

Service Appeal No.7079/2021 titled "Fahad Shah Vs.Secretary Board of Revenue and others", Service Appeal No.7287/2021 titled "Jamil versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others", Service Appeal No.7288/2021 titled "Yasir Asghar versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" and Service Appeal No.7289/2021 titled "Adil Younas versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" decided on 15.06.2023 by the Division Bench comprising Kalim Arshad Khan, Chairman and Salah-ud-Din, Member(Judicial) Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN** CHAIRMAN
SALAH-UD-DINMEMBER (Judicial)

Service Appeal No.7079/2021

Date of Institution.....26.07.2021
Dates of Hearing.....26.04.2023 &29.05.2023
Date of Decision.....15.06.2023

Fahad Shah, son of Muhammad Muazzam Shah (Ex-Computer Operator), Office of the Assistant Commissioner office, Abbottabad R/O New Mohallah Shaikhul Bandi, Tehsil & District Abbottabad.
.....(*Appellant*)

Versus

1. **Secretary Board of Revenue**, Government of Khyber Pakhtunkhwa, Peshawar.
2. **Commissioner**, Hazara Division, Abbottabad.
3. **Deputy Commissioner**, Abbottabad.....(Respondents).

Present:

Mr. Muhammad Aslam Tanoli, Advocate.....For appellant.

Mr. Fazal Shah Mohmand,
Additional Advocate General and

Mr. Asad Ali Khan,
Assistant Advocate General..... For respondents

.....

**SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974, AGAINST THE ORDER
DATED 31.03.2021, OF THE DEPUTY
COMMISSIONER ABBOTTABAD WHEREBY
THE APPELLANT HAS BEEN REMOVED
FROM SERVICE ILLEGALLY, UNLAWFULLY,
CONTRARY TO THE DEPARTMENTAL RULES**

Service Appeal No.7079/2021 titled "Fahad Shah Vs.Secretary Board of Revenue and others", Service Appeal No.7287/2021 titled "Jamil versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others", Service Appeal No.7288/2021 titled "Yasir Asghar versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" and Service Appeal No.7289/2021 titled "Adil Younas versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" decided on 15.06.2023 by the Division Bench comprising Kalim Arshad Khan, Chairman and Salah-ud-Din, Member(Judicial) Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**AND REGULATIONS IN A WHIMSICAL AND
ARBITRARY MANNER WITHOUT ANY
REASON**

Service Appeal No.7287/2021

Date of Institution.....20.08.2021
Dates of Hearing.....26.04.2023 & 29.05.2023
Date of Decision.....15.06.2023

Jamil, son of Gul Zaman, Naib Qasid, Office of the Assistant
Commissioner, Abbottabad.....(***Appellant***).

Versus

- 1. Government of Khyber Pakhtunkhwa** through Senior Member Board
of Revenue, Peshawar.
- 2. Commissioner**, Hazara Division, Abbottabad.
- 3. Deputy Commissioner**, Abbottabad.....(**Respondents**).

Present:

Mr. Muhammad Arshad Khan Tanoli, Advocate.....For appellant.

Mr. Fazal Shah Mohmand
Additional Advocate General and

Mr. Asad Ali Khan
Assistant Advocate General For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974, FOR DECLARATION TO THE EFFECT
THAT THE APPELLANT WAS SERVING IN
THE RESPONDENTS DEPARTMENT AS NAIB
QASID AND HIS THREE INCREMENTS HAVE
BEEN WITHHELD FOR THREE YEARS WITH
ACCUMULATIVE EFFECT VIDE IMPUGNED
ORDER DATED 31.03.2021. THEREFORE, THE
APPELLANT FILED DEPARTMENTAL
APPEAL AGAINST THE IMPUGNED ORDER
DATED 31.03.2021 ON 07.04.2021 TO
RESPONDENT NO.3 BUT RESPONDENT NO.3**



