


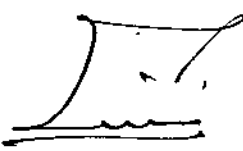
31.01.2023

Appellant alongwith his counsel present. Mr. Ahmad Yar, Assistant Director (Litigation) alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

At the very outset, learned counsel for the appellant stated that for the time being he does not want to press his application to the extent of summoning of Alhaj Mazhar Sajjad as witnesses, however he requested that the application to the extent of requisitioning of record of Service Appeal No. 838/2012 may be allowed. Learned Assistant Advocate General is having no objection on requisitioning of record of Service Appeal No. 838/2012, therefore, the same be requisitioned and to come up for arguments on 07.03.2023 before D.B.

In view of order sheets dated 03.06.2021 and 11.06.2021, the appeal in hand be fixed for arguments before D.B comprising of worthy Chairman and Ms. Rozina Rehman, learned Member (Judicial).


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

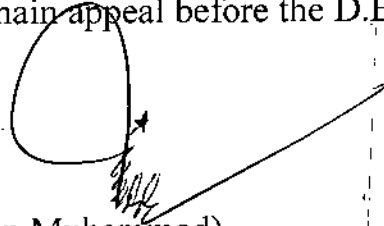
SCANNED
K.P.3T
Peshawar

07.12.2022

Learned counsel for the appellant present. Mr. Ahmad Yar,
Assistant Director alongwith Mr. Muhammad Jan, District Attorney
for the respondents present.

Learned counsel for the appellant sought adjournment for
arguments. Adjourned. To come up for arguments on application as
well as on main appeal before the D.B on 31.01.2023.

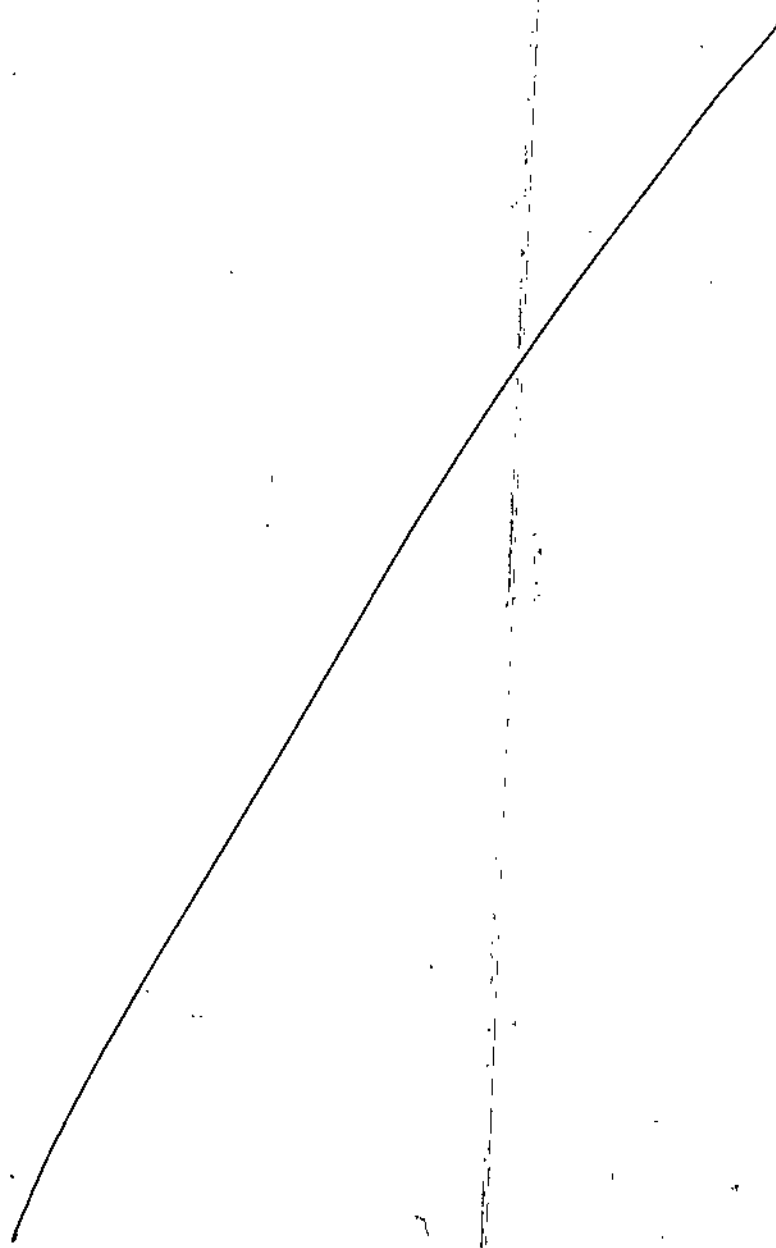
SCANNED
KSP & T
Peshawar



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)



01.06.2022

Appellant with counsel present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Reply to applications submitted by the appellant vide order sheet dated 02.12.2021 submitted. Rejoinder was also submitted with a request for adjournment; granted with direction to both the parties to argue the case on 10.08.2022 before D.B.

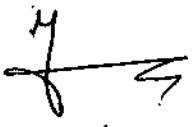

(Fareeha Paul)
Member(E)


(Rozina Rehman)
Member (J)

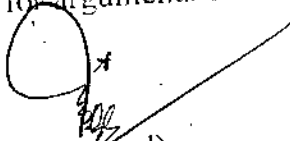
10-8-2022


Proper DB not available the case
is adjourned to 6-10-2022

06.10.2022


Counsel for the appellant present. Mr. ~~Kalim~~ Ullah
Khattak, Additional Advocate general for respondents present.

Counsel for the appellant requested for adjournment
on the ground that he has not prepared brief. Adjourned. To
come up for arguments on 07.12.2022 before D.B.


(Mian Muhammad)
Member (E)


(Kalim Arshad Khan)
Chairman

02.12.2021

Counsel for appellant present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Case was fixed for rejoinder and arguments but again a request was made for adjournment on behalf of appellant. He also submitted an application for summoning record of Service Appeal No.838/2012 and for summoning one Alhaj Mazhar Sajjad. Copies of the application were properly served upon learned A.A.G. In this regard, his signature was obtained on the margin of order sheet. To come up for reply and arguments on the application on 26.01.2022 before D.B.

(Atiq ur Rehman Wazir)
Member (E)

(Rozina Rehman)
Member (J)

26.01.2022

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

Former seeks adjournment as learned senior counsel is seriously ill. Adjourned. To come up for arguments on 24.02.2022 before the D.B.

(Atiq-Ur-Rehman Wazir)
Member (E)

Chairman

24.2.22

*Due to medical request of worthy chairman,
The case is adjourned to 1.6.22.*

Rejoinder 11/12/21

12.07.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


Chairman

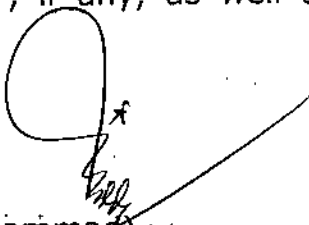
20.08.2021


Due to summer vacations, case is adjourned to 29.10.2021 for the same as before.


READER

29.10.2021

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present and submitted reply/comments, copy of which handed over to learned counsel for the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments before the D.B on 02.12.2021.


(Mian Muhammad)
Member (E)


(Salah-Ud-Din)
Member (J)

Stipulated period passed reply not submitted.

25.06.2021

Appellant present through counsel.

Muhammad Adeel Butt learned Additional Advocate General for respondents present.

Subject to all legal and factual objections including the objection of limitation, this appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notice be issued to the respondents for submission of reply/comments in office within 10 days of the receipt of notices, positively. If the reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. To come up for arguments on 20.08.2021 before D.B.

Appellant Deposited
Security & Process Fee

28/6/21


(Rozina Rehman)
Member(J)


Chairman

03.06.2021

Appellant with counsel present.

Due to peculiar facts of the appeal, it will be in the fitness of things that this appeal be heard by the Bench comprising the Chairman and one other Member to be constituted within the meaning of sub-section (1)(b) of Section 5 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. As and when Special Bench is constituted, notice be issued to appellant and his counsel for preliminary hearing.

Handwritten signature

Handwritten signature
Chairman

11.06.2021

The D.B comprising the undersigned and Mrs. Rozia Rehman, Worthy Member (Judicial) will take up this case on 17.06.2021. Notice be issued to the appellant/learned counsel for the date fixed.

Handwritten signature
Chairman

Noted for 17/6/21
Handwritten initials

17.06.2021

Clerk to counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 25.06.2021 for hearing, before D.B.


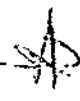


Handwritten signature
(Rozina Rehman)
Member(J)

Handwritten signature
Chairman

FORM OF ORDER SHEET

Court of _____

Case No. 2514 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/02/2021	<p>The appeal of Mr. Pervez Khan presented today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR <u>9/2/2021</u></p>
2-	<p></p> <p>12.04.2021</p> <p>Application for early hearing allowed. Fixed for 03/06/2021.</p>	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/04/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 20.07.2021 for the same as before.</p> <p style="text-align: right;"> Reader</p>

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 254 /2021

Parvez Khan Appellant.

Versus

The Govt. of KPK and others.....Respondents

INDEX

S.No.	Description of Documents	Date	Annex	Pages
1.	Memo of Service Appeal with Affidavit	21.1.2021	-	1-17
2.	Charge Sheet and Statement of Allegations	29.8.2011	A-1, A-2	20-23
3.	Inquiry Report of Inquiry Officer	21.10.2011	B-1	68-76
4.	Evidence adduced in trial court of ACE		B-2	77-98
5.	Show cause notice	27.12.2011	C	99
6.	Removal Notification	10.05.2012	D	100
7.	Impugned Compulsory Retirement Notification	16.01.2013	E	102
8.	Judgment of Service Tribunal KPK	19.11.2015	F	105-122
9.	Order/Judgment of the Apex Court	13.09.19	G	123
10.	F.I.R. NO. 8, u/s 419,420,468	19.11.2013	H	125
11.	Judgment of Ante-Corruption/Trial Court	01.12.2020	I	129-147
12.	Representation to respondents	22.12.2020	J	148-151
13.	Impugned regret orders	29.8.2011	K-1,K-2	152-A 152-B
14.	Working papers for promotion	14.01.2021 01.02.2021	L-1,L-2	153-155
15.	Judgment of apex court in Appeal No.172-P-2010	15.07.2011	M	156-160
16.	Policy decision of Establishment Deptt.	30.05.2011	N	161-162
17.	Promotion Notification of ineligible	19.02.2007	O	163-164
18.	Promotion proposal of the appellant	12.03.2012	P	165-173
19.	Move-over Promotion of the appellant	16.01.2017	Q	174
20.	Service Acknowledgement	24.12.2018	R	175
21.	Removal from CEO WSSC Swat post		S	176
22.	Wakalat Nama		T	177

(2)

Pervez Khan (Appellant)

Through

Khaled Rahman

Advocate, Supreme Court of Pakistan

& Muhammad Amin Ayub
Advocate, High Court

& Muhammad Ghazanfar Ali
Advocate, High Court

4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: 3/1/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2021

Mr. Parvez Khan

Ex-Project Director /EDO/DPWO,
Population Welfare Department,
Khyber Pakhtunkhwa.
R/o Village Palosi Tiarzai,
District Peshawar.

Appellant

VERSUS

1. **The Govt. of Khyber Pakhtunkhwa**
through Chief Secretary,
Civil Secretariat, Peshawar.

2. **The Secretary,**
Govt. of Khyber Pakhtunkhwa
Population Welfare Department,
Civil Secretariat, Peshawar.

Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 READ WITH 12(2) C.P.C. AGAINST THE IMPUGNED ORDER/LETTER DATED 14.01.2021 WHEREBY THE REPRESENTATION OF THE APPELLANT FOR HIS REINSTATEMENT INTO SERVICE WAS REGRETTEED.

PRAYER:

On acceptance of the instant appeal, the impugned order/letter dated 14.01.2021 & Compulsory Retirement Notification dated 16.01.2013 may be brushed aside and the appellant may graciously be reinstated into service w.e.f. 16.01.2013 with all consequential back benefits solicited in heading of appeal including promotion to next higher scale w.e.f October 2005 etc.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That the appellant, admittedly, entered into the Government service on 16.04.1980. Later on, appellant was appointed as EDO/DPWO (B.P.S-18) in Population Welfare Department, Khyber Pakhtunkhwa on 29.09.2004 by topping the final merit list of the Commission.
2. That while serving as EDO/ DPWO/Project Director FATA, Population Welfare, a well-planned conspiracy was hatched by a section of Officers against the appellant which finally culminated into a Charge Sheet and Statement of Allegations (*Annex- A-1, A-2*) issued to the appellant on 29.08.2011, containing fabricated and ill-founded allegations. Thus appellant replied the same by submitting a detailed reply thereto explaining his innocent position.
3. That the Inquiry Officer conducted inquiry in utter violation of the RSO 2000, the fact he latest admitted before the Anti-Corruption court, Peshawar during his cross-examination. He submitted the so-called Inquiry Report vide letter dated 06.09.2011. Inquiry Report and his Statement before the trial court of Senior Special Judge Anti-Corruption are as *Annex-B-1 & B-2* respectively).
4. On the basis of such illegal and fallacious Inquiry Report, a Final Show Cause Notice (*Annex;-C*) was served upon the appellant which was duly replied explaining all the issues raised in the Show Cause Notice.
5. That after a meaningless personal hearing offered through the then Commissioner, Peshawar Division who had no authority being not the Competent Authority, vide impugned Notification dated 10.05.2012 (*Annex;-D*) the appellant was imposed upon the major penalty of removal from service.
6. That being aggrieved of the impugned Notification *ibid*, appellant challenged the same through a Departmental Appeal before the appellate authority. The same was however, partially allowed and the penalty of removal from service was converted into compulsory retirement vide order dated 16.01.2013 (*Annex-E*).

7. That no meaningful opportunity of personal hearing and fair defense was afforded to the appellant, neither by the competent authority, the Inquiry Officer nor by the appellate authority throughout, which is the mandatory requirements of law. Thus appellant was condemned unheard and mistreated as the actions have been taken at the back of the appellant with deep conspiracy, insinuation & rancor, thus stood against the principle of natural justice, equity and fair-play in public business.
8. That thereafter, the appellant approached this Hon'ble Tribunal in Service Appeal No.838/2012 and finally vide Judgment dated 19.11.2015 (*Annex-F*) the appeal of the appellant was dismissed. The Judgment *ibid*, was challenged before the Hon'ble Apex Court in CPLA but the same was also dismissed in limini vide two-lines order dated 13.09.19 (*Annex-G*) for lacking element of public importance.
9. That, it is worthwhile to mention that on the basis of charges leveled against the appellant in Charge Sheet, a criminal case was also registered against the appellant on the same charges vide F.I.R. No.8 dated 19.11.2013 U/S 419/420/468 (*Annex-H*) in Police Station ACE, Peshawar.
10. That later on, the criminal case was put in the Court of learned Senior Special Judge Anti-Corruption (Provincial), Khyber Pakhtunkhwa, Peshawar and trial commenced. In support of the charges all witnesses of the prosecution/respondents with record were produced & examined by the Trial Court and finally the appellant was exonerated of all the charges and he was acquitted vide a detailed Judgment dated 01.12.2020 (*Annex-I*). It is worthwhile to add that each of the charge leveled against the appellant both in Charge Sheet & F.I.R registered which were one & the same, were discussed threadbare and rejected by the learned Trial Court on sound and justifiable grounds.
11. That since the very basis of the major penalty of compulsory retirement imposed upon the appellant was set aside by the Court of competent jurisdiction, therefore, appellant immediately on obtaining attested copy of the Judgment, preferred a Representation (*Annex-J*) to the Competent Authority, the respondents, on 29.12.2020 for his reinstatement with back

benefits but vide impugned appellate order dated 14.01.2021 (*Annex;-K-1,K-2*) the same was regretted.

12. That appellant, being aggrieved of the impugned regret order/letter *ibid*, challenges the same, *inter-alia*, on the following grounds:-

G R O U N D S:

- A. That Respondents have not treated appellant in accordance with law, policy and dicta set by the superior courts on the subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned order/letter, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That the appellant was charged for the criminal acts vide F.IR NO. 8 dated 19.11.2013 and the competent court of law acquitted him of those criminal charges. The charges in departmental proceedings leveled against the appellant were one and the same and as the competent Court of law has repudiated the charges, therefore, appellant is entitled for his reinstatement into service with all back benefits. The impugned orders/letters dated 14.01.2021 refusing reinstatement of the appellant is unwarranted, illegal and thus not sustainable in the eye of law.
- C. Since appellant was imposed upon major penalty of compulsory retirement on account of his alleged involvement in criminal offences as incorporated in the Charge sheet and then in FIR. Thus he is well within the right to claim re-instatement in service in view of repudiation of the charges on merits. If the charges were untrue & misfounded then perpetual right of condemning the innocent employee for penalty of compulsory retirement imposed cannot be gained on the basis of proceeding held in the hon'ble tribunal falsely implicating appellant.
- D. If the charges contained in the Charge sheet for departmental proceeding are taken on its face value, these are criminal in nature and do not fall in the meaning of civil 'misconduct' defined in section 2 (c) of NWFP Removal from Service (Special Powers) Ordinance, 2000. Thus the charges being criminal were rightly considered by competent criminal court, decided and

repudiated under its inherent authority. The respondents were required to wait for the outcome of the criminal proceedings and if charges were proved in the court of criminal jurisdiction, should have then proceeded u/s 3-A of RSO, 2000 for departmental proceedings. Thus the departmental proceeding was pre-matured, misfounded, misplaced and against the law laid down.

E. That it is a settled legal principle enunciated by the superior legal fora that when the basis of misconduct no more remains in the field the appellant civil servant should be reinstated into service. In the instant case, after acquittal of the appellant from the same charges on merits he is also entitled for reinstatement into service, therefore, refusal of the respondents to reinstate appellant into service after his acquittal is violative of Article-189 of the Constitution of Islamic Republic of Pakistan, 1973 and Judgments of the Supreme Court of Pakistan delivered on the subject matter.

F. That the disciplinary proceedings which finally culminated into the major penalty were fraught with malafide, malicious and extraneous motives in as much as the appellant had filed a Damages Suit of Rupees 80 Million against the then Minister, Secretary and Director General, Population Welfare, Khyber Pakhtunkhwa for not implementing two Judgments of the august Supreme Court of Pakistan wherein the Apex Court had declared that the Federal origin employees working in the respondent-2 department headed by the then Director General were not Provincial employees and thus not entitled for seniority in the Provincial Civil Service with the appellant, that the appellant is/was eligible for seniority and promotion to next higher scale w.e.f. 2005 while the Federal origin employees headed by the then Director General are/were not ineligible being Federal employees. The matter was also so stamped by Govt. of Khyber Pakhtunkhwa in Law Department vide their legal opinion dated 21.12.2009 sought by the respondent-2 department vide their letter dated 5.11.2009 (pages- 54-57).

G. That against the appellant a total six charges were leveled on the basis of which he was imposed upon the penalty of compulsory retirement from service. All the charges suffered from serious legal lacunas as explained by the trial court in its judgment. Now, all of them are washed away with the judgment in hand and evaporated in the air as held by the apex court in

several of its reported judgments and the appellant stood innocent. When the very foundation on the basis of which the major penalty was imposed upon the appellant is no more in the field, continuation of penalty is nullity in the eye of law.

