
- 14- In institution of any case in the court of law by the contractor proper jawab-e-dawa should be prepared by the Executive Engineer, Divisional Accountant and Head Clerk with consultation with the Govt: Pleader for defence of the Govt: interest. Relevant clause of contract agreement shall be kept in view, which unfortunately was not done.
- 15- ✓ In the instant case the officers i.e. Executive Engineer did not prepare the case on strong footing before the learned court in the initial stage due to which decision received against the department right from District court to Supreme Court.
- 16- The basic duty of Sub Engineer is lay out, quality control and measurements of work executed by the contractor. The Sub Engineer has to submit his statement according to the factual position/record. Any concealment of fact from the court is a criminal offence, therefore, the officers/officials has to submit their statement according to the actual official records before the learned court. Laxity was shown by all concerned from Executive Engineer to Sub Engineer in bringing glaring facts in front of lower court.
- 17- The Sub Engineer Incharge rightly deducted the payment of damaged work from the contractor and endeavored to save the Govt: Exchequer from loss, but the officers failed miserably to defend the government in the court.

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RECOMMENDATIONS:

The Inquiry Committee recommends that:-

- 1- It is recommended that clause 25 & 29 should be implemented in all disputed cases, so that litigation in courts could be curtailed.
- 2- The Executive Engineer being Incharge should have directed his staff to prepare a more logical response for the court proceedings or should have himself defended the case.
- 3- It is suggested that censure or any other appropriate disciplinary proceedings should be initiated against all the officers concerned including Executive Engineer, Sub Divisional Officer and Sub Engineer.



Sardar Asad Haroon (PMS BS-18)
Additional Political Agent,
Khyber Agency



Engr. Musrim Khan (BS-18),
Executive Engineer,
Mardan Irrigation Division,
Mardan

(24)

ANNEX:- D

SHOW CAUSE NOTICE

I, Amjad Ali Khan, Chief Secretary Khyber Pakhtunkhwa as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Muhammad Shoukat Sub Engineer (BS-11) C&W Department; presently working as Sub Engineer O/O XEN C&W Division Shangla, as follows.

- a. That consequent upon the completion of inquiry conducted against you by the inquiry committee for which you were given opportunity of hearing; and
- b. On going through the findings and conclusions of the inquiry committee, the material on record and other connected papers including your defence before the inquiry committee;

"I am satisfied that you as Sub Engineer O/O XEN C&W Division Shangla, pursuing the case as Defendant Witness (DW) on behalf of the Government of Khyber Pakhtunkhwa C&W Department in the Civil Appeal No.553-P of 2014 Govt of Khyber Pakhtunkhwa through Chief Secretary & others V/S Saranzeb Govt Contractor, committed the following act/omissions.

- i. You admitted the claim of the contractor as correct during cross examination in the Court
- ii. Your statement regarding the correctness of the contractor claim clearly shows your slackness and inefficiency, resultantly the Government petition dismissed by the Supreme Court of Pakistan
- iii. You badly failed in the defence of Government interest due to which the Govt exchequer is being sustained huge loss, besides a poor show on the part of C&W Department in the eye of Supreme Court of Pakistan".

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of "reduction of time scale of pay by three stages for three years" under Rule 4 of the said rules.

3. You are, thereof, 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 (07) days or not more than fifteen (15) 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 the findings of the inquiry officer is enclosed.

Amjad Ali Khan

(Amjad Ali Khan)
Chief Secretary
Khyber Pakhtunkhwa

_____/09/2015

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W/EX-1 F

To

The Section Officer (Estb)
C & W department,
Khyber Pakhtunkhwa, Peshawar.

Subject: Civil Appeal No. 553-P of 2014 Government of Khyber
Pakhtunkhwa through Chief Secretary and others Vs
Seranzab.

Reference your office Letter No.SOE/C&WD78-
16/2015 Dated Peshawar, the Sept 17, 2015, please find
herewith my reply to the show cause notice in the attachments
for onwards submission.


Muhammad Shaukat
O/O XEN
C&W Division Shangla

Dated: 23 /09/2015

To

The Worthy Chief Secretary,
Khyber Pakhtunkhwa,
Peshawar.

Subject : Reply to the Show Cause Notice

Respected Sir,

Reference to your Show Cause Notice conveyed to the undersigned vide letter dated 17.09.2015, wherein the penalty of "Reduction of time scale of pay by three stages for 03 years" has been proposed to be imposed upon the undersigned, I very humbly submitted my reply to the show cause notice as under:

A. BACKGROUND OF THE CASE

An ADP Scheme No. 28/80448 (2008-09) up-gradation of 100 Middle Schools to High Level (B&G) on need basis in Khyber Pakhtunkhwa was reflected in the ADP for the year 2008-09. Up-gradation of Govt. Middle School Shangla TOP was part of this Umbrella Scheme.

The Govt. Contractor started the work as per direction of the officer/official of Works & Services Department and subsequently payments were made to the Contactor as per Govt. procedure and policy. The contractor received the payment up to 4th Running bill according to his measured work done at site. There was no dispute in between the department and contractor up to 4th running bill. The department measured the contractor work done up to the 5th running bill and the total amount of work done comes to Rs. 10376880.00 the measurement of 5th running bill was carried on 10.5.2011. Due to less funds available with the Divisional Office an amount of Rs. 2032000.00 were paid to the contractor on 30.6.2011 and an amount of Rs. 3866360.00 was withheld from the 5th running bill and the scheme was carried over to the next financial year.

After June, 2011 some damages were noticed by the department due to land sliding in the vicinity of the project area. The department re-measured the whole work in the 6th running bill and deducted an amount of Rs. 1548233.00 from already withheld

(27)

amount of contractor in 5th running bill i.e Rs. 3866360.00 and contractor bill reduced from Rs. 10376880.00 to Rs. 8828847.00.

That since the contractor was not happy due to withholding of the amount, therefore, he filed a civil suit for the recovery in the court of Senior Civil Judge Shangla on 25.06.2012. which was decided in favour of the Contractor vide order dated 27.07.2013, thereafter appeals filed in the Honourable High Court/Darul Qaza Swat and Supreme Court of Pakistan by the Government /C &W Department were also dismissed vide judgment and orders dated 10.07.2014, and 04.05.2015, respectively. However, the Honorable Supreme Court, has also directed that the case has since not been presented/defended properly by the department in the Lower Court, therefore, disciplinary action may be taken against the concerned officials/DWs.

B. DISCIPLINARY PROCEEDINGS

1. That the undersigned since appeared as DW in the court at the lower forum, therefore, I was served with the charge sheet, containing certain baseless and unfounded allegations. I duly replied the charge sheet and refuted the allegations leveled against me vide my reply dated 04.08.2015. (Copy attached)
2. That an inquiry committee was also constituted to probe into the matter, however without properly associating the undersigned with the inquiry proceedings, the inquiry committee conducted the inquiry in a hasty manner and submitted its report wherein besides certain other recommendations, censure or any other appropriate disciplinary proceedings were recommended against the undersigned and other officials. Hence the instant show cause notice has been served upon me proposing the imposition of penalty of "Reduction of time scale of pay by three stages for 03 years."
3. That I once again deny the allegations leveled against me as false and baseless. In this respect I have already submitted my Para wise reply to the charge sheet served upon me, in addition to my earlier reply I also submit as under.
4. That in contrary to the inquiry report findings No. 9, it is stated that I have not shown any laxity or negligence while defending the case because I have duly attended the court in time as per the orders/summon of the court and recorded my statement as per factual positions whenever it was required.
5. That I have never recorded statement in favor of contractors claim, neither in my examination in chief nor in my cross examination, but only explained the factual position of work at the site. I could not

state anything of my own and had to record statement in accordance with the record without concealment of facts. As any concealment of fact from the court is a criminal offence.

6. That the contractor, Mr. Saranzeb was awarded the contract of up-gradation of Middle School to High status at Shangla and was paid for work done as measured at site through 5th R/bill and finally 6th R/Bill, deducting/recouping an amount of Rs. 1538233/ for those works which were executed at site but damaged due to the settlement of landscape. I was summoned for statement by the Civil Judge/Alaqa Qazi as defendant witness on, and I recorded my statement according to the factual position.
7. That it is pertinent to mention here that when the contractor filed his suit in June, 2012 in lower court, at the relevant time I was transferred to C&W Division Battagram vide Chief Engineer (Centre) orders NO. 18-E/275/CE/C&W dated 09.02.2012. Thus neither the written statement on behalf of the department was prepared by me, nor I was the signatory of the same, therefore if the case is not presented properly at the initial stages on behalf of the department, I cannot be held responsible for the same. I have never showed any slackness or inefficiency, nor have damaged the image of the department.
8. That the base of every case/ proceedings in the court is formed on the pleadings of the parties to the case/proceedings, i.e. plaint and written statement and it is also established principle of law that parties cannot go beyond their pleadings. It was the responsibility of the Executive Engineer, Divisional Accountant and Head Clerk with consultation with the government pleader to prepare proper Jawab Dawa / written statement mentioning all factual and legal position. It is also admitted by the inquiry committee that the written statement on behalf of the government /department was not properly presented for which responsibility cannot be fixed on the undersigned. I only appeared as defendant witness and recorded my statement according to the factual position.
9. That it was the responsibility of the then defending officers to file the case/written in lower court in the first instance on correct lines in pursuance of the relevant clauses of Contract agreement, however nothing was mentioned in the pleadings/written statement regarding the relevant clauses of the contract agreement, therefore responsibility for the same cannot be fixed on the undersigned.
10. That with utmost respect it is submitted that the inquiry committee has not conducted the inquiry in accordance with law and rules. The procedure prescribed under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 has not been followed during the inquiry. The inquiry committee itself admitted in the inquiry report that proper/relevant material has not been

presented in the inquiry. Thus the inquiry so conducted is defective in the eye of law and findings based on such defective proceedings have no legal support as a single iota of evidence has not been brought on record to fix responsibility upon me of the alleged charges.

- 11. That the inquiry committee did not associate me properly with the inquiry proceedings. Not a single witness has been examined during the enquiry, or if so examined, neither their statements has been recorded in my presence nor I have been given opportunity to cross examine those who may have said anything against me during the inquiry.
- 12. That the report of the inquiry committee is self contradictory as at the one hand in para-14 it admits the fact that the case was not properly presented at the initial stage in the court i.e proper Jawab-e-Dawa was not presented in the court, while at the other hand it fixes responsibility on the undersigned, ignoring the fact that the undersigned was neither the signatory of the Jawab-e-Dawa, nor had he prepared the same.
- 13. That similarly Para-13 of the inquiry report wherein the inquiry committee has observed that the statements recorded by Imad Ahmad, Sub Divisional Officer and Muhammad Shaukat i.e the undersigned, in the lower court is also dubious, which is the direct denial of the first charge.
- 14. That Para 9 to 16 of the inquiry report are self contradictory and confusing, a careful reading of the same would suggest that the inquiry report is ambiguous and general in nature, and has not reached to a definite conclusion. Moreover the recommendations are also vogue and not clear.
- 15. That it has also been admitted by the inquiry committee in its report that the Sub Engineer In-charge i.e the undersigned has rightly deducted the payment of damaged work from the contractor and endeavored to save the Govt. Exchequer from loss, thus their arise no question that I would admit the claim of the contractor in the court. Moreover this Para also show contradictions in the inquiry as at one hand the efforts of the undersigned has been appreciated while on the other hand I have been recommended for penalty.
- 16. That I have been discriminated against as other senior officials on whose shoulders, responsibility was though fixed by the inquiry committee have let free and no disciplinary action has been taken against them.

- 17. That during the inquiry not a single evidence oral or documentary has been produced that could even remotely associate the undersigned with the charges leveled in the charge sheet.
- 18. That the charges leveled against me were never properly probed during the inquiry, the inquiry committee gave its findings on surmises and conjunctures.
- 19. That I have never committed any act or omission which could be termed as misconduct, I have duly performed my duties as assigned with full devotion, zeal and loyalty. My statement recorded in the court was based on available record and according to the factual position hence cannot be termed as admission of the claim of the contractor.
- 20. That I have a long and spotless service career, at my credit, during my entire service career I have always performed my duties as assigned with zeal, devotion and loyalty and have never given any chance of complaint whatsoever regarding my performance. I have always preferred the interest of the Government/Department over and above my personal interests. The proposed penalty if imposed upon me would be a stigma on my bright and spotless service career.
- 21. That the undersigned also desires to be heard in person.


CONCLUSION

Keeping in view the above submissions it can safely be concluded that the charges leveled against the undersigned were neither attributable to me nor any proof/ evidence has been brought before the inquiry committee that could associate the undersigned with the alleged charges, as such the charges remained unproved during the inquiry. Throughout the findings of the inquiry committee, it has not been mentioned nor proved that I have admitted the claim of the contractor as correct which is the operative part of the charge sheet. Moreover in their findings, the inquiry committee has stated that the case was lost by the department owing to the reasons that it has not been properly produced before the court (i.e. Reference to the Clause #25 and 29) had not been made in the written reply, whereas the inquiry committee itself admitted the fact that preparation of Written reply from the department is the duty of the Executive Engineer, Divisional Accountant and Head clerk in consultation with the Government Pleader, as the written statement was neither prepared by me nor I signed the same, therefore how could the undersigned be made to suffer for the acts and omissions which are not committed by me.

PRAYER

It is, therefore, humbly requested that on acceptance of this reply, the subject final show cause notice may please be dropped and I may be very kindly be exonerated of the charges.

Yours Truly,


Muhammad Shaukat
O/O XEN
C&W Division Shangla.

Dated: 23 /09/2015.

(32) - JAWED F

GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the September 29, 2015

ORDER:

No SOE/C&WD//8-16/2015: WHEREAS, Mr. Muhammad Shoukat Sub Engineer (BS-11) C&W Division Shangla was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 in the case titled "Civil Appeal No.553-P of 2014 Govt of Khyber Pakhtunkhwa through Chief Secretary & others V/S Saranzeb Govt Contractor"

2. AND WHEREAS, for the said act of misconduct he was served charge sheet/ statement of allegations.

3. AND WHEREAS, an inquiry committee comprising of Mr. Sardar Asad Haroon, the then Additional Political Agent Khyber Agency now working as Deputy Secretary Administration Department and Engr. Musrim Khan Executive Engineer Irrigation Department Mardan was appointed. who submitted the inquiry report.

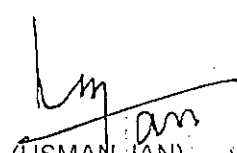
4. NOW THEREFORE, the Competent Authority after having considered the charges, material on record, inquiry report of the inquiry committee, explanation of the official concerned during personal hearing held on 29.09.2015, in exercise of the powers under Rule-14(5)(ii) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the major penalty of "Reduction of time scale of pay by three stages for 03 years, besides recovery of pecuniary loss of Rs.7,74,116/-" upon the aforementioned official.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (North/Centre), C&W Peshawar
3. Superintending Engineer C&W Circle, Swat
4. Executive Engineer C&W Division Shangla
5. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
6. District Accounts Officer Shangla
7. Section Officer (Litigation) C&W Department, Peshawar
8. PS to Secretary, C&W Peshawar
9. Official concerned
10. Office order File/Personal File


(USMAN JAN)
SECTION OFFICER (Estb)

33

VAN/EO/


To
The Secretary to Govt of
Khyber Pakhtunkhwa
C & W Department, Peshawar.

Subject: Departmental Appeal.

Sir,

Kindly find herewith attached the departmental appeal of the undersigned against the penalty order dated 29.09.2015 for onwards submission Please.

Yours faithfully,


Muhammad Shaukat
C/O XEN
C&W Division Battagram.

Dated: 13 /10/2015

34

To

The Honourable, Chief Minister
Khyber Pakhtunkhwa,
Peshawar.

Through: Proper Channel

Subject: Departmental Appeal / Representation against the order No. SOE/C&WD//8-16/2015, dated 29.09.2015, whereby the undersigned has been awarded the major penalty of Reduction of Time scale of pay by three stages for 03 years, besides recovery of pecuniary loss of Rs. 7,74,116.

Prayer in departmental appeal:

On acceptance of this appeal the impugned order No. SOE/C&WD//8-16/2015, dated 29.09.2015 may kindly be set aside and pay of the undersigned may very kindly be restored to its original position i.e before the imposition of penalty with all back/consequential benefits.

Respected Sir,

1. That the appellant is serving as Sub Engineer in the C&W department, and is presently posted in C&W Division Battagram. It is pertinent to mention here that ever since my appointment I am performing my duties as assigned with great zeal and devotion and without there being complaint regarding my performance.
2. That An ADP Scheme No. 28/80448 (2008-09) up-gradation of 100 Middle Schools to High Level (B&G) on need basis in Khyber Pakhtunkhwa was reflected in the ADP for the year 2008-09. Up-gradation of Govt. Middle School Shingla 'CPI' was part of this Umbrella Scheme. The Govt. Contractor started the work as per direction of the officer/official of Works & Services Department and subsequently payments were made to the Contactor as per Govt. procedure and policy. The contractor received the payment up to 4th Running bill according to his measured work done at site. There was no dispute in between the department and contractor up to 4th running bill. The department measured the contractor work done up to the 5th running bill and the total amount of work done came to Rs. 10376880.00 with net amount of Rs. 5898360.00. The measurement of 5th running bill was carried out on 10.5.2011. Due to less funds available with the Divisional Office an amount of Rs. 2032000.00 were paid to the contractor on 30.6.2011 and an amount of Rs. 3866360.00 was withheld from the 5th running bill and the scheme was carried over to the next financial year. After June, 2011 some damages were noticed by the department due to land sliding in the vicinity of the project area. The department re-measured the whole work in the 6th running bill and deducted an amount of Rs. 1548233.00 from already withheld amount of contractor in 5th running bill i.e Rs. 3866360.00 and contractor bill reduced from Rs. 10376880.00 to Rs. 8828847.00.