Service Appeal No.7079/2021 titled "Fahad Shah Vs.Secretary Board of Revenue and others", Service Appeal No.7287/2021 titled "Jamil versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others", Service Appeal No.7288/2021 titled "Yasir Asghar versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" and Service Appeal No.7289/2021 titled "Adil Younas versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" decided on 15.06.2023 by the Division Bench comprising Kalim Arshad Khan, Chairman and Salah-ud-Din, Member(Judicial) Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**WITHOUT FOLLOWING THE REQUISITE
PRESCRIBED CODAL FORMALITIES
REMOVED THE APPELLANT FROM SERVICE
VIDE IMPUGNED ORDER DATED 08.06.2021
WHICH WAS RECEIVED BY THE APPELLANT
ON 05.08.2021 WHICH IS PERVERSE, AGAINST
THE LAW AND THE SAME IS LIABLE TO BE
SET-ASIDE.**

Service Appeal No.7288/2021

Date of Institution.....20.08.2021
Dates of Hearing.....26.04.2023 & 29.05.2023
Date of Decision.....15.06.2023

Yasir Asghar, son of Ali Asghar, Chowkidar, Office of the Assistant
Commissioner, Abbottabad.....(**Appellant**).

Versus

- 1. Government of Khyber Pakhtunkhwa** through Senior Member Board
of Revenue, Peshawar.
- 2. Commissioner**, Hazara Division, Abbottabad.
- 3. Deputy Commissioner**, Abbottabad.....(**Respondents**).

Present:

Mr. Muhammad Arshad Khan Tanoli, Advocate.....For appellant.

Mr. Fazal Shah Mohmand
Additional Advocate General and

Mr. Asad Ali Khan
Assistant Advocate General For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974, FOR DECLARATION TO THE EFFECT
THAT THE APPELLANT WAS SERVING IN
THE RESPONDENTS DEPARTMENT AS
CHOWKIDAR, AND HIS THREE INCREMENTS
HAVE BEEN WITHHELD FOR THREE YEARS
WITH ACCUMULATIVE EFFECT VIDE
IMPUGNED ORDER DATED 31.03.2021.**

Service Appeal No.7079/2021 titled "Fahad Shah Vs.Secretary Board of Revenue and others", Service Appeal No.7287/2021 titled "Jamil versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others", Service Appeal No.7288/2021 titled "Yasir Asghar versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" and Service Appeal No.7289/2021 titled "Adil Younas versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" decided on 15.06.2023 by the Division Bench comprising Kalim Arshad Khan, Chairman and Salah-ud-Din, Member(Judicial) Khyber Pakhtunkhwa Service Tribunal, Peshawar.

THEREFORE, THE APPELLANT FILED DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 31.03.2021 ON 07.04.2021 TO RESPONDENT NO.3 BUT RESPONDENT NO.3 WITHOUT FOLLOWING THE REQUISITE PRESCRIBED CODAL FORMALITIES REMOVED THE APPELLANT FROM SERVICE VIDE IMPUGNED ORDER DATED 08.06.2021 WHICH WAS RECEIVED BY THE APPELLANT ON 05.08.2021 WHICH IS PERVERSE, AGAINST THE LAW AND THE SAME IS LIABLE TO BE SET-ASIDE.

Service Appeal No.7289/2021

Date of Institution.....20.08.2021
Dates of Hearing.....26.04.2023 & 29.05.2023
Date of Decision.....15.06.2023

Adil Younas, son of Muhammad Younas, Naib Qasid, Office of the Deputy Commissioner, Abbottabad.....(**Appellant**).

Versus

1. **Government of Khyber Pakhtunkhwa**, through Secretary Local Government and Rural Development Department, Peshawar.
2. **Secretary**, Local Council Board, Abbottabad.
3. **Senior Member Board of Revenue (SMBR)**, Khyber Pakhtunkhwa, Peshawar.
4. **Commissioner**, Hazara Division, Abbottabad.
5. **Deputy Commissioner**, Abbottabad.....(**Respondents**).

Present:

Mr. Muhammad Arshad Khan Tanoli, Advocate.....For appellant.