H. That subsequently, appellant was appointed by respondent-1 as Chief Executive Officer Water & Sanitation Services Swat (MP-1 position) on open merits but due to conspiracy of the same Officers in respondent-1 department the appellant was unceremoniously removed from the job on basis of the same allegations vide order dated 22.9.2016 (*Annex- S*) after 13 months of his service while the pay of the appellant is still withheld. Again the appellant was appointed as Economist (BPS-20/21) in the Federal Government but his appointment was held in abeyance through the conspiracy of the same people by referring major penalty imposed upon.

I. That hence before, in Service Tribunal Khyber Pakhtunkhwa the case of the appellant was totally misrepresented by the functionaries representing respondent-2 department, hailing from the affected federal-origin lot, cut-throat adversaries of the appellant who on concealment of true record, claiming lost of appellant original 3 personnel files from the department, misled the service tribunal on surmises and conjectures to reach a conclusion which seriously prejudice the appellant's innocence. The entire gagged record has since been retrieved now, produced before the trial court and exhibited on judicial file and thus appellant was exonerated of the charges honorably. Appellant reserves the right to produce attested copies.

J. That, findings of facts were involved in the appellant' case. However, unfortunately, the theory of presumption and hearsay ruled in departmental proceedings which suffered from many probable deficiencies, suppressions of facts, error of sources and untrustworthiness, lied underneath the bare untested assertions of the respondents in the departmental proceeding before the tribunal. Now, the judgment of Senior Special Judge Anti-Corruption Peshawar, the court of evidence, has best brought to the limelight and exposed the whole truth through the tests of examination & cross-examination of witnesses and perusal of record. The full-fledged trial in the Anti-Corruption court has knocked out and washed away the charges and appellant declared innocent on merits.

K. This is an admitted fact that at the time of hearing of service appeal in this august Service Tribunal, the original service record containing credential and testimonials of the appellant were already lost, therefore, were not presented before the tribunal in support of the charges despite appellant's written request, then moving the learned bench to call the official true record including personnel files of the appellant from the department for inspection (**Annex-Page-103**). The respondents failed to produce it; rather the respondent-2 office misrepresented the facts before the tribunal through hearsay & speculations. The shaded facts now well scrutinized through pro & contra evidence in the court of Senior Special Judge Anti-Corruption, Peshawar. The true evidence has come forth before the Anti-Corruption court which has belied the charges and appellant exonerated on merits. Attested record of the trial court can be produced before the learned tribunal when desired so. The departmental proceedings were not initiated for any good public cause but to settle personal scores with appellant.

L. That the charges in the Charge sheet of the respondents before the tribunal and of F.I.R are one and the same. All the charges are criminal in nature and were asserted so before the two forums. The court of Senior Special Judge Anti-Corruption under its inherent criminal jurisdiction put to the litmus the charges in most natural way and cleared the appellant in unequivocal terms. The charges did not included **inefficiency, indiscipline, misbehavior, insubordination, conduct against good order or service discipline etc but criminal offences** as referred ante.

M. In case of acquittal from the criminal charges which were the sole base of the departmental proceedings in appellant case, the Supreme Court of Pakistan has held:

"When an official is tried on a definite charge and is acquitted either in the original court or on appeal and there is no question of the acquittal being merely on technical ground of evidence having been suppressed. In such cases, and when no facts are established in the course of the trial that would justify action being taken for disregard of departmental rules, the decision of the court on the facts should be accepted and no departmental action should be taken."

Similarly, when the charge is dismissed without any suggestion by the court that the conduct of the accused has been suspicious or any indication that it is merely giving

the accused the benefit of a doubt; the acquittal should be treated as an honourable acquittal and no further departmental action should be taken.

Constitution of Pakistan (1973), Art.212(3)—civil servant's dismissal from service based on his conviction of criminal charge—civil servant having been acquitted of criminal charge, his dismissal was set aside and he was ordered to be reinstated in service with back benefit". (Citations: 1991 S C M R 209).

N. The Hon'ble Supreme Court of Pakistan held in Superintendent Engineer GEPCO, Sialkot V. Muhammad Yousaf case reported in 2007 SCMR 537, that if a civil servant has been acquitted he has to be re-instated when his dismissal order was based on this very ground. (Citations: 2007 SCMR 537).

O. The Supreme Court of Pakistan held in another case:

"Basis of recommendation for removal from service having been knocked out, appeal was rightly allowed by service tribunal — judgment of service tribunal was maintained in circumstances". (Citation: 1994 S C M R 247)

P. The supreme court of Pakistan in the case Province of Punjab & V. Abdul Aziz Qurashi held:

"The judgment of the learned special judge leaves no slur on the conduct of the respondent (accused) and rather shows that he was made to suffer for extraneous reasons. The very basis of the recommendations for removal from service having been knocked out (By special judge), the appeal was therefore rightly allowed by learned tribunal". (Dictum set in 1994 SCMR 247).

Q. The Lahore High Court in a service case held:

"This Specific observation seems to be directly in conflict with the basic principle of the criminal administration of justice under which a person is presumed to be innocent unless proven guilty and person through involved in criminal case, if acquitted shall also be considered as a person against whom no case was ever registered. It will be a great irony of our society entire life with an obsolete and baseless stigma that he once being involved in a criminal case that too relating to a personal vendetta. This is considered a serious threat to the criminal administration of justice and offensive to the judicial system as a whole which not only shows mistrust but also a clear disrespect to it. The said approach will also be in direct conflict with provision of section 403 Cr.P.C and Article 13-A of the constitution of Islamic Public of Pakistan, 1973 under which double jeopardy has been prohibited". (Excerpt from 2018 PLC (CS) 454).

R. The Supreme Court of Pakistan has held in another similar case:

"Acquittal of civil servant in criminal case...Civil servant was re-instated in service after acquittal from a criminal case—payment of subsistence grant to the civil servant—Validity—Where the criminal charges were not established before a competent court of law and the civil servant was acquitted on those specific charges, the departmental proceedings exactly on the same charges would be wholly irrelevant and unjustified.---Civil servant was acquitted by the competent court of law which would mean that civil servant was not been suspended and would be entitled to all pay and allowances admissible under the rules, minus the amount which the civil servant had already drawn". (2001 SCMR 269)

S. The Supreme court of Pakistan held in another case.

"Frequently, however the above elements are absent; e.g. When an official is tried on a definite charge and is acquitted either in the original court or on appeal and there is no question of the acquittal being merely on technical ground of evidence having been suppressed. In such cases, and when no facts are established in the course of the trial that would justify action being taken for disregard of departmental rules, the decision of the court on the facts should be accepted and no departmental action should be taken.

Similarly when the charge is dismissed without any suggestion by the court that the conduct of the accused has been suspicious or any indication that it is merely giving the accuse the benefit of a doubt, the acquittal should be treated as an honourable acquittal and no further departmental action should be taken.---It was held in Muhammad sardar khan v. Senior Member (Establishment), Board of Revenue, Punjab, Lahore" (Citation: 1985 SCMR 1483)

T. The apex court held in similar case:

"However, it does not require any elaborate argument to show that in case the sentence is set aside and accused officer is acquitted, the very basis on which such order of removal from service stands, would disappear. The result of such an event would be that the order of removal itself will render ineffective and liable to be set aside. Such being the legal consequence a void order of removal could not have been propped up by an additional ground, as done by the learned service Tribunal, for the simple reason that such additional grounds found in support of the removal order would violate the rule of natural justice, beside being violative of the mandatory requirements of the Efficiency and Discipline Rules." (Citation: 1985 SCMR 1483)

U. In the judgment reported as (province of the Punjab v. Abdul Aziz Qureshi 1994 SCMR 247), the rule was established by apex court that when:

"Basis of Recommendation for Removal from Service having been knocked out, appeal was rightly allowed by service Tribunal --- Judgment of Service Tribunal was maintained in the circumstances". (Citation:1994 SCMR 247)

V. In another case Supreme Court followed similar principle in following words:

"Very Basis of recommendation for removal was knocked out by judgment of acquittal which shows that the case was started on the application of the students --

-- The judgment of the learned special judge leaves no slur on the conduct of respondent and rather shows that he was made to suffer from extraneous reasons. The very basis of recommendation for removal from service having been knocked out, the appeal was rightly allowed by the learned Tribunal. (Citation: 1995 SCMR 247).

W. The apex court held in identical case.

"Acquittal of civil servant from the criminal case--civil servant in case of acquittal was to be considered to have committed no offence because the competent Criminal Court had freed/cleared him from an accusation or charge of crime--Such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of murder case against him.

--Benefit of doubt--Doubt itself destroys the very basis of the prosecution case-- Where the benefit of doubt has been given to the accused, it cannot be said that charge has been established by the prosecution-- Accused has to be treated as innocent unless it is proved on the basis of best possible evidence that they are connected with the commission of crime and as such deserves to be convicted to meet the ends of justice--Even where benefit of doubt has been extended to accused, he shall be deemed to have been honourably acquitted.

--Acquittal--All acquittals are "honourable" and there can be no acquittals which may be said to be "dishonourable".

All acquittals, even if these are based on benefit of doubt are honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such "acquittals" All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals.

That term "acquittal" has not been defined anywhere in the Criminal Procedure Code or under some other law. In such a situation, ordinary dictionary meaning of "acquittal" shall be pressed into service". (Citations: 1998 S C M R 1993)

X. The Supreme Court of Pakistan has set a range of principles with the following dicta in one of its reported judgment.

"Every person was presumed to be innocent unless proved guilty--Person though involved in criminal case if acquitted was to be considered as a person against whom no case was ever registered--Any condition creating impediment on the job in the department on the basis of acquittal in criminal case would not and should not be read as disqualification--Impugned order passed by the department was set aside and Authority was directed to decide the representation of candidate in accordingly. The same principle was relied in 2011 SCMR 408, 2012 PLC (C.S) 502, 2012 SCMR 165, PLD 2010 SC 695, 2007 SCMR 537, 2009 SCMR 985, 1998 SCMR 1993, 2018 P L C (C.S) 454"

"Even order of removal of respondent from service had provided that his case would be considered by competent authority for his reinstatement in service in case he was acquitted of the criminal charge--Respondent was justified in claiming his reinstatement in service upon earning acquittal from the competent criminal court-- Supreme Court declined to interfere in the judgment passed by Service Tribunal, where by respondent was reinstated in service--Appeal was dismissed".
(Citations: P L D 2010 Supreme Court 695).

Y. The apex court observed in another identical case as below:

"It will be noted that the basis of recommendation for removal from service was that a "case is under trial in the Anti-Corruption Establishment, Multan". This very basis was knocked out by the judgment of acquittal which shows that the case was started on the application of the students---The judgment of the learned Special Judge, leaves no slur on the conduct of respondent and rather shows that he was made to suffer from extraneous reasons. The very basis of the recommendation for removal from service having been knocked out, the appeal was rightly allowed by the learned Tribunal. The learned counsel for the appellant could not point out any misreading, non-reading or misconstruction. The appeal is therefore dismissed with no order as to costs. Appeal dismissed". **(Citation: 1994 S C M R 247)**

Z. The apex court similarly observed in another case:

"Acquittal on benefit of doubt from criminal charge ---Honourable acquittal --- Back benefits Entitlement --- Civil servant was taken on duty after his acquittal from criminal charge and his period of suspension was treated as leave on due basis--- Grievance of civil servant was that the authorities did not pay him the salary for the period ---Service tribunal allowed the appeal of civil servant and directed the authorities to pay him back benefits---Validity---civil servant who was acquitted by extending benefit of doubt would be deemed to have been acquitted honourably--- Service tribunal had rightly directed the authorities to treat him on duty and give him all financial benefits during the period of his confinement in custody on account of his involvement in criminal case---Leave to appeal was refused. **(Citation: 2007 S C M R 537)**

Z-1. In another case the apex court laid down the following dicta:

"---Acquittal--- All acquittals are "honourable" and there can be no acquittal which can be termed as "dishonourable".

"It is an admitted fact that the appellant was acquitted by learned special judge (center), Multan from the charges which were leveled against him. This court, in the case of Dr. Muhammad Islam has laid down a dictum that all acquittals are "honourable" and there could be no acquittal which could be termed as "dishonourable".

"It appears that the tribunal was of the view that, since after registration of the case, the appellant was placed under suspension, as such, penalty imposed by the responded No.3 altogether separate than the findings in the criminal case. The record does not show that any different charge was leveled against the appellant in the departmental proceedings. On the contrary, it is evident that subject-matter was the same and action against appellant was taken on the basis of said criminal

proceedings. Where the those criminal charges are not established before a competent court of law and the accused acquitted on those specific charges, the departmental proceedings exactly on the same charges, would be wholly irrelevant and unjustified. Since the appellant was acquitted by competent court of law, it shall be deemed that he had not been suspended and would be entitled to all pay and allowances, admissible under the rules, minus the amount which he had already drawn. Under the circumstances, the impugned order of the tribunal is set aside and the appeal is allowed with above observations". (Citations: 2001 S C M R 269)

Z-2. That, on the basis of Policy decision of the respondent-1, communicated to respondent-2 vide NO.SOR-II (E&AD) 3-249/07 Vol-I dated 30.05.2011(annex-N) and of Apex court judgment in appellant's civil appeal NO. 172-P/2010 (Annex-M), right of promotion to the BPS-19 was already mature to the appellant from year October 2005, undoubtedly. The judgment of the apex court in paras 5, 6, 7, 8 has explicitly determined **eligibility** of the appellant from the date of controversy cropped up in year October 2005 which was the only moot point between the parties in litigation throughout. There was no controversy of 'fitness' between the parties ever. Therefore the appellant has sought his promotion-on-the-basis of his eligibility, matured in year 2005 as determined by the apex court. That respondent-2 moved promotion proposal of the appellant to PSB/respondant-1 accordingly but retrieved back maliciously (Annex-P).

Z-3. That, under Article 18 of the constitution of the Islamic Republic of Pakistan every citizen have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business. That, this hon'ble tribunal has kindly to confirm that joining further employment in government sector is allowed to a compulsory retired employees under Rule 4 (2) of E&D Rules 2011, *inter alia*, also so held by Establishment Department in appellant case. Therefore, respondents have wrongly disturbed fresh employment of the appellant as Chief executive Officer, Water & Sanitation Services, Malakand Division Swat and service in the Ministry of Housing & Works, Government of Pakistan, Islamabad by dint of his compulsory retirement and had wrongly caviled/maligned his employment at the two relevant forums.

Z-4. That, Anwar Qurashi Director (M&E), immediate officer of the appellant, has written last ACRs of the appellant and submitted to respondent-2 office. The same were maliciously kept pending in the department and were not

fairly processed and finalized. Therefore, the tribunal is requested to direct respondents to fairly process and finalized last ACRs of the appellant submitted by his immediate officer to respondent-2.

Z-5. That, the judgment of acquittal has created fresh cause of action to the appellant. The Supreme Court of Pakistan has allowed 2nd and subsequent appeal to the Service Tribunal in the circumstances. In addition, as fundamental principle of law all judgments & orders obtained through fraud and misrepresentations are always open for correction by the same forum passing the impugned judgment or order.

Z-6. Any other relief not specifically prayed for but concomitant, necessary, appurtenant to or ancillary to the caption payer or arise during the pendency of the appeal may also be allowed, all above with cost throughout please

Z-7. That, all reliefs solicited herein service appeal fall in the Terms & Condition of civil servant and this tribunal has got jurisdiction to entertain.

Z-8 That appellant would like to offer some other grounds during the course of arguments.

PRAYER:

In light of the above facts, points of law as well as legal elucidation put forth above this honorable tribunal is respectfully prayed to grant relief as prayed for in heading of the service appeal and in paras above please.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Dated: 21-01-2021

Pervez Khan (Appellant)

Through

Khaled Rahman,

Advocate, Supreme Court of Pakistan

&

Muhammad Amin Ayub

Advocate, High Court

&

Muhammad Ghazanfar Ali

Advocate, High Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL No. _____/2021

Pervez Khan ex-Prject Director FATA/ DPWO/EDO Population Welfare
Department Khyber Pakhtunkhwa, Peshawar.

VERSUS: -

Chief Secretary KPK Peshawar & others.

AFFIDAVIT

I, Pervez s/o Fatheh Khan S/O Fatheh Khan R/O of Palosi Tlarazai , Tehsil
& District Peshawar, CNIC NO: 17301-2119883-5, do hereby solemnly affirm and
declare on oath that the contents of accompanying appeal are true and correct to
the best of my knowledge and belief and nothing has been concealed from this
honorable Tribunal deliberately.

Dated: 21-01- 2021

Pervez Khan
Ex- Prject Director/ EDO/DPWO
Population Welfare Department Peshawar
(Appellant)

Through:
Khalid Rehman, Advocate Supreme Court of Pakistan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL No. _____/2021

Pervez Khan Dy. Director/ DPWO/EDO Population Welfare Department KPK,
Peshawar.

: -VERSUS: -

Government of Khyber Pakhtunkhwa, Peshawar & others.

ADDRESSES OF PARTIES

APPELLANT:

Pervez Khan, Khalil House, Palosi Tlarazai, P.O PFI, Tehsil & District Peshawar,
Khyber Pakhtunkhwa Province, Pakistan.

RESPONDENTS:

1. Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary, Government of KPK, Population Welfare Department, Civil Secretariat,
Peshawar, Peshawar cantt.

Dated: 31-01-2021

Pervez Khan
Ex- Project Director FATA/EDO/DPWO
Population Welfare Department Peshawar
(Appellant)

Through:
Khaled Rahman, Advocate Supreme Court of Pakistan



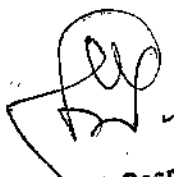
GOVERNMENT OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT

20

CHARGE SHEET

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa, as competent authority, hereby charge you, Mr. Pervez Khan Deputy Director BS-18 for the following acts of omissions and commissions.

- i. You have two domicile certificates i.e. one from settled area of District Peshawar which is your original place of domicile and second obtained from Khyber Agency, which you have used for your recruitment as Deputy Director / DPWO, (BS-18) in the Population Welfare Department.
- ii. You have tampered your M.A Economics Degree, session 1984 Annual under Roll No.6467 and changed your 3rd Division to 2nd Division to make yourself eligible for recruitment to BS-17 and above posts in the initial recruitment quota for which you were ineligible with your 3rd Division degree.
- iii. You, through concealment of facts from the court, have managed to get ex-parte decree from court and thus reflected your age nearly five years less than actual besides the fact that you have also been granted 14 months relaxation in upper age limit at the time of your recruitment to the post of Deputy Director (BS-18) in the Population Welfare Department.
- iv. You have served Planning Commission of Pakistan as Monitoring Specialist at monthly salary of Rs.75,000/= w.e.f 05-06-2007 to 29-8-2007 without getting NOC from your parent Department i.e. Population Welfare Department which is gross violation of Rules.
- v. You have served Ghulam Ishaq Khan Institute of Science and Technology as Director (Student's Affairs) at monthly salary of Rs. 30450/= w.e.f 01-04-2005 to 10-06-2005 without getting NOC from your parent department i.e. Population Welfare Department which is explicit violation of Rules as you have been receiving salary from your Department also.
- vi. You have served in clear violation of Rules in an Organization "Associates in Development (Pvt) Ltd w.e.f. 25-01-2008 to 25-11-2008 at annual salary of Pak Rupees equivalent to US\$ 40710/= per annum with other fringe benefits while being employed as Deputy Director Population Welfare Department.


Additional Secretary
Population Welfare Department
Khyber Pakhtunkhwa Peshawar
21-03-04

A


2. For the above reasons, you appear to be guilty of misconduct and inefficiency under Section-3 of the NWFP Removal from Service (Special Powers) Ordinance 2000, and have rendered yourself liable to all or any of the penalties specified in Section-3 of the said Ordinance.