3. That since the contractor was not happy due to withholding of the amount; therefore, he filed a civil suit for the recovery in the court of Senior Civil Judge Shangla on 25.06.2012. which was decided in favor of the Contractor vide order dated 27.07.2013, thereafter appeals filed in the Honourable High Court/Darul Qaza Swat and Supreme Court of Pakistan by the Government /C &W Department were also dismissed vide judgment and orders dated 10.07.2014, and 04.05.2015, respectively. However, the Honourable Supreme Court, has also directed that the case has since not been presented/defended properly by the department in the Lower Court, therefore, disciplinary action may be taken against the concerned officials/DWs.
4. That the undersigned since appeared as defendant witness (DW) in the court at the lower forum, therefore, I was served with the charge sheet, containing certain baseless and unfounded allegations so leveled are reproduce below:
 - i. *That you admitted the claim of the contractor as correct during cross examination in the Court*
 - ii. *Your statement regarding the correctness of the contractor claim clearly shows your slackness and inefficiency resultantly the Government petition dismissed by the Supreme Court of Pakistan*
 - iii. *You badly failed in the defense of Government interest due to which the Govt exchequer is being sustained huge loss, besides a poor show on the part of C&W Department in the eye of Supreme Court of Pakistan"*

I duly replied the charge sheet and refuted the allegation leveled against me as false and baseless.

5. That a an inquiry committee was also constituted to probe into the matter, however without properly associating the undersigned with the inquiry proceedings, the inquiry committee conducted the inquiry in a hasty manner and submitted its report wherein besides certain other recommendations, only censure or any other appropriate disciplinary proceedings were recommended against the undersigned and other officials.
6. That though the undersigned was only recommended for censure by the inquiry committee, however, when show cause notice was issued, in disregard of the recommendations of the inquiry committee, major penalty of reeducation of time scale of pay by three stages for three years was proposed. The show cause notice was communicated to me vide letter dated 17.09.2015.
7. That I duly submitted my detail reply to the show cause notice wherein besides denying the allegation I also explained my position in detail, thereafter though a personal hearing notice was issued on 28.09.2015, However no proper personal hearing was allowed to the undersigned.
8. That without considering my reply in defense, I have been awarded the major punishment of time scale of pay by three stages for three years and recovery of Rs. 7,74,116 vide the impugned order dated 29.09.2015.

9. That the penalty so imposed upon me is illegal and unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

GROUNDS OF DEPARTMENTAL APPEAL

- A. That the undersigned has not been treated in accordance with law hence my rights secured and guaranteed under the law are badly violated.
- B. That the biased punishment have demoralized the undersigned, as he has got a spotless career of more than 20 years, the punishment awarded to him have forced him to be hopeless from the government setup and all the above forums as there is no one to listen to the poor.
- C. That no proper procedure has been followed before awarding me the penalty, no proper inquiry has been conducted, I have not been properly associated with the inquiry proceedings, statement of witnesses if any were never recorded in my presence nor I have been allowed opportunity of personal hearing thus the whole proceedings are defective in the eye of law.
- D. That I have not been allowed proper opportunity of personal hearing thus I have been condemned unheard.
- E. That during the inquiry no witness has been examined or if so examined, neither his statement has been recorded in my presence nor I have been allowed opportunity to cross examine those witnesses who may have deposed against me.
- F. That the charges leveled against me were never proved during the inquiry proceedings, the inquiry officer gave its findings on surmises and conjunctures.
- G. That the penalty of recovery of Rs.7,74,116/- has also wrongly been imposed upon me, neither in the show cause notice the said amount was mentioned nor it was proposed by the inquiry committee.
- H. That in contrary to the inquiry report findings No. 9, it is stated that I have not shown any laxity or negligence while defending the case because I have duly attended the court in time as per the orders/summon of the court and recorded my statement as per factual positions whenever it was required.
- I. That I have never recorded statement in favor of contractors claim, neither in my examination in chief nor in my cross examination, but only explained the factual position of work at the site. I could not state anything of my own and had to record statement in accordance with the record without concealment of facts. As any concealment of fact from the court is a criminal offence.

- J. That the contractor, Mr. Sarunzeb was awarded the contract of up-gradation of Middle School to High status at Shangla and was paid for work done as measured at site through 5th R/bill and finally 6th R/Bill, deducting/recouping an amount of Rs. 1538233/ for those works which were executed at site but damaged due to the settlement of landscape. I was summoned for statement by the Civil Judge/Alaqa Qazi as defendant witness, and I recorded my statement according to the factual position.
- K. That it is pertinent to mention here that when the contractor filed his suit in June, 2012 in lower court, at the relevant time I was transferred to C&W Division Battagram vide Chief Engineer (Centre) orders NO. 18-E/275/CE/C&W dated 09.02.2012. Thus neither the written statement on behalf of the department was prepared by me, nor I was the signatory of the same, therefore if the case is not presented properly at the initial stages on behalf of the department, I cannot be held responsible for the same. I have never showed any slowness or inefficiency, nor have damaged the image of the department.
- L. That the base of every case/ proceedings in the court is formed on the pleadings of the parties to the case/proceedings, i.e. plaint and written statement and it is also established principle of law that parties cannot go beyond there pleadings. It was the responsibility of the Executive Engineer, Divisional Accountant and Head Clerk with consultation with the government pleader to prepare proper Jawab Dawa / written statement mentioning all factual and legal position. It is also admitted by the inquiry committee that the written statement on behalf of the government /department was not properly presented for which responsibility cannot be fixed on the undersigned. I only appeared as defendant witness and recorded my statement according to the factual position.
- M. That it was the responsibility of the then defending officers to file the case/written in lower court in the first instance on correct lines in pursuance of the relevant clauses of Contract agreement, however nothing was mentioned in the pleadings/written statement regarding the relevant clauses of the contract agreement, therefore responsibility for the same cannot be fixed on the undersigned.
- N. That with utmost respect it is submitted that the inquiry committee has not conducted the inquiry in accordance with law and rules. The procedure prescribed under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 has not been followed during the inquiry. The inquiry committee it self admitted in the inquiry report that proper/relevant material has not been presented in the inquiry. Thus the inquiry so conducted is defective in the eye of law and findings based on such defective proceedings have no legal support as a single iota of evidence has not been brought on record to fix responsibility upon me of the alleged charges.
- O. That the inquiry committee did not associate me properly with the inquiry proceedings. Not a single witness has been examined during the enquiry, or if so examined, neither their statements has been recorded in my presence nor I have been given opportunity to cross examine those who may have said anything against me during the inquiry.

- P. That the report of the inquiry committee is self contradictory as at the one hand in para-14 it admits the fact that the case was not properly presented at the initial stage in the court i.e proper Jawab-c-Dawa was not presented in the court, while at the other hand it fixes responsibility on the undersigned, ignoring the fact that the undersigned was neither the signatory of the Jawab-c-Dawa, nor had he prepared the same.
- Q. That similarly Para-13 of the inquiry report wherein the inquiry committee has observed that the statements recorded by Imad Ahmad, Sub Divisional Officer and Muhammad Shaukat i.e the undersigned, in the lower court is also dubious, which is the direct denial of the first charge.
- R. That Para 9 to 16 of the inquiry report are self contradictory and confusing, a careful reading of the same would suggest that the inquiry report is ambiguous and general in nature, and has not reached to a definite conclusion. Moreover the recommendations are also vogue and not clear.
- S. That it has also been admitted by the inquiry committee in its report that deduction in payment for damaged work from the contractor was rightly made and endeavor was made to save the Govt. Exchequer from loss, thus their arise no question that I would admit the claim of the contractor in the court when it has rightly been done by the department. Moreover this Para also show contradictions in the inquiry as on the one hand the efforts of the department have been appreciated while on the other hand I have been recommended for penalty.
- T. That I have been discriminated against as other senior officials on whose shoulders, responsibility was though fixed by the inquiry committee, but have been let free and no disciplinary action has been taken against them.
- U. That I have never committed any act or omission which could be termed as misconduct, I have duly performed my duties as assigned with full devotion, zeal and loyalty. My statement recorded in the court was based on available record and according to the factual position hence cannot be termed as admission of the claim of the contractor.
- V. That the charges leveled against the undersigned were neither attributable to me nor any proof/ evidence has been brought before the inquiry committee that could associate the undersigned with the alleged charges, as such the charges remained unproved during the inquiry. Throughout the findings of the inquiry committee, it has not been mentioned nor proved that I have admitted the claim of the contractor as correct which was the operative part of the charge sheet. Moreover in their findings, the inquiry committee has stated that the case was lost by the department owing to the reasons that it has not been properly produced before the court (i.e. Reference to the Clause #25 and 29) had not been made in the written reply, whereas the inquiry committee itself admitted the fact that preparation of Written reply from the department is the duty of the Executive Engineer, Divisional Accountant and Head clerk in consultation with the Government Pleader, as the written statement was neither prepared by me

nor I signed the same, therefore how could the undersigned be made to suffer for the acts and omissions which are not committed by me.

W. That I have a long and spotless service career, at my credit, during my entire service career I have always performed my duties as assigned with zeal, devotion and loyalty and have never given any chance of complaint whatsoever regarding my performance. I have always preferred the interest of the Government/Department over and above my personal interests. The penalty imposed upon me is too harsh and is a stigma on my bright and spotless service career.

It is, therefore, humbly prayed that on acceptance of this appeal the impugned order No. SOE/C&WD//8-16/2015, dated 29.09.2015 may kindly be set aside and pay of the undersigned may very kindly be restored to its original position i.e before the imposition of penalty with all back/ consequential benefits.

Yours Truly,

Muhammad Shaikat
O/O XEN
C&W Division Battagram.

Dated: 13/10/2015.

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Approved: H



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. No. SOE/C&WD/8-16/2015
Dated Peshawar, the December 04, 2015

TO

Mr. Muhammad Shaukat
Sub Engineer O/O
XEN C&W Division Battagram

Subject: Departmental Appeal/Representation against the Order No.SOE/C&WD/8-16/2015 dated 29.09.2015, whereby the undersigned has been awarded the major penalty of "reduction of time scale of pay by three stages for 03 years" besides recovery of pecuniary loss of Rs.7,74,116/-

I am directed to refer your appeal/representation dated 13.10.2015, which was examined and submitted to the Competent Authority (Chief Minister). The Competent Authority has rejected your appeal/representation.

2. You are hereby informed accordingly.

(USMAN JAN)
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to PS to Secretary C&W Department, Peshawar

SECTION OFFICER (Estb)

بجواب ۲۵۱۱ سہ ماہیہ
بیاختیار بہ درخت ہے کہ باجیوں رشتہ بل

AT P
25/12/15

Dawar
11/7/13



بیان شرکت سے انجنیر

تورنر
 حلفاً بیان کیا کہ میں جون 2011 میں
 محنت سے انجنیر ضلع شانگلہ میں
 تھا۔ گو محنت معائنہ سکول شانگلہ کی تعمیر
 اس وقت جاری تھی جس میں محنت
 انجنیر انجارج تھا۔ مذکورہ سکول کی تعمیر
 سلسلے میں میں نے جون 2011 میں ایمپلائمنٹ
 کے فرم اس کا MB میں ریکارڈنگ کی ہے۔
 مذکورہ ریکارڈنگ جو کہ MB کا لفظ نقودات
 ہے پہلے سے مل پر موجود ہے جو کہ EXPW2 ہے۔
 اس طرح میں نے نومبر 2011 میں دوبارہ پاس
 کی ہے اور MB میں ریکارڈنگ کر کے برائے
 مزید کارروائی SP5 متعلقہ کو ارسال کر دی
 تھی۔ مذکورہ ریکارڈنگ کی نقودات بھی
 پہلے سے مل پر موجود ہے جو کہ EXPW2 ہے
 دعویٰ مدعی اخلوا ہے۔ خارج فرمائی جائے
 میں میرا بیان ہے۔

XXX شرح مہابت وکیل مدعی نے میں نے مقدمہ لڈا
 میں جواب دعویٰ نہ لڈھا ہے۔ پانچوں رنڈ
 بل جون 2011 میں تقریباً 5800000 روپے بنایا
 گیا تھا۔ یہ درست ہے کہ پانچوں رنڈ بل

(رجا کی)

ATTESTED
 Exhibitor
 11/7/13



Date
/ /

مرقع پر جا کر پھانس کے بعد مرتب کیا گیا
 تھا۔ پانچویں رنٹ بل آخری بل ہے
 تھا۔ چونکہ وہی کا حکمہ سر پانچویں رنٹ بل
 تقریباً -/58000000 روپے حکمہ سر واجب الادا
 کھانگن پیڈ میں دستیاب شدہ کم تھا اسلئے
 وہی کو -/20330000 ادائیگی کی گئی جبکہ تقریباً
 -/38000000 روپے حکمہ سر وہی کا واجب الادا
 رہا۔ یہ درست ہے کہ پانچویں رنٹ بل کے
 نسبت حکمہ خزانہ کا نقد کو 5898366 روپے
 کا چیک دیا۔ وہی کے کام کا ناسل بل نکال
 نہ بنا ہے۔ یہ درست ہے کہ وہی کا جو رقم
 پانچویں رنٹ بل حکمہ سر واجب الادا رہا
 اس نسبت صوبائی حکومت سے فنڈ کا Demand
 کیا گیا جو منظور ہوا۔ اور حکومت نے وہی کا
 واجب الادا رقم 3866366 روپے منظور
 کرے مدعا علیہم کو ارسال ہے۔ یہ درست ہے کہ
 جس مقام پر سکولوں کی تعمیر جاری تھی سکولوں
 زیر آراغی سر کئے گئے اور بلڈنگ ٹو شڈ رہ
 نقصان پہنچا۔ یہ درست ہے کہ مدعا علیہم اور
 ریونیورس آف پیار کے جیولاجکل ٹیم سکولوں

(حارم)

ATTESTED
Examiner



(110)
(3)

DWS
جاری

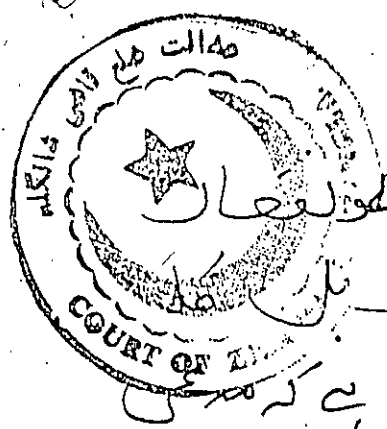
کے آرا فی سر کرنے کے بعد مدعا علیہ کیا۔ کونسلوں کی
آرا فی تعمیر کے لئے نامناسب قرار دی گئی۔

2011ء میں سکول کی تعمیر کی توجہ سے بارہ ہفتوں
عزرت سے اس لئے محسوس کی کہ تعمیر کے بعد
آرا فی سر کرنے کے وقت یہ سکول کی تعمیر کو نقصان
پہنچا تھا۔ میری تجویز کے دوران میں نے مدعی
کو ایڈیٹریل کام کرنے کی کھوکھلی ہدایت نہ کی تھی
کیونکہ میں فروری 2012ء کو تبدیل ہو گیا تھا۔
یا پچوس رینٹ بل کے دوران میں نے جو ہفتوں
کے لئے وہ تعمیر شدہ سکول میں کیے ہوئے کام
کے لئے درت سے کھانا اور مذکورہ ہفتوں
مہ نظر رکھتے ہوئے یا پچوس رینٹ بل درت
اور صحیح طور پر مرتب کیا تھا۔ یہ درت ہے
کہ یا پچوس رینٹ بل کے دوران جو ہفتوں
بنیاد بنا کر مدعی کو ادائیگی کے لئے تھا
تھا کھانا وہ درت سے کھانا۔ از خود کہا کہ دربارہ
ہفتوں یعنی 6th رینٹ بل میں اس ہفتوں
کے لئے سکول کے آٹھ کھٹوں کی کھٹوں کی کھٹوں جو
بعد میں Damage ہوئے تھے۔ یہ غلو ہے کہ
میں نے 6th رینٹ بل میں کھٹوں کے حقائق

(جاری 1)

ATTESTED
Examiner

574115



کی بنیاد پر نہ کی ہے بلکہ مدعی کو بلوچان
بنیاد کے لئے قعداً عمدراً کی رنٹ بل
سہارا لے کر گسٹوں کی ہے یہ علوا ہے کہ مدعی

یا بچوں رنٹ بل کے بنیاد پر عملہ رقم
ہس کی منقولہ رسی صوبائی حکومت نے دی تھی
مدعی حقدار ہے یہ علوا ہے کہ میں جمعوں
گواہی دے رہا ہوں

سنگردست تسلیم کیا

11/7/13

[Handwritten signature]

عبدالحسن حسنی
سول جج / علاقہ قاسمی
الہ پور

ATTESTED
Exhibitor

25/4/15

ساتھ
میں مزید شہادت
کرتا ہوں

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محمد عزیز خان

16

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بعدالت جناب سینئر سول جج صاحب / اعلیٰ علاقہ تاحی شانگلہ بمقام اپوری



صوبائی حکومت

پنجاب

سرزینب

(مدعی)

مدعی استغوار بحق

فہرست گواہان منجانب مدعی

25.6.12

جناب عالی! فہرست گواہان منجانب مدعی ذیل عرض ہے۔

- 1: مدعی بذات خود یا بذریعہ مختار بمعہ جملہ دستاویزات بابت تعمیراتی ٹینڈر / ٹھیکہ (اپ گریڈیشن آف مڈل سکول شانگلہ ٹو ہائی سکول شانگلہ)
- 2: ریکارڈ کلرک DCO شانگلہ بمعہ جملہ خط و کتابت مابین مدعی و مدعا علیہ نمبر 4 نسبت تعمیر ہائی سکول شانگلہ۔
- 3: ریکارڈ کلرک XEN سی اینڈ ڈبلیو بمعہ جملہ ریکارڈ تعمیر ہائی سکول شانگلہ۔
- 4: ریکارڈ کلرک EDO سکول ضلع شانگلہ بمعہ جملہ ریکارڈ بابت تعمیر ہائی سکول شانگلہ۔
- 5: ریکارڈ کلرک SDA / بلڈنگ ڈویژن C&W اپوری بمعہ جملہ ریکارڈ تعمیر ہائی سکول شانگلہ۔
- 6: مدعا علیہم بغرض جرح بشرط ضرورت۔