Mr. Fazal Shah Mohmand

Additional Advocate General and

Mr. Asad Ali Khan

Assistant Advocate General For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT,

Service Appeal No.7079/2021 titled "Fahad Shah Vs.Secretary Board of Revenue and others", Service Appeal No.7287/2021 titled "Jamil versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others", Service Appeal No.7288/2021 titled "Yasir Asghar versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" and Service Appeal No.7289/2021 titled "Adil Younas versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" decided on 15.06.2023 by the Division Bench comprising Kalim Arshad Khan, Chairman and Salah-ud-Din, Member(Judicial) Khyber Pakhtunkhwa Service Tribunal, Peshawar.

1974, FOR DECLARATION TO THE EFFECT THAT THE APPELLANT IS THE EMPLOYEE OF DISTRICT COUNCIL AND WAS TRANSFERRED FROM DISTRICT COUNCIL TO THE OFFICE OF RESPONDENT NO.5. THE APPELLANT WAS NAIB QASID IN THE OFFICE OF RESPONDENT NO.5 AND HIS THREE INCREMENTS WERE WITHHELD FOR THREE YEARS WITH ACCUMULATIVE EFFECT VIDE IMPUGNED ORDER DATED 31.03.2021. THEREFORE, THE APPELLANT FILED DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 31.03.2021 ON 07.04.2021 TO RESPONDENT NO.3 BUT RESPONDENT NO.3 WITHOUT FOLLOWING THE REQUISITE PRESCRIBED CODAL FORMALITIES REMOVED THE APPELLANT FROM SERVICE VIDE IMPUGNED ORDER DATED 08.06.2021 WHICH WAS RECEIVED BY THE APPELLANT ON 05.08.2021 WHICH IS PERVERSE, AGAINST THE LAW AND THE SAME IS LIABLE TO BE SET ASIDE.

CONSOLIDATED JUDGEMENT

KALIM ARSHAD KHAN CHAIRMAN. Through this single judgment this appeal and connected appeals No.7287, 7288 and 7289 of 2021 are being decided as all the three are the outcome of the same departmental proceedings.

2. The facts surrounding the appeals are as under:

a. Appeal No.7079/2021 titled "Fahad Shah versus Secretary BOR and others":

The appellant was posted as Computer Operator in the office of Assistant Commissioner, Abbottabad when he was served with a show

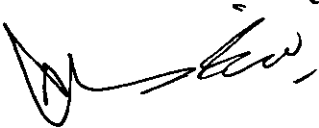
Service Appeal No.7079/2021 titled "Fahad Shah Vs.Secretary Board of Revenue and others", Service Appeal No.7287/2021 titled "Jamil versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others", Service Appeal No.7288/2021 titled "Yasir Asghar versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" and Service Appeal No.7289/2021 titled "Adil Younas versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" decided on 15.06.2023 by the Division Bench comprising Kalim Arshad Khan, Chairman and Salah-ud-Din, Member(Judicial) Khyber Pakhtunkhwa Service Tribunal, Peshawar.

cause notice by the Deputy Commissioner, Abbottabad, in the following words:

- "i. Whereas, the said official has been an unauthorized beneficiary of funds from the relief account without any approval from the competent authority vide cheque No.24459824 dated 22.06.2020 and No.24459828 dated 23.06.2020, which were credited to his account at National bank of Pakistan, Main Branch Abbottabad.*
- ii. Whereas, one of the principal culprit in the embezzlement of funds namely Aqeel Khan Jadoon has contended before Police that he collected cash from the cheque of relief account which were issued and made payments to Fahad Shah's brother."*

After submission of reply to the show cause notice, the appellant was awarded major penalty of removal from service vide order dated 31.03.2021; that aggrieved of the above order, the appellant preferred a departmental appeal before the Commissioner Hazara Division, Abbottabad, which was not responded within the statutory period and, hence, this appeal.