3. You are, therefore, required to submit your written defence within seven (07) days of the receipt of this Charge Sheet to the Enquiry Officer / Committee.


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

5. Please intimate whether you desire to be heard in person?

6. The Statement of allegations is enclosed.


29-8-11
(AMIR HAIDER KHAN HOTI)
CHIEF MINISTER,
KHYBER PAKHTUNKHWA
(COMPETENT AUTHORITY)

Mr. Pervez Khan,
Deputy Director (BS-18),
Population Welfare Department,
Khyber Pakhtunkhwa.


Additional Secretary
Population Welfare Department
Khyber Pakhtunkhwa Peshawar
21-03-014



GOVERNMENT OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT

Stat allegations
shown cause
charge sheet
Removal order

22

DISCIPLINARY PROCEEDINGS

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa, as competent authority, am of the opinion that Mr. Pervez Khan Deputy Director BS-18 Population Welfare Department has rendered himself liable to be proceeded against as he has committed the following acts / omissions within the meaning of Section-3 of the NWFP Removal from Service (Special Powers) Ordinance, 2000.

STATEMENT OF ALLEGATIONS

- i. He has obtained two domicile certificates i.e. one from settled area of District Peshawar which is his original place of domicile and second obtained from Khyber Agency, which he has used for his recruitment as Deputy Director / DPWO, (BS-18) in the Population Welfare Department.
- ii. He has tampered his M.A Economics Degree, session 1984 Annual under Roll No.6467 and changed his 3rd Division to 2nd Division to make himself eligible for recruitment to BS-17 and above posts in the initial recruitment quota for which he was ineligible with his 3rd Division Degree.
- iii. He has through concealment of facts from the court, managed to get ex-parte decree from court and thus reflected his age nearly five years less than actual besides the fact that he has also been granted 14 months relaxation in upper age limit at the time of his recruitment to the post of Deputy Director (BS-18) in the Population Welfare Department.
- iv. He has served Planning Commission of Pakistan as Monitoring Specialist at monthly salary of Rs.75,000/= w.e.f 05-06-2007 to 29-07-2007 without getting NOC from his Parent Department i.e. Population Welfare Department which is a gross violation of Rules as he has also been receiving salary from the Department.
- v. He has served Ghulam Ishaq Khan Institute of Sciences and Technology as Director (Students' Affairs) at monthly salary of Rs. 30450/= w.e.f 01-04-2005 to 10-06-2005 without getting NOC from his parent department i.e. Population Welfare Department which is explicit violation of Rules.

Additional Secretary
Population Welfare Department
Khyber Pakhtunkhwa Peshawar
21-23-2014

vi. He has served in clear violation of Rules in an Organization "Associates in Development (Pvt) Ltd w.e.f. 25-01-2008 to 25-11-2008 at annual salary of Pak Rupees equivalent to US\$ 40710/= per annum with other fringe benefits while being employed and paid as Deputy Director Population Welfare Department.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, the following inquiry committee is constituted under Section-3 of the NWFP Removal from Service (Special Powers) Ordinance, 2000.

- 1. Mr. Waqar Ayub (BS-21)
- 2. _____
- 3. _____

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

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

A. Haider
 29-8-11
 (AMIR HAIDER KHAN HOTI)
 CHIEF MINISTER,
 KHYBER PAKHTUNKHWA
 (COMPETENT AUTHORITY)



Additional Secretary
 Population Welfare Department
 Khyber Pakhtunkhwa Peshawar
 21-03-2014

(24)

○

CHARGE SHEET

I, (Name and Designation), as competent authority, hereby charge you, Mr. (Name and Designation), as follows:

That you, while posted as _____ committed the following irregularities:

- (a) _____
- (b) _____
- (c) _____

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

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

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

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

6. A statement of allegations is enclosed.

○

COMPETENT AUTHORITY



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

25

CHARGE SHEET

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Mr. Muhammad Khalid, PMS BS-17, Section Officer, Population welfare Department, as follows :-

- a) While posted as Section Officer (Establishment), Population Welfare Department you asked your Section Staff to bring personal files of Mr. Pervez Khan, Deputy Director (BS-18) and other files pertaining to Court cases of the said Officer. You kept the files in your custody and returned some of these to the Section, while retaining the following files:-
 - i) File No. SOE(PWD) 4-30/08, contains seniority lists and other related documents of BS-17 and above non-technical Officers.
 - ii) File No. SOE(PWD)1-61/PF/Vol-I, First Volume of Personal File of Mr. Pervez Khan, Deputy Director (BS-18).
 - iii) File No. SOE9PWD)1-61/PF/Vol-II, Second Volume of Personal File of Mr. Pervez Khan, Deputy Director (BS-18).
- b) You have not returned the above files till date even after your transfer to Budget Section.
- c) The files you returned to the Section, have been tampered which is evident from the page marking, meaning thereby that some papers have been removed.

2- For the above reasons, you appear to be guilty of misconduct under Section-3 of the NWFP Removal from Service (Special Powers) Ordinance, 2000, and have rendered yourself liable to all or any of the penalties specified in Section-3 of the said Ordinance.

3- You are, therefore, required to submit your written defense within Seven (07) days of the receipt of this charge sheet to the Enquiry Officer/Committee.

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

Section Officer (E-1)
Establishment &
Administration Deptt.

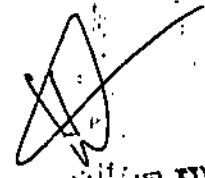
○
Please intimate whether you desire to be heard in person ?

The statement of allegations is enclosed.

26

**CHIEF MINISTER
KHYBER PAKHTUNKHWA
(COMPETENT AUTHORITY)**

Mr. Muhammad Khalid,
PMS BS-17, Section Officer,
Population Welfare Department.


Section Officer (B-II)
Establishment &
Administration Deptt.

GOVERNMENT OF NWFP
POPULATION WELFARE DEPARTMENT
F.C TRUST BUILDING SUNEHRI MASJID ROAD
PESHAWAR CANTT:

27

As per index, all files are available except the following, which were taken by the Section Officer (Estt) to his home and never returned:-

1. File No. SOE (PWD) 4-30 / 08 regarding seniority list of officer (N. Tech).
2. File No. SOE (PWD) 1-61 / PF / Vol-I PF of Mr. Pervez Khan Khalil, (Deputy Director) BS-18.
3. File No. SOE (PWD) 1-61 / PF / Vol-II PF of Mr. Pervez Khan Khalil, (Deputy Director) BS-18.

Raja Javed,
Assistant (Estt)

So (E) PWP NWFP

DS (ADMN)

2.2.10
Ejaz Khan
J/Clerk (Estt)

12/5/2011

29.3.11 27.2.16
P839

Government of Khyber Pakhtunkhwa,
Agriculture, Livestock & Cooperation Department, Block C,
Civil Secretariat, Peshawar

No. PA/AS (Agri)-E-1/2010
Dated 29th June, 2010.

p-80/c

TO

The Section Officer (E-II),
Establishment & Administration Department,
Khyber Pakhtunkhwa.

Subject: DISCIPLINARY PROCEEDINGS AGAINST MR. MUHAMMAD KHALID, PMS BS-17, SECTION OFFICER POPULATION WELFARE DEPARTMENT.

We (the undersigned members of the Enquiry Committee) are to refer to your letter No. SOE-II (ED)3(642)/2005 dated 04.05.2010, followed by reminder of even No. dated 31.05.2010 on the subject noted above.

The Enquiry Committee has completed the report consisting of total 159 pages including 7 pages of context of enquiry report, 14 Annexes and the Annexes consist of 152 pages, is submitted for further necessary action please.

Enclosures: As above

[Signature]
(Mohammad Arshad) PCS (SG) BS-19

The then Additional Secretary, Law Deptt.
Now OSD

[Signature] 29/6/2010
(Muhammad Israr) PCS (SG) BS-18

Additional Secretary, Agriculture

*SOE-II (ED)
D. No. 105
Dated 29/6/2010*

Amr
[Signature] 30/6/10

[Signature]

gives in appeals No.698-798 of 2009 vide which the apex court was pleased to declare my opponents in the seniority list including present Director General Mr. Noor Nawaz and other hundreds of Ministry recruited employees as Federal Civil Servants. The department has still not implemented the judgment of the Supreme Court of Pakistan on my representation and subsequent advice received from Govt. of Khyber Pakhtunkhwa in the Law Department.

FINDINGS.

- 11. i. By personally hearing Mr.Pervez Khan Deputy Director, the main stake holder in the whole case, we (the inquiry committee) has found that the stake holder being a Law graduate, have filed many cases against his colleagues in various courts/fora and he is contesting these himself without engagement of a counsel. In one of such cases, he has got a favorable judgment dated 30-6-2009 from the Supreme Court of Pakistan. Therefore, all the staff members in the Secretariat as well as in the Directorate of Population Welfare Department consider him as a troublesome person for the department. We personally feel that he is a courageous man who pursue and fight for his rights and therefore, his personal record is the prime target of loss in the case.
- ii. No record of movement of files has been maintained in the section between the section officer and his staff and also the complainants have stated on oath that they have not concealed or misplaced any of the record while similarly, the accused has also stated on oath that he has not concealed, misplaced or stolen any of the file from the department. The effect of evidence on oath becomes equalized on both sides of the pendulum. Therefore, the charge of not returning the concerned files i.e. No. SOE(PWD)4-30/08, contains seniority lists and other related documents of BS-17 and above non-technical Officers, No.SOE(PWD)1-61/PF/Vol-I, First Volume of Personal File of Mr. Pervez Khan, Deputy Director (BS-18) and No.SOE(PWD)1-61/PF/Vol-II, Second Volume of personal File of Mr. Pervez Khan, Deputy Director (BS-18) to the section back by the accused is not proved.

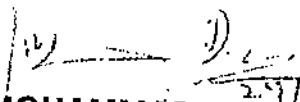
[Handwritten signature]

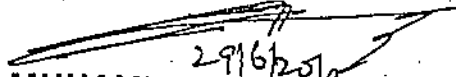
iii. Similarly, the available evidence on the record does not show that any tampering in the record has been done by the accused officer.


RECOMMENDATIONS.

12

The inquiry committee on the basis of the statements of the accused, the complainants/departmental witnesses, the analysis of the evidence on record and findings, hereby recommend that the accused Mr. Muhammad Khalid Section Officer, PMS (B-17) may be honorably exonerated from the charges levelled against him in the charge sheet/ statement of allegation.


29/11/17
MOHAMMAD ARSHAD,
PCS(SG), BPS-19,
the then Additional Secretary,
Law Department,
Now OSD.


29/11/17
MUHAMMAD ISRAR,
PCS(SG), BPS-18,
Additional Secretary,
Agriculture, Livestock and
Cooperation Department,


13/5/2014



NO.SOE-II(ED)3(642)/2005
Dated Peshawar the April, 13,2011

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

Subject- DISCIPLINARY PROCEEDINGS AGAINST MR. MUHAMMAD KHALID, PMS BS-17, THE THEN SECTION OFFICER, POPULATION WELFARE DEPARTMENT.

Dear Sir,

I am directed to refer to the captioned subject and to state that on the request of Population Welfare Department, disciplinary proceedings were initiated against Mr. Muhammad Khalid, PMS BS-17, the then Section Officer, Population Welfare Department. Mr. Muhammad Asghar, PCS(SG) BS-19, Director(HR/Admn), PDMA/ Inquiry Officer in the case submitted his enquiry report with the following recommendations. The Chief Minister, Khyber Pakhtunkhwa has been pleased to approve the recommendations:-

- i) Exoneration of the officer.
- ii) It may be ensured that officers of the Directorate are not appointed as Enquiry officer against the PMS Officers as it puts them on the defensive and they feel vulnerable which affect their performance.
- iii) The practice of seeking views of the Administrative-Department on the enquiry report may be examined in light of rules as it may tantamount to affecting the free and fair assessment of the competent authority.
- iv) The Population Welfare Department may reconstruct all the three files by getting material from the relevant Departments and even Mr. Pervez Khan, Deputy Director from his personal file. Copy of summary through which Mr. Pervez Khan had been barred by the competent authority from indulging in litigation against the Government, if at all, may be obtained from the Regulation Wing of the E&A Department, who normally retain a copy during vetting of the summaries.
- v) It may be ensured that the legitimate rights of Mr. Pervez Khan, Deputy Director, PWD are protected and loss of his personal file is not used as a pretext in any way to his disadvantage.

I am therefore, directed to request you to kindly take necessary action in light of the above mentioned recommendations.

Yours Faithfully,

Faryal Kazim
13/4/11

(FARYAL KAZIM)
SECTION OFFICER(E-II)

*13-4-2011
P.W.D.
Enquiry Officer*

*1/Pl. examine
a.p.u.*

*So (G)
For n/a per
14-4-2011*

*(Signature)
13/4/11*



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

32

Dated Peshawar the April. 12, 2011

NOTIFICATION

NO.SOE-II(ED)3(642)/2005:- WHEREAS, Mr. Muhammad Khalid, PMS BS-17, the then Section Officer, Population Welfare Department now Section Officer, Information Department was proceeded against under the North.- West Frontier Province, Removal from Service (Special Powers) Ordinance, 2000 for the charges mentioned in the Charge Sheet & Statement of Allegations dated 04.12.2010;

AND WHEREAS, Mr. Asghar Ali, PCS(SG) BS-19, Director(HR & Admn), PDMA was appointed as Inquiry Officer to conduct enquiry against the said officer.

AND WHEREAS, the Inquiry Officer after having examined the charges, evidence on record and explanation of the accused officer, submitted his report;

NOW THEREFFORE, the competent authority (Chief Minister, Khyber Pakhtunkhwa) after having considered the charges, evidence on record, the explanation of the accused officer, findings of the Inquiry Officer, and exercising his powers under Section 3 read with Section 8 of the NWFP Removal from Service (Special Powers) Ordinance, 2000 has been pleased to exonerate the above named officer of the charges levelled against him.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN.

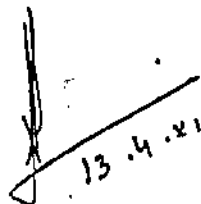
A copy is forwarded to:-

1. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- ~~2. Secretary to Govt. of Khyber Pakhtunkhwa, Population Welfare Department.~~
3. Secretary to Govt. of Khyber Pakhtunkhwa, Information Department.
4. SO(Secret)/EO/Librarian, Establishment Department.
5. Officer concerned.
6. PS to Chief Secretary, Khyber Pakhtunkhwa.
7. PS to Secretary Establishment.
8. PA to Addl: Secretary (Estt) / Dy. Secretary (Estt), Establishment Department.
9. Office order file.
10. Personal files.


13/4/11
(FARYAL KAZIM)
SECTION OFFICER (ESTT)


14-4-11
HASAN AFRIDI


DS


13.4.11


13/5/2011



NO. SOE (PWD) 1-61/2013/PF/Documents
Dated Peshawar the, 06th November, 2014

To

✓
Mr. Pervez Khan,
Ex-Deputy Director,
Village Palosai Talarzai Teh: & District,
Peshawar.

Subject: - REQUEST FOR THE PHYSICAL SUPPLY OF ATTESTED
COPIES UNDER RTI, ACT

Dear Sir,

Kindly refer to the subject noted above.

It is to inform that as per fourteen (14) applications delivered by you to this Department through RTI Commission for supply of certain documents, it is to state that we have already supplied you most of the documents as per detail given in list - A (copy enclosed) while the rest of the documents' photo copies have been made out as per list - B (copy enclosed) in compliance of the Govt. of Khyber Pakhtunkhwa, Right to Information Commission Order dated 30-10-2014 which may kindly be received with due acknowledgment please.

ENCL: As Above


(USMAN SHAH)
DEPUTY SECRETARY/PIO

Copy to the:-

1. PS to Chief Information Commissioner, Govt. of KPK, Right to Information Commission, 7th Floor, Tasneem Plaza, Near Benevolent Fund Building, 6th Sadar Road, Peshawar Cantt. With reference to RTI Commission Order dated 30-10-2014. List A & B are attached herewith.
2. PS to Secretary, Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.

DEPUTY SECRETARY/PIO

**STATEMENT SHOWING DEMAND FOR DOCUMENTS AND SUPPLY THEREOF TO
MR. PERVEZ KHAN**

(FLAG-B)

1.	Application dated 26-09-2013 Copies of pseudonymous complaints with annexure, Inquiry Report/ record both for Department and of Regular, along with annexure, including of note parts of these files moved both for departmental and regular inquiry proceedings, thought. Copies of 03 Nos volumes of the requester personal file No. SO-E (PW) 1=61/PE	39-4	S.No.16 S.No. 13	54 copies 68 copies 07 copies	All requested documents supplied vide letter No. SOE(PWD)1-61/14/PF/Documents dated 23-05-2014
2.		39-4	S.No.4 S.No.3 S.No.7 Total	601 copies 299 copies 227 copies 1127	Complete three volumes of PFs (Vol-III, IV & V) provided Vol-I & II are missing files. He has been informed vide letter No. SOE(PWD)1-61/12/PF/1499 dated 16-06-2014
3.	First inquiry Report conducted by Mr. Israr Khan AS Agriculture Department, Second inquiry report conducted by Mr. Asghar Khan Director PDMA, along annexure and note parts.	39-4	S.No 1	13 copies Copy of inquiry report conducted by Mr. Israr Khan has been provided to the requester. Annexures to the said report have not been provided by the E.D, KPK. So far as the Enquiry Report of Mr. Asghar Khan is concerned, no report has been provided to this Department by the E.D of which the requester has been informed vide letter No. SOE(PWD)1-61/14/PF/Documents dated 23-05-2014. For supply of Annexures of Mr. Israr Khan Enquiry & copy of Mr. Asghar Khan Enquiry alongwith Annexures, the E.D has been approached vide letter No.	

Dated: 07th Aug., 2015

(Complaint No. 00137)

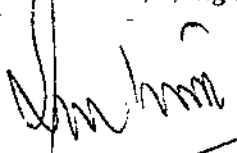
Ref: Mr. Pervez Khan vs. Population Welfare Department, Peshawar.

Proceedings

Mr. Pervez Khan (Complainant) in person present. Mr. Ghulam Habib, Deputy Secretary/PIO, Mr. Mumtaz Khan, Section Officer, Mr. Zulfiqar Ali, Superintendent, and Mr. Muhammad Aleem, District Population Welfare Officer, Population Welfare Department, Peshawar are also present.

The matter was discussed in detail. The representative of the Public Body had brought photocopies of the personnel files of various officers containing 2771 pages. These were handed over to the complainant Mr. Pervez Khan without any cost as offered by Mr. Ghulam Habib, Deputy Secretary/PIO. The complainant Mr. Pervez Khan inspected the files and raised the objection that these personnel files do not contain the testimonials of these officers. It was explained by the representative of the Public Body that since originally this Department was established at the Federal level which was later on handed over to the Provincial Government in 2002. Hence, they would search the testimonials with the Federal Government or DG, Population Welfare Department, and after procuring the same, the copies of these testimonials will be given to the complainant Mr. Pervez Khan as per Right to Information Law. The Public Body was directed to inform this Commission regarding the correspondence with the other Departments in connection with procurement of these testimonials. As far as the personnel file of the complainant Mr. Pervez Khan is concerned, as per statement of Mr. Muhammad Aleem it is missing since 2010 and is not available even today. The documents were handed over to the complainant Mr. Pervez Khan as per list attached to their letter No. SOE(PWD)1-61/PF/Documents, dated: 06th August, 2015. Copy of their letter and covering letter is also placed on the file of this Commission.