7: عبدالرشید خان / انکوائری نمبر (8) شاہ نواز خان SDO بلڈنگ سی اینڈ ڈبلیو (9) ایف اے ڈی ڈی ڈی شانگلہ حال ڈیو ٹیوٹوریل۔
نوٹ: سینئر سول جج 2 تا 8 طلبیدہ گواہان بہ ادائے خرچہ مدعی۔

(Signature)

سینئر سول جج 7 تا 9 بطور عدالت گواہان بغرض جرح
مدعا علیہ مدعی۔

فضل اکبر گورنمنٹ کنٹرولنگ سیکرٹری ضلع شانگلہ۔

(فہرست گواہان میں قلم سے اینڈر رائٹنگ)
دست اور میچ سے لندا تھکن کی جانے ہے)

ATTESTED
Examiner

Sessions Judge, Shangala

(Signature)
25.6.12

۶۵

۱۵

بعدالت جناب سینئر سول جج صاحب / اعلیٰ علاقہ قاضی شائنگہ بمقام ایجوکیشنل



صوبائی حکومت
(مدعا علیہم / مسئول)

بسم اللہ

مرزب
(مدعی / سائل)

درخواستی استفسار رشق

درخواست ہمداد جاری کرنے حکم امتناعی عارضی و تا کیدی بدیں مراد کہ مدعا علیہم گورنمنٹ ہائی سکول شائنگہ کی تعمیر کے مد / ADP کو ڈنمبر 28/80448 میں موجود رقم کسی دوسری مد میں منتقل کرنے یا صوبائی حکومت کو واپس کرنے سے تا تصفیہ مقدمہ باز و ممنوع رکھے جا کر بذریعہ حکم امتناعی تا کیدی حسب منشاء جز ب دعویٰ مدعی کو ادا کرنے کا حکم ہوئے۔

جناب عالی! درخواست ذیل عرض ہے۔

- 1: یہ کہ مقدمہ عنوان بالا عدالت حضور میں دائر کیا جا رہا ہے۔ جس میں نا حال تاریخ پیشی مقرر نہ ہے۔
- 2: یہ کہ مدعی / سائل کے حق میں ایک قوی اور مضبوط مقدمہ موجود ہے۔
- 3: یہ کہ توازن سہولت بھی مدعی / سائل کے حق میں ہے۔
- 4: یہ کہ اگر حکم امتناعی عارضی و تا کیدی بحق مدعی / سائل جاری نہ کیا گیا تو مدعی کو نا قابل تلافی نقصان ہوگا۔

بیان حلفی

لہذا استدعاء ہے کہ درخواست ہذا حسب استدعاء منظور فرمایا جائے۔

حلفاً بیان کیا جاتا ہے کہ جملہ مراتب درخواست ہذا نا حاد علم و یقین میرے درست اور صحیح ہیں۔

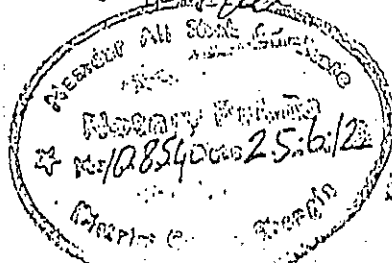
(Signature)

عریضہ

مدعی بذریعہ مختار خاص فضل اکبر
گورنمنٹ کنٹرولڈ شائنگہ

(Signature)

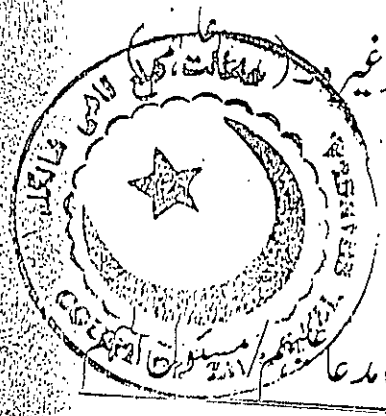
فضل اکبر



ATTEST
Examiner

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محکمہ عدالت / علاقہ قاضی صاحب اپوری ضلع شانگلہ



صوبائی حکومت وغیرہ (محکمات عدالت)

بنام

سرزیب۔ (مدعی)

دعویٰ استنقار حق

جواب درخواست منجانب مدعا

ناب عالی!

0/11/12
عبدالرحمن مہمند
محکمہ عدالت شانگلہ
اپوری شانگلہ

جواب درخواست ذیل عرض ہے۔

۱۔ یہ کہ فقرہ نمبر ۱ قانونی ہے جواب طلب نہیں ہے۔

۲۔ یہ کہ فقرہ نمبر ۲ غلط ہے۔ مدعی کے حق میں کوئی مقدمہ نہیں ہے۔ بلکہ مدعا علیہم / مسئول الیہم کے حق میں قوی مقدمہ ہے۔

۳۔ یہ کہ فقرہ نمبر ۳ بھی غلط ہے۔ توازن سہولیات بھی حکم استناعی عارضی خارج کرنے کے حق میں ہیں۔

۴۔ یہ کہ فقرہ نمبر ۴ بھی غلط ہے۔ حکم استناعی عارضی جاری کرنے سے ما مسئول الیہم / مدعا علیہم کو ناقابل تلافی نقصان پہنچ جائیگا۔

بیان حافی

بیان کیا جاتا ہے کہ

جواب درخواست ہذا

صحیح اور درست ہیں۔

استدعا ہے کہ منظوری جواب درخواست ہذا، درخواست سائیل / مدعی بمعدہ خرچہ دہرہ

۰۵-۰۹-۲۰۱۲

خارج فرمایا جاوے۔

عریف

مسئول الیہم / مدعا علیہم بذریعہ سینئر گورنمنٹ پلیدر ضلع شانگلہ

TESTED
Examiner
Sessions Court Shangle
25/11/12

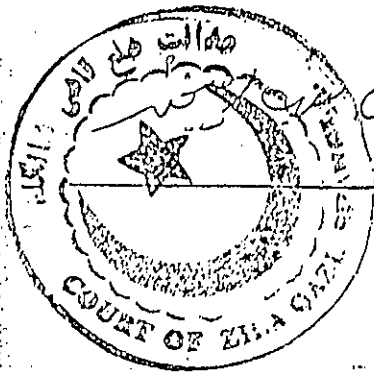
Pk-87

47

درست فدا - سولہ جہا - اسلحہ عالی صلا - اللوری

15

زندہ نام عروہ



درست پتہ طلبہ گواہ درستی

ppf.

درست پتہ عالی! درست پتہ عالی

مجموعہ سبب الجندیہ دستہ اولیہ سے ایس ڈی کے
ڈومین ٹورنٹیا کے غازی ٹوٹ ضلع ماہیہ

عمر الجندیہ
صوبائی حکومت ہزارہ
SDO سے ایس ڈی کے
وہوئی ضلع سہانہ

ATTESTED
Examiner
Sessions Court Shangle

25/4/15

24 $\frac{6}{13}$ افریقہ

15

بعدالت جناب سول جج / علاقہ قاضی صاحب اپوری ضلع شانگلہ



بسنام

سرزید

Handwritten signature and notes in Urdu.

ذہانت و فیاضیت کے ساتھ

جواب درخواست منجانب مدعی بابت درخواست مدعا علیہم

نسبت طلبی سب انجینئر محمد شوکت

جناب عالی! جواب درخواست ذیل ہے۔

عذرات تمہیدی :-

- (i) سائیلان کو بنائے درخواست حاصل نہ ہے۔
- (ii) درخواست سائیلان بشکل مرجوعہ ناقص، غلط اور ناقابل پذیرائی ہے۔
- (iii) سائیلان قبول و نفل سے مانع از درخواست ہیں۔
- (iv) درخواست سائیلان شریعہ نظام عدل ریگولیشن کے منشاء کے خلاف ہے۔
- (v) درخواست محض مقدمہ کو طول دینے اور DW-1 کی ایڈیشن کو تقویت دینے کے لئے بلا جواز دائر کیا گیا ہے۔
- (vi) درخواست سائیلان کی وجہ سے DW-1 کی جرح پیش میل ہونے کا قوی امکان موجود ہے۔

واقعاتی :-

(جاری)

(1) یہ کہ فقرہ نمبر 1 درست ہے۔



(2)



(2) یہ کہ فقرہ نمبر 2 درخواست کے بارے میں عرض ہے کہ اگر مذکورہ گواہ مقدمہ کا اہم گواہ تھا تو اس کا بیان جواب دہی کے ساتھ حسب منشاء (2) 9 شریعہ نظام عدل ریگولیشن شامل کرنا چاہئے تھا یا اس وقت شہادت ہوئی۔

داخل کر کے بوقت شہادت DW-1 پیش کرنا چاہئے تھا۔ چونکہ DW-1 کے بیان میں بوقت جرح اس گواہ کی طرف سے نشاندہی/سوال کیا گیا تو تب سائیلان کو مذکورہ گواہ کا پیش ہونا یاد آ گیا۔ حالانکہ قانون اور ضابطہ کے مطابق زبانی شہادت ایک ہی وقت میں پیش کیا جانا چاہئے تھا۔ نیز مقدمہ کا تمام ریکارڈ پیش کیا گیا ہے جس کی تائید DW-1 نے اپنے بیان میں کیا ہے اور مقدمہ مدعی کو تقریباً تسلیم کیا ہے۔ لہذا بدیں مرحلہ محض زبانی گواہ بطور عدالتی گواہ طلب کرنا بعید از عقل سلیم ہے۔ پس مدعا علیہم اس غفلت اور کوتاہی کو عدالت کے کندھوں پر بندوق رکھ کر پورا نہیں کر سکتا۔ بدیں وجہ فقرہ درخواست غلط اور خلاف واقعات ہے اور مقدمہ کو طول دینے کے مترادف ہے۔ لہذا انکار ہے۔

(3) یہ کہ فقرہ نمبر 3 درخواست مدعا علیہم کی بدینتی و خود غرضی کا بین ثبوت ہے کہ اگر متعلقہ گواہ مدعا علیہم کے لئے اہم ہے اور اس کے محکمہ میں ملازم ہے تو بوقت شہادت DW-1 اس کے پیش کرنے میں کیا رکاوٹ حائل تھی۔ لہذا اگر مدعا علیہم عدالت کے ذریعے مذکورہ گواہ طلب کر رہا ہے جس کے پاس کوئی ریکارڈ نہ تو موجود ہے اور نہ ہی پیش کر سکتا ہے۔ مذکورہ جملہ ریکارڈ جواب دہی اور ریکارڈ کلرک مدعا علیہم نے بطور DW-1 پیش کر کے DW-1 نے اس کی تائید اور مزید تصدیق کی ہے۔ بدیں وجہ مذکورہ گواہ کو طلب کرنا عدالت کے قیمتی وقت کے صیاع کا مترادف ہے۔

لہذا استدعا ہے کہ درخواست سائیلان کو بلا ہوازد بلا اختیار بے وقت اور مقدمہ کو طول دینے کے مترادف تصور کیا جا کر معہ خرچہ خارج فرمایا جائے۔

22.6.013
عدلیہ

مسول الیہم بذریعہ وکیل خود

حق نواز ایڈووکیٹ۔

ATTESTED
Examiner
Sossio/Equirt Sharad
23/4/15

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الحمد لله رب العالمين والصلوة والسلام على سيدنا محمد وآله الطيبين الطاهرين



کتابخانه ملی و اسناد

تاریخ

شماره

عنوان سند

سند شماره ۱۰۰۰
تاریخ ۱۳۰۰

سند شماره ۱۰۰۰

این سند در تاریخ ۱۳۰۰ در شهر تهران
از طرف آقای محمد علی محمدی
به آقای علی محمد محمدی
مهر و امضا گردید.
این سند در تاریخ ۱۳۰۰ در شهر تهران
از طرف آقای محمد علی محمدی
به آقای علی محمد محمدی
مهر و امضا گردید.
تاریخ ۲۱.۶.۲۰۱۳
سازمان اسناد و کتابخانه ملی

POWER OF ATTORNEY

In the Court of Khyber Pakhtun Khwa Service Tribunal Peshawar
Muhammad Shaukat

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of Khyber Pakhtun Khwa
and others.

} Defendant
} Respondent
} Accused
}

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

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

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

and Sajid Amin Advocate my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year _____
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Accepted
Raj
Sajid Amin Adv

Ijaz Anwar

Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3 & 4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0333-9107225

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
SERVICE APPEAL NO. 10 OF 2016

Engr. Imad Ahmad --- Appellant
Assistant Engineer O/O
CE (Centre) C&W Peshawar

VERSUS

1. Govt of Khyber Pakhtunkhwa through --- Respondents
Chief Secretary, Peshawar
2. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
3. Chief Engineer (Centre)
C&W, Peshawar

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 3

Respectfully Sheweth

Preliminary Objections

1. That the appeal is not maintainable in its present form.
2. That the appeal is premature.
3. That the appellant has no cause of action and locus standi.
4. That the appeal is time barred.
5. That the appeal is liable to be rejected on ground of non-joinder of necessary and mis-joinder of unnecessary parties
6. That the appellant is estopped by his own conduct to file the instant appeal

Facts

1. Pertains to record
2. Pertains to record
3. Incorrect. In September 2011, due to ground movement and erosion of rock, the under construction scheme of GMS Shangla was seriously damaged along-with the existing buildings of Middle and Primary sections. The field staff of C&W Department calculated the value of damages and deducted the amount of Rs.15,48,233/- from the contractors' 6th running bills. The plaintiff Mr. Seranzeb Govt contractor filed a suit for declaration, recovery and permanent injunction against the respondents in the learned court of Senior Civil Judge/Illaqa Qazi Alpuri District Shangla on 25.06.2012. After arguments, the learned court decreed the suit in favour of plaintiff on 27.07.2013 (**Annex-I**). The respondents being aggrieved with the judgment of the trial court filed an appeal against the decision in the Learned Peshawar High Court Peshawar Mingora Bench/Darul Qaza Swat. However the court dismissed the appeal (**Annex-II**). Therefore, the Department approached to August Supreme Court of Pakistan against the decision of the Learned Peshawar High Court Mingora Bench. The August Supreme Court of Pakistan has ordered dated 04.05.2015 in the verdict that since the officials of the Department had admitted the claim of the respondent as correct. In these circumstances, we do not find any merit in this petition, which is dismissed leave refused. However, the Competent Authority in the Department is directed to initiate disciplinary proceedings against the said DWs and conclude the same within a period of 30 days from the receipt of this order. Report of the proceedings shall be submitted before this court for his perusal (**Annex-III**).


4. Incorrect. As stated above, on the direction of August Supreme Court of Pakistan, a note submitted to Chief-Secretary Khyber Pakhtunkhwa with the suggestion that disciplinary proceedings may be initiated against the responsible officer/ official i.e. Engr. Imad Ahmad Assistant Engineer (BS-17) and Mr. Shaukat Sub Engineer (BS-11). An inquiry committee was constituted to initiate disciplinary proceeding against the responsible officer/official under E&D Rules, 2011 by serving charge sheets/Statement of Allegations upon them and submit report.
5. Incorrect. The Chief Secretary being Competent Authority constituted inquiry committee to conduct formal inquiry under the Khyber Pakhtunkhwa Govt Servants (Efficiency & Discipline) Rules, 2011 against the accused officer/official. Accordingly, the committee submitted the inquiry report (**Annex-IV**), wherein it was recommended imposition of penalty upon the appellant, meaning thereby the charges were proved against him. As the accused failed to submit a proper statement before Learned Civil Court. On the basis of his false statements given by appellants, the Learned Civil Court decided the case in favour of contractor. Moreover, he was required to agitate clause-29 during the hearing date in the Learned Civil Court. If he tried to defend the case in the Learned Civil Court in a smooth manner then the Government would have not faced embarrassing situation in the higher courts, besides loss caused to the Govt exchequer.
6. Incorrect. As and when the inquiry committee submitted the report which was processed and placed before the Competent Authority (Chief Secretary). In the report, the committee recommended imposition of penalty upon the appellant. The Competent Authority tentatively imposed major penalty "Reduction of time scale of pay by three stages for 03 years" upon the appellant with the direction to submit his reply.
7. Incorrect. The reply to the show cause notice of the appellant examined but did not find convincing, as the inquiry committee has clearly mentioned in the findings that clause-29 should have been presented before the court in the instant matter to defend the case which says that "the Government will accept no responsibility on account of damages". The committee has further added that any concealment of facts from the court is a criminal offence. Therefore, the tentative penalty of "reduction of time scale of pay by three stages for three years" already imposed upon the appellant was confirmed.
8. Incorrect. The Competent Authority after having considered the charges mentioned in the inquiry report, personal hearing of the officer/ official (appellant) in exercise of power under Rule-14(5)(ii) of Khyber Pakhtunkhwa E&D Rules, 2011 has imposed major penalty of "reduction of time scale of pay by three stages for 03 years besides recover of pecuniary loss of Rs.7,74,116/-" upon the appellant on 29.09.2015 (**Annex-V**).
9. As per record, the departmental appeal of the appellant processed and found not convincible as the presence of the appellant in the Learned Civil Court and his statement on behalf of Govt reveals that his laxity in defending the case being not honoured in the Learned Civil Court nor in August Supreme Court of Pakistan, which clearly shows their inefficiency and negligence. Therefore, the Competent Authority has rejected his appeal and informed him accordingly.
10. Incorrect. The appellant has no cause of action to file the instant appeal, as the disciplinary proceeding against the appellant was initiated on the orders of August Supreme Court of Pakistan and its outcome meaning by imposition of major penalty upon the appellant was placed before August Supreme Court of Pakistan by the Chief Secretary in person. **The August Supreme Court of Pakistan vide its order dated 30.09.2015 that the two delinquent officer were departmentally proceeding against and as a major penalty, recovery of the amount which the latter conceded in the court has been directed. Furthermore, three increments have also been stopped and three stages demotion has been made. This to us is a reasonable compliance of the order dated 04.05.2015. The matter is disposed of accordingly (Annex-VI).** Therefore, the appellant was required to comply with the referred orders and should have deposited his share of loss in the government treasury.