- b. **Appeal No.7287/2021 titled "Jamil versus Government of Khyber Pakhtunkhwa and others":**
- c. **Appeal No.7288/2021 titled "Yasir Asghar versus Government of Khyber Pakhtunkhwa and others":**
- d. **Appeal No.7289/2021 titled "Adil Younas versus Government of Khyber Pakhtunkhwa and others":**



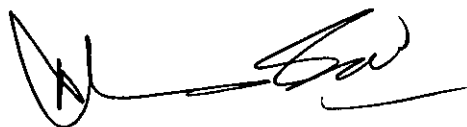
The facts of appeals No.7287/2021, 7288/2021 and 7289/2021 are similar and those are that the appellants were implicated in a false case and had

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illegally been declared beneficiary of Rs.1300000/-, Rs.1450000/- and Rs.1300000/- respectively out of relief fund by using their personal bank accounts vide enquiry report No.6764 dated 27.11.2020; that the respondents issued show cause notices to the appellants, which they replied but the replies were not considered and vide the impugned orders dated 31.03.2021, three increments, of all the three appellants in these appeals, were withheld with cumulative effect; that the appellants filed departmental appeals to Respondent No.3 on 07.04.2021 but instead of rejection or acceptance of the appeals, respondent No.3 removed the appellants from service vide the impugned appellate orders dated 08.06.2021, hence, these appeals.

3. On receipt of the appeals, notices were issued to the respondents to file their reply. They submitted their joint reply/para-wise comments. It was mainly contended that the department had proceeded against the appellants in accordance with relevant law and rules; that the appellants were found guilty being beneficiaries of cheques of different amounts of relief which they credited to their personal bank accounts; that the appellants were proceeded and were dealt with in accordance with law.

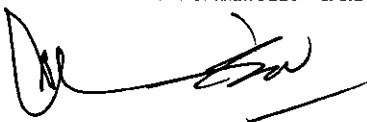
4. We have heard arguments of learned counsel for the parties and perused the record with their assistance.



Service Appeal No.7079/2021 titled "Fahad Shah Vs.Secretary Board of Revenue and others", Service Appeal No.7287/2021 titled "Jamil versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others", Service Appeal No.7288/2021 titled "Yasir Asghar versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" and Service Appeal No.7289/2021 titled "Adil Younas versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" decided on 15.06.2023 by the Division Bench comprising Kalim Arshad Khan, Chairman and Salah-ud-Din, Member(Judicial) Khyber Pakhtunkhwa Service Tribunal, Peshawar.

5. The learned counsel for the appellants reiterated the grounds urged in the memorandum and grounds of appeals and submitted that the impugned orders dated 31.03.2021 were illegal, unlawful, against the facts, hence, liable to be set aside; that no neither proper departmental inquiry had been conducted nor any witness had been produced for cross-examination. They submitted that the respondents had not treated the appellants in accordance with law, rules and that had violated Article-4 of the Constitution of Islamic Republic of Pakistan, 1973 and the impugned order was unjust, unfair and not sustainable in the eyes of law. Further submitted that the respondents had violated the relevant rules as laid down in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The learned counsel for the appellants requested for acceptance of the instant appeal.

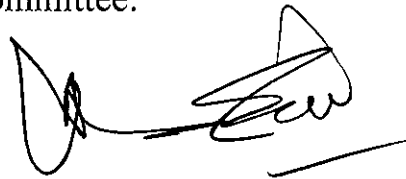
6. On the other hand, learned Additional Advocate General submitted that the proceedings initiated against the appellants were as per law and rule and after completion of inquiry report, the appellants had been served with final show cause notice and were heard in person. He submitted that the allegations leveled against the appellants had been proved in the inquiry report and based on the recommendations of committee, thus had been penalized accordingly. Further submitted that all the legal formalities had been completed and the authority had acted as per law/rules. Lastly, he submitted that as the recovery was made by the Anti-Corruption Establishment during investigation and recovered amount was deposited



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into government treasury. Therefore, he requested for dismissal of the appeals.