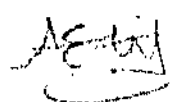
Whenever the rest of the documents are procured, the same be handed over to the complainant Mr. Pervez Khan immediately. The Public Body would send the report to this Commission within fifteen working days.


07/8
Chief Information Commissioner


Commissioner-I


Commissioner-II

to Mr. Pervez Khan (Complainant)


7/8/15

UPDATED COPY UP TO 6th FEBRUARY, 2009

**THE NORTH-WEST FRONTIER PROVINCE PUBLIC SERVICE
COMMISSION ORDINANCE, 1978**

N.W.F.P Ordinance No. XI of 1978.

**AN
ORDINANCE**

*to repeal and with certain modifications, re-enact the North-West Frontier
Province Public Service Commission Act, 1973.*

Preamble. - WHEREAS, it is expedient to repeal and, with certain modifications, re-enact the North-West Frontier Province Public Service Commission Act, 1973, (N.W.F.P Act XIX of 1973), in the manner hereinafter appearing;

AND WHEREAS, the Governor of the North-West Frontier Province is satisfied that circumstances exist, which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977(C.M.L.A Order No.1 of 1977), and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance: -

1. Short title and commencement. - (1) This Ordinance may be called the North-West Frontier Province Public Service Commission Ordinance, 1978.

(2) It shall come into force at once.

2. Definitions. - In this Ordinance, unless the context otherwise requires, ___

- a) "Commission" means the North-West Frontier Province Public Service Commission.
- b) "Government" means the Government of the North-West Frontier Province;
- c) "Governor" means the Governor of the North-West Frontier Province
- d) "Member" means a member of the Commission and includes the Chairman thereof;
- e) "Prescribed" means prescribed by rules made under this Ordinance; and

¹ Published in the NWFP Government Gazette, extraordinary dated 13th May 1978

6. *Removal from Office.* - A member shall not be removed from office except in the manner applicable to a Judge of a High Court and upon a reference made by the Governor.

7. ¹⁵⁵*Functions of the Commission.* - (1) The functions of the Commission shall be _____

(a) to conduct tests and examinations for recruitment of persons to. - //

(i) the civil services of the Province and civil posts in connection with the affairs of the Province in basic pay scales 16 and above or equivalent, and //

(ii) posts in basic pay scales 11 to 15 or specified in following Departments (except the District cadre posts).

1. Civil Secretariat (through Establishment Department);
2. Board of Revenue;
3. Police Department;
4. Prison Department;
5. Communication & Works Department;
6. Irrigation Department;
7. Industries, Labour & Manpower Department;
8. Health Department;
9. Education department;
10. Local Government and Rural Development Department;
11. Excise and Taxation department;
12. Food department;
13. Physical Planning & Environment Department including Urban Development Board; and
14. Organizations, except autonomous bodies, under the Health and Education Departments;

(b) to advise the Governor _____

(i) on matters relating to qualifications for, and method of recruitment to, services and posts referred to in clause (a);

(ii) on the principles to be followed in making:

(1) initial appointments to the services and posts referred to in clause (a);

(2) appointments by promotion to posts in BPS-17 and above; and

¹⁵⁵ Section 7 substituted vide NWFP Public Service Commission (Amendment) Ordinance, 2002 (Ordinance No. XXVII of 2002, notified on 9th August, 2002.

- (3) transfer from one service to another; and
- (iii) on any other matter which the Governor may refer to the Commission.

Explanation. - In this section, recruitment means initial appointment other than by promotion or transfer.

- (2) Recruitment to the following posts shall be outside the purview of the Commission:
 - (i) ¹⁵⁶post pertaining to household staff in the Governor's House and Chief Minister House;
 - (ii) posts to be filled on ad hoc basis for a period of ¹⁵⁷one year or less; provided that before filling the post, prior approval shall be obtained from the Commission;
 - (iii) posts to be filled by re-employing a retired officer; provided that the re-employment is made for a specified period not exceeding two years in a post not higher than the post in which the person was employed on regular basis before retirement.

8. **Commission to be informed when its advice not accepted.** - Where the Governor does not accept the advice of the Commission, he shall inform the Commission accordingly.

9. **Report of Commission.** - (1) It shall be the duty of the Commission to present to the Governor annually a report on the work done by the Commission, and the Governor shall cause a copy of the report to be laid before the Provincial Assembly.

- (2) The report referred to in sub-section (1) shall be accompanied by a memorandum setting out so far as is known to the Commission
 - (a) the cases, if any, in which the advice of the Commission was not accepted and the reasons therefor; and
 - (b) the matters, if any, on which the Commission ought to have been consulted but was not consulted and the reasons therefor.

10. **Rules.** - Government may, by Notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

¹⁵⁶ Clause (i) substituted vide NWFP PSC(Amendment) Act 2003 (NWFP Act No. XIV of 2003).
¹⁵⁷ The words "six months" substituted for the words "one year" by NWFP Public Service Commission (Amendment) Act, 2008 (NWFP Act No. VI of 2008) published in the NWFP Gazette extraordinary on 9th January 2009(page-327-328).



39

GOVERNMENT OF NWFP
POPULATION WELFARE DEPARTMENT.

NO.SO(PW)/PWD/4-26/2002/4619
Dated Peshawar the, June 18th 2004.

The Chairman
NWFP Public Service Commission
Peshawar.

SUBJECT:- COMPLAINT AGAINST ^{MR} PERVEZ KHAN, SELECTEE(BPS-18).

Dear Sir;

I am directed to refer to the subject noted above and to forward herewith a complaint against Mr. Pervez Khan, selected by the NWFP Public Service Commission for the post of Deputy Director etc (BPS-18) in the Population Welfare Department for further necessary action.

[Handwritten signature]
18/6/04

[Handwritten signature]

Yours Faithfully,

(MUHAMMAD SAEED)
SECTION OFFICER (PW)

18/6

18/6

Telephone: 9211295

NWFP Public Service Commission
2-Fort Road, Peshawar Cantt.



No. 10456
Dated: 21/06/04.

To:

The Secretary to Govt. of N.W.F.P.,
Population Welfare Department,
Peshawar.

Subject:

RECRUITMENT OF DEPUTY DIRECTORS (NON-TECHNICAL) /
DISTRICT POPULATION WELFARE OFFICERS / DEPUTY CITY
POPULATION WELFARE OFFICERS / EXECUTIVE DISTRICT
POPULATION WELFARE OFFICERS ON CONTRACT BASIS IN THE
POPULATION WELFARE DEPARTMENT (BPS-18) (Adv. No. 02 / 2003).

Dear Sir,

I am directed to refer to your letter No. SO(PW)4-26/2004/KC.4369 dated 29.05.2004; No. SO(PW)4-26/2002 dated 31.05.2004 and No. SO(PW)4-26/2004-Vol.I dated 08.06.2004 on the subject noted above and to state that after having gone through the satisfactory performance certificate and available ACRs, the Commission confirms the provisional recommendations in favour of the following recommendees: -

<u>S. No.</u>	<u>Name with Father's Name</u>	<u>Domicile.</u>
(1)	Mr. Parvez Khan S/O Fatch Khan	Khyber Agency
(2)	Mr. Nazar Jan S/O Shah Wali Khan	Lakki Marwat.

2. Inter-se-merit of all the five recommendees is enclosed at Annexure-"A" for your record and further necessary action.

3. Original application alongwith testimonials in favour of Mr. Parvez Khan and original ACRs in respect of Mr. Nazar Jan for the period from 1983 to 2003 are returned herewith. Please acknowledge receipt.

Yours faithfully,

DS(A)

[Signature]
22/6/2004

[Signature]
(Abdus Salam) S-4
Director Recruitment.

Encl. As above.

SO(PW)

22/6/04 SA / 1163 / 22/6

2303
23/6/04

(41)

**Office of The District Population
Welfare Officer/ EDO(PW), Nowshera,
Government of NWFP.**

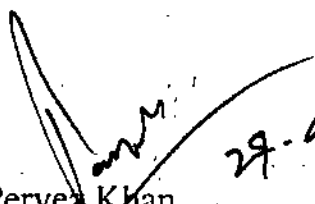
No:

Dated: 29 September, 2004.

JOINING REPORT

In pursuance of Government of NWFP in Population Welfare Department gazette notification NO SO (PW) 4-26/2002/5469 - 78 Dated: 29.09.2004 I,

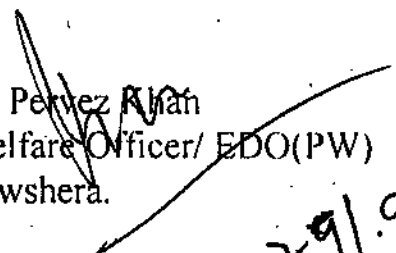
Pervez Khan (BPS 18), hereby join the office and assume/ take over the charge of **District Population Welfare Officer/ EDO(PW)** Nowshera today on 29-9-2004 (FN) while *ifso facto* relieving Mr. Akhtar Zaman acting DPO of the post with immediate effect.


Pervez Khan

District Population Welfare Officer/ EDO(PW)
Nowshera.

Copy forwarded for information and necessary action to the:

1. Secretary to Government of NWFP, Population Welfare Department, Population Welfare secretariat, Peshawar.
2. Director General Population Welfare Deptt, Population Welfare secretariat, Peshawar.
3. Mr. Akhtar Zaman, freshly posted Acting District Population Welfare Officer, Chitral.
4. District Account Officer Nowshera.
5. The Nazim, District Govt: Nowshera.
6. District Coordination officer, Nowshera.
7. All heads of the department/district officers at Nowshera.
8. PS to Minister for Population welfare and Women Dev: deptt, Peshawar.
9. Manager Government Printing, and Stationary Deptt, Peshawar.
10. Secretary, NWFP, Public Service Commission Fort Road, Peshawar cantt.
11. Manager National Bank Main Branch Nowshera Cantt.


Pervez Khan

District Population Welfare Officer/ EDO(PW)
Nowshera.

GOVERNMENT OF NWFP
POPULATION WELFARE DEPARTMENT

Dated Peshawar the, 22nd March, 2006

NOTIFICATION

NO.SO(PW) 4-31/2002 In pursuance of Section 8 of NWFP Civil Servant Act, 1973 read with Rule 17 of NWFP Civil Servant (Appointment, Promotion & Transfer) Rules, 1989, the final seniority list of Deputy Directors / District Population Welfare Officers / Deputy City Population Welfare Officers BPS-18 (Non Tech) Population Welfare NWFP as stood on 31-12-2005 is hereby notified / circulated for general information of all concerned :-

S. No.	Name of Officer with academic qualification.	Date of Birth and Domicile.	Promotee/ Direct	Date of first entry into Govt. Service.	Regular Appointments/Promotion to present.		Present place of posting	Remarks.
					BPS-17-	BPS-18		
1.	Mrs. Nayab Ahmad (MPA) (LLB)	06-09-1969 Nowshera.	Direct	27-11-2000	---	15-7-2003	Deputy Director (FATA) Governor Secretariat NWFP.	
2.	Seyd Mudassar Shah (B.A.)	01-03-1950. Manseltra.	Promotee	14-11-1975	08-01-1996	29-05-2004	District Population Welfare Officer Abbottabad.	
3.	Mr. Mah Barani Khan (B.A.)	01-06-1949. Lakki Marwat.	Promotee	10-01-1976	08-01-1995	29-05-2004	District Population Welfare Officer, D.I. Khan.	
4.	Arbab Mohammad Ramzan (B.A, L.L.B)	16-01-1949 Peshawar	Promotee	28-07-1976	08-01-1996	29-05-2004	District Population Welfare Officer Buner.	He was deferred subsequently promoted w.e.f 21.05.05 seniority re-fixed in light of the Estab: Dept letter dated 13-04-87
5.	Mr. Shahi Nawab Khattak (B.A.)	09-04-1955. Karak.	Promotee	05-01-1977	08-01-1996	29-05-2004	District Population Welfare Officer, Hangu.	
6.	Mohammad Anwar Qureshi (M.A)	12-12-1951 Abbottabad.	Promotee	28-06-1973	08-01-1996	29-05-2004	Deputy Director (Admin) PHQr, Peshawar.	
7.	Mr. Subh Sadiq (B.A)	09-03-1951 Swabi.	Promotee	19-04-1973	27.12.1999	29-05-2004	District Population Welfare Officer Swabi.	
8.	Mr. Muhammad Akram Khan M.A L.L.B	15-05-1946	Promotee	17-03-1970	08-01-1996	29-05-2004	District Population Welfare Officer, Shangla.	As per Serial No. 4
9.	Mr. Dilawar Khan M.A(Economics)M.Phil.	11-12-1955 FATA.	Promotee	13-01-1982	16-09-1997 13-05-1997	29-05-2004	District Population Welfare Officer, Tank.	

8
 [Handwritten signature and stamp]
 District Population Welfare Officer, Peshawar

43

No.	Name	15-03-1967	Promotee	06-01-1994	06-01-1994	29-05-2004	District Population Welfare Officer, Mansehra	As per serial No. 4
10.	Dr. Habib Shah MBBS	Kohistan	Promotee	15-07-2003	15-07-2003	29-05-2004	District Population Welfare Officer, Mansehra	
11.	Mr. Ghulam Mohammad Kaleem (M.A)	10-08-1947 Peshawar.	Promotee	23-08-2003	23-08-2003	29-05-2004	Deputy Director, Directorate Welfare NWFP, Peshawar.	
12.	Mr. Mohammad Wali (M.A)	01-03-1964 FATA.	Promotee	23-08-2003	23-08-2003	29-05-2004	OSD, PHQr. Peshawar	
13.	Mr. Mohammad Aleem (M.A)	18-02-1964 Peshawar.	Promotee	23-08-2003	23-08-2003	28-06-2004	Deputy Director (C&L) PHQr. Peshawar	
14.	Mr. Pervez Khan (M.S.C/L.L.B)	31-12-1963 Khyber Agency	Direct	3-11-1988	3-11-1988	29-09-2004	Deputy Director (M&E), Directorate General of Population Welfare NWFP, Peshawar.	
15.	Mr. Nowsherwan (M.S.C)	15-07-1967 Nowshera	Direct	—	—	01-07-2004	District Population Welfare Officer, Charsadda.	
16.	Mr. Ikramullah Khan (M.S.C)	20-12-1968 Lakki Marwat	Direct	21-10-1998	21-10-1998	28-07-2004	District Population Welfare Officer, Batagram	
17.	Malik Tuj (M.P.A)	22-04-1972 Peshawar	Direct	—	—	01-07-2004	District Population Welfare Officer, Nowshera.	
18.	Mr. Nazar Jan (M.S.C)	08-04-1959 Lakki Marwat	Direct	15-01-1987	15-01-1987	30-11-2004	District Population Welfare Officer, Lakki Marwat	

SECRETARY
GOVERNMENT OF NWFP
POPULATION WELFARE DEPARTMENT

Dated the, 22nd March, 2006

Endst No. SO(PW)4-31/2002.

Copy forwarded to the:-

- 1) Secretary Government of Pakistan, Ministry of Population Welfare Islamabad.
- 2) Director General Population Welfare, NWFP, Peshawar.
- 3) Officers concerned.
- 4) All District Population Welfare Officer in NWFP.
- 5) The Manager Government Printing and Stationary Department NWFP, Peshawar.

[Handwritten Signature]

(MUHAMMAD SAEED)
SECTION OFFICER (PW)

[Handwritten Signature]

(44)

GOVERNMENT OF NWFP
POPULATION WELFARE DEPARTMENT
F.C. TRUST BUILDING SUNEHRI MASJID ROAD
PESHAWAR CANTT
Phone No.9211536

NOTIFICATION

Dated Peshawar the, 19th March 2005

NO.SO(PW)1-61/2003: 40 (forty) days Extra Ordinary Leave (without pay) is hereby granted to Mr. Pervez Khan, District Population Welfare Officer, Nowshera from the date of availing on account of his personal / private affairs.

On expiry of leave the Officer is likely to return to the same post and station.


SECRETARY
GOVERNMENT OF NWFP
POPULATION WELFARE DEPARTMENT

Endst No.SO(PW) 1-61/2003 / 1068-70.

Dated Peshawar the, 19th March, 2005

Copy to the:-

- 1) Director General Population Welfare NWFP.
- 2) District Accounts Officer, Nowshera.
- 3) Officer concerned.


(MUHAMMAD SAEED)
SECTION OFFICER (PW)

19/3

X
21/3/05

45

Office of the
District Population Welfare Officer Nowshera,
Tehsil Road Nowshera Kalan, Government of NWFP.
Phone No:644131: E.Mail :dponowshera @Yahoo.com
F.No: 1(4)/Admn-2004 dated 1. 4. 2005.

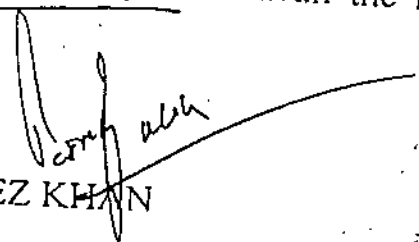
To,

The Secretary, Population Welfare Department, NWFP, FC
Plaza, Peshawar.

Subject: NOTIFICATION

Availing of Leave.

In pursuance of Government of NWFP, notification NO SO (PW)
1-61/2003 dated 19.3.2005 for leave received today, I do avail the leave
w.e.f 1.4.2005 (Forenoon) today.


PERVEZ KHAN

DISTRICT POPULATION WELFARE OFFICER
NOWSHERA.

Copy to the :-

- ✓ 1) Secretary Government of NWFP Population Welfare Department with intimation of ^{possible} joining private business / job please.
- 2) Director General Government of NWFP Population Welfare.
- 3) District Account Officer, Nowshera with the request to discontinue the pay of the undersign till rejoining.
- 4) Manager National Bank of Pakistan, Main Branch Nowshera Cantt: for information.

Stamp: District Population Welfare Officer Nowshera
Date: 05/4/05

Handwritten notes and signatures:
- 1-61/03
- File
- 7/6/4
- SA 46/4
- 80P
- 25/4
- pl note

Copy of Notification No. SOE(PWD)1-61/07/PF/Vol-III/KC dated 14th May, 2009 from Section Officer (Estt.) Govt. of NWFP, Population Welfare Deptt. Peshawar copy of Secretary to Govt. of NWFP, Establishment Deptt. Peshawar and others

46

NOTIFICATION

No. SOE(PWD)1-61/07/PF/Vol-III/KC:- WHEREAS Mr. Pervez Khan Khalil, Deputy Director (M&E), Directorate General, Population Welfare, NWFP, Peshawar while posted as Deputy Director (BPS-18) Population Welfare Department (FATA) committed misconduct and was proceeded against under the North West Frontier Province Removal from Service (Special Powers) Ordinance, 2000 for charges mentioned in the charge sheet and statement of allegations.

AND WHEREAS, he was placed under suspension vide Notification No. SOE(PW) 1-61/2007/PF/2220-24 dated 12th September, 2007 with the approval of competent authority under Section-4 of the North West Frontier Province Removal from Service (Special Powers) Ordinance, 2000;

AND WHEREAS, an inquiry committee under Section-5 of the Ordinance ibid was constituted to investigate the allegations leveled against him in the Charge Sheet and Statement of Allegations;

AND WHEREAS, according to the inquiry report, the allegations against the accused officer could not be proved;

NOW, THEREFORE, the competent authority in exercise of powers conferred on him under Section-8 of the North West Frontier Province Removal from Service (Special Powers) Ordinance, 2000, has been pleased to exonerate Mr. Pervez Khan Khalil Deputy Director (M&E) Directorate General, Population Welfare, NWFP and reinstate him in service from the date of suspension.