Grounds

- A. Incorrect. There is no mala-fide intention of the respondents, no discrimination and no violation of rights of the appellant has been made. The respondents dealt the case strictly in accordance with law and regulations.
- B. Incorrect. The charges leveled against the appellant were properly enquired and were proved against him as per inquiry report and the order is in accordance with law.
- C. Incorrect. The opportunity of detail personal hearing was given to the appellant on 29.09.2015, but he could not prove himself innocent from the charges which were proved against him.
- D. Incorrect. The inquiry report was processed according to law and under existing rules and regulation. Moreover, all the process of inquiry proceedings were conducted against the appellant according to law and rules.
- E. Incorrect and mis-conceived. All relevant rules have been followed and action taken is within the prescribed law as explained in para-8 of the facts.
- F. Incorrect. As explain in para 7 & 8 of the facts.
- G. Incorrect. The August Supreme Court of Pakistan has clearly mentioned in the judgment dated 04.05.2015 that both the DWs have admitted the claim of contractor, while giving their statement in the Learned Civil Court. Moreover the inquiry committee has also mentioned in the report that clause-29 should have been presented before the court in the instant matter to defend the case which says that "the Government will accept no responsibility on account of damages".
- H. Incorrect. As explained in para-G of the grounds.
- I. Incorrect. As explained in para-G of the grounds.
- J. Incorrect. As explained in para-G of the grounds.
- K. Incorrect. As explained in para-G of the grounds.
- L. Incorrect. As explained in para-G of the grounds.
- M. No comments
- N. Incorrect. As explained in para-G of the grounds.
- O. Incorrect. As explained in para-G of the grounds.
- P. Incorrect. As explained in para 4 & 5 of the facts.
- Q. Incorrect. As explained in para 4 & 5 of the facts.
- R. Incorrect. As explained in para 4 & 5 of the facts.
- S. Incorrect. As explained in para 4 & 5 of the facts.
- T. Incorrect. As explained in para 4 & 5 of the facts.
- U. Incorrect. The impugned notification is legal and accordance with law, no violation of the constitution, law, and even policy, rules and regulations of the Provincial Government is made.
- V. Incorrect. No right of the appellant has been violated.
- W. Incorrect. No discrimination to any individual, including the appellant was done nor any rules of principle of law infringed. The apprehension of the appellant is mis-happed.
- X. Incorrect and mis-conceived. All relevant rules have been followed and action taken within the prescribed law as explained in para 4 & 5 of the facts.
- Y. Incorrect. The charges leveled against the appellant were properly enquired and were proved against him as per inquiry report of the inquiry committee and impugned order is in accordance with law.
- Z. The respondents would like to seek permission of this Hon'able Tribunal to produce more grounds during the time of arguments.

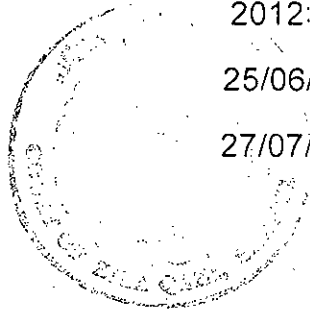
In view of the above, it is humbly prayed that the instant appeal may kindly be dismissed with cost.

Secretary to Govt of
Khyber Pakhtunkhwa
C&W Department
(Respondents No. 1 & 2)


Chief Engineer (Centre)
C&W Department
(Respondent No. 3)

(5)

بعدالت عبدالحسن مہمند سول جج / علاقہ قاضی اپوری ضلع شانگلہ



مقدمہ نمبر 86/1 سال: 2012
رجوعہ: 25/06/2012
تاریخ فیصلہ: 27/07/2013

سر مزید گورنمنٹ کنٹریکٹر شانگلہ بذریعہ فضل اکبر گورنمنٹ کنٹریکٹر شانگلہ (مدعی)

بنام

- (1) صوبائی حکومت بذریعہ چیف سیکرٹری صوبہ پنجتنخواہ مقام پشاور۔
- (2) چیف انجینئر C & W خیبر پنجتنخواہ مقام پشاور۔
- (3) سیکرٹری ایجوکیشن خیبر پنجتنخواہ مقام پشاور۔
- (4) DCO شانگلہ بمقام اپوری۔
- (5) XCN سی اینڈ بیو ضلع شانگلہ بمقام اپوری۔
- (6) SDO بلڈنگز C&W ضلع شانگلہ۔
- (7) EDO (E&SE) شانگلہ بمقام اپوری۔
- (8) ADO (P&D) (سکول) ضلع شانگلہ بمقام اپوری۔ (مدعا علیہم)

مولا محمد / علاقہ قاضی
اپوری ضلع شانگلہ

☆ وکیل مدعی: حق نواز ایڈوکیٹ۔

☆ وکیل مدعا علیہم: محمد زبیر گورنمنٹ پلیڈر۔

ATTESTED

(جاری)-----

17/2012

﴿ دعویٰ استغراق حق ﴾

فیصلہ

27/07/2013

حالات و واقعات مختصراً مقدمہ ہذا کچھ یوں ہیں۔ کہ مدعی بحیثیت ٹھیکیدار محکمہ C&W خیبر پختونخوا کے ساتھ رجسٹرڈ ہے اور حسب ضابطہ تعمیراتی کاموں میں بذریعہ ٹینڈر حصہ لیتا رہا ہے۔ اس نے گورنمنٹ ہڈل سکول شانگلہ کو گورنمنٹ ہائی سکول کا درجہ دینے کے بعد بلڈنگ تعمیر کرنے کا ٹھیکہ بروئے معاہدہ نمبر SH/2009-94 حاصل کر کے مورخہ 28.11.2009 کے ورک آرڈر کے مطابق مذکورہ بلڈنگ پر کام شروع کر کے جون 2011 تک مکمل کرنا مطلوب تھا۔ سکول کے کل تخمینہ 9.585 ملین روپے کا 2% کال ڈیپازٹ اور 8% سیکورٹی جمع کر کے ورک بل حاصل کرتا رہا۔ جس کو جون 2011 تک کئے ہوئے کام کے نسبت MB تیار شدہ کی جزوی ادائیگی کی گئی۔ اور مزید فنڈ نہ ہونے کے وجہ سے بقایا بل کی ادائیگی مؤخر رہی۔ اور جب سال 2011-12 میں مزید فنڈ دستیاب ہوا تو اس نے کئے ہوئے کام تقریباً 16 لاکھ روپے بنتے ہیں واگزار کرنے کے نسبت کئی بار مدعا علیہم سے رابطہ کر کے مورخہ 20/04/2012 کو اس نسبت تحریری طور مدعا علیہ نمبر 4 سے استدعاء کی۔ لیکن مدعا علیہم نے اس کے کئے ہوئے کام جو کہ MB بک پر تقریباً 16 لاکھ روپے کا بقایا بنتا ہے ادا کرنے اور مزید کام بشکل ڈرین، ریٹنگ وال وغیرہ کر کے پیمائش لینے سے لیت و لعل کر کے انکاری ہوئے۔ بدیں وجہ دعویٰ ہذا ادا کر کے کی ضرورت لاحق ہوئی۔

مدعی نے دعویٰ خود کے جزی (ج) میں صدور حکم امتناعی دوائی کی بھی استدعاء کی کہ گورنمنٹ ہائی سکول کے تعمیر کے مد میں ADP نمبر اور کوڈ 28/80448 میں موجود رقم واپس کرنے یا کسی دوسرے مد میں منتقل کرنے سے باز و ممنوع رکھا جائے۔

مدعا علیہم کو حسب ضابطہ طلب کیا گیا۔ مدعا علیہم بذریعہ نمائندہ و گورنمنٹ پبلیڈر حاضر عدالت ہوئے انہوں نے جواب دعویٰ داخل عدالت کرتے ہوئے موقف اختیار کیا کہ مدعی کے پانچواں رنگ بل مورخہ 30.06.2011 کو مبلغ 5898366/- روپے کا بنایا گیا۔ اور فنڈز کی کمی کی وجہ سے مبلغ 2033000/- روپے کی ادائیگی کی گئی جبکہ مبلغ 3866366/- روپے with-held کئے گئے۔ مزید مستدعی ہے کہ دوبارہ پیمائش نومبر 2011 میں کی گئی جس میں مبلغ 1548233/- روپے کا کام کم پایا جا کر مذکورہ کام کا دوبارہ بل بنایا گیا جس میں مبلغ 1548233/- روپے منہا کئے گئے اور باقی ماندہ رقم مدعی کو ادائیگی کی گئی۔ اور مدعی کا 8% سیکورٹی اور 2% زر بیعانہ کے علاوہ انکے ساتھ دیگر کوئی رقم نہ ہے۔ (جاری)

ATTESTED

فریقین کی معروضات کی روشنی میں درج ذیل تنقیحات وضع کیئے گئے۔

﴿تنقیحات﴾

- 1: کیا مدعی کو بنائے دعویٰ حاصل ہے؟
- 2: کیا دعویٰ مدعی اندر میعاد ہے؟
- 3: کیا دعویٰ مدعی بشکل موجودہ ناقص ہے؟
- 4: کیا مدعی قول و فعل خود سے مانع از دعویٰ ہیں؟
- 5: کیا مدعی مبلغ -/15,482,333 روپے بمعہ 2% کال ڈیپازٹ اور 8% سیکورٹی کے وصولی کا حقدار ہے؟
- 6: کیا مدعیان ڈگری مستدعیہ کے حقداران ہیں؟
- 7: داد رسی؟



ATTESTED

Executive
District Court Shergarh

تنقیحات وضع کئے جانے کے بعد فریقین کو شہادت پیش کرنے کا موقع دیا گیا۔ فریقین نے حسب نشاء شہادت 13.8.13 پیش کی۔ شہادت فریقین، بحث و کلاء اور ریکارڈ موجود بر مسل کی روشنی میں عدالت ہذا کا تنقیح وار فیصلہ حسب ذیل ہے۔
بحث بر تنقیحات:-

تنقیح نمبر: 5:

☆ کیا مدعی مبلغ -/15,482,333 روپے بمعہ 2% کال ڈیپازٹ اور 8% سیکورٹی کے وصولی کا حقدار ہے؟۔

تنقیح ہذا کا بار ثبوت بزمہ مدعی تھا مدعی کی جانب سے اسکا مختار فضل اکبر گورنمنٹ کنٹریکٹر شانگلہ بطور PW-1 پیش ہوا۔ وہ اپنے صدر بیان میں بیانی ہے کہ مدعی C&W کے ساتھ بطور کنٹریکٹر جسٹریٹس اور تعمیراتی کاموں میں جج اعلیٰ ڈاھر السوری شانگلہ حصہ لیتا رہا ہے اسی طرح گورنمنٹ ہائی سکول شانگلہ کی تعمیراتی کام کا ٹھیکہ بروئے معاہدہ نمبر 94-SH/20.09.2010 مظہرہ PW1/2 اور ورک آرڈر محررہ 28.11.2009 مظہرہ PW1/3 لے کر تعمیراتی کام شروع کیا۔ مدعی نے جون 2011 تک دستیاب فنڈ/بجٹ میں سکول کا 90% کام مکمل کر کے MB بک پر مدعا علیہم کے ذمے تقریباً 16 لاکھ روپے بقایا ہے۔ لیکن سال 2011-12 میں مزید فنڈ دستیاب ہونے پر مدعی کو مزید 10% کام کی تکمیل کا کہا گیا لیکن زیر تعمیر سکول اور اس کے ملحقہ 1 سکوائر کلومیٹر کی اراضی سر کرنے لگی جس کی وجہ سے سکول پر مزید بقایا کام کی تکمیل میں رکاوٹ پیدا ہوئی۔ دریں نسبت مدعا علیہم نے ایک انکوائری ٹیم مقرر کی جس نے قرار دیا کہ مذکورہ مقام پر سرکاری مزید تعمیرات کو روکا رکھا جائے۔ دریں نسبت انکوائری رپورٹ مظہرہ PW1/4 پیش کی۔ بعد میں جیولاجیکل رپورٹ مظہرہ PW1/5 مدعا علیہم کو ارسال کیا گیا۔ اسی طرح مدعا علیہم نے سکول مذکورہ کو مزید نقصان سے بچانے کیلئے مدعی پر ٹیکنیکل سیکشن کے علاوہ ڈیڑھ لاکھ روپے، ریٹیننگ والا وغیرہ کا اضافی کام بھی اگنا جو کتا حال مدعا علیہم نے MB رٹن لاسے۔۔۔ (حارہ 1)

چونکہ مدعا علیہم نے مدعی کو سکول مذکورہ پر مزید کام کرنے سے روکا تو اس نے مورخہ 11.04.2012 کو مدعا علیہم نمبر 4 سے بذریعہ تحریری درخواست مظہرہ PW1/6 استدعاء کی کہ مدعی کا واجب الادا رقم بمعہ 2% کال ڈیپازٹ اور 8% سیکوریٹی فنڈ مبلغ تقریباً 30 لاکھ روپے واگزار کرنے۔ لیکن مدعا علیہم لیت لعل سے کام لیکر مدعی کو مذکورہ واجب الادا رقم ادا نہ کیا گیا۔ PW-2 بیان فضل مولا سینئر کلرک دفتر XCN, C&W شانگلہ۔

اپنے صدر بیان میں بیانی ہے کہ وہ اپنے ہمراہ گورنمنٹ ہائی سکول شانگلہ کا تعمیراتی ریکارڈ لایا ہے جو کہ ہاتھ تہ ترتیب مظہرہ PW2/1 تا PW2/12 ہیں پیش کی۔ جبکہ اصل بعد ملاحظہ سے واپس کیا گیا۔ PW-3 بیان گل پرویز اسٹنٹ DC اپوری۔

اپنے صدر بیان میں بیانی ہے کہ وہ اپنے ہمراہ سکول مذکورہ کے نسبت انکوائری کمیٹی کے جانب سے DCO شانگلہ کو ارسال کردہ چھٹی نمبر 918 مورخہ 27.10.2011 جس کے ساتھ انکوائری رپورٹ مشتمل برپانچ صفحات ہیں کے تصدیق نقولات مظہرہ PW3/1 پیش کی۔

یوں فریق مدعی کی شہادت پائے تکمیل تک پہنچی اور مدعا علیہم کو اپنے موقف کی تائید میں شہادت پیش کرنے کا موقع دیا گیا۔ مدعا علیہم موقف خود کی تائید میں عماد احمد SDO بطور DW-1 پیش ہو کر اپنے صدر بیان میں بیانی ہے کہ وہ اپنے ہمراہ ٹھیکہ متعلقہ سے تعلق رکھنے والے بل ہائے کے فوٹو اسٹیٹ لایا ہیں جو کہ مقدمہ ہذا میں پہلے سے بطور مظہرہ PW2/9 ہے اور اسی طرح پہلے سے مظہرہ شدہ PW2/8، PW2/10، PW2/12، PW2/11، PW2/12، PW2/3 اور PW2/6 جو کہ اسکے دفتر کے سینئر کلرک نے بطور ریکارڈ پیش کئے ہیں کو درست اور صحیح گردانا۔

بدوران جرح گواہ مذکورہ بیانی ہے کہ مدعی کے لئے پانچویں رنگ بل مورخہ 30/06/2011 کو مبلغ 5898366/- روپے کا بنایا گیا تھا جو کہ پیمائش کے مطابق درست تھا۔ اسی طرح دوبارہ پیمائش انجینئر محمد شوکت نے کی تھی۔ جبکہ اس بات کو درست تسلیم کیا کہ انہوں نے پانچویں رنگ بل کے اصل میں کٹ کرید کر کے 1548233/- روپے کے لئے جرح کئے گئے۔ مزید یہ کہ انہوں نے پانچویں رنگ بل کام کی کمی کے نسبت کوئی نوٹس ٹھیکہ دار کو نہیں دیا ہے۔ گواہ نے اپنے جرح میں اس بات کو درست تسلیم کیا کہ مدعی کا 2% کال ڈیپازٹ اور 8% سیکوریٹی اسکے پاس موجود ہے۔ مزید یہ کہ اسکے ذمہ مدعی کے تقریباً 58 لاکھ روپے واجب الادا تھے جس میں جزوی ادائیگی کے بعد مدعی کو بقایا رقم کی ادائیگی کا انہوں نے منظوری لیکر ادا کرنے کا وعدہ کیا تھا۔ مزید بیانی ہے کہ مدعی کو رقم کی ادائیگی میں لیت و لعل نہیں کر رہے ہیں البتہ اس کا جو بھی حق بنتا ہے اسے ادا کرنے کو تیار ہیں۔

DW-2 بیان محمد شوکت سب انجینئر C&W حال ضلع تورغر۔

اپنے صدر بیان میں بیانی ہے کہ وہ سال 2011 میں بحیثیت سب انجینئر ضلع شانگلہ تعینات تھا اور بوقت تعمیر سکول مذکورہ وہ بحیثیت انجینئر انچارج تھا۔ جس نے جون 2011 میں پیمائش لے کر اس کا MBK میں ریکارڈ کی ہے جس کا نقل پہلے سے مسل پر مظہرہ PW2/1 ہے۔ (جاری)

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گواہ صدر بیان میں مزید بیانی ہے کہ اس نے نومبر 2011 میں دوبارہ پیمائش کر کے MB میں ریکارڈ کی ہے جس کے نقولات پہلے سے مسل پر موجود مظہرہ PW2/12 ہے۔