7. Having heard the learned counsel for the appellants and learned Law Officer on behalf of the respondents, it appears to us that the departmental proceedings were initiated against the appellants on the basis of report dated 27.11.2020 of the fact finding (enquiry) comprising Muhammad Abid, Additional Deputy Commission Relief Abbottabad and Shahab Muhammad, Additional Deputy Commissioner (General), Abbottabad, whereafter formal enquiry was ordered by the Deputy Commissioner, Abbottabad vide notification No. 5246-52/2/3-EB dated 04.12.2020 to be conducted by Mr. Shabir Ahmad, Secretary to Commissioner, Hazara Division, Abbottabad and Tariq Ullah, Additional Deputy Commissioner (F&P) Abbottabad. They conducted enquiry and recorded statements of the appellants, some private persons, Asfandyar Khan, Cashier of Bank of Khyber, Abbottabad and Mujtaba Arafat Khan, Assistant Commissioner, Abbottabad. Following are the findings and recommendations of the enquiry committee:



Findings:

1. All the material facts on record transpire that Mr. Waqas Khan was principal custodian of the record of relief section and was entrusted with the responsibilities of Relief Section. He was carrying out all correspondences related with relief fund disbursement procedure and related computer tasks. Therefore, allegations leveled against him in his charge sheet vide Para 1 and 2 stand proved. Mr. Waqas Khan being senior-most official was looking after the work of relief branch since his order issued by DC Abbottabad vide No. 9371-74 dated 14.11.2019.
2. The statements of Naib Qasid & private person indicate that Mr. Waqas Khan handed over cheques to them & received cash which confirm that Mr. Waqas Khan is prime culprit and allegations at Para 3 of charge sheet also stand proved.
3. Similarly, Para 4 of charge sheet also stand proved for the reason that Mr. Junaid Khan being unauthorized for relief fund was confirmed for receiving relief Cheques during inquiry proceedings however, he deliberately concocted his statement to save Mr. Waqas Khan being his cousin and pointed out the name of Mr. Yasir Asghar Naib Qasid in his statement.
4. Private person Mr. Aqeel Khan during inquiry stated that he got the relief Cheques from Mr. Waqas Khan including the alleged Cheque of one million. But Mr. Waqas Khan in his written statement stated that he does not know any person named Aqeel Khan. Therefore, Para 5 of charge sheet also stand proved. Mr. Waqas Khan also manipulated the remaining staff and private persons of his acquaintance in misappropriation and embezzlement of relief fund.
5. Entries in acquaintance roll have been found incomplete & thumb impression & signatures of fake people as evidenced in case of Mr. Fiaz Khan who received cheque of Rs. 50000/- with No. 24459831 dated 19.06.2020 but in acquaintance roll the entry against the said cheque has been shown as Mr. Anayatur Rehman s/o Ghani. However, Mr. Fayaz Khan showed unfamiliarity with Anayatur Rehman in statement. Mr. Waqas Khan is responsible for such



malpractice of tempering acquaintance roll of 388 cases of House damages 2015. Therefore, all the allegations leveled against Mr. Waqas Khan stand proved.

6. *Beside the above entries for double payments in said acquaintance roll have also been found. Two cheques for double payment were issued as in case of Ghazala Bibi a cheque of Rs. 50000/- through No. 24515368 was issued and payment was made on 25.02.2020. Similarly, in acquaintance roll at serial No. 324 she has been shown as receiving another cheque No. 24515595 of Rs. 100000/-.*

7. *The charges leveled against all the staff including Computer Operators & Naib Qasids in their charge sheets have been stand proved/confirmed however, by drawing inferences, the Naib Qasid might have not got all amount of cheques(s) as they handed over cash to Mr. Waqas Khan however chance of their share/benefit may not be ruled out.*

8. *Mr. Jameel Khan & Mr. Adil Younis, Naib Qasids deliberately changed their statements which shows that they concealed the facts from committee.*

9. *The statements of all private persons also confirmed that they received & cashed relief cheques. Although they held for handing over cheques amount to Mr. Waqas Khan however, it indicates that involvement of Private person was surely for the sake of some monetary benefits.*

10. *Relief cheques of Rs. 200000/- in the name of private person Mr. Aqeel Khan & Rs. 200000/- in the name of Qaiser Shezad were issued on the same day vis 12.07.2020.*

11. *During proceedings the role of Khyber Bank authorities have been found for overlooking many things. While clearing relief cheques the signatures were not verified especially for the cheques amounting above Rs. 100000/-.*

12. *The Bank of Khyber detained one million cheque No. 24459875 dated 02.10.2020 issued in the name of Mr. Aqeel Khan due to signature difference. However, signatures on previous two cheques issued to Mr. Aqeel Khan i.e. cheque No. 24459869 dated 12.07.2020 & 24459871 dated*



12.07.2020 were cleared despite of signature differences on both.