Secretary to Govt. of NWFP
Population Welfare Department

Government of NWFP
Directorate General Population Welfare
Post.Box No. 235

F.No 4(21)/95-2007/Admn-Vol-VIII
Dated Peshawar the 22/5/2009

DISTRIBUTION:-

1. PS to Secretary to Govt. of NWFP, Population Welfare Deptt. Peshawar.
2. PS to Director General, Population Welfare Department NWFP, Peshawar.
3. Section Officer (Estt.) PWD, w/r to his Notification referred above.
4. Assistant Director (M&E) with the request to hand over the same to Mr. Pervez Khan Khalil, Deputy Director (M&E) under intimation to this office.
5. Master File.

Received on
Pervez Khan
30 PM

(Nasim Ullah)
Assistant Director (Admn)

- (47)
5. In complaint against a civil servant, the petitioner should be asked to furnish an affidavit to the effect that all facts stated in his complaint are true and if his affidavit is proved false, he would be prepared to face legal action which could be taken against him.
 6. Complaints received through anonymous/pseudonymous source should be ignored.
 7. Antecedents and credentials of a complaint should be verified before an inquiry is instituted against the officials concerned.
 8. News papers publishing allegations, which are proved to be baseless, should be dealt with according to the law.

It is requested that strict observance of the above instructions may be ensured at all levels of Administration under your control.

(Authority: S&GAD's letter No. SORII(S&GAD)5(29)97-II, dated 22.7.1998)

Disposal of anonymous/pseudonymous complaints.

S.No.4

I am directed to invite attention to this Department circular letter of even number dated 22.7.98, wherein detailed instructions with regard to the disposal of anonymous/pseudonymous complaints had been issued. It has been observed that the aforesaid instructions are either not being followed or have been lost sight of as anonymous/pseudonymous complaints are still being received which on investigation, are found baseless resulting in wastage of time and energy of the Government functionaries and stationary of the Government which could usefully be utilised in pursuits of public interest.

2. I am, therefore, directed to request once again that anonymous/pseudonymous letters/complaints should not be entertained in any Government Department/office in future.

3. The above instructions may kindly be brought to the notice of all concerned and noted for strict compliance.

(Authority S&GAD letter NO.SORII(S&GAD)5(29)97 Vol-II, dated 15.11.1999)

Conducting of inquiries into complaints.

S.No.5

I am directed to refer to the subject noted above and to state that in a case of inquiry pertaining to Agency Headquarters Hospital, Landikotal, the Chief Secretary NWFP was pleased to observe that in very rare cases anybody responsible would admit a mistake or a fault. It has therefore been desired that while dealing with such complaints the officer conducting a particular enquiry should be a little more discerning, otherwise the entire exercise would become meaningless. The Departments should not treat every complaint as a noose around their neck. The idea of conducting inquiries into the alleged malpractices is simply to see inwardly and reform/correct the situation wherever anything goes wrong. In all cases so far referred to the Departments, the charges leveled against individual officers are denied and no case has been reported in which corrective action was taken.

In view of the position explained above, the instructions of the Competent Authority as mentioned above may please be noted for strict compliance. These instructions may also be circulated amongst the attached department and subordinate offices for similar action.

(Authority S&GAD letter No. SO(Coord)/PMC/S&GAD 1-1/99/853-95 Dt: 23.20.01)

It has
been decided
circle dt
22.8.1998

48

GOVERNMENT OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT
POST BOX NO.235

F.NO. 5(4)/2009-10/M&E
Dated Peshawar the 23rd February, 2011

To
The Secretary,
Government of Khyber Pakhtunkhwa.
Population Welfare Department.

Subject: - **ENQUIRY**
OBJECTION TO THE MEMBERSHIP OF THE COMMITTEE (Appeal)

Dear Sir,

Reference F.No.1 (1)/2011/Admn/Enquiry/P.K. dated 22/02/2011
received today, constituting Enquiry Committee comprising:-

- 1). Mr. Noor Afzal (BPS-19), District Population Welfare Officer Kohat
- 2). Mr. Muhammad Aleem, Deputy Director (Admn)

It is submitted that the undersigned has filed one appeal in the Khyber Pakhtunkhwa Service Tribunal and another appeal in the Supreme Court of Pakistan in which the two nominated officers are the parties/affectees.

Further, the enquiry steams from personal malafide of Mr. Noor Nawaz Khan acting Director General (also affectee) and the two officers are under his active influence.

It is therefore requested that the Enquiry Committee may please be replaced with the independent extra departmental persons who in the event of success of my appeals by implementing concurrent judgment of FST and Supreme Court of Pakistan, are not affected.

Yours faithfully,

(Pervez Khan)
Deputy Director (M&E)

Copy to:-

- 1- Mr. Noor Afzal, Districts Population Welfare Officer Kohat for information please
- 2- Mr. Muhammad Aleem, Deputy Director (Admn) for information please.

Deposited No. 235-37
Dated 23/2/11
M&E Section

Director (PME)

تعلیمی نمبر 1522 صفحہ 2/23

برصغیر اور وزیر خان ولد فتح خان محمدی ڈائریکٹر ریسرچ اور انسٹی ٹیوٹن پشاور

محمدی خیر اللہ خان ولد ضرب اللہ خان سائنس محفل ماہانہ کو ملحق کرنا کہ

وہ سلسلہ انٹرویوز صفحہ 3/12 کو روکتے۔۔۔ 10/10/2011 قمانہ انسٹی ٹیوٹن

صاحب کتب صدر سائنس محفل پشاور

Co-ACE Peshawar

Roll - 03 - 10



گامتیل دہلی

عرب خاٹہ تمیل خوری طور پر عمل میں
لڈر آج ہی آج تم پرہ جوائے

9 1

CO-ACE P

10-3-2011

جانب عالی

درجہ اولیٰ لکڑہ عیر اللہ ولد حزب اللہ ساس

سوال با بیان با علامتہ سے کافی بہت تہاری

سوال آئی لوگوں سے سوال جو درجہ اولیٰ

درجہ اولیٰ سبھی سوال با بیان

سوال کا رہا سبھی دستوری سہا ہے

اس کے تڑہ علاقہ کا سابقہ گورنر

لڈر اللہ ولد نا اور سبھی اللہ سبھی سوال با بیان

سے مزبورہ سبھی سے بار سے سے بہت تہاری

سوال اس سے گورنری طور پر قبول ہوا

کہ تہ لڈر سبھی سوال با بیان سے سہا ہے

دہلی سے

CO-ACE P

11

10/3/11

شہر حاجی ڈاکٹر ایس خان سابقہ گورنر

تیکال با بیان لکڑہ و سبھی طور پر

دستاویز کہ سبھی تہ لکڑہ و سبھی

سکتہ تیکال با بیان کا رہا سبھی سبھی

اسی کو Prove کہہ لے کو سبھی

جو کہ میں ڈاکٹر اللہ ولد نا اور سبھی

سے لکڑہ سبھی کہ لڈر لکڑہ سبھی

بارہ سبھی کا رہا سبھی سہا ہے

حاجی ڈاکٹر ایس خان

سابقہ گورنر

0300-5842331

(81)

To,
Wazir Asghar Khan

[Handwritten mark]

Subject:- OPEN ENQUIRY NO. 23/2005 DEPARTMENT Misc.
ACE, Peshawar AGAINST Dr. Parvez Khan, ex-distt.
Prohibition welfare officer, NWFP, Peshawar.
Reference your report No. 298/acc. Pesh. dated 19-7-2005

The subject enquiry has been filed. Record be completed accordingly. The enquiry file is returned herewith for completion of record.

Encls: Enquiry file.

[Signature]
Director, Anti-Corruption,
NWFP, Peshawar.
[Initials]

ADC, ACE, Peshawar Cs. Pesh.
No. 1690 25.3.06 for completion of record.

دفتر سکریٹری ماہر شقیقت انٹر میڈیٹ لورڈ تھیوری سے روز فیصلہ کا تصدیق کرن
جان کوئی قسمیں فارم سیرائی 12-31-1963 سے پہلے سے شقیقت لارڈ سے شقیقت
تہا کا دعوائت متعلقہ فصاح سے لکھا کہ سنیزوں کے بارے میں اور اس سے جاری کردہ ڈگری
میں روز فیصلہ فارم سیرائی 12/31/63 کیا گیا ہے۔

دفتر سکریٹری ماہر پورے ایسے موہر صورت پورے روز فیصلہ کا تعلیمی اسلوا، دوسریاں، دعوایت
سہوی وقت لورڈ تھیوری کا شقیقت سے تصدیق فرم سیرائی میں حاصل کیا گیا ہے۔ لیکن اس میں کوئی
وٹس کا طریقہ کار نہیں ہے۔ عوامی رجسٹریشن کا شقیقت سے روز فیصلہ نہیں اسناد طلب کیا گیا
اور اس میں ہے۔ NED دفتر پورے ایسے کے درمیان گھبراہٹ اور اس سے روز فیصلہ PMSO ڈگری میں
ہے۔ روز فیصلہ میں سے نمایاں کہ روٹی میں ایک سوال بنا جاری کیا۔ جس کے جوابات موصول
کیے ہیں۔ روز فیصلہ کا حال کیا ہے اس میں ہے۔ اس کی کوئی بھی نہ ہے۔ A 383 کے روز فیصلہ
اس وقت سے پورے ایسے کے بارے میں اور اس کے بارے میں کوئی بھی نہیں ہے۔ اس میں سے کوئی بھی نہیں ہے۔
کوئی بھی نہیں ہے۔ اس میں سے کوئی بھی نہیں ہے۔

حیثیہ رکھنے میں ڈوسریاں بنانے متعلق روز فیصلہ کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں
ہیثیہ رکھنے کا ہے۔ اس کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں
ہے ڈوسریاں کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں
کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں
PMSO کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں
بنایا اور حیران کن ہے۔ اس میں سے کوئی بھی نہیں ہے۔ اس کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں
اس بات کا ثبوت ہے کہ اس کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں پورے ایسے کے بارے میں

EO Peshawar
2.2.66

Forwarded for records as
requested by
ADL Peshawar
13/2
27/2/66

May be approved as filed,
as requested.

Approved

53

Subject: - Complaint No. 1522 dated 23.2.2011 against Pervez Khan s/o Fatah Khan,
Deputy Director, Population Welfare Department, Peshawar.


Reference your report dated 18.5.2011.

The Subject complaint has been filed. Record be completed accordingly.

However you both ADC, ACE, Peshawar and CO, ACE, Peshawar are directed not to violate ACE, Rules and warned to be careful in future as contents of circular order No. 01/2010 have not been followed and they have put deaf ears and cocked eyes to the directives issued by this office, which depicts as under:-

"Report in complaint is to be initiated to identify the existence of facts as complained. No record from any public department can be taken nor questionnaire is to be issued. The Circle Officers are required to work out the allegations to the extent of its existence causing losses to the Government or of the nature of gross irregularities. They may opt for filing in the event when nothing is dug out and if the complaint consists of cognizable substance then to move for open enquiry"

ADC, ACE, Peshawar is also directed to monitor/Check the proceedings of his subordinate's staff and not to be a forwarding agency without his opinion.


Director,
Anti-Corruption Establishment,
Khyber Pakhtun Khwa,
Peshawar.

ADC, ACE, Peshawar.

No. 4295

Dated 24/5/2011

NO: SOE (PWD) 4-30/09/3034-35
Dated: Peshawar the 5th Nov, 2009

(54)

To

The Secretary,
Law Parliamentary Affairs
& Human Rights Department,
Government of NWFP,
Peshawar.

Subject: - **REPRESENTATION ON TENTATIVE SENIORITY LIST OF B-18 OFFICERS BY MR. PERVEZ KHAN KHALIL, (B-18) OFFICER OF THE POPULATION WELFARE DEPARTMENT NWFP, PESHAWAR.**

Dear Sir,

I am directed to refer to the subject noted above and to state that Mr. Pervez Khan Khalil (B-18) Deputy Director, Population Welfare Peshawar vide his representation dated 25-9-2009 (copy enclosed) has raised certain questions in connection with finalization of tentative seniority list of officers of Population Welfare Department in pursuance to the:-

- i. Judgment of Federal Service Tribunal dated 08-11-2008.
- ii. Supreme Court of Pakistan orders dated 21-5-2009.
- iii. Judgment of Supreme Court of Pakistan dated 30-6-2009.
- iv. Judgment of NWFP Service Tribunal dated 23-04-2009 in Service Appeal No.1099 / 2007.

2. Since the queries raised by the officer require legal interpretation and explanation of law, therefore, it is requested that opinion / advice of the Law Department in the matter may kindly be conveyed to this Department for finalization of the case at an early date.

3. Copies of the judgment referred to above, alongwith comments of the Directorate General, Population Welfare, NWFP are enclosed herewith please.

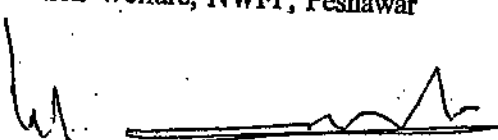
Encls: - As above.

Yours faithfully,

(MUHAMMAD KHALID)
SECTION OFFICER (ESTT)

Endst: - No & date even.

Copy forwarded to the Director General, Population Welfare, NWFP, Peshawar w/r to above, for information please.


SECTION OFFICER (ESTT) 05.11.09



GOVERNMENT OF NWFP,
LAW PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT.

SS

No. OP 5(89)LD/09. 10965
Peshawar dated the, 21/12/2009.

To

The Secretary to Government of NWFP,
Population Welfare Department.

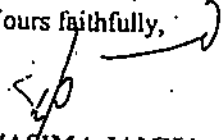
Subject:

REPRESENTATION ON TENTATIVE SENIORITY LIST OF (BPS-18)
OFFICERS BY MR. PERVEZ KHAN KHALIL, (BPS-18) OFFICER OF THE
POPULATION WELFARE DEPARTMENT NWFP, PESHAWAR.

Dear Sir,

I am directed to refer letter No.SOE (PWD)4-30/09/3034-35, dated: 05-11-2009 on the subject noted above and to state that the judgment(s) which have attained finality may be implemented in its/their true spirit unless the competent Court (S.C) places an embargo on their implementation. Such decision cannot be held in abeyance on the ground that there may be departure from the stance in these verdicts in subsequent decision.

Yours faithfully,


(WASIMA JAMIL)
Section Officer (OP)

GOVERNMENT OF N.W.F.P
LAW, PARLIAMENTARY AFFAIRS
AND HUMAN RIGHTS DEPARTMENT

PS (24) / 2011-7

(56)

NO SOE (PW) 4-3-1-9/334-35
from Population Welfare Dept
PUC P-1/C

2 PUC submitted for ME W
S
14/11/09
S.P.P

Consistent

16/11

3) This is a mixed matter and
it would be in the fitness of things if
the A.D. is advised to refer the matter to
E.H. Dept. E.H. Dept. will seek advice of
this Dept. if it is required by it.

Mahesh Chandra
23-11-2011

Attested

AS (P.P)

Secretary (General)
Law, Parliamentary Affairs and
Human Rights Department

4) The judgment(s) which have attained finality may be implemented in its
/their true spirit unless the competent Courts (S.C) places an embargo on their
implementation. Such decision cannot be held in abeyance on the ground that
there may be departure from the stance in these verdicts in subsequent
decision.

Directors and District Population Welfare Officers may graciously be filled
with provincial civil servants of the department and they be exclusively
nominated for trainings including foreign trainings out of provincial
departmental quota.

(S7)

5.

Here it would not be out of place to state that it would be the headache of the Federal Government to prepare the joint seniority of the persons attached to different provinces and settle their fates.

6.

The persons who have been adjusted as Federal employees would not be able to retain the benefits doled out to them by the Provincial Government unless the Federal Government put stamp on them.

1000
1097
1110
1115
1120
1125
1130
1135
1140
1145
1150
1155
1160
1165
1170
1175
1180
1185
1190
1195
1200
1205
1210
1215
1220
1225
1230
1235
1240
1245
1250
1255
1260
1265
1270
1275
1280
1285
1290
1295
1300
1305
1310
1315
1320
1325
1330
1335
1340
1345
1350
1355
1360
1365
1370
1375
1380
1385
1390
1395
1400
1405
1410
1415
1420
1425
1430
1435
1440
1445
1450
1455
1460
1465
1470
1475
1480
1485
1490
1495
1500
1505
1510
1515
1520
1525
1530
1535
1540
1545
1550
1555
1560
1565
1570
1575
1580
1585
1590
1595
1600
1605
1610
1615
1620
1625
1630
1635
1640
1645
1650
1655
1660
1665
1670
1675
1680
1685
1690
1695
1700
1705
1710
1715
1720
1725
1730
1735
1740
1745
1750
1755
1760
1765
1770
1775
1780
1785
1790
1795
1800
1805
1810
1815
1820
1825
1830
1835
1840
1845
1850
1855
1860
1865
1870
1875
1880
1885
1890
1895
1900
1905
1910
1915
1920
1925
1930
1935
1940
1945
1950
1955
1960
1965
1970
1975
1980
1985
1990
1995
2000

[Signature]
10-12-09
A.S.(OP)

Secretary Law

Al spr alanginthe comultants

[Signature]
A.S.(OP)

[Signature]
10-12-09

Discussed Para 4/n approved

[Signature]
A.S.(OP)

[Signature]
15-12-09

*In light of Para 4/n
DFA be prepared*

[Signature]
S.G.(OP)

[Signature]
15/12/09

16/12

R.P.O.

2019 submitted (P.L.S.)

[Signature]
S.G.(OP)

[Signature]
17-12-09

*For correction and
approval P.L.S.*

[Signature]
17/12

Attended
[Signature]
13/15/10
Additional Secretary (General)
Law, Parliament and Administration
Ministry of Justice

[Signature]
A.S.(OP)

Approved

[Signature]
12-12-09

Dated: 18.02.2011

To:

Secretary to Government of Khyber Pukhtunkhwa,
Establishment Department,
Civil Secretariat, Peshawar.

Subject: INQUIRY AGAIST MR. PERVEZ KHAN KHALIL, DEPUTY
DIRECTOR (M&E) BPS-18 DIRECTORATE OF POPULATION
WELFARE KHYBER PAKHTUNKHWA.

Sir,

Reference is made to the Secretary Population Welfare Department letter NO.SOE/PWD/1-61/P.File dated 15.02-2011, on the subject, addressed to you and copy thereof endorsed to the undersigned.

Vide Secretary Population Welfare Department letter NO.SOE/PWD/1-61/P.File 3283-86, dated 10.02-2011, the undersigned was appointed as Inquiry Officer by the competent authority in captioned inquiry. On receiving the said letter along with statement of allegations on 11.02.2011, copies of the same were handed over to Mr. Pervez Khan (accused officer) to submit parawise reply. While cooperating to the proceeding the accused submitted reply along with supporting documents on 12.02.2011. On the other hand, the department was so lethargic that it could not even serve the statement of allegations on the accused officer till late on 12.02.2011 which was the prime duty of the concerned officers/officials.