بدوران جرح گواہ نے اس بات کو درست تسلیم کیا کہ مدعی کے کام کا فائل بل تا حال نہ بنا ہے۔ پانچویں رنگ بل کے دوران اس نے جو پیمائش کی تھی وہ تعمیر شدہ سکول میں کئے ہوئے کام کے نسبت درست تھا اور مذکورہ پیمائش کو مد نظر رکھتے ہوئے پانچویں رنگ بل درست اور صحیح طور پر مرتب کیا تھا۔

مندرجہ بالا شہادت و بحث فاضل و کلاء کی روشنی میں یہ تعین کیا جاتا ہے کہ مدعا علیہم نے موقف مدعی کی تردید میں کوئی معقول شہادت پیش نہیں کی ہے۔ بلکہ زیادہ تر مدعا علیہم موقف مدعی کو درست اور صحیح گردانتے ہیں۔ لہذا تنقیح ہذا اثبات میں فیصلہ کیا جاتا ہے۔



تنقیح نمبر: 2 کیا دعویٰ مدعی زائد المیعاد ہیں؟

تنقیح ہذا کا بار ثبوت بذمہ مدعی تھا۔ مدعی نے دعویٰ استقر احق دائر کیا ہے جس کیلئے قانون میعاد میں عرصہ چھ سال مقرر ہے۔ جسمیں اس نے معاہدہ نمبر 10-2009-SH/94-محرمہ 28.11.2009 کو متنازعہ گردانتے ہوئے دعویٰ ہذا مورخہ 25/06/2012 کو دائر کر کے دادری طلب کی ہے۔ جس سے صاف عیاں ہے کہ دعویٰ مدعی اندر میعاد ہے۔ لہذا تنقیح ہذا کا فیصلہ نفی میں کیا جاتا ہے۔

تنقیحات نمبر: 3, 4:

☆ کیا دعویٰ مدعی بشكل موجودہ ناقص اور قابل پذیرائی ہے؟

☆ کیا مدعی قول و فعل خود سے مانع از دعویٰ ہے؟

چونکہ دونوں تنقیحات بالا قانونی ہیں اور ایس میں باہم مربوط ہیں بدیں وجہ یکجا طور پر فیصلہ کئے جاتے ہیں۔

تنقیحات بالا کا بار ثبوت بذمہ مدعا علیہم تھا۔ تاہم مدعا علیہم نے اس بابت کوئی معقول شہادت پیش نہیں کی ہے۔ جس سے ثابت ہو کہ دعویٰ مدعی بشكل موجودہ ناقص اور ناقابل پذیرائی اور مدعی قول و فعل خود میں مانع از دعویٰ ہے۔ لہذا ہر دو تنقیحات بالانفی میں فیصلہ کئے جاتے ہیں۔

تنقیحات نمبر 1, 6: کیا مدعی کو بنائے دعویٰ حاصل ہے؟ کیا مدعی ڈگری مستدعیہ کا حقدار ہے؟

چونکہ دونوں تنقیحات بالا کا ایس میں گہرا ربط ہے۔ بدیں وجہ یکجا طور پر فیصلہ کئے جاتے ہیں۔

تنقیحات بالا کا بار ثبوت بذمہ مدعی تھا۔ مدعی نے اپنا دعویٰ ثابت کیا ہے جس کی تفصیل تنقیح نمبر 5 میں درج ہے۔ لہذا اسے بنائے دعویٰ حاصل ہے اور ڈگری مستدعیہ کا حقدار ہے۔

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لہذا تنقیحات بالا کا فیصلہ اثبات میں کیا جاتا ہے۔ (جاری)

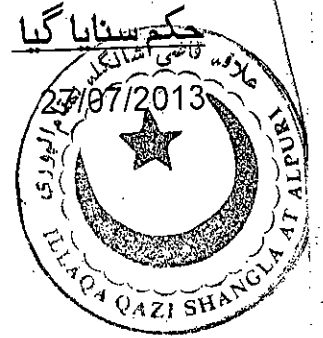
Sessions Court Shargha

دادرسی:-

مدعی نے اپنا دعویٰ ٹھوس اور مستند شہادت کے ذریعے تا حد 1548233 روپے بمعہ 2% کال ڈیپازٹ اور 8% سیکورٹی ثابت کیا ہے۔ لہذا دعویٰ مدعی بحق مدعی بر خلاف مدعا علیہم ذکر کی گیا جاتا ہے۔ خرچہ بذمہ فریقین رکھا جاتا ہے۔ عمل بعد از ضروری ترتیب و تکمیل داخل دفتر ہوئے۔



عبد الحسن مہمند
سول جج / علاقہ قاضی الپوری
ضلع شانگلہ



﴿سرٹیفیکیٹ﴾

تصدیق کی جاتی ہے کہ فیصلہ ہذا کل (6) صفحات پر مشتمل ہے
بعد از ضروری تصحیح ہر صفحہ پر میرا دستخط اور مہر عدالت درست طور پر ثبت ہے۔

عبد الحسن مہمند
سول جج / علاقہ قاضی الپوری
ضلع شانگلہ

Certificate to be true copy

Member to
District Sessions Judge
Shargha
Jhelum

13/8/13

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT
(Judicial Department)

R.F.A. No. 83-M/2013.

JUDGMENT

Date of hearing: 10-7-2014.

Appellant-Petitioner (Govt. of Khyber Pakhtunkhwa
through Chief Secretary & Others) by Muhammad Javed, A.A.S.
Respondent (Sarangzeb, Govt. Contractor Shangla
through Fazal Akbar Govt. Contractor Shangla) by Mr. Haid Nadeem
Rawal.

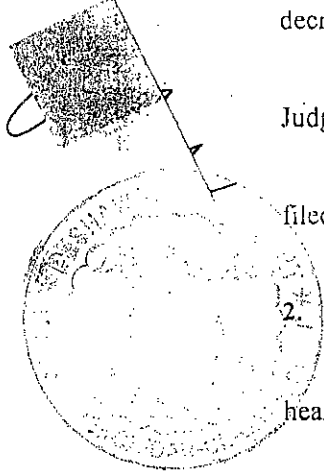
ABDUL LATIF KHAN, J.- The appellants have filed the

instant Regular First Appeal against the judgment and

decree dated 27-7-2013 passed by the learned Civil

Judge/Illaq Qazi, Alpuri, District Shangla, whereby suit

filed by the plaintiff/respondent has been decreed.



2. Arguments of learned counsel for the parties

heard and record perused.

3. A perusal of record reveals that Sarangzeb,

respondent filed a suit against the petitioners/Department

for declaration to the effect that he as government

contractor participated in a tender for construction of

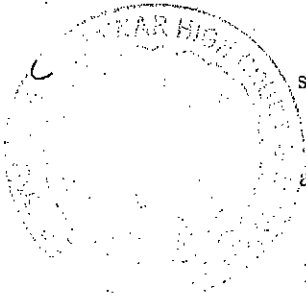
Government High School Shangla by upgrading

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Registrar
Peshawar High Court Bench
Mingora

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Government Middle School Shangla. An agreement to this effect bearing No. 94-SH-/2009-10 was arrived at between the parties on 28-11-2009 and thereafter work order was issued and after necessary codal formalities the construction was started and was entitled to receive the amount of work done by him and defendants have not authorized to withheld the amount of Rs. 16 lacs regarding the work done by the plaintiff, recovery to the extent of an amount of Rs. 16 lacs alongwith 2 % call deposit and 8 % security amounting to Rs. 26 lacs and after rendition of account total amount alongwith interest with bank rate 15 % .w.e.f. June, 2011 till disposal of the matter were also sought. The suit was contested by the defendants on the ground that 5th running bill amounting to Rs. 58, 98, 366/- was prepared on 30-6-2011, however, due to insufficient fund an amount of Rs. 20, 33,000/- was paid to the plaintiff, the rest of the amount of Rs. 38, 66, 366/- was withheld later on in November, 2011, as the work done by

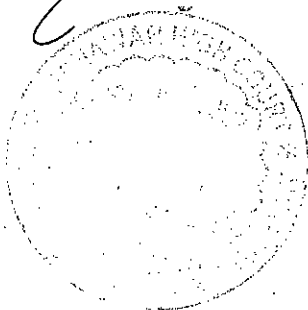


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the plaintiff was re-measured and work to the tune of Rs. 15, 38, 233/- was found less done by the contractor and after deducting the said amount the remaining amount of Rs. 23, 18,233/- was paid to the plaintiff, which was in accordance with the work done on the spot and nothing left outstanding against the defendants owe to the plaintiff except 8 % security and 2 % call deposit.

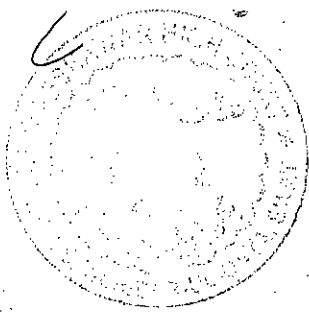
4. Learned AAG appearing on behalf of the appellants/Department only focused on the point that though the work done by the plaintiff/contractor on the spot, however, referred to Clause 29 of the agreement and argued that as the building was collapsed after completion of the construction by the contractor, therefore, the Government was not responsible, as both the parties have agreed that there would be no responsibility of the Government and the contractor would be liable to damage caused by floods, fires, thefts, riots, force majored or any act of god to partly completed work, or to the material



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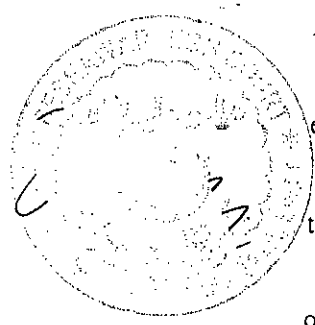
25/11

belonging to the contractor or to material supplied by the Public Works Department once they have been handed over to the contractor, which is misplaced for the reason, that statement of DW-1, who happens to be S.D.O. C & W Department is worth perusal, who deposed that 5th running bill prepared on 30-6-2011 amounting to Rs. 58, 98, 366/- was rightly prepared as per work done on the spot; he was unable to mention as to how re-measurement of the work was made. The defendants/Department were unable to prove that what necessitated the re-measurement of the work done by the contractor. It is pertinent to mention that during the subsequent measurement made in November, 2011 the plaintiff or his representative are not associated and it was unilaterally made and it has no binding effect upon the plaintiff. The S.D.O. appeared as DW-1 has also deposed that he has not measured the work done by the plaintiff in November, 2011 rather re-measurement was made by one Muhammad Shaukat, who is still working as



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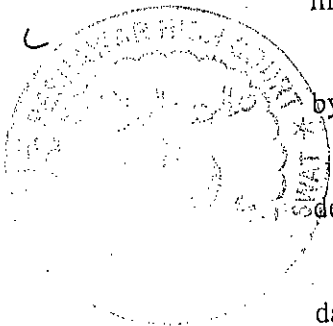
Sub-Engineer in the C&W Department but he has not been produced by the Department in order to substantiate the re-measurement regarding the work done on the spot by the contractor. DW-1 has also admitted that no notice was served upon the plaintiff regarding the less work done by the contractor, as pointed out re-measurement made in November, 2011. It is also in the evidence that a sum of Rs. 58, 98, 366/- was paid to the Government and to this effect a cheque was issued. This witness has also admitted that after 5th running bill a sum of Rs. 58 lacs were outstanding against the Department out of which the partial amount was paid to the plaintiff and rest of the amount was promised to be made to him and are not making hindrances in payment of said amount and are ready to pay the amount owe to the plaintiff. DW-1, Muhammad Shaukat, Sub-Engineer was subsequently produced as DW-2, who has admitted that an amount of Rs. 58-lacs were outstanding against the Department, 5th running bill passed in favour of



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 Assistant High Court Clerk
 Lahore High Court

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the plaintiff and partial amount was paid to him due to insufficient fund. He deposed that the place where the school was constructed, the building was collapsed; he admitted that the Geological team of the University of Peshawar has made the report, according to which the site was declared not suitable for construction. He also deposed that the re-measurement was necessitated due to land erosion. He further admitted that the M.B. on the basis of which 5th running bill was prepared was correct and measurement was rightly done on the basis of work done



by the plaintiff on the spot. He also admitted that the deduction made in the 5th running bill was due to the damage later on caused to the building, however, building was constructed by the plaintiff and was rightly measured and 5th running bill was prepared in accordance with law.

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Peshawar

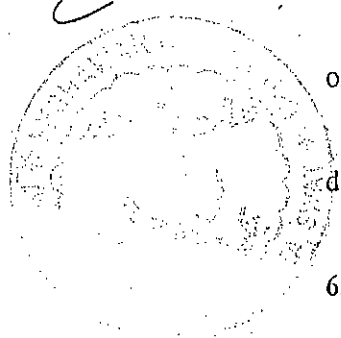
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5. The plea taken by the learned AAG was a departure from the pleadings as the written statement is

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on the spot, measurement was made and on the basis of which 5th running bill was prepared; partial payment was also made and thereafter he was not responsible for any loss and cannot be penalized for the subsequent acts. It was informed that an area of about one kilometer radius, all the buildings were collapsed due to the land-erosion, however, none of the other contractor of school buildings were asked for payment and only plaintiff has been penalized and amount has been deducted from the 5th running bill, which was rightly prepared as per the work done by the plaintiff on the spot, which is not in line with law, apart from being discriminatory in nature.

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6. The learned Trial Court has decided the "lis" pending before it with conscious and application of independent mind and the appellants/Department could not point out any infirmity or illegality in the impugned order, which is not open to any exception.

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BY

For the aforesaid reasons, the instant appeal being devoid of merits is hereby dismissed.

Announced
Dt: 10-7-2014.

Sd: Abdul Latif Khan J. JUDGE



S.No. 4856
 Name of A: A313 Ud. Rehman
 Date of F: 17-7-14
 Date of J: 4-8-14
 Page: 21-P
 Fee C: 42
 Date of: 06-8-14

Certified to be true and correct.

(Handwritten signature)

Postwar High Court, Mingora/Khan-El-Qaza, Swat
 Authorized Under Article 51 of Constitution of Pakistan 1973
06/8/14

Govt. of Khyber Pakhtunkhwa
No. 5070 (we)
Date: 15-5-15

REGISTERED
No. C.P. 553-P/2014 - SCJ
SUPREME COURT OF PAKISTAN.

Islamabad, dated 18/5/2015.

From:

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To:

The Additional Registrar,
Peshawar High court, Mingora Bench (Dar-ul-Qaza),
Swat.

Add: Secy: (Jud) E&AD
Diary No. 1949-e
Date: 18-5-15
SO (Litigation) S&GAD
Diary No. 1347
Dated: 18-5-15

Subject: **CIVIL PETITION NO. 553 - P OF 2014.**
Govt. of Khyber Pakhtunkhwa through Chief Secretary & others
VERSUS.
Serenzaib

On appeal from the Judgment/Order of the Peshawar High Court, Mingora Bench (Dar-ul-Qaza Swat dated 10.07.2014 in RFA NO. 83-M/2013

Dear Sir,

I am directed to enclose herewith a certified copy of the Order of this Court dated 04.05.2015 **dismissing** the above cited civil petition for information and further necessary action.

The operative part of the Order is reproduced hereunder:-
"...The officials of the Department had admitted the claim of the respondent as correct. In these circumstances, we do not find any merit in this petition, which is dismissed and leave refused. However, the Competent Authority in the Department is directed to initiate disciplinary proceedings against the said DWs and conclude the same within a period of 30 days from the receipt of this order. A report of the proceedings shall be submitted before this Court for our perusal in Chambers."

Please acknowledge receipt of this letter alongwith its enclosure immediately.

Yours faithfully,

Encl: Order

ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Copy with a certified copy of the Order of this Court dated 04.05.2015 is forwarded for immediate necessary action to:-

- i. The Chief Secretary, Government of Khyber Pakhtunkhwa, for immediate necessary action and **report compliance.**
- ii. The Chief Engineer C&W Khyber Pakhtunkhwa, Peshawar.
- iii. The Secretary Education, Government of Khyber Pakhtunkhwa, Peshawar.
- iv. The D.C.O. Shangla.

Encl: Order

- v. Copy for information to:-
Deputy Registrar (Peshawar)

ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Kadmi/** P.S. to Chief Secretary
Govt of Khyber Pakhtunkhwa

AJ/LT

Handwritten signatures and dates: 15/5/15, 15/5/2015, R. QAWI

1

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ AHMED CHAUDHRY
MR. JUSTICE IQBAL HAMEEDUR RAHMAN

CIVIL PETITION NO. 553-P OF 2014

(On appeal against the judgment dated 10.7.2014
passed by the Peshawar High Court, Mingora
Bench in RFA No. 83-M/2013)

Government of KPK through Chief Secretary, Peshawar etc
... Petitioners

VERSUS

Serenzaib

... Respondent

For the Petitioners: Mr. Waqar Ahmed, Addl. A.G. KPK

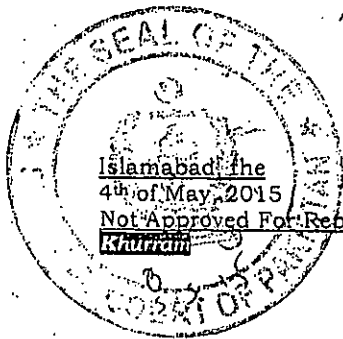
For the Respondent: N.R.

Date of Hearing: 04.05.2015

ORDER

IJAZ AHMED CHAUDHRY, J.- After arguing the case at some length, learned Additional Advocate General, KPK, has admitted that DWs-1 & 2, who are officials of the C&W Department, have admitted during cross-examination that the measurement of fifth running bill was correct and on the basis of the said bill the decree has been passed. The officials of the Department had admitted the claim of the respondent as correct. In these circumstances, we do not find any merit in this petition, which is dismissed and leave refused. However, the Competent Authority in the Department is directed to initiate disciplinary proceedings against the said DWs and conclude the same within a period of 30 days from the receipt of this order. A report of the proceedings shall be submitted before this Court for our perusal in Chambers.