13. Mr. Fahad Shah during inquiry also accepted for being unauthorized beneficiary from relief account of Rs. 200000/- and he is ready to return the amount. Although he has shown ignorance about crediting these cheques into his account however, role of his friend Aqeel Khan and brother Jazib Shah also pointing towards the involvement of all.

14. The cross cheques among 54 relief cheques under investigation were showing more than a month time gap between their issuance and clearance from banks as all the accused and bank cashier in their statements confirmed that all cheques were cleared within 2-3 days after depositing in banks. It shows a gross negligence and incompetency towards such an important duty of relief section due to which general public suffers.

15. Total 14 open cheques were issued however; only 12 open cheques were brought on record by fact finding inquiry.

16. Unnecessary cheque books were used. Acquaintance roll and cash book were not signed by the Assistant Commissioner/DDMO.

RECOMMENDATIONS:

From the perusal of record presented before committee, written statements, answers of questionnaires, cross examination/interrogations etc, it is recommended that.

1. Mr. Waqas Khan Computer Operator, office of Assistant Commissioner Abbottabad for guilty of misconduct & corruption render him for imposition of Major penalty of Dismissal from Service as envisaged in Rule 4 (1) (b-IV) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Moreover, Anti-Corruption Authorities may also be informed for his removal from service & recovery of embezzled amount of relief section.

2. Mr. Fahad Shah Computer Operator, Assistant Commissioner office Abbottabad during proceedings, it transpires that he was also involved in embezzlement. He was beneficiary of two cheques of Rs. 200000/- & soon after he



cashed those cheques therefore, his stance for being unaware of the relief cheques into his personal account is not cogent reason. Moreover, his connection with a private person Mr. Aqeel Khan & then with Waqas Khan pointing towards his role as accomplice in the embezzlement. Similarly, statement of Aqeel Khan before police regarding involvement of Mr. Jazib Shah, real brother of Fahad Shah is also suspecting him. Since, he was beneficiary of Rs. 200000/- & accepted to return the amount therefore, he is liable for Major penalty of Removal from service as envisaged in Rule 4 (1) (b-III) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Moreover, Anti-Corruption Authorities may also be informed for recovery of embezzled amount on his part.

3. Mr. yasir Asghar Chowkidar/Naib Qasid, Assistant Commissioner Abbottabad the unauthorized beneficiary of Rs. 1450000/- from relief fund has proved himself for irresponsible official & naïve towards his job description/duties & using his personal account for relief cheques without sensing its gravity and negligence for not bringing the matter into the notice of high authorities. However, during proceedings it has been observed that he was manipulated by Mr. Waqas Khan and he also handed over cash to Mr. Waqas Khan therefore, the imposition of Minor penalty of stoppage of 03 Annual increments with accumulative effect as envisaged in Rule, 4(1) (a-II) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 is recommended.

4. Mr. Jameel Ahmed, Naib Qasid, Assistant Commissioner Abbottabad the unauthorized beneficiary of Rs. 1300000/- from relief fund has proved himself for irresponsible official and naïve towards his job description/duties & negligence for not bringing the matter into the notice of higher authorities. However, during proceedings it has been observed that he was manipulated by Mr. Waqas Khan and he also handed over cash to Mr. Waqas Khan therefore, the imposition of Minor penalty of stoppage of 03 annual increments with accumulative effect as envisaged in Rule, 4(1) (a-II) of Khyber Pakhtunkhwa Government Servants



(Efficiency & Discipline) Rules, 2011 is recommended.