On 13.02.2011, I decided to pay a courtesy call on the Secretary Population. I reached the office at about 10:00 am. I was informed that Secretary Population is out of office. Therefore in his absence, I visited the adjacent office of Mr. Noor Nawas Khattak, acting Director General, Population Welfare Department. After formal introduction, we started discussing ways and means to complete the task in accordance with the procedure. The acting Director General expressed his earnest desire convicting the accused at any cost as he (accused officer) is making problems for the

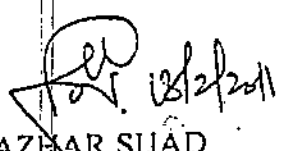
RECEIVED

department officers in promotions case by challenging it in the courts of law. I replied that the said accused will be given due opportunity to prove his innocence, cross-examine the witnesses and to afford him all lawful opportunities to defend himself under the law. I told acting DG to be present for recording his statement and his cross-examination by the accused officer as he (the accused officer) had alleged him (acting DG) behind the whole process. The acting DG was not ready to be cross-examined in accordance with law. The officer, apparently, became disappointed and expressed that they needed an officer who could immediately solve their problem. The officer kept emphasizing that major punishment to the accused officer is inevitable in the department interests. On expressing my inability for such pre-determined results of the proceedings he said that he would try to appoint another suitable person for the job. I received this impugned letter in response at a time when I had actually started the proceedings and was half-way to complete it.

I have no objection if the enquiry is entrusted to anyone and the competent authority may like to replace the undersigned and appoint a suitable person for the task. However, being government servant, I would like here to express my readiness, and would have accomplished the task within the statutory period or even earlier if allowed to proceed in accordance with law and without any external pressure. I disown the statement that the undersigned is in a hurry to join SMC commencing from 24th February 2011 as the task could have been accomplished by the time or even earlier if corresponding cooperation would have come forth.

The report is submitted to put the record straight in the public interests please.

Sincerely;



MAZHAR SIJAD

Inquiry Officer/ Ex- Add- Secretary Industries Department/
Now OSD Establishment Department, Peshawar.



GOVERNMENT OF NWFP
POPULATION WELFARE DEPARTMENT, PESHAWAR

F. No. 1.1/2011/personal dated 03.11.2011

(60)

Waqar Ayub Khan
Senior Member Board of Revenue/
Revenue & Estate Department, Peshawar/ Inquiry Officer.

Subject: Reservations to the proceedings.

Dear Sir,

Reference is made to the hearings made in connection with the instant inquiry and request letter of the undersigned of even NO dated 16.09.2011, 17.9.2011 & 26.9.2011 on the subject.

under the provision of RSO 2000.

1. That today is fixed for hearing.
2. That in order to exercise my right of defense in accordance with law requested your honor for calling of official evidence/witnesses for examination, Charge framers, recommending and forwarding authorities for cross examination as well as providing copies of the materials to the undersigned in full presented by the department in support of the allegations. The same is not effectuated so far. Unfortunately my department is led by the persons who are at cross purpose and have been affectees/parties to the litigation with me relating seniority, promotion, and service status etc *inter se* pending since long. Therefore the request becomes all the more important.
2. That I picked the bonafide impression during the hearings that findings of the instant inquiry is being stretched beyond the allegations leveled, should be limited to its present face value only and should not be inquired beyond. The answers/replies of the undersigned to the allegations should kindly be juxtaposed proportionately and decided. That for reaching any decision relevant section of law, rules and regulation applicable should be cited therewith to avoid blanket interpretations and misconstruction of facts or law please as I have been victim in the past.
3. That the record called from various offices additionally latter (including of Director PDMA/I.O. etc), should have been shared with the undersigned before making it part of the supporting evidence to the allegations/findings, enabling him to examine, cross examine and set pros and cons of the same before this forum. That otherwise it would potentially deprive the undersigned civil servant from exercising his right of defense and affording him fair opportunity of explanation thereabout.
4. That the proceedings seems not inclined to take into consideration the preliminary/fundamental objections made under serial NO 1 & 2 of the reply and to determine the questions, *inter alia*, of legal status, *locus standi*, mala fide, personal grudge, waiver, estoppel of the complainant/ charge framers, time limitation for the prosecution of instant allegations and determination jurisdiction of this forum to entertain the allegations in present form as explained in the reply dated 28.09.2011 etc.
5. Therefore with all fairness to the instant proceedings and respect for this forum these lines are being submitted in good faith for consideration before closure of the proceedings please.

Yours truly,

P/c
Pervez Khan
Deputy Director

Population Welfare Deptt. Peshawar.

Ahmed Hanif Orakzai, Secretary Population Deptt for similar request falling on the same case

Received
7/10/11
در شاد دہلی
SM BR
ان

Important/By Special Messenger

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

No. PS/SMBR/Enquiry/ 736
Peshawar dated 28-09-2011

Office of Dy. Secy. (Legal)
EC&A Dept., Diry
Date 28.9.11

To
The Special Secretary Establishment,
Government of Khyber Pakhtunkhwa

SUBJECT: ENQUIRY IN REMOVAL FROM SERVICE (SPECIAL POWERS)
ORDINANCE 2000 --- CALLING OF WITNESSES.

The Provincial Government appointed me enquiry officer to scrutinize the conduct of Mr. Pervez Khan Deputy Director Population Welfare Department vide Population Welfare Department letter No. SOE(PWD)1-61/personal file/4895-98 dated 6th September, 2011. The accused officer while appearing before me submitted an application for summoning of Mr. Noor Nawaz Acting Director General and Mr. Ahmad Hanif Orakzai Secretary Population Welfare Department. During his personal hearing, convened today, he again requested that the aforementioned officers be summoned under Section-6 under RSO 2000. In my view Section-6 ibid authorizes the enquiry officer to call witnesses whose evidence is necessary for determination of allegation/charge. The accused officer request, in my view fall Section-5 (c) of RSO 2000.

You are requested to opine whether my contention is correct; if so, the Secretary and Acting Director General are to be summoned as defence witnesses. It may further be clarified whether the accused officer can cross examination his defence witness or not. The next date of hearing is fixed on 03-10-2011. You are requested to provide guidance in the matter by 01-10-2011.

M. Noor
Senior Member

PU today
SSR
28/9/11
29/9/11

ATTESTED
[Signature]



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

No.SOR-II/E&AD/3-249/07(Vol-I)
Dated Peshawar, the 1st October, 2011

To

The Senior Member,
Board of Revenue,
Khyber Pakhtunkhwa,
Peshawar.

Subject: ENQUIRY UNDER REMOVAL FROM SERVICE (SPECIAL POWERS)
ORDINANCE, 2000 --- CALLING OF WITNESSES

Dear Sir,

I am directed to refer to your letter No.PS/SMBR/Enquiry/736 dated 28.09.2011 on the subject and to state that Section 6(a) of RSO 2000 empowers the Inquiry Officer/Inquiry Committee to summon and enforce attendance of any person and examine him on oath. Section 5(1)(c) subject to Sub Section (2) of the said section requires the Inquiry Officer/Inquiry Committee to enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him. While Section 5(1)(c) entitles the accused to cross examine the witnesses against him. It does not allow him to dictate his terms for summoning of particular prosecution witnesses nor does it allow him to cross examine the defence witnesses.

Yours faithfully,

(NASIR AMAN)
SECTION OFFICER (R-II)

Ps.
Place on file
ms

63

Immediate/Through Special Messenger



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

No.SOR-II/E&AD/3-249/07(Vol-I)
Dated Peshawar, the 1st October, 2011

To

The Senior Member,
Board of Revenue,
Khyber Pakhtunkhwa,
Peshawar.

f-15

Subject:

ENQUIRY UNDER REMOVAL FROM SERVICE (SPECIAL POWERS)
ORDINANCE, 2000 --- CALLING OF WITNESSES

Dear Sir,

I am directed to refer to your letter No.PS/SMBR/Enquiry/736 dated 28.09.2011 on the subject and to state that Section 6(a) of RSO 2000 empowers the Inquiry Officer/Inquiry Committee to summon and enforce attendance of any person and examine him on oath. Section 5(1)(c) subject to Sub Section (2) of the said section requires the Inquiry Officer/Inquiry Committee to enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him. While Section 5(1)(c) entitles the accused to cross examine the witnesses against him. It does not allow him to dictate his terms for summoning of particular prosecution witnesses nor does it allow him to cross examine the defence witnesses.

copy

Yours faithfully,

(NASIR AMAN)
SECTION OFFICER (R-II)

*Ps.
place on file
kuz*

P. 2/5

21-03-2014

68

Immediate/Through Special Messenger



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)**

No.SOR-II/E&AD/3-249/07(Vol-I)
Dated Peshawar, the 1st October, 2011

To

The Senior Member,
Board of Revenue,
Khyber Pakhtunkhwa,
Peshawar.

F-15

**Subject: ENQUIRY UNDER REMOVAL FROM SERVICE (SPECIAL POWERS)
ORDINANCE, 2000 ---- CALLING OF WITNESSES**

Dear Sir,

I am directed to refer to your letter No.PS/SMBR/Enquiry/736 dated 28.09.2011 on the subject and to state that Section 6(a) of RSO 2000 empowers the Inquiry Officer/Inquiry Committee to summon and enforce attendance of any person and examine him on oath. Section 5(1)(c) subject to Sub Section (2) of the said section requires the Inquiry Officer/Inquiry Committee to enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him. While Section 5(1)(c) entitles the accused to cross examine the witnesses against him. It does not allow him to dictate his terms for summoning of particular prosecution witnesses nor does it allow him to cross examine the defence witnesses.

copy

Yours faithfully,

(NASIR AMAN)
SECTION OFFICER (R-II)

*Ps.
replace in file
lmy*

B. 2/5

21-03-2014

دفاع الوفا
سی ای ڈی ایڈمنسٹریٹو
رہنمائی و تفسیر

GOVERNMENT OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT

House No. 125/111 Street No. 7 Defence Officers Colony,
Khyber Road, Peshawar Cantt.

NO. SOE (PWD) 1-61/ personal file / 4895-98
Dated Peshawar the, 6th September, 2011

To

Mr. Waqar Ayub,
Government of Khyber Pakhtunkhwa,
Senior Member Board of Revenue,
Peshawar.

Subject: - INQUIRY AGAINST MR. PERVEZ KHAN DEPUTY DIRECTOR (BS-18)
POPULATION WELFARE DEPARTMENT.

Dear Sir,

I am directed to refer to the subject noted above and to state that the Chief Minister, Khyber Pakhtunkhwa the competent authority has been pleased to approve initiation of Disciplinary Proceeding against Mr. Pervez Khan, BS-18 Deputy Director, Population Welfare Department under the removal from service (Special Powers) Ordinance, 2000.

Consequently, the competent authority has further been pleased to appoint you as Inquiry Officer to scrutinize the conduct of aforesaid accused officer vis-à-vis the attached statement of allegations / Charge Sheet and desired that the Inquiry Officer should take further necessary action and submit findings / recommendations / report within 25 days in accordance with the provision of the (Special Powers) Ordinance mentioned above.

Yours faithfully,

(S. ISMAIL ALI SHAH GILANI)
SECTION OFFICER (ESTT)

Enclt: - No & date even.

Copy forwarded for information to the:-

- 21-03-044
1. Director General, Population Welfare, Khyber Pakhtunkhwa with the request to detail a departmental representative well conversant with the facts of the case alongwith relevant record to assist the Inquiry Officer during the inquiry proceedings.
 2. Mr. Pervez Khan, Deputy Director, Population Welfare Department with the directions to appear before the Inquiry Officer for the purpose of the inquiry proceedings as and when required.
 3. PS to Secretary Population Welfare Department.

kindly ask Secy Pw Deptt:

- 1) Secy Pw Deptt. to provide copy of fact finding report and depute an officer to assist inquiry proceedings.
- 2) Inform the officer to appear on 16-9-2011 at 9 am.

SECTION OFFICER (ESTT)

68

To,

Secretary to Govt. of NWFP,
Population Welfare Department,
PESHAWA.

Subject:- Extension of leave without pay to two calendar years.

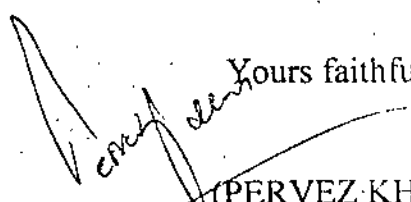
Dear Sir,

In partial modification of my application dated 16.4.2005 on the subject.

Reference to my previous application for forty days leave without pay and subsequent Notification NO SO (PW) 1-61/2003/1068-70 dated 19.3.2005, now being availed by the undersigned.

It is requested that my forty days leave without pay may please be extended to one calendar year (365 days), counted from the date of availing, with permission to join any private business, consultancy or contractual service please.

It is pertinent to mention here that your honour being the competent authority is bestowed with the discretion under section 12 of the prevailing leave rules to grant requested leave. Copies of the relevant section are attached as **Annexure-A&B.**


Yours faithfully,
(PERVEZ KHAN)
District Population Welfare Officer Nowshera
(on leave)

Dated: 02/05/2005:

CC: PS to minister Population Welfare in reference with the discussion on the subject matter please.

To,

(66)

GOVERNMENT OF NWFP
POPULATION WELFARE DEPARTMENT
F.C. TRUST BUILDING SUNEHRI MASJID ROAD
PESHAWAR CANTT
Phone No.9211536

Dated Peshawar the, 11th May, 2005

NOTIFICATION

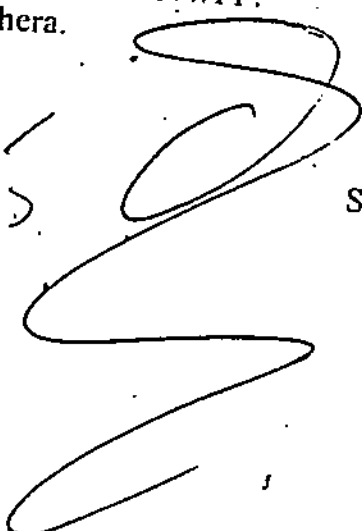
NO. SO(PW)1-61/2003: 40 days Extra Ordinary Leave (without pay) granted to Mr. Pervez. Khan, District Population Welfare Officer Vide this department notification No.SO(PW)1-6/2003/1068-72 Dated 19-03-2005, is hereby extended for a further period of 365 days with effect from 11-05-2005 to 10-05-2006 (both days inclusive) on account of his personal / private affairs.

SECRETARY
GOVERNMENT OF NWFP
POPULATION WELFARE DEPARTMENT

Endst No. SO(PW)1-61/2003 / 1120 - 22 . Dated Peshawar the, 11th May, 2005

Copy to the:-

- 1) Director General Population Welfare NWFP.
- 2) District Accountant, Nowshera.
- 3) Officer concerned.

13/5/05


SECTION OFFICER (PW) 13/5

GOVERNMENT OF NWFP
POPULATION WELFARE DEPARTMENT

Dated Peshawar the 12th September 2007

NOTIFICATION

No. SOE(PW)1-61/2007/PF. In exercise of Powers conferred upon him under Section-4 of North West Frontier Province Removal from Service (Special Powers) Ordinance, 2000, the competent authority is pleased to place Mr. Pervez Khan Khalil, Deputy Director (M&E), Directorate General Population Welfare NWFP, Peshawar under suspension with immediate effect.

The officer will receive subsistence grant during the suspension period under the rules.

SECRETARY TO GOVT. OF NWFP
POPULATION WELFARE DEPARTMENT

Endsl No. SOE(PW)1-61/2007/PF / 2220-24 Dated Peshawar the 12/09/2007

Copy forwarded for information and necessary action to the:-

- 1. Accountant General NWFP, Peshawar.
- 2. Secretary (Admn & Coord) Civil Secretariat FATA Warsak Road Peshawar.
- 3. Director General Population Welfare NWFP Peshawar.
- 4. PS to Chief Secretary NWFP, Peshawar.
- 5. Mr. Pervez Khan Khalil Deputy Director (M&E), Directorate General Population Welfare NWFP, Peshawar.

[Handwritten signature]
14-9-07

[Handwritten initials]
b/c

(USMAN SHAH)
SECTION OFFICER (ESTT:)

68

Confidential

**GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT**

No.PS/SMBR - 778
Peshawar dated 20-10-2011

The Secretary to Government of Khyber Pakhtunkhwa
Population Welfare Department

**SUBJECT:-ENQUIRY AGAINST MR. PERVEZ KHAN DEPUTY DIRECTOR (BS-18)
POPULATION WELFARE DEPARTMENT.**

Sir,

Kindly refer to your letter No.SOE (PWD) 1-61/Personal File/4895-98 dated 09th September, 2011. Enquiry report containing (38 pages) alongwith written statements filed by Mr. Pervez Khan Deputy Director Population Welfare Department (2 in number) are enclosed for further action.

[Signature]
Deputy Secretary

AS.
P.V.

[Signature]
21.11.11

RECEIVED
[Signature]
EXAMINER
CHIEF OF SPECIAL JUDGE
ADFC, Peshawar dated 20-10-2011

650
21/11/11
DS

A-4 PL

[Signature]

69

EXAMINED

Court of Special Judge

ADD: Islamabad KHA, PESHAWAR

**INTO CHARGES LEVELLED AGAINST Mr. PERVEZ KHAN
ACTING DIRECTOR POPULATION WELFARE DEPARTMENT.**

With the approval of the Competent Authority, the Population Welfare Department issued communication (Annexure-A) on 06-09-2011 authorizing initiation of enquiry proceedings under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000 to scrutinize the conduct of Mr. Pervez Khan Deputy Director Population Welfare Department with reference to charges enumerated in the charge sheet/statement of allegations. The accused officer was summoned; on his first appearance on 16-09-2011 he denied having received charge sheet and statement of allegations. He was provided with copies of charge sheet/statement of allegations, and allied communications (listed in Annexure-B) for submitting his written reply and to indicate if he wanted to be heard in person. The Directorate of Population Welfare deputed Mr. Hidayat Khan Deputy Director as its representative.

The officer under enquiry submitted his reply on 26-09-2011. When the officer was asked if he had anything to add to his written statement, he sought decision on the preliminary objections raised by him before going into the details of his replies to the allegations. The officer was informed that his reply and verbal explanations, if any, will be considered as a whole, and findings on the preliminary objections, if required, will be provided to the Department as part of this report. When his replies were discussed in detail, he requested filing of an amended written reply which was acceded to.

The officer submitted an application (Annexure-C) on 17-09-2011 for summoning of Secretary and Acting Director General Population Welfare for cross examination, and production of his personal files. The officer was told that he cannot cross examine his own witnesses. However, he persisted with his point of view whereupon opinion of the Establishment Department was sought. The Establishment Department advised that the accused officer cannot cross examine witnesses summoned on his request (Annexure-D). The officer was informed in writing on 03-10-2011 (Annexure-E) to produce his witnesses and to appear for personal hearing on 07-10-2011 if he so desired. On the date fixed he appeared for personal hearing but did not produce his witnesses nor sought fresh date for their production.

The preliminary/fundamental objections raised by the officer in his written statement are that the allegations are without supporting (incriminating) documents therefore do not constitute charges; the same have been initiated and finalized on behest of Acting Director General, a Federal Government employee; were surreptitiously forwarded by the Secretary "for affixing signatures from the CM"; some of the allegations (iii & iv) were subject matter of an earlier enquiry, and are subjudice; allegations/charges were based on pseudonymous applications therefore could not be enquired into; original documents were not available (lost with the officer's personal file) therefore charges formulated on reconstructed material had no validity.

From the documentation made available and the replies given by the officer, a strong inference is deduced that the Acting Director General and the officer are daggers drawn. The officer in the garb of protecting his rights has been raising objections (if required in the shape of seeking

70

clarifications) in minor matters which could have been resolved through face to face discussions, in an effort to bring matters (whether right or wrong) on record. This has not only created a bitter and acrimonious environment in the Directorate General establishment, where energies are being spent to belittle opponents and cut them to size rather than spending the same on serving masses. In a communication addressed to the Chief Secretary, the enquiry officer of one of the earlier enquiries against the officer stated "The acting Director General expressed his earnest desire convicting the accused at any cost as (accused officer) is making problems for the department officers in promotion case by challenging it in the court of law" (Annexure-F). The situation has deteriorated to an extent, that the accused officer filed suit for payment of Rs. 25 million each as damages against the Secretary and Acting Director General.