Ijaz Ahmed Chaudhry
Iqbal Hameedur Rahman



Certified to be True Copy

[Signature]
Superintendent
Supreme Court of Pakistan
Islamabad

Annex-IV 3

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ADMINISTRATION DEPARTMENT

No. PA/DS(Estate/Aviation)/Ad/1-2/2015

Dated: 11th September, 2015

16449
17/09/2015

To

The Section Officer (Establishment),
C & W Department,

SUBJECT: CIVIL APPEAL NO. 553-P OF 2014 GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY AND OTHERS VS SERANZAB

Reference: - Your office letter No.SOE/C&W/8-16/2015, dated 07.07.2015 — R-49/c

The undersigned along with Musrim Khan, Executive Engineer, Mardan Irrigation Division, Mardan were appointed as Inquiry Committee for conducting formal inquiry in the subject noted case.

The inquiry has been conducted and the report is enclosed herewith for further necessary action, please.

Enclosure
As above

SARDAR ASAD HAROON,
Deputy Secretary (Estate/Aviation)
Enquiry Officer

Please Process Early

SA

17/09/2015

**FORMAL INQUIRY REGARDING CIVIL APPEAL NO. 553-P OF 2014
GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF
SECRETARY AND OTHERS VS SERANZAB**

Subject: - CIVIL APPEAL NO. 553-P OF 2014 GOVERNMENT OF KHYBER
PAKHTUNKHWA THROUGH CHIEF SECRETARY AND OTHERS
VS SERANZAB

In compliance of the Chief Secretary Khyber Pakhtunkhwa order No SOE/C & WD/8-16/2015 dated Peshawar the July 07, 2015 constituted an inquiry committee to conduct formal inquiry under Khyber Pakhtunkhwa servants (Efficiency & Disciplinary) Rules, 2011 in the subject case against the following officer / officials of C&W Department.

- 1) Engr: Imad Ahmad, Assistant Engineer (BS-17) C&W Department
(S.D.O High Way Sub Division, Peshawar.
- 2) Muhammad Shoukat, Sub Engineer (BS-11) C&W Department
(Working as Sub Engineer C&W)
 - i- The copy of order for inquiry is annexed at "A"
 - ii- Copy of charge sheet and statement of allegations of both the officer/officials is annexed at "B" & "C" respectively

BACKGROUND

An ADP Scheme No. 28/80448 (2008-09) Up-Gradation of 100 Middle School to High Level (B&G) on need basis in Khyber Pakhtunkhwa" was reflected in the ADP for the year 2008-09. Up-gradation of Govt. Middle School

Shangla TOP was part of this Umbrella Scheme. The detail of this sub scheme may be summarized as under:-

| | |
|-----------------------------------|---|
| 1- Estimated Cost | Rs.9.586 (M) |
| 2- Administrative Approval Issued | 20.04.2009 |
| 3- Tender date | 12.10.2009 |
| 4- Contractor | M/S Seranzab Govt: Contractor Distt: Shangla |
| 5- Agreement No. | 94-SH 92009-10) dated 28.11.2009 |
| 6- Work Order No | 17/7/4-M, dated 28.11.2009 |
| 7- Date of Commencement of work | 28.11.2009 |

The Govt: Contractor started the work as per direction of the officer/official of Works & Services Department and subsequently payments were made to the contractor as per government procedure and policy. The contractor received the payment up to 4th Running Bill according to his measured work done at site. There was no dispute in between the department and contractor up to 4th running bill. The department measured the contractor work done up to the 5th running bill and the total amount of work done comes to Rs.10376880.00 The measurement of 5th running bill was carried by Sub Engineer/Sub Divisional Officer on 10.05.2011. Due to less funds available with the Divisional Office an amount of Rs.2032000.00 were paid to the contractor on 30.06.2011 and an amount of Rs.3866360.00 was withheld from the 5th running bill and the scheme was carried over to the next financial year. **(Copy of 5th Running Bill Annexed At "D")**.

After June 2011 some damages were noticed by the officer/official of the department due to land sliding in the vicinity of the project area. The Sub Divisional Officer and Sub Engineer re-measured the whole work in the 6th running bill and deducted an amount of Rs.1548233.00 from already withheld amount of contractor in 5th running bill i.e Rs.3866360.00 and contractor bill reduced from Rs.10376880.00 to Rs. 8828847.00 (Copy of 6th Running Bill is Annexed "E").

The contractor deemed it as injustice to him and sued the department in the court. The details are as under:-

| Court | Appellant | Defendants | Date of institution | Date of Decision |
|----------------------------|----------------------------|----------------------------|---------------------|------------------|
| District Court Shangla | M/S Saranzeb Contractor | C&W Department | 25.06.2012 | 27.07.2013 |
| High Court (Darul Qaza) | C&W Department | M/S Saranzeb Contractor | 10.11.2013 | 10.07.2014 |
| Supreme Court Pakistan | C&W Department | M/S Saranzeb Contractor | | 04.05.2015 |

As evident from the above statement the Lower Court (District Court Shangla), Darul Qaza (High Court) and Supreme Court of Pakistan decided the case against the department. The Supreme Court dismissed the civil petition dated 04.05.2015.

The operative part of the order is reproduced hereunder:-

"....The officials of the Department had admitted the claim of the respondent as correct. In these circumstances, we do not find any merit in this petition, which is dismissed and leave

refused. However, the Competent Authority in the Department is directed to initiate disciplinary proceedings against the said DWs and conclude the same within a period of 30 days from the receipt of this order. A report of the proceedings shall be submitted before this court for our perusal in Chambers”.

PROCEEDINGS:

1- The Inquiry Committee commenced its proceedings by summoning both the accused i.e Mr.Imad Ahmad, Sub Divisional Officer and Muhammad Shoukat, Sub Engineer. They submitted their written reply which are annexed at “F” & “G”.

2- Despite repeated requests in written and telephonically, the relevant documents e.g parawise comments of the department, verdict of the courts etc; were not provided, which resulted in inordinate delay in the inquiry (copy of correspondence attached).

3- The so called “well conversant” representative of the department was not aware of the facts at all and did not provide the inquiry committee with any helping materials/documents (Copy of correspondence attached).

4- Engr: Kifaytullah, who was deputed to assist the Inquiry Committee never turned up with the relevant record and instead sent Ghulam Rahim, Sub Divisional Officer (OPS) Battagram who was not aware of the case details.

THE PROBE FINDINGS

1- The contractor started the work on 28.11.2009

- 2- The contractor were paid up to 4th running bill amounting to Rs.4478514/- without any dispute in between the department and contractor.
- 3- The total work done measured in the 5th running bill is amounting to Rs.10376880/- due to non availability of funds only an amount of Rs.2032000/- were paid and an amount of Rs.3866360/- were withheld.
- 4- Some damages occurred due to land sliding/erosion and the Sub Engineer/Sub Divisional Officer re-measured the whole work and deducted an amount of Rs.1548233/- from the already withheld amount of Rs.3866366/- in the 6th running bill.
- 5- Total payment made to the contractor is Rs.8828847/- against the estimated cost of Rs.9586000/-
- 6- The contractor sued the department in the District Court Shangla and the case decided in favour of contractor.
- 7- The department did appeal in Dauri Qaza and the case decided in favour of contractor.
- 8- The department submitted an appeal in the Supreme Court and the case dismissed in favour of contractor.
- 9- It is evident that the department has shown criminal negligence and laxity in defending the case at the lower court, which resulted in decision against the government in higher court as well.

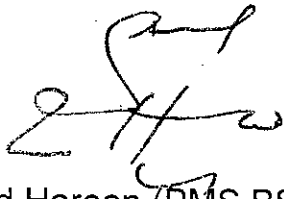
- 10- Moreover, had Executive Engineer, Sub Divisional Officer and Sub Engineer concerned presented the actual facts in front of the lower court, the verdict eventually could have been different. Since cogent facts were not revealed before the court, the decision/verdict was in favour of contractor.
- 11- Further more, the department failed to invoke clause 25 (Arbitration clause) and clause 29 of the contract agreement in the lower court. An issue which could have been settled through arbitration under clause 25 eventually went into the court, which could have been avoided, had the department exercised caution.
- 12- Similarly, clause 29 should have been presented before the court to defend the department, which says that "The Government will accept no responsibility on account of damages". The department failed to properly present this clause in the court of law, as a result, court decided the matter in favour of the contractor.
- 13- From perusal of the available record, it is apparent that the statement recorded by Imad Ahmad, Sub Divisional Officer and Muhammad Shoukat, Sub Engineer in the lower court is also dubious. The signatures of Civil Judge/Ilalaqa Qazi Alpuri on both the statements do not match. It needs to be verified from the court whether the statement reproduced here are exact/original copies of the court record or have been forged by somebody.

- 14- In institution of any case in the court of law by the contractor proper jawab-e-dawa should be prepared by the Executive Engineer, Divisional Accountant and Head Clerk with consultation with the Govt: Pleader for defence of the Govt: interest. Relevant clause of contract agreement shall be kept in view, which unfortunately was not done.
- 15- In the instant case the officers i.e Executive Engineer did not prepare the case on strong footing before the learned court in the initial stage due to which decision received against the department right from District court to Supreme Court.
- 16- The basic duty of Sub Engineer is lay out, quality control and measurements of work executed by the contractor. The Sub Engineer has to submit his statement according to the factual position/record. Any concealment of fact from the court is a criminal offence, therefore, the officers/officials has to submit their statement according to the actual official records before the learned court. Laxity was shown by all concerned from Executive Engineer to Sub Engineer in bringing glaring facts in front of lower court.
- 17- The Sub Engineer Incharge rightly deducted the payment of damaged work from the contractor and endeavored to save the Govt: Exchequer from loss, but the officers failed miserably to defend the government in the court.

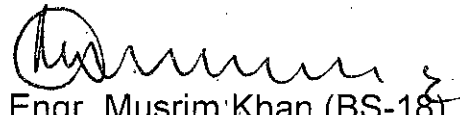
RECOMMENDATIONS:

The Inquiry Committee recommends that:-

- 1- It is recommended that clause 25 & 29 should be implemented in all disputed cases, so that litigation in courts could be curtailed.
- 2- The Executive Engineer being Incharge should have directed his staff to prepare a more logical response for the court proceedings or should have himself defended the case.
- 3- It is suggested that censure or any other appropriate disciplinary proceedings should be initiated against all the officers concerned including Executive Engineer, Sub Divisional Officer and Sub Engineer.



Sardar Asad Haroon (PMS BS-18)
Additional Political Agent,
Khyber Agency



Engr. Musrim Khan (BS-18),
Executive Engineer,
Mardan Irrigation Division,
Mardan

Annex-V

GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the September 29, 2015.

ORDER:

No.SOE/C&WD//8-16/2015: WHEREAS, Engr. Imad Ahmad (BS-17) the then SDO C&W Sub Division Shangla now posted as Assistant Engineer O/O Chief Engineer (Centre) C&W Peshawar was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 in the case titled "Civil Appeal No.553-P of 2014 Govt of Khyber Pakhtunkhwa through Chief Secretary & others V/S Saranzeb Govt Contractor"

2. AND WHEREAS, for the said act of misconduct he was served charge sheet/ statement of allegations.

3. AND WHEREAS, an inquiry committee comprising of Mr. Sardar Asad Haroon, the then Additional Political Agent Khyber Agency now working as Deputy Secretary Administration Department and Engr. Musrim Khan Executive Engineer Irrigation Department Mardan was appointed, who submitted the inquiry report.

4. NOW THEREFORE, the Competent Authority after having considered the charges, material on record, inquiry report of the inquiry committee, explanation of the officer concerned during personal hearing held on 29.09.2015, in exercise of the powers under Rule-14(5)(ii) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the major penalty of "**Reduction of time scale of pay by three stages for 03 years, besides recovery of pecuniary loss of Rs.7,74,116/-**" upon the aforementioned officer.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (North/Centre), C&W Peshawar
3. Superintending Engineer C&W Circle, Swat
4. Executive Engineer C&W Division Shangla
5. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
6. District Accounts Officer Shangla
7. Section Officer (Litigation) C&W Department, Peshawar
8. PS to Secretary, C&W Peshawar
9. Officer concerned
10. Office order File/Personal File


(USMAN JAN)
SECTION OFFICER (Estb)

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE IJAZ AHMED CHAUDHRY
MR. JUSTICE QAZI FAEZ ISA

CMA NO.5641 OF 2015 IN CIVIL PETITION NO.553-P OF 2014
(Interim report regarding initiation of disciplinary proceedings against the
DWs of C & W Department)

In attendance: Mr. Abdul Latif Yousafzai, A.G. KPK
Mr. Amjad Ali Khan, Chief Secy. KPK

Date of Hearing: 30.09.2015

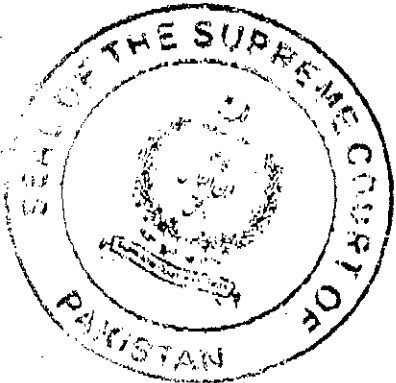
ORDER

MIAN SAQIB NISAR, J.- Learned Advocate General along with Chief Secretary, KPK has put in an appearance and stated that the two delinquent officers were departmentally proceeded against and as a major penalty, recovery of the amount which the latter conceded in the court has been directed. Furthermore, three increments have also been stopped and three stages demotion has been made. This to us is a reasonable compliance of the order dated 4.5.2015. The matter is disposed of accordingly.

Sd/- Mian Saqib Nisar, J
Sd/- Ijaz Ahmed Chaudhry, J
Sd/- Qazi Faez Isa, J

Certified to be True Copy

Superintendent
Supreme Court of Pakistan
Islamabad



Islamabad, the
30th September, 2015
Not Approved for Reporting
Waqas Nasser/15

13528/15

| | |
|---------------------|----------------|
| Case No. | 13528/15 |
| Category | Civil/Criminal |
| Date of Institution | 10/10/15 |
| Date of Disposal | 30/9/15 |
| Cost of Proceedings | 5-00 |
| Cost of Copy | 1-80 |
| Date of Copy | 30/9/15 |
| Date of Case | 13/9/15 |

Zamil / Jan

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 06/2016

Muhammad Shaukat O/O XEN C&W Division Shangla.
(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa Peshawar & others.

(Respondents)

REJOINDER TO THE PARA WISE REPLY ON
BEHALF OF THE APPELLANT

Respectfully submitted:

The appellant submits **his** rejoinder as under:

ON PRELIMINARY OBJECTIONS:

1. Contents incorrect and misleading, the appeal is filed well in accordance with the prescribed law/ rules and procedure hence maintainable under the law.
2. Contents incorrect and misleading, the appeal is filed well within the prescribed period of Limitation.
3. Contents incorrect and misleading, the appellant has illegally been awarded the penalty hence he has got the necessary cause action to file the instant appeal.
4. Contents incorrect and misleading, the instant appeal is filed well within the prescribed period of limitation.
5. Contents incorrect and misleading, all necessary parties are arrayed in the instant appeal.

6. Contents incorrect and misleading, no rules of estoppel is applicable to the instant case.
7. Contents incorrect and misleading, the appellant has come to the tribunal with clean hands.

ON FACTS

1. Contents need no reply, however contents of Para-1 of the appeal are true and correct.
2. Contents need no reply, however contents of Para-2 of the appeal are true and correct.
3. Contents of Para-3 of the appeal are correct, the reply submitted to the Para is incorrect, misleading and based on surmises and conjunctures.
4. Contents of Para-4 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
5. Contents of Para-6 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
6. Contents of Para-6 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
7. Contents of Para-7 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
8. Contents of Para-8 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
9. Contents of Para-9 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
10. Contents of Para-9 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.
11. Contents of Para-10 of the appeal are correct, the reply submitted to the Para is incorrect and misleading.

GROUND

The Grounds (A to Z) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

It is therefore humbly prayed that the appeal of the appellant may please be accepted as prayed for.

Appellant

Through

IJAZ ANWAR

Advocate, Peshawar.

&



SAJID AMIN

Advocate, Peshawar.

AFFIDAVIT

I do, hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct and nothing has been kept back or concealed from this Honourable Tribunal.

Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 06 /2016

Muhammad ShuakatAppellant

Versus

The Govt. and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO
REPLY FILED BY RESPONDENTS No.1 to 3.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. The appeal is maintainable in its present form and shape and is also mature. The appellant has got cause of action and for that matter locus standi to file the instant appeal which has been filed within time with all necessary parties being arrayed in the panel of Respondents. Estoppel has not application to the law.

Facts:

1. Being not replied hence admitted.
2. Being not replied hence admitted.
3. Misconceived. The answering Respondents have admitted that damage was due to calamity. The Hon'ble Supreme Court of Pakistan did not direct for taking an illegal action. Disciplinary action must be based upon sound justification as well as in accordance with law.
4. Incorrect. The action was taken in violation of law. Appellant fully defended the interests of the Govt. in the civil litigation before the

Court.

5. Misconceived. All the record was properly brought before the Hon'ble Court, however, due poor assistance rendered by the Govt. Pleader the case could not be won over for which lapse the appellant cannot be made to suffer.
6. Misconceived. The Enquiry Committee keeping in view the entire facts and circumstances, recommended minor penalty of Censure which was proper but to the contrary, the major penalty was proposed by the competent authority without any lawful justification.
7. Incorrect and misleading. As already submitted that the lapse was not on the part of appellant. No facts have been concealed and all documentary evidence placed on record including the Agreement deed and it was responsibility of Govt. Pleader to have pressed clause 29 thereof. Since appellant was not legal expert, therefore, he was not supposed to say on behalf of Govt. pleader.
8. Incorrect. Keeping in view facts and figures no penalty was warranted under the law. Moreover, recovery and reduction of time scale are two punishments for single act which is illegal.
9. Misconceived. The appellate order is violation of section of 24A of General Clauses Act, 1897 as no reasons have been given in support thereof.
10. Misconceived. The Judgment of the Hon'ble Supreme Court has been misinterpreted.