5. Mr. Adil Younis, Naib Qasid, Assistant Commissioner Abbottabad the unauthorized beneficiary of Rs. 1300000/- from relief fund has proved himself for irresponsible official and naïve towards his job description/duties and using his personal account for relief cheques without sensing its gravity and negligence for not bringing the matter into the notice of higher authorities. However, during proceedings it has been observed that he was manipulated by Mr. Waqas Khan and he also handed over cash to Mr. Waqas Khan therefore, the imposition of minor penalty of stoppage of 03 annual increments with accumulative effect as envisaged in Rule 4 (1) (a-II) of Khyber Pakhtunkhwa Government Servants (efficiency & Discipline) Rules, 2011 is recommended.

6. Private persons namely Mr. Aqeel Khan, Mr. Shahbaz Saleem, Mr. Qaiser Shezad, Mr. Junaid Khan, Mr. Jazib Shah, Mr. Tahir Asghar, Mr. M. Fiaz & Mr. Shah Nawaz were also interrogated during the inquiry and their statements were recorded which may be shared with Anti-Corruption Authorities to incorporate in legal proceedings already taken against them by Anti Corruption Authorities.

7. The reliability, completeness and substantiating documentation/record particularly Acquaintance roll, cash book and relief account statements the DDMO may be directed to ensure safeguarding government fund/record, for close check on work of subordinates and regular review of record to ensure that relief fund is utilized efficiently, & in accordance with law/PDMA policies.

8. During inquiry many discrepancies/procedural violation have been observed for disbursing of relief cheques particularly the cases of those affectees who did not hold bank accounts therefore, in order to eliminate such practices in future a proper policy/mechanism/strategy should be devised in accordance with directions of provincial government.



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8. Although the findings of the enquiry committee are in detail yet there are following missing facts which we do not find therein, in order to ascertain the guilt of the appellants and/or of others.

1. In which and in whose account the relief fund was initially received and kept?

2. Who had signed the cheques which were allegedly handed over to the appellants? Who had handed over the charges to the appellants and why?

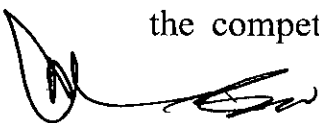
3. Whether the cheques, allegedly credited by the appellants in their personal bank accounts, were open, crossed and/or issued in the names of the appellants?

4. Whether the appellants were in any manner connected with the dealing of the relief fund or they were in any manner empowered to receive the charges, get those encashed or credited in their personal accounts?

5. Who else was involved in the episode?

9. The above questions are unanswered and without ascertaining the above facts only the appellants could not be held responsible for the alleged embezzlement.

10. Since the enquiry report is ^{benefit} ~~benefit~~ of the above details, therefore, we are constrained to allow these appeals and set aside the impugned orders of the competent authority as well as the appellate authority and remit the



Service Appeal No.7079/2021 titled "Fahad Shah Vs.Secretary Board of Revenue and others", Service Appeal No.7287/2021 titled "Jamil versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others", Service Appeal No.7288/2021 titled "Yasir Asghar versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" and Service Appeal No.7289/2021 titled "Adil Younas versus Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue (SMBR), Peshawar and others" decided on 15.06.2023 by the Division Bench comprising Kalim Arshad Khan, Chairman and Salah-ud-Din, Member(Judicial) Khyber Pakhtunkhwa Service Tribunal, Peshawar.

matter back to the departmental head i.e. worthy Senior Member Board of Revenue, Khyber Pakhtunkhwa to himself constitute fresh enquiry committee or to refer the matter to the competent authority for such constitution a of enquiry committee for conducting de-novo enquiry also addressing the above questions. The appellants are reinstated for the purpose of de-novo enquiry. The issue of back benefits etc. will be subject to the final outcome of the de-novo enquiry. Copy of this judgment shall also be placed on the connected appeals. Copy of this judgment be also sent by name to the worthy Chief Secretary, Khyber Pakhtunkhwa for his information. Cost shall follow the event. Consign.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of June, 2023.*



KALIM ARSHAD KHAN
Chairman



SALAH UD DIN
Member (Judicial)

Adnan Shah, P.A