The preliminary objections have primarily been made to create a ground for subsequent litigation, in case unfavourable recommendations are made as a result of this enquiry. In my opinion it is for the enquiry officer to decide whether a witness has to be summoned to prove a charge/allegation, or documentary evidence is sufficient to arrive at a judicious opinion. Claims of forwarding charges in a surreptitious manner and the Chief Minister signing them without having got them examined (in a way without application of mind) are uncalled for. Action on anonymous and pseudonymous applications is discouraged, but it does not stop the Secretary of the Department to enquire into contents that are of grave nature and appear to have some truth (Annexure-G). Therefore the objections need no further consideration.

The acts/omissions leading to the framing of charges on the officer are discussed below.

1. Obtaining 2 domiciles and using the second one i.e. of Khyber Agency for recruitment as Deputy Director/District Population Welfare Officer in Population Welfare Department.

The officer has not denied obtaining of two domiciles. However, he has explained that before applying for issuance of domicile certificate from Political Administration (PA) of Khyber Agency he had surrendered his earlier domicile obtained from the office of Deputy Commissioner (DC) Peshawar. In support of his contention he attached with his reply a copy of letter addressed by him to Deputy Commissioner Peshawar on 16-07-1992 with an endorsement to Director General LG&RDD. The copy shows receipt of the endorsement in Director General's office under # 889 on 16-07-1992. While returning the domicile the officer, then Planning Officer in LGE&RD Department, mentioned that his application for award of Khyber Agency domicile certificate was in final stages. The officer could not produce proof of receipt of the application in DC's office; whether the application was accepted, or explain why he did not mention the fact that he was in possession of Peshawar district domicile while apply for Khyber Agency domicile.

The Department provided a copy of PA Khyber Agency's letter (Annexure-H) in which he has opined that the domicile has been obtained fraudulently. The accused officer in his reply of 26-09-2011 on page 8 explains that the acting DG PWD has prejudiced the PA's Office therefore the letter is "outcome of factious consternation". He continues as "they only say about absence of my family on the spot which is true as my family, as I stated earlier, is shifted to the outskirts

J
Judge
of Peshawar

(71)

of Peshawar since long, a common phenomenon I explained earlier". He further explains that he did not use the Khyber Agency domicile for acquiring any benefit, even recruitment in Population Welfare Department as Public Service Commission recommended his recruitment against post reserved for 'open merit'. In case any action has to be taken, it is for the Public Service Commission to take---which has now become time barred, and not for the Government or any other agency. He also made an attempt to equate case of obtaining two domiciles at par with dual citizenship.

Finding

The submission of an application to DC Peshawar in order to return the domicile certificate issued by his office is of no consequence until a prayer for its cancellation has been made and a decision obtained thereon. The officer could not provide any evidence of the application having been received in DC office. If he was so particular to have obtained receipt number on the endorsement made to DG LG&RD, he should have repeated the same vigilance in respect of DC's office which was to take action on his application. This casts doubts on the submission of the application.

Where a holder of a domicile wishes to obtain a domicile of another district it is incumbent upon him to surrender the earlier domicile, get its cancellation, and narrate these facts in subsequent application for issuance of domicile certificate. These facts were never mentioned in the domicile request submitted by the officer to the PA's office.

Domicile certificate is issued to certify the permanent residency of a person in a particular District/Agency. When the officer himself in his reply states that his family had left Khyber Agency for good and had shifted to outskirts of Peshawar district, no case for issuance of domicile certificate is made out. This statement on its own is sufficient to prove that Khyber Agency domicile was obtained by concealing information that would have enabled the Political Agent to make an informed decision of not acceding to request of issuing domicile certificate. However, the Political Agent, in the circumstances, took the correct decision to declare the obtaining of domicile as fraudulent.

Recommendation

Irrespective of the fact that the officer obtained any benefit from the Khyber Agency domicile or not, the officer is found guilty of suppressing facts in order to obtain a domicile certificate of which he had no entitlement. The Public Service Commission treated and accepted his candidature for the advertised post of Deputy Director/DPWO as resident of FATA (Zone 1).

Public Service Commission has indicated that the accused officer was recommended for the post of Deputy Director (Non Technical) on the basis of MA Economics qualification as laid down in the Service Rules and that he was recruited with domicile of Khyber Agency (Annexure-1). The merit list shows that four recommendees have secured identical numbers i.e. 35/55. As the officer is placed at serial # 2 of the merit list, recommendation by Public Service Commission has been made against seat reserved for FATA in light of its circular 3-89-DS/3241 dated 19-03-1990 and not against the open merit seat as claimed by the officer in his personal hearing

[reference: page 36 of Establishment Code Khyber Pakhtunkhwa (Revised Edition) 2011].

[Signature]
EXAMINER

Court of Special Judge

Anti Corruption K.P.A. Peshawar

Bst (5) 72
5/20/11

Action under Paragraph 20(d) of Khyber Pakhtunkhwa Public Service Commission Regulation 2003 may be initiated in addition to action under Section 3 of the Khyber Pakhtunkhwa Removal of Service (Special Powers) Ordinance 2000 for having been found guilty of misconduct as defined in Section 2(c) ibid. Before proceeding in the matter opinion of Establishment Department may be obtained as to whether Public Service Commission or Provincial Government is to initiate action.

- 2. Changed category of MA Economics Degree from 3rd to 2nd Division in order to gain eligibility for initial recruitment to posts in BPS 17 and above.

The charge stems from the seeking of applications from persons having obtained a minimum of 2nd Division in MA in social sciences etc. for recruitment as Deputy Director/DPWO (BPS-18) in Population Welfare Department. After tests interviews, the officer was recommended for appointment by the Public Service Commission, post was offered to him, and he joined the Department. In response to a query form the Department, the University of Peshawar reported that the officer had passed MA Economics in 1984 under Roll # 6467 in 3rd Division and not in 2nd Division.

The officer in his written reply and personal hearing stated that "the undersigned had more than one post-graduations qualification at the time of recruitment available with Application Form submitted. All relevant documents submitted to the NWFP Public service commission were found, apparently, sufficient to the commission requirement, were considered, authenticated and decided upon finally being PSC the sole and competent forum/authority in selection matter, and based thereupon sent recommendations to the department". In the amended reply the officer states "The veracity of the said document, or otherwise, can only be confirmed from the Commission record (Application Form in original with testimonials submitted at the time of applying, perused and authenticated by PSC), which was sent to the department along with their recommendations (Annex-R). Therefore requested that the Application Form of PSC in original may kindly be called from the department to check entries made in column NO 16 and page 3 of the application form (Sample Annex-R-4), in front of the undersigned please".

The request for summoning of the original application form was intentionally made by the officer knowing well that the same had been lost/misplaced by the Department. However, to reach an informed opinion, the Department was asked to provide a copy of service rules, while Public Service Commission was requested to provide details of educational qualifications submitted by the officer while applying for the post. Service Rules (Annexure-J) and details educational qualifications (Annexure-K) were provided by the Department and Public Service Commission respectively.

Findings

The Public Service Commission in response to a query made by me indicated that the accused officer provided documentation that he had secured 495 marks out of 1100 in MA Economics (Annexure-K); this works out to be 45% marks which is 2nd Division in accordance with paragraph 19 (d) of the Khyber Pakhtunkhwa Public Service Commission Regulations, 2003.

ATTESTED



EXAMINER

Board of Special Judge
Anti-Corruption Office Peshawar

73

Earlier through Annexure-I it was confirmed by Public Service Commission that the officer was considered for test interview on basis of MA Economics.

Recommendation

The accused officer is found guilty of providing Public Service Commission with falsified documents that showed he had passed MA Economics in 2nd Division thus duping the Commission in accepting his eligibility for the post which tantamounts to misconduct on part of the accused officer. Action under Section 3 of Khyber Pakhtunkhwa Removal of Service (Special Powers) Ordinance 2000 is recommended.

3. The officer obtained an **exparte decree through concealment of facts thus reducing his age by 5 years and obtained 14 months relaxation in upper age limit.**

Judgments passed by the Civil Judge 1st Class Peshawar on 13-12-1984 dismissing the suit brought by the accused officer against the Secretary Board of Intermediate & Secondary Education (BISE) Peshawar for correction of his date of birth from 13-04-1958 to 31-12-1964. Additional District Judge III Peshawar dated 24-02-1985 dismissing appeal; and Senior Civil Judge Peshawar granting an **exparte decree** on 21-06-1989 in a subsequent suit for change of date of birth were provided by the Department. The officer in his defence stated that the suits were brought by his guardians; the litigation relates to period when he was not in government service and has no bearing on his recruitment in the Population Welfare Department.

Findings

Two things have been noted from the examination of aforementioned judgments. Firstly, while instituting the subsequent suit before the Senior Civil Judge Peshawar which was decreed **exparte** on 21-06-1989, the officer (as he did not require guardian at age of 24 years reckoned from the corrected date of birth) did not inform the court that in earlier litigation on the subject matter a decision was already in the field. Had he done so, the subsequent suit would have been thrown out being hit by the principle of *res judicata*. This points to the willful concealment of facts in order to get a favourable decision, which in terms of Section 12(2) of the Civil Procedure Code is not a valid decision. Secondly, it is exceptional for a boy at the tender age of 10 years and 4 months to appear and pass matriculation examination.

Recommendation

As the correction of date of birth, even though through a process not encouraged by law, was done prior to joining Population Welfare Department, framing of the charge by the Department will not be in order. However the LGE&RD Department can consider this fact and take an appropriate decision. Therefore decision/recommendation on this charge is not required.

4. Seeking employment in Planning Commission from 05-06-2007 to 29-07-2007 on monthly salary of Rs. 75,000; Ghulam Ishaq Institute of Sciences and Technology from 01-04-2005 to 10-06-2005 on monthly salary of Rs. 30,450; Associates in Development from 25-01-2008 to 25-11-2008 on annual salary of US\$ 40,710 without obtaining permission from the Department.

All the three charges are of similar nature they are being discussed together. The Department has copies of letters from Planning Commission (Annexure-L) and enclosures i.e. Curriculum Vitae of accused officer provided by him to Planning Commission, his appointment

Signature
 Director of Services
 Anti-Corruption Commission

letter showing joining in Planning Commission of Pakistan as Monitoring & Evaluation Specialist; Ghulam Khan Institute of Engineering Sciences and Technology (Annexure-M) with enclosure i.e. offer to join as Director on monthly salary of Rs. 30,450; and Associate in Development (Pvt) Ltd contract signed with the accused officer for post of consultant, and termination of contract notice (Annexure N).

The accused officer did not deny having worked with the three entities during his employment in Population Welfare Department. However, he drew attention to victimization by the Acting DG which forced him to seek employment to feed his family, and raised the plea that he had informed the Department of his seeking employment to overcome economic stringency.

It was noted that the accused officer on return from FATA Secretariat had reported for duty in Population Welfare Department on 1-3-2007 and waited for posting for two months. When he reminded the Department to order his posting and attached his Last Pay Certificate (LPC), issued by Accountant General, a strange query was made "Has the officer been relieved by FATA Sectt.? Pl confirm?" Making such query in presence of LPC is strange way of getting even with intent to delay payment of salary and create fiscal crunch. This led to the submission of an application on 04-07-2007 for grant of 6 months leave without pay with permission to join an economic pursuit to feed his family; copy was endorsed to Minister for Population Welfare. At this juncture the accused officer was holding the post of Deputy Director M&E. The application met with positive outcome; the Department issued orders purportedly on 04-07-2007 allowing the accused officer to draw salary from 01-03-2007 to 16-05-2007.

For the other two jobs outside the public sector the officer stated that he had duly applied for and obtained permission which is available with the Department and are not being produced before the enquiry officer on the pretext that personal files of the officer have been misplaced. When he was asked to produce the copies of the permission addressed to him, he stated that he had lost them during shifting of residence.

Record reveals that the officer, upon his request (dated 07-03-2005) was granted 40 days leave without pay on 19-03-2005 from date of availing to attend to "personal/private affairs" which he availed on 01-04-2005. On 16-04-2005 the officer applied for extension of the EOL for two years, which was modified on 02-05-2005 by making request to join private business, consultancy or contractual service. On 16-05-2005 leave was allowed for one year on account of personal/private affairs; however the officer reported back for duty on 11-06-2005, resultantly remaining period of leave was cancelled.

On 31-12-2007 another application was moved by the accused officer to Secretary Population Welfare Department indicating that he had been offered assignment in the private sector and that he wanted to join as there was no express bar on government employees placed under suspension, therefore he may be guided/advised if there was any bar on suspended civil servants from joining private sector during the suspension period. Copies of all the documents relating to request and approval of leaves have been provided by the accused officer with his reply.

Findings

From the above following findings are made:

[Handwritten Signature]

EXAMINER

Court of Special Judge

Anti-Corruption Cell Peshawar

(75)

16/10/07

- a. When the accused officer joined Ghulam Ishaq Institute for Engineering Sciences and Technology on 01-04-2005, he had obtained leave without pay on personal grounds. In his subsequent application of 02-05-2005 he sought extension of leave with permission to join service outside government. Leave for 365 days was granted on account of personal/private affairs. Permission to join service outside the Department was not granted.
- b. The accused officer's application for 6 month leave without pay to join economic pursuit, purported to have been written on 05-06-2007, the day he joined Planning Commission of Pakistan, was received in the Minister's office on 04-07-2007 and Secretary's office on 06-07-2007. It is worthwhile to note that the officer put his designation as Deputy Director M&E, Directorate General of Population Welfare Department, thus concealing the fact that he had already accepted the Planning Commission's offer and joined it. The Department did not grant him leave or permission to join service elsewhere.
- c. In order to cover up the lapse the officer submitted an application on 31-12-2007 seeking advice if there was an express bar on government officials placed under suspension from pursuing private sector assignments. It is pertinent to note that the Planning Commission had terminated employment contract of the officer on 29-09-2007 i.e. 3 months prior to the seeking of this advice, thus making this reference inconsequential.
- d. The officer could not produce any document to show that he had applied for leave and permission to join Associates in Development Pvt. Ltd as Consultant with whom he entered into a contract on 24-01-2008.
- e. The officer's plea that relevant documents are with the Department and are not being produced intentionally to harm him, and that he has lost his copies is to be taken with a pinch of salt as with his reply he has annexed copies of leave applications, departmental orders related to him, internal departmental notings, and privileged communication by enquiry officers.

Recommendation

Rule 16 of the Civil Servants (Conduct) Rules 1987 in unambiguous terms prescribes that whenever a civil servant seeks to engage in any trade or undertake employment or work, other than his duties he has to obtain prior sanction of the government. Where the government servant is in doubt whether the prohibition applies or not if he desires to join religious, social, charitable, or occasional work of literary or artistic nature he is to refer the matter to government for orders. The officer's stints outside the Population Welfare Department without the express permission of the government are violations of the aforementioned Rule. Thus he is found guilty of misconduct as defined in Section 2(c) of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000 on all the three counts. It is of no consequence whether he was under suspension or he did not get salary from the employers whom he joined outside Population Welfare Department. Action under Section 3 of Khyber Pakhtunkhwa Removal of Service (Special Powers) Ordinance 2000 is recommended on all the three counts.

76

General Recommendation

Keeping in view the unpleasant environment created in the Directorate General of Population Welfare which is not conducive for efficient working of the Department, it is recommended that the accused officer's continuation in service may be considered by the Review Committee in light of section 13(1) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Establishment Department circular SOR-1(S&GAD) 4-13/87 dated 30-11-2000. In addition the posting of a full time Director General be considered by the Government to end the polarization in the Directorate General Population Welfare.

In light of paragraph 4 of Establishment Department circular SORII(S&GAD)3-4/78 dated 21-12-181 it is for the authorized officer to decide the kind of penalty to be imposed.

Waqar Ayub

(Waqar Ayub) 20-10-2011
Senior Member Board of Revenue

RECORDED
9
OFFICE OF THE
SECRETARY
AND CHIEF EXECUTIVE OFFICER

PW-7 Statement of Waqar Ayub, Rtd: PCS (EG) Officer, R/o Mirpur District Abbottabad, on Oath:

When I was posted as Senior Member Board of Revenue, Government of Khyber Pakhtunkhwa, I received a letter from Population Welfare Department containing the instructions of Competent Authority (Chief Minister) appointing me as Inquiry Officer to scrutinize the conduct of Mr. Pervez Khan, Deputy Director, Population Welfare Department and submit findings/recommendations. The officer was summoned for inquiry, charge sheet, statement of allegations and other documents were provided to him on 16-09-2011. After conducting the inquiry an inquiry report containing 39 pages along with the reply to the charges provided by the officer were sent to the Population Welfare Department. The original inquiry report along with annexures produced, perused and returned, the copy of which is Ex.PW7/1 consisting of 39 pages. As per my inquiry report all the six allegations were proved against the accused and I being inquiry officer recommended legal action on 3 counts i.e. obtaining of two domicile certificates, producing MA Economics Degree (IInd Division) to Khyber Pakhtunkhwa Public Service Commission and obtaining employment thrice in Organization other than government of Khyber Pakhtunkhwa without obtaining necessary sanction while being a government servant.

The action taken on my inquiry report by the competent authority was assailed by the officer before Service Tribunal and thereafter in the Supreme Court of Pakistan through leave to appeal and review which failed.