Grounds:


- A. Incorrect. Appellant has not been treated according to law.

- B. Misconceived. No regular inquiry was conducted which was mandatory requirement of law.
- C. Misconceived. No proper meaningful opportunity has been given to appellant.
- D. Absolutely incorrect. Respondents have eluded answer to the Para which amounts to admission.
- E. Incorrect hence denied.
- F. Being not replied hence admitted.
- G. Absolutely false and incorrect. Neither admission has been made nor appellant was directly connected with the matter.
- H-T. Being not replied hence admitted.
- U. Incorrect and irrelevantly replied. Discrimination in the case is quite visible.
- V. Being not replied hence admitted.
- W. Incorrect. Hence denied. The Responsible officers were let off the hook while appellant was made escape goat.
- X. Incorrect hence denied.
- Y. Incorrect. All proceedings were done in fill-in-blank manner to submit report before the Apex Court .
- Z. Needs no reply.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through


Appellant
b


Khaled Rahman
Advocate, Peshawar

Dated: 8th /06/2017

Verification

Verified, as per instructions of my client that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Advocate
b

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 06 /2016

Muhammad ShuakatAppellant

Versus

The Govt. and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO
REPLY FILED BY RESPONDENTS No.1 to 3.**

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Preliminary objections raised by answering respondents are erroneous and frivolous. The appeal is maintainable in its present form and shape and is also mature. The appellant has got cause of action and for that matter locus standi to file the instant appeal which has been filed within time with all necessary parties being arrayed in the panel of Respondents. Estoppel has not application to the law.

Facts:

1. Being not replied hence admitted.
2. Being not replied hence admitted.
3. Misconceived. The answering Respondents have admitted that damage was due to calamity. The Hon'ble Supreme Court of Pakistan did not direct for taking an illegal action. Disciplinary action must be based upon sound justification as well as in accordance with law.
4. Incorrect. The action was taken in violation of law. Appellant fully defended the interests of the Govt. in the civil litigation before the

Court.

5. Misconceived. All the record was properly brought before the Hon'ble Court, however, due poor assistance rendered by the Govt. Pleader the case could not be won over for which lapse the appellant cannot be made to suffer.
6. Misconceived. The Enquiry Committee keeping in view the entire facts and circumstances, recommended minor penalty of Censure which was proper but to the contrary, the major penalty was proposed by the competent authority without any lawful justification.
7. Incorrect and misleading. As already submitted that the lapse was not on the part of appellant. No facts have been concealed and all documentary evidence placed on record including the Agreement deed and it was responsibility of Govt. Pleader to have pressed clause 29 thereof. Since appellant was not legal expert, therefore, he was not supposed to say on behalf of Govt. pleader.
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10. Misconceived. The Judgment of the Hon'ble Supreme Court has been misinterpreted.

Grounds:

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- X. Incorrect hence denied.
- Y. Incorrect. All proceedings were done in fill-in-blank manner to submit report before the Apex Court .
- Z. Needs no reply.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant
b

Khaled Rahman
Advocate, Peshawar

Dated: 8th /06/2017

Verification

Verified, as per instructions of my client that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Advocate
b

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 442/2016

Dilawar Shah

V/S



Social Welfare Deptt:

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APPELLANT

THROUGH:


(M.ASIF YOUSAFZAI)
& 
(TAIMUR ALI KHAN)

ADVOCATES, PESHAWAR

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. _____/2016

Dilawar Shah, Senior Oral Master,

Govt: School for Deaf Children Dargai.

(APPELLANT)

VERSUS

1. The Secretary Zakat, Usher, Social Welfare, Special Education & Women Empowerment, Department.
2. The District Officer Social Welfare, Women Empowerment & Special Education, Dargai Malakand.
3. The Secretary Finance Deptt: KPK Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 FOR DIRECTING THE RESPONDENTS TO CONSIDER THE APPELLANT FOR PROMOTION ON THE POST OF PRINCIPAL (BPS-17) BEING ELIGIBLE AND SENIOR AS WELL AS POST IS ALSO AVAILABLE IN PROMOTION QUOTA, AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINE DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY BE DIRECTED TO CONSIDER THE APPELLANT FOR PROMOTION ON THE POST OF PRINCIPAL (BPS-17) BEING ELIGIBLE AND SENIOR MOST AS WELL AS POST IS ALSO AVAILABLE IN PROMOTION QUOTA 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:

FACTS:

1. That the appellant was appointed as SOM (BPS-9) in the department of Zakat, Usher, Social Welfare, Special Education & Women Empowerment. The appellant has MA/MSc M.Ed, B.Ed and M.Ed (SPL. EDU:) qualification and with the passage of time the appellant was promoted/upgraded Senior Oral Master (BPS-17) and the appellant is at S.No.3 of the seniority list. All the dates with qualification have been mentioned in the seniority list of 2015. (Copies of academic documents and seniority list are attached as Annexure-A&B).
2. That the Deptt: issued a notification, 1993 wherein the criteria laid down for the promotion to the post Principal/Senior teacher BPS-17 in School for Deaf Children is by promotion on the basis of seniority cum-fitness, from amongst junior teacher with three year's experience and senior oral Master/ mistress with five years as such. (Copy of notification is attached as Annexure-C)
3. That the Deptt: amended the notification No. SO (SW) II-12/93 on 13.11.2008, whereby for the post of Principal (BPS-17) is to filled in by promotion on the basis of seniority cum fitness from amongst Junior Teachers (B-16) with three years service and Senior Oral Master (B-15) with five years service as such. If no suitable persons is available for promotion then by initial recruitment. (Copy of notification 13.11.2008 is attached as Annexure-D)
4. That as the appellant possessed the requisite qualification along with experience, and the posts are also available at Dargai, Takhat Bhai and Mansehra for the last three years, but despite that the appellant has not been considered for the post of Principal (BPS-17), therefore, he filed departmental appeal on 11.1.2016 for his grievance, which has not been responded within the statutory period of ninety days. (Copy of departmental appeal is attached as annexure-E)
6. That now the appellant come to this august tribunal on the following grounds amongst others.

GROUND:

- A) That not considering the appellant for promotion to the post of Principal (BPS-17) despite being senior most and eligible, and not taking action on the departmental appeal of the appellant within the statutory period are against the law, facts, norms of justice and material on record.
- B) That the appellant has not been treated in accordance with law rules and has been kept deprived from the benefits of promotion in an arbitrary manner which is not maintainable in eyes of law.
- C) That the appellant is fully eligible and entitled for promotion as well as under section 9 of the Civil Servants Act, 1973, the respondents are legally bound to consider the appellant for promotion along with other officials against the posts which are available for the last three years.
- D) That according to the criteria of promotion, senior oral master will be promoted on the post of principal, but the department appointed social welfare officers from other section of the department on the post of principal and ignore the appellant despite the fact that the post of Principal is a promotion post and cannot be filled in by transfer. Thus the appellant has been deprived from promotion in an illegal manner and arbitrary use of official power.
- E) That the appellant was not treated according to law and rules and has been deprived from his legal right of promotion to the post of principal.
- F) That not responding on the departmental appeal of the appellant is the violation of the Supreme Court judgment reported 2011 SCMR-01.
- G) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dah

APPELLANT

Dilawar Shah

THROUGH:

M. Asif Yousafzai

(M.ASIF YOUSAFZAI)

Taimur Ali Khan

(TAIMUR ALI KHAN)

&

(SYED NOMAN ALI BUKHARI)

ADVOCATES, PESHAWAR.

UNIVERSITY OF PESHAWAR
(Pakistan)

Session ANNUAL 1999

DILAWAR SHAH

Son of

SABIR SHAH

A (S)
and a student

of GOVT POSTGRADUATE COLLEGE ABBOTTABAD

having passed the prescribed examination held in JANUARY 2000, is this day admitted by the University of Peshawar to the Degree of

Master of Science

In the

SECOND

Division

The Subject of examination being MATHEMATICS

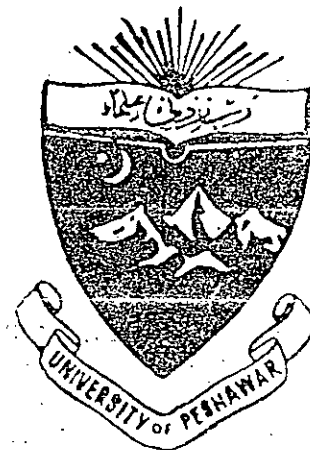
The Examination was taken as a whole / in parts

Serial No. 006048

Registered No. 94-DK-1128

Roll No. 3907

Result declared on 19TH JUNE 2000



Attested
DAUD SHAH
J.S.E.T BPS-17
GSDC Dargai

Countersigned

MOL
Vice-Chancellor

پشاور
یونیورسٹی

University of Peshawar
(Pakistan)

Session ANNUAL 1996

DILAWAR SHAH ✓ Son of SABIR SHAH ✓ and a student
of GOVT. COLLEGE DARGAI ✓ having passed the prescribed examination
held in AUGUST 1996, is this day admitted by the University of Peshawar
to the Degree of

Bachelor of Science

in the SECOND division.

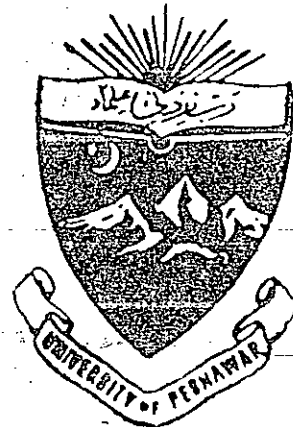
The Examination was taken as a whole ~~in parts~~

Serial No. 014066

Registered No. 94-DNC-1128

Roll No. 7510

Result declared on FEBRUARY 15, 1997



Attested

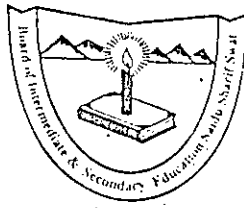
DATIE SHAH
J.S.E. & P.S.-II
GSDC Dargai

[Signature]
Registrar

Countersigned

[Signature]
Vice-Chancellor

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



Saidu Sharif Swat N.W.F.P. Pakistan
Intermediate Examination

PRE-ENGINEERING Group

SESSION ANNUAL 1994

THIS IS TO CERTIFY THAT DILAWAR SWAN

Son/Daughter of SADIR SWAN

and a student of GOVT. DEGREE COLLEGE DARGAI MMD AGENCY

Registered No. 85-B/DR 8-92 has passed the Intermediate Examination of the Board of Intermediate and Secondary Education, Saidu Sharif Swat held in 1994 as a Regular/Private candidate. He/She obtained 628 Marks out of 1100 and has been placed in Grade C Representing GOOD

The Examination was taken as a whole/in parts and the candidate passed the following subjects:

- | | | |
|------------|---|------------|
| 1. English | 3. Islamic Education - Pakistan Studies | 5. MATHS |
| 2. Urdu | 4. CHEMISTRY | 6. PHYSICS |

Date of birth according to admission form is XXXX

one thousand nine hundred and XXXX

Asst. Secretary

This certificate is issued without alteration or erasure.

A. J. Angjum
Secretary

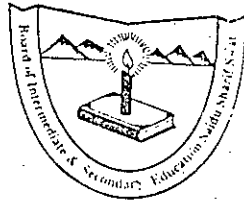
Attested

[Signature]
DALI...
J.S.E.T 1993-94
GSDC Dargai

SW No. (SA) 3846

Roll No. 23134

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



Saidu Sharif Swat N.W.F.P. Pakistan
Secondary School Certificate Examination
SESSION ANNUAL 199 2

THIS IS TO CERTIFY THAT DILAWAR SHAH

Son/Daughter of SADIR SHAH

and a student of GOVT HIGH SCHOOL GARHI USMANI KHEL MKD AGENCY

has passed the **Secondary School Certificate Examination**
of the Board of Intermediate and Secondary Education, Saidu Sharif Swat held in
199 2 as a *Regular/Private candidate*. He/She obtained 571 Marks out of 850 and has
been placed in Grade B Representing VERY GOOD

The Candidate passed in the following subjects.

- | | | | |
|------------|---------------------|------------|--------------|
| 1. English | 3. Islamiyat | 5. MATHS | 7. BIOLOGY |
| 2. Urdu | 4. Pakistan Studies | 6. PHYSICS | 8. CHEMISTRY |
- (He/She has been awarded Grade A on the basis of Internal assessment by the Institution concerned.)

Date of birth according to admission form is FIRST MAY

one thousand nine hundred and SEVENTY SIX. (01-05-1976)

[Signature]
Asst. Secretary

Attested
This certificate is issued without alteration or erasure.

[Signature]
Secretary

[Signature]
DARGA SWAT
J.S.E.T BPS-17
GSDC Dargai

(10) (10)
Allama Iqbal Open University
Islamabad



Serial No. 2504

Certified that Mr. / Ms. DILAWAR SHAH

Son / Daughter of SABIR SHAH

Registration No: 9T-HMA-0435 Roll No: J-6561129

having completed the prescribed requirements in semester
SPRING, 2001 is awarded the degree of:

Master of Education (M.Ed.)

He/She has secured 50 % marks and has been placed in C grade.

Attached

Fajir

DAUD SHAN
J.S.E.T BPS
GSDC Dargal

CONTROLLER OF EXAMINATIONS.

Result declared on: APR. 16, 2002.

ISLAMABAD. DATED:



[Signature]
VICE-CHANCELLOR

THIS DEGREE IS TO BE READ IN CONJUNCTION WITH THE TRANSCRIPT, ISSUED SEPARATELY

Roll No. G-6486313

32408

Allama Iqbal Open University



علامہ اقبال اوپن یونیورسٹی

DILAWAR SHAH

Regn. No. 97-MED-0435

رجسٹریشن نمبر

دلام شاہ

son/daughter of SABIE SHAH

صابر شاہ

بن / بنت

having completed the prescribed requirements
in AUTUMN, 19 98 is awarded the degree of

کو خزاں 98ء میں مطلوبہ شرائط مکمل کرنے پر

Bachelor of Education

بی۔ ایڈ

He/She secured 63 % marks and was placed

in B grade.

کی ڈگری مکمل کی گئی اس نے 63 فیصد نمبر لے کر 63 گریڈ حاصل کیا۔

Sh. H. Siddiqui

Vice Chancellor

وائس چانسلر

Attested

Dalamabad

Dated : 31st JUL, 1999

Controller of Examinations

کنٹرولر امتحانات DAUD SHAH

تاریخ 31 جولائی 1999ء

J.S.E.T BPS-17
SDC Dargai

This degree is to be read in conjunction
with the Transcript, issued separately.

Roll No. G-6486313

Serial No. 85809

ALLAMA IQBAL OPEN UNIVERSITY
ISLAMABAD



Provisional Certificate

This is to certify that Mr./Ms. DILAWAR SHAH
son/daughter of SABIR SHAH
Registration No. 97-IND-0435 has passed.

BACHELOR OF EDUCATION

examination with the subjects detailed below in Spring/Autumn 1998
Semester:

| <u>S.No.</u> | <u>Code/Subject</u> | <u>Marks obtained</u> |
|--------------------|---|-----------------------|
| Compulsory: | | |
| 1. | 512—Perspectives of Education | <u>52</u> / 100 |
| 2. | 513—School Organization and Management | <u>66</u> / 100 |
| 3. | 514—Evaluation, Guidance and Research | <u>54</u> / 100 |
| 4. | 518—Educational Psychology and Curriculum | <u>50</u> / 100 |
| 5. | 651—English | <u>52</u> / 100 |
| 6. | 652—Islam, Pakistan and the Modern World | <u>63</u> / 100 |
| 7. | 655—Practical Component | <u>88</u> / 100 |
| Electives: | | |
| 8. | 656—TEACHING OF PHYSICS | <u>76</u> / 100 |
| 9. | 661—TEACHING OF MATH | <u>64</u> / 100 |
| Total: | | <u>565</u> / 900 |

He/She has secured 63 percent marks and has been placed in B grade.

Islamabad
Dated: 31st JUL, 1999.