XX

Vide charge sheet and statement of allegation the Chief Minister (KPK) the Competent Authority appointed me as inquiry officer on 28-8-2011. It is correct that I was instructed to conduct inquiry under the provision of Removal from service (Special Ordinance 2000) which is page-11 & 12 of Ex.PW7/1. Volunteered that page-11 & 12 were communicated to me on 6th September 2011, vide letter which is at page-10 of Ex.PW7/1. The inquiry report was submitted on 20-10-2011 to Secretary Population Welfare Officer from whose department I had received the sanction of the competent authority and charge sheets/statement of allegations. After completion of proceeding I returned the inquiry on the 52nd day from the date of my appointing as inquiry officer by the competent

16.08.2010

ATTESTED
EXAMINER
Court of Special Judge
Anti Corruption KPK Islamabad

authority. It is incorrect to suggest that I submitted my report of inquiry after six month and 13 days, if the period is reckoned from my appointment as inquiry officer vide charge sheet by the competent authority till the date of submission of inquiry report. (The whole suggestion is wrong). It is correct that being inquiry officer I was supposed to complete my job within the parameter laid down in RSO 2000. Volunteered that the inquiry was to be conducted in accordance with provision of RSO 2000. As per section 5 of RSO 2000 being inquiry officer I was supposed to submit my report to the Competent Authority within 25 days of the initiation of the inquiry. The witness volunteered that subsequent section of the RSO 2000 allow its extension of time. It is incorrect to suggest that I breached the statutory line and time period of RSO 2000 in order to give undue leverage to Ahmad Haneef Orakzai, Secretary Population. It is further incorrect to suggest that I extended undue favour to the Secretary just to settle my personal score with the accused. It is correct that at page-3 of Ex.PW7/1 I have mentioned the facts that the accused had filed a suit for damages against Secretary and Acting Director General. It is incorrect to suggest that due to the said facts I had given my finding against the accused. (It is correct that the accused has written three applications to me wherein he requested for requisition of his personal files and summoning of Secretary and Acting Director General for cross examination. One of the application is available at page-16 of Ex.PW7/1. The witness volunteered that the other two applications were not annexed with my inquiry report Ex.PW7/1 as the contents and substance of those applications were one and the same.) It is incorrect to suggest that I intentionally not annexed the other two applications with my inquiry report due to my personal vandata with the accused. It is correct that on the request of accused I sought opinion of the Establishment Department. It is correct that the reply of the Section Office R-II is available at page-17 of Ex.PW7/1. (It is correct that I have mentioned in my inquiry report that the accused had requested for requisition of his personal record but the same could not be requisitioned as it was reported by the concerned quarter as well as by the accused that the personal file of the accused was lost by the department in original. I have not seen any inquiry report regarding the missing of personal file of the accused. It is correct that I have specifically not sought extension of period of inquiry. The witness volunteered that the same point was agitated by the accused before the competent authority at the time of final show cause notice but the same was turned down as such I presumed that the time was impliedly extended. It is correct that no written

16.06.2020

ATTESTED

EXAMINER

Court of Special Judge
Anti Corruption & Recovery

lost in original

order regarding the rejection of the plea of accused about the non-completion of inquiry within stipulated period is not available with my inquiry report Ex.PW7/1. It is incorrect to suggest that no such evidence is available on prosecution file that the competent authority has extended period of inquiry or turn down such request of the accused. I cannot answer the question that whether there is difference in the meaning of misconduct in civil and criminal cases. It is incorrect to suggest that the accused has not committed any misconduct in shape of obtaining dual domicile. It is further incorrect to suggest that a citizen of Pakistan can obtain a second domicile by surrendering the first one u/s 17 of Pakistan Citizenship Act, 1951. The witness volunteered that the proof of violation of law in respect of obtaining of dual domicile is available at page-22 of Ex.PW7/1. As per the contents of the letter available at page-22 of Ex.PW7/1 the concerned officer inquired about the persons who verified the place of residence of accused were searched out but three out of these four elders had died and the fourth elder stated that the accused was not residing in Khyber Agency. It is incorrect to suggest that during the inquiry I was shown the provision of Pakistan Citizenship Act, 1951, judgment of the Supreme Court reported in PLJ SC 1980 page-300 and PLJ 1985 AJK page-1 that permanent residency is not a condition for making a domicile of a District or Agency but I did not consider the same. I have seen the copy of publication which is available at page-255 of the judicial file which is Ex.PW7/D-1 wherein the post of Deputy Director Non-technical in Population Welfare Department at serial No.1 and it does not clarify that whether it was for regional or it was for open merit. It is correct that in respect of other vacant posts it is mentioned that those seats were for regional quota. It is correct that in respect of zonal allocation I have referred to page-36 of "Esta Code Revised 2011 Edition". The witness self stated that the recommendation of the Public Service Commission regarding the accused and other is available at page-24 of Ex.PW7/1. It is incorrect to suggest that page-36 of Esta Code just referred, speak about the post of regional quota falling only in BPS-16 & 17 and not for BPS-18. It is further incorrect to suggest that page-24 of Ex.PW7/1 in its column does not disclose that the post of accused was lying under any regional quota but open merit.

I cannot say that what kind of documents were in the personal file of the accused as it was not produced before me, being reportedly lost, at the time of inquiry. In my inquiry report I have not mentioned that the accused had tampered any document. Self stated that I have only mentioned that he

Mirza Aslam Khan

16.08.2020

ATTESTED


 Mirza Aslam Khan
 Comr. of Police
 Ferozabad

had provided falsified document to the commission (reference page-32 of Ex.PW7/1). It is incorrect to suggest that the accused has neither submitted any false document nor he has made any tampering in order to make himself eligible for the seat in question. It is further incorrect to suggest that in fact the accused while submitting his form before the commission has mentioned passing of MA in III Division.

It is correct that in respect of allegation No.3 I have given my opinion that it relates to the Local Government Department and not to the Population Welfare Department. In respect of the securing other jobs by the accused without taking permission from parent department i.e. Population Welfare Department I have given my opinion that he has committed misconduct within the meaning provided by the Rule 16 KP Civil Servant (Conduct Rules) 1987. I cannot say that whether securing second job without permission from parent department makes any criminal offence or not. It is incorrect to suggest that since the NWFP Government Servant Rules 1987 have been abolished and were not in field due to RSO 2000, therefore the accused could not proceeded against the said rules. It is incorrect to suggest that though the 1987 Rules were not in field but I dishonestly and with ulterior motive while joining hands with Population Department have given my inquiry report against the law and facts. I do not know that whether the alleged securing of employment without permission from the parent department were obtained during the period of leave without pay and suspension or not. It is correct that the reference of rule I have made in my recommendation at the last para including section 13(1) KPK Civil Servant Act, 1973 and paragraph 4 of Establishment Department Circular SORII(S&GAD)3-4/78 dated 21-12-1981, were over ridden specifically by section 11 & 12 of RSO 2000 where provisions are in conflict with RSO 2000.

Handwritten notes:
3/10/20
4/11/20

Handwritten notes:
13/10/20
14/11/20

RO & AC.
Peshawar.
16.06.2020.

Special Judge,
Anti-Corruption (Provincial),
Khyber Pakhtunkhwa, Peshawar.

TESTED

Signature
EXAMINER
Court of Special Judge
Anti Corruption, Peshawar

Guidelines for review of cases of civil servants under Section 13(1)(a) of the NWFP Civil Servants Act, 1973.


I am directed to refer to the subject noted above and to say that Section 13 of the NWFP Civil Servants Act, 1973 as amended vide Civil Servants (Amendment) Ordinance, 2000 lays down as under:-

- (1) A civil servant shall retire from service.
 - (a) On such date after he has completed twenty-five years of service for pension or retirement benefits as the competent authority may, in public interest, direct; or
 - (b) Where no direction is given under clause (a), on the completion of Sixtieth year of his age.
- (2) No direction under clause (a) of sub-section (1) shall be made until the civil servant has been informed in writing of the grounds on which it is proposed to make the direction, and has been given a reasonable opportunity of showing cause against the said direction.

Explanation: In this section, "competent authority" means the appointing authority prescribed in rule 4 of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

- 2. The guidelines approved by the competent authority for review of cases under Section 13(1)(a) of the NWFP Civil Servants Act, 1973 are given in the succeeding paragraphs.
- 3. When it comes to the notice of the competent authority that a civil servant has, prima-facie, ceased to be efficient and that action is warranted against him under Section 13(1)(a) of the NWFP Civil Servants Act, 1973, it shall cause the case to be referred to a Review Committee stating the facts of the case alongwith supporting documentary evidence, if any, service record of the person in the form attached as Annexure-I, and such other record as may be considered relevant to a case for the purpose of making a recommendation about his suitability for further retention in service.
- 4. The Review Committee for officer of BS-17 and above may comprise the following:-

(i) Chief Secretary	Chairman (By name)
(ii) Addl. Chief Secretary	Member(Ex-officio)
(iii) Senior Member, Board of Revenue	Member(Ex-officio)
(iv) Secretary S&GAD	Member(Ex-officio)
(v) Administrative Secretary of the Department concerned.	Member(Ex-officio)
(vi) Additional Secretary S&GAD	Secretary
- 5. The Secretary of the concerned Administrative Department has been authorized to constitute Review Committees for officials of BS-16 and below subject to the


 Additional Secretary
 Population Welfare Dept.
 Khyber Pakhtunkhwa Peshawar
 21-03-2014


(82)

provide that each Review Committee shall include representative of S&GAD as a member of the Committee.

6. The Review Committees should examine the cases referred to them, and the Committees may recommend retirement in the following cases:-

- (a) Where two or more penalties under the Government Servants (Efficiency & Discipline) Rules, 1973 have been imposed on a civil servant or any other law for the time being in force.
- (b) Where over all grading of the ACRs is Average, and / or where reliability, output of work and behavior with the public were recorded in the ACRs(duly conveyed to the concerned civil servant and his representation against it finalized, as per rules).
- (c) Where a civil servant is twice recommenced for supersession by Selection Board/DPC and the recommendation of the Selection Board/DPC is approved by the competent authority.
- (d) Where other specific and cogent grounds, including the following, may warrant retirement of a civil servant:-
 - (i) Persistent reputation of being corrupt.
 - (ii) Possessing pecuniary resources and/or property etc.
 - (iii) Frequent unauthorized absence from duty.

7. Where the Review Committee recommends retirement of a civil servant, specific reasons for doing so should be given. The recommendation of the Committee should be submitted for the approval of the competent authority. If the competent authority agrees with the recommendation of the Committee, a show cause notice shall be issued to the civil servant under sub-Section (2) of Section 13 of the Civil Servants Act, 1973. After receipt of reply to the show cause notice within 14 days by the civil servant, the competent authority shall take the final decision.



Additional Secretary
Population Welfare Department
Khyber Pakhtunkhwa Peshawar
21-03-014

PROFORMA FOR REVIEW OF SERVICE RECORD OF CIVIL SERVANTS, ON COMPLETION OF 25 YEARS QUALIFYING SERVICE FOR PENSION.

- (1) Name
- (2) Date of birth
- (3) Educational qualification
- (4) Name of the post/department
- (5) Name of the cadre/group or service
- (6) Date of joining Government service.
- (7) Details of pre-service and in-service training
- (8) Date of promotion to the present post
- (9) Date of completing of 25 years service qualifying for pension.
- (10) Details of service record.


(a) Synopsis of ACR

Year	Overall assessment	Assessment made in the ACR about		
		Quantity and output of work	Integrity	Fitness for promotion
		(a)	(b)	(c)
1		2	3	

- (b) Pen picture recorded in the ACRs during last five years.
- (c) Particulars of penalties imposed under the Govt. Servants (Efficiency & Discipline) Rules, 1973:-

<u>Name of Penalty</u>	<u>Grounds of Penalty</u>	<u>No. and date of Penalty imposing order</u>
------------------------	---------------------------	---

(Authority; letter No.SOR-I(S&GAD)4-13/87, Dated 30.11.2000)


Additional Secretary
 Population Welfare Department
 Khyber Pakhtunkhwa Peshawar
 21-03-014

LIST OF MINOR & MAJOR PENALTIES.

PENALTIES: - (1) The following are the minor and major penalties, namely:-

(A) MINOR PENALTIES:-

- (i) Censure;
- (ii) withholding, for a specific period, promotion or increment, otherwise than for unfitness for promotion or financial advancement, in accordance with the rules or orders pertaining to the service or post;
- (iii) recovery from pay of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order.


(B) MAJOR PENALTIES:-

- (i) Reduction to a lower post, grade or time scale, or to a lower stage in a time scale;
- (ii) compulsory retirement;
- (iii) removal from service; and
- (iv) dismissal from service.

(2) Removal from service does not, but dismissal from service does; disqualify for future employment.

(3) In this rule, removal or dismissal from service does not include the discharge of person:-

- (a) appointed on probation, during the period of probation, or in accordance with the probation or training rules applicable to him; or
- (a) appointed, otherwise than under a contract, to hold a temporary appointment, on the expiration of the period of appointment; or
- (b) engaged under a contract, in accordance with the terms of the contract.


 Additional Secretary
 Population Welfare Department
 Khyber Pakhtunkhwa Peshawar
 21-03-2014

PW-3

Statement of Muhammad Maroof Khan, DSP Security Governor House, Peshawar, KPK, on Oath:

During the relevant days I was posted as C.O. ACE Peshawar. On my transfer as C.O. ACE Peshawar, the inquiry was already conducted in instant case. In the light of inquiry conducted by the C.O. ACE and Departmental Inquiry, I submitted my final report consisting of three pages Ex.PW3/1 with the request for registration of case FIR which was allowed vide letter Ex.PW3/2 and I registered the case FIR Ex.PA. I also placed on file the audit report. The accused submitted an application to the Director ACE regarding his innocence which was marked to me. I was not agreed with the stance of accused and submitted my report Ex.PW3/3. The above exhibits correctly bear my signature. Thereafter I was transferred and the remaining investigation was conducted by my successor-in-office.

اس میں PW3/1
 کے ساتھ
 درخواست
 کی ہے

XX.

I do not remember the exact period of my tenure in the ACE department. It is correct that before registration of this case, there was another inquiry against the accused facing trial. During that inquiry I summoned the accused for recording his statement but it was not recorded as I was transferred. Today I have seen the file of previous inquiry file bearing No.1522 dated 23-02-2011 in which I have suggested that the I.O. concern should carry the inquiry and to submit report. Similarly I have also seen another page in which I have written that as per directions of DAC the file be sent to him. The copies of these two pages are Ex.PW3/D-1 & PW3/D-2. I have not gone through the entire file which was received by me at that time. I have suggested in Ex.PW3/D-1 on the basis of allegations in the complaint.

02.01.2011

NO
 investigation

Ex.PW3/3 consisting of two pages are correctly bearing my signature. It is correct that I had no knowledge about the filing of previous inquiry against the accused and this fact is also mentioned in Ex.PW3/3. I have stated in my examination-in-chief that the accused had filed an application regarding his innocence before the DAC. It is not in my knowledge that the DAC had constituted two members committee on the application of accused who had conducted inquiry and submitted their report. I have not gone through the report of the committee. It is correct that DAC had passed his comments related to the previous two inquiries. It is correct that thereafter I submitted my reply/report in Ex.PW3/3. It is

[Handwritten signature]

correct that on page-85 of the judicial file letter submitted by accused with the subject return of Peshawar Domicile is available. Self stated that since I have not placed on file this document therefore no question could be answered about this document. The documents available at page 69 to 132 were not taken into possession by me therefore the concern I.O. may be asked about these documents. I am not sure that whether I have gone through the said documents before making recommendation for registration of case. The photo copies of Public Service Commission (PSC) are available on file at page-264 to 272. I have gone through page-268 before making recommendation of FIR. It is mentioned at page-268 that "MA 3rd division". Self stated that the name of the person is not mentioned at the said page. It is correct that the documents at page-271 & 282 were available before my recommendation for registration of FIR. I cannot say that the recommendations for appointment as Deputy Director Population Welfare were made by the competent authority i.e. Public Service Commission. The notification dated 30-05-2003 is available on judicial file at page 145. I cannot say that when the accused had got the job of Deputy Director Population Welfare. Since I have not taken into possession the record available at page-283 to 289 therefore I cannot say about its contents.

At this stage senior PP objected that no question could be asked from this witness about the documents which were not taken into possession by him. RR.

Zia Hassan my predecessor had requested for requisition of record from concerned department which were produced to him and placed on file. It is incorrect to suggest that there was no case against the accused as evident from the available record but even then due to my personal grudges I recommended the registration of FIR. It is also incorrect to suggest that I recommended FIR despite recommendation of two members committee of the senior officers who had recommended cancellation of FIR. It is also incorrect to suggest that under the influence of Secretary Population Welfare Mr. Ahmad Haneef Aurakzai and Minister Population, Mr. Saleem Chitrali, I prevail to register case against the accused despite that the Director ACE was on foreign tour and I got approval for filing the application including the inquiry committee recommendation through an incompetent officer of Grade-17. It is also incorrect to suggest that the saga of allegations was based on revivalory with department seeming from the litigation going on in the criminal and civil courts, spear headed by

Handwritten notes in Urdu and English, including "PSC", "18-05-04", and "Public Service Commission".

02.01.2019

Handwritten signature or initials.

Secretary Population and Minister Population concern who was facing criminal as well as damages suit of 80 million against them, the whole suggestion is wrong. It is also incorrect to suggest that despite sacrosanct documents in favour of accused on judicial file out rightly rebutting the charges containing in the FIR were not inquired at source and the FIR was registered after due date of receipt of letter from the department. It is also incorrect to suggest that neither inquiry before registration of FIR nor investigation after registration of FIR was conducted by me as I.O/C.O. despite wolf cry of the accused, the whole suggestion is wrong.

Delay

RO & AC.
Peshawar.
02.01.2019.

Special Judge,
Anti-Corruption (Provincial),
Khyber Pakhtunkhwa, Peshawar.



ACCEPTED

CLERK

Court of Special Judge
Anti-Corruption (Provincial) Peshawar

PW-11

Statement of Faheemullah Khan, Senior Law Officer,
Khyber Pakhtunkhwa, Public Service Commission, on Oath:

I have been authorized by the Khyber Pakhtunkhwa, Public Service Commission (PSC) to appear in the court for statement. The authority letter is Ex.PW11/1. I produce the office copy of the procedure of the Commission in which the recommendation of the candidates including accused at serial No.2 was submitted for approval and the same was supposed to be sent to the requisition department. (Original office copy seen and returned) while copy of the recommendation is Ex.PW11/2. Similarly I produce the descriptive sheet along with experience sheet of the candidates including Pervez Khan at serial No.4 wherein the description of the candidates and the reference of his testimonial submitted by him with his application form at the time of its submission. On the descriptive sheet at serial No.4 the academics, experience and interview marks have been mentioned while on the experience sheet at serial No.4 the experience of Pervez Khan is mentioned. The original of the experience sheet and the descriptive sheet are seen and returned while its copies are Ex.PW11/3 & Ex.PW11/4 respectively. After recommendation of the candidate/Pervez Khan his application form along with his testimonials and recommendation letter were sent to the requisitioning/concerned department. The Commission has no other documents of the candidate/Pervez Khan except the descriptive sheet, experience sheet and copy of the recommendation letter which are already exhibited. The contents of the above documents are the true reflection of application and testimonials.

XX

The letter already Ex.PW4/D-2 the original of which is available in our record and through this letter the Public Service Commission have sent the application of the accused and other candidates along with all testimonials and credentials attached with letter No.474 dated 19-01-2004 which I just reflected true along with the contents. I cannot say about Ex.PW4/D-1 as it is not part of the record which I produced today. It is correct that para-4 of our letter No.474 dated 19-01-2004 speaks about sending original application (along with enclosures of the recommendation) to the concerned department. It is correct that the Public Service Commission vide letter Ex.PW11/D-1, the original of which is available in our record has confirmed the provisional recommendation previously sent to the concerned

17.06.2020
SPECIAL JUDGE
Anti Corruption
Khyber Pakhtunkhwa Peshawar

EXAMINER
Court of Special Judge
Anti Corruption K.P.K. Peshawar

department. It is correct that the record of the Commission in my hand bears the copy of the letter dated 08-01-2004 bearing No.SOR.IV(E&AD)6-1/2004/Vol:III of the Establishment Department Khyber Pakhtunkhwa addressed to the Secretary to the Government, NWFP, Local Government and Rural Development Department and copy thereof endorsed to the Public Service Commission shows that the Establishment Department had given 10 years relaxation in upper age limits ^{to the accused} for recruitment of the subject post. The photo copy of the letter is available on the file of this court at page-181. It is correct that there is no testimonial of the accused in our record apart from the descriptive sheet Ex.PW11/4 in our file. The witness volunteered that we have already send the attested copies of the testimonials of the accused to the concerned department. It is correct that the posts of Grade-18 & above are non-Zonal seats. It is correct that the post for which the accused was applied and selected ^{was} grade-18. It is further correct that the accused was not selected against the seat allocated for zonal quota ^{but open merit}. It is correct that the function of the Commission for the purpose of selection and recruitment at that time was governed by the Khyber Pakhtunkhwa, Public Service Commission, Regulation, 2003. Since the said rules are not in field ^{now} therefor I cannot say anything about the provision of said rules. I do not know whether the commission had made any complaint against the recruitment of the accused. It is incorrect to suggest that I am intentionally denying the fact that under Regulation 2003 SUPRA Public Service Commission is an independent ^{authority} to determine the credential of the candidate under Regulation-15, 19 & 20. It is also incorrect to suggest that I am intentionally denying the fact that the Public Service Commission in its recruitment and selection function is totally independent from the government under Article 242 read with NWFP, Public Service Commission Ordinance 1978 (section-7). The witness explained that the commission is bound the follow the relevant rules of the requisitioning department.

RO & AC.