Prepared by: [Signature]

Checked by: [Signature]

[Signature]
Controller of Examinations

DAUD SHAIKH
J.S.E.T BPS-17
GSDC Dargal

B (14)

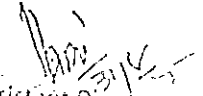
TENTATIVE SENIORITY LIST OF SENIOR ORAL MASTER (BPS-15)/JUNIOR TEACHER (BPS-16) OF SCHOOL FOR DEAF CHILDREN IN SOCIAL WELFARE, SPECIAL EDUCATION DEPARTMENT KHYBER PAKHTUNKHWA AS STOOD ON 31-8-2015.

| S.No | Name & F/Name | Date of Birth | Domicile | Qualificati on | Date of 1 st Entry into Govt: Service | BPS | Date Present appointment: /promotion to the present post | Date from which HPS awarded with BPS | Place of present posting | Remarks |
|------|--|---------------|--------------------|-----------------------|--|-----|---|--|--|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 1 | Mst: Nadia Shafiq D/O Ghulam Shafiq | 18-4-1979 | Kohat | M.A, B.Ed Spl edu: | 2-10-2006 SOM (BPS-15) | 16 | Appointed as SOM (BPS-15) on 2-10-2006 | BPS-16 w.e.f 1-10-2015 dated 20-2-2015 | Govt School for Deaf Children Kohat | |
| 2 | Mr. Fazle Wahid S/O Muhammad Rashid | 1-1-1969 | Dir Lower | F.A | 4-8-1990 JOM(BPS-9) | 15 | BPS-15(SOM) w.e.f 23.5.2008 dated 23.5.2008 (promoted) | | Govt School for Deaf Children Timargara Dir lower | |
| 3 | Mr. Dilawar Shah S/O Sabir Shah | 1-5-1976 | Malakand Agency | M.A/MSc M.Ed, B.Ed | 1-7-2003 SOM(BPS-9) | 15 | Regularized as SOM (BPS-9) w.e.f 1-7-2003 | BPS-17 w.e.f 1-7-2008 dated 31-8-2012 | Govt School for Deaf Children Daragai Malakand | The post of SOM upgraded from BPS-9 to BPS 15 w.e.f 8-9-2011 |
| 4 | Mst: Samina Sardar D/O Sardar Khan | 2-1-1965 | Peshawar | F.A/PTC | 1-2-1987 JOM(BPS-9) | 15 | BPS-15(SOM) W.e.f 30-12-2003 (Promoted) | | Govt School for Deaf Children Yakatoot Peshawar | |
| 5 | Mst: Samina Aziz D/O Aziz Bakhsh | 29-8-1966 | Peshawar | B.A, PTC | 15-5-1987 AOM (BPS-9) | 15 | BPS-15(SOM) W.e.f 30-12-2003 (Promoted) | | Govt School for Deaf Children Gulbahar Peshawar | |

File

(15)

| | | | | | | | | | | |
|---|--|-----------|-------|-----------------------|------------------------------|----|--|--|--|--|
| 6 | Mst: Shazia Wakeel D/O Abdul wakeel | 19-2-1979 | Kohat | M.A, B.Ed Spl: Edu | 2-10-2006 SOM (BPS-15) | 16 | promoted as SOM (BPS-15) on 9-5-2012 | BPS-16 w.e.f 2-10-2006 dated 20-2-2015 | Govt School for Deaf Children Kohat. | |
| 7 | Mst: Saima Roomi D/O Aman Ullah | 7-4-1979 | Kohat | M.A, B.Ed Spl: Edu | 2-10-2006 SOM (BPS-15) | 16 | promoted as SOM (BPS-15) on 9-5-2012 | BPS-16 w.e.f 2-10-2006 dated 20-2-2015 | Govt School for Deaf Children Kohat. | |


Assistant Director
(Establishment)

APPENDIX

Nomenclature of Post

Maximum qualification for appointment by initial recruitment,

Age Limit

Method of recruitment

2

3

4

5

PART-I

1. Assistant Director
BPS-17.

By transfer from amongst the Assistant Directors of the Social Welfare Deptt: Managers Mentally Retarded & Physically Handicapped Children, Principals in the Schools for Deaf Children & Superintendents in the Institutes for Blind.

PART-II
SCHOOL FOR DEAF CHILDREN

1. Principal/Senior Teacher: BPS-17.

By promotion on the basis of seniority-cum-fitness, from amongst Junior Teachers with three year's experience and Senior Oral Master/Mistress with five years experience as such.

2. Social Case Worker.
BPS-16.

Master's degree in Social Work/ Sociality from a recognised University. 21-30 years.

i)
ii)

By initial recruitment; or by transfer from Social Welfare Department, if no suitable candidate is available.

3. Assistant Audiologist.
BPS-16.

Bachelor's degree with Physics as one of the subjects from a recognised University. 21-28 years.

By initial recruitment.

4. Junior Teacher.
BPS-16.

a) Bachelor's degree; 21-28 years.
b) Bachelor of Education from a recognised University; and

By initial recruitment.

5. Senior Oral Master/
Mistress. BPS-15.

c) Diploma in teaching of Deaf from a recognised Institute. 21-28 years

i) Seventy-five percent by promotion on the basis of seniority-cum-fitness, from amongst the Junior Oral Masters/Assistant Oral Masters/Mistress with at least five years service as such; and
ii) twenty-five percent by initial recruitment.

8

| Sl. No. | Post | Qualification | Age | Experience | Recruitment |
|---------|--|--|-------------|------------|---|
| 7 | Senior Oral Master/B-9. Asstt. Oral Master/ Tailoring Instructor. BPS-14. | Intermediate with certificate in Teaching from a recognised Institute. | 18-25 years | | By initial recruitment. |
| 8 | Vocational Teacher Tailoring. BPS-9. | Bachelor's degree with diploma of two years duration from a Government Vocational Institute in Tailoring. | 18-25 years | | 1) Fifty percent by promotion on the basis of seniority-cum-fitness from amongst Vocational Teachers (Tailoring) with five years experience as such; and ii) Fifty percent by initial recruitment. |
| 9 | Vocational Teacher Tailoring. BPS-9. | Secondary School Certificate with diploma of two years duration from a recognised Institute with Tailoring as a subject. | 18-25 years | | By initial recruitment. |
| 9 | Vocational Teacher B-7 (Embroidery/Knitting). | Secondary School Certificate with certificate in Embroidery/Knitting from a recognised Institute. | 18-25 years | | By initial recruitment. |
| 10 | Physical Training Instructor. BPS-9. | Intermediate with diploma in Physical Education from a recognised Institute. | 18-25 years | | By initial recruitment. |
| 11 | Drawing Master. B-9. | Intermediate with diploma in Drawing from a recognised Institute. | 18-25 years | | By initial recruitment. |
| 12 | Store Keeper. B-8. | Secondary School Certificate with two years experience of Storekeeper. | 18-25 years | | By initial recruitment. |

PART-III

CENSUS FOR MENTALLY RETARDED AND PHYSICALLY HANDICAPPED CHILDREN.

| | | | |
|---------------------|--|-------------|---|
| 1. Manager. BPS-17. | Master's Degree in Psychology (applied Psychology) from a recognised University with two years experience as such. | 21-30 years | i) Twenty-five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Teachers with five years service as such. ii) Twenty-five percent by temporary transfer from amongst the officers of the Social Welfare Deptt. holding appointments in BPS-17 on regular basis and |
|---------------------|--|-------------|---|

SECTION OFFICER (SW)
 ZAKAT & SOCIAL WELFARE
 N/W/P BHMAR

Senior Teacher.
BPS-15.

a) Bachelor's Degree; and
b) Bachelor of Education from a
recognised University.

18-25
years.

iii) Fifty percent by initial recruitment.
By initial recruitment.

3. Junior Teacher.

Intermediate with C.T. from a
recognised Institute.

18-25
years.

By initial recruitment.

4. Social Care Worker.
BSP-16.

Master's degree in Social Work/
Sociology from a recognised
University.

18-25
years.

i) By initial recruitment, on
ii) by transfer from Social Welfare Deptt:
if no suitable candidate is available.

5. Vocational Teacher.
BPS-9.

Secondary School Certificate
with a certificate from a
recognised Institute in the
relevant field.

18-25
years.

By initial recruitment.

6. Religious Teacher.
BPS-9.

Secondary School Certificate
with Dars-e-Nizami Sanad from
a registered Religious
Institute.

18-25
years.

By initial recruitment.

7. Music Teacher.
BPS-9.

Secondary School Certificate
with certificate of Instru-
mental and Vocal Music.

18-30
years.

By initial recruitment. /

8. Electrician/
Electronic Instructor.
BPS-11.

Secondary School Certificate
with Electrical Diploma of
three years duration from a
recognised Institute of
Technical Education.

18-25
years.

By initial recruitment.

9. Assistant Physio-
therapist. BPS-11.

Secondary School Certificate
with diploma in Physiotherapy
from a recognised Institute/
Faculty.

18-25
years.

By initial recruitment.

SECTION OFFICER (SW)
SAKAT & SOCIAL WELFARE
NWFP PESHAWAR.

(10)

(19)

3

4

5

PART IV.
INSTITUTES FOR THE BLINDS

| | | | | |
|---------------------------------|---|-----------------|---|---|
| 1. Super Prin | S-17. | - | - | By transfer from amongst the B-17 Officers of Social Welfare Department. |
| 2. Super Inst Can / | Secondary School Certificate with five years certificate from Blind Institute in the relevant subject. | 18-25 years. | | By initial recruitment. |
| 3. Brail BPS-9. | Secondary School Certificate with five years certificate in Braille teaching from a recognised Blind Institute. | 18-25 years. | | By initial recruitment. |
| 4. P.T. / LBP | Secondary School Certificate with Junior Diploma in Physical Education from a recognised Institute/Ex- serviceman not below the rank of N.K. | 18-30 years | | By initial recruitment. |
| 5. Religious Teacher. BPS-9. | Secondary School Certificate with Hawlvi Fazil or Sanad in Dars-e- Ulumi from a registered Religious Institute. | 18-30 years | | By initial recruitment. |
| 6. C.T. Teacher. BPS-9. | Intermediate with C.T. from recognised Institute/Board. | 18-25 years. | | By initial recruitment. |
| 7. Music Teacher. BPS-9. | Secondary School Certificate with certificate of Instrumental and Vocal Music. | 18-30 years. | | By initial recruitment. |
| 8. Work Overseer. BPS-7. | Secondary School Certificate from a recognised Board. | 18-30 years. | | By initial recruitment. |
| 9. Salmen. BPS-5. | Secondary School Certificate from a recognised Board. | 18-30 years. | | By initial recruitment. |

(Handwritten Signature)

67

- 10. Blind Worker.
BPS-7. Secondary School Certificate from a recognised Board with five years certificate in the relevant field from a recognised Blind's Institute. 18-30 years By initial recruitment.
- 11. Dispenser.
BPS-5. Secondary School Certificate and Dispenser Certificate from a recognised Institute/Faculty. 18-30 years By initial recruitment.
- 12. Semi. BPS-9. Secondary School Certificate or equivalent qualification from a recognised Board/Institute with said in part from a recognised religious Institute. 18-30 years By initial recruitment.

Oh S.M.

SECTION OFFICER (SW)
HEALTH & SOCIAL WELFARE DEPTT:
N.W.F.P., PESHAWAR.

D (21)

GOVERNMENT OF NWFP NORTH-WEST FRONTIER PROVINCE,
ZAKAT, USHR, SOCIAL WELFARE AND WOMEN DEVELOPMENT DEPARTMENT

Peshawar, dated the 13-11-2008

NOTIFICATION

No. SOII (SW) II-12/93/ Vol-V. In pursuance of the provisions contained in sub-rule (2) of rule (3) of the North-West Frontier Province Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the Zakat, Ushr, Social Welfare and Women Development Department, in consultation with Establishment Department and the Finance Department, hereby directs that in this Department's Notification No. SO(SW) II-12/93, the following amendment shall be made, namely:

AMENDMENT

In the appendix, in part-II, against serial No.1, for the existing entries in column 2 to 5, the following shall be substituted:

| S. # | Nomenclature of the post. | Qualification for appointment by initial recruitment | Age limit | Method of recruitment |
|------|---------------------------|---|-------------|--|
| 1 | 2 | 3 | 4 | 5 |
| 1. | Principal (BPS-17) | (a) Second Class Master's degree in Social work, Sociology, anthropology, Psychology from recognized University; and (b) Teaching diploma for the Deaf from a recognized Institute. OR Second Class Master's degree in Special Education from a recognized University. OR (a) Second Class Bachelors degree (Arts/Science) from a recognized University; (b) Bachelors in Education from a recognized University; and (c) Teaching diploma for the Deaf from a recognized Institute. | 21-55 years | (a) By promotion, on the basis of seniority-cum-fitness, from amongst the Junior Teachers (BS-16) with three years service and Senior Oral Masters (BS-15) with five years service as such; and (b) if no suitable person is available for promotion then by initial recruitment. |

Secretary to Govt. of NWFP
Zakat, Ushr, Social Welfare & WD Deptt:

Encls: NO.SOII (SW) II-12/93/Vol-IV/651-68. Dated Peshawar, the 13-11-2008.

Copy is forwarded to:-

1. All the Administrative Secretaries to Govt. of NWFP.
2. All Heads of the Attached Department.
3. All Distt. Coordination Officers in NWFP.
4. Director, Social Welfare and Women Devt. NWFP Peshawar. ✓
5. Manager, Printing Press, NWFP Peshawar for information and publication in the officer's gazette.
6. PS to Chief Secretary, NWFP.
7. PS to Secretary, Zakat, Ushr, Social Welfare & WD Deptt NWFP.

(Mubhammad Saeed)
Secretary Officer-II

F (27)

To

The Secretary GOVT of KPK
Social Welfare Women Development
And Special Education Department

Subject: Appeal for the recruitment of principal by promotion

Sir,

With due respect I hereby submit my humble submission for the subject post on promotion in the following few lines for your kind personal and sympathetic consideration pleas.

"By promotion as per Amendment made in notification No Ends No so 11 (SW) 11/12/93/vol/iv/651-68 date 13-01-2008 (method of recruitment) copy attached.

By promotion the basis of seniority fitness from amongst the junior teacher BPS 16 with three years' service and senior oral master (BPS 15 with five years as such)

If no suitable person is available for promotion then by initial recruitment

I qualify the criteria amendment as discussed above and documentary evidence in this regard is attached with my application in the shape of appeal sir.

Keeping in view mentioned facts your honor is very humble requested to kindly draw sympathetic consideration on my appeal. I may kindly be given a chance for promotion as a principal on promotion and obliged, as there are some vacant posts available and no recruitment has been made.

Thanking you sir in anticipation

Sincerely yours

Dilawar Shah

Dilawar Shah
11/01/2016

Senior Oral Master

Govt School for Deaf Children Dargai.

Govt School for Deaf Children Dargai
" " Mansherwan "
" " Takht-e-Ahli "
for last 3 years

Before the Service Tribunal Khyber Pakhtunkhwa,
Peshawar
Service Appeal No.442/ 2016

Dilawar shah Senior Oral Master Govt. School for Deaf Children, Dargai,
Malakand.....**APPELLANT**

VERSUS

1. The Secretary, Zakat, Ushar, Social Welfare Special Education & Women Empowerment Department.
2. The District Officer Social Welfare, Women Empowerment Special Education. Dargai, Malakand.
3. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar..... **(Respondents)**

PRE-LIMINARY OBJECTIVES:

1. That the Appellant has no cause of action.
2. That the Appeal is not maintainable in its present form.
3. The appeal is based on malafide intentions.
4. The appellant has no locus standi.
5. The appeal in hand is badly time barred.
6. The appellant has not come to Honorable Tribunal with clean hand.
7. The appellant has concealed the material facts from this Honorable Tribunal. Hence liable to be dismissed.
8. The appeal is liable to be dismissed for mis-joinder and non-joinder necessary parties.
9. The appeal is against the prevailing law & rules.

PARA- WISE COMMENTS BY RESPONDENT NO.1 TO 3.

FACTS

1. Pertains to record, need, no comments.
2. Pertains to record, need, no comments.
3. Pertains to record, need, no comments.
4. Incorrect, Promotion to the Post, of Principal is considered on the basis of seniority cum fitness and the appellant is not the senior most in the seniority list.

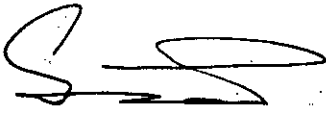
Grounds:

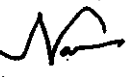
- A. Incorrect hence denied. The appellant is not the senior most in the seniority list of 2015.
- B. Incorrect hence denied. The appellant was justly treated under the law & after appointment as Junior Oral Master in BPS-09 on 01-07-2008 he was awarded higher pay scale and is enjoying BPS-17 personal.
- C. Incorrect hence denied. As is evident from para 03 of the facts. The promotion to the post of Principal is based on seniority cum fitness. The appellant will get regular promotion first in BPS-15 as Senior Oral Master and then in BPS-17 as Principal as per Policy.

- 28
- D. Incorrect hence denied. Restructuring ~~and~~ service rules is already initiated in terms of court decision.
- E. Incorrect hence denied. Factual position has been explained in the preceding para's.
- F. Incorrect hence denied. As is evident form para C above.

It is therefore, most humbly prayed that on acceptance of this written comments the appeal in hand may graciously be dismissed with cost through out.

Secretary
 To Govt of KHYBER PAKHTUNKHWA.
 SOCIAL WELFARE DEPARTMENT PESHAWAR
 (RESPONDENT NO. 1)


District Officer
 SOCIAL WELFARE, SPECIAL EDUCATION AND
 WOMEN EMPOWERMENT MALAKAND
 (RESPONDENT NO. 2)


Secretary
 to Govt of KHYBER PAKHTUNKHWA.
 FINANCE DEPARTMENT PESHAWAR
 (RESPONDENT NO. 3)

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 442/2016

Dilawar Shah

VS

Social Welfare Department

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-9) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Para-1 of the appeal is admitted correct by the respondents department as service record is already in the custody of the department.
- 2 Para-2 of the appeal is admitted correct by the respondents department as service record is already in the custody of the department.
- 3 Para-3 of the appeal is admitted correct by the respondents department as service record is already in the custody of the department.
- 4 Incorrect. While Para-4 of the appeal is correct as mentioned in the main appeal of the appellant.

- 5 Not replied while para-5 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, the appellant has good cause of action and his appeal is liable to be accepted.


GROUND:

- A) Incorrect. While Para-A of the grounds of appeal is correct as mentioned in the main appeal of the appellant.
- B) Incorrect. While Para-B of grounds of the appeal is correct as mentioned in the main appeal of the appellant.
- C) Incorrect. While Para-C of grounds of the appeal is correct as mentioned in the main appeal of the appellant.
- D) Incorrect. While Para-D of grounds of the appeal is correct as mentioned in the main appeal of the appellant.
- E) Incorrect. While Para-E of grounds of the appeal is correct as mentioned in the main appeal of the appellant.
- F) Incorrect. While Para-F of grounds of the appeal is correct as mentioned in the main appeal of the appellant.
- G) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.

Pai
DEPONENT

ATTESTED
Oath Commissioner
Zafar Iqbal Advocate
Distt: Chit Peshawar

14 FEB 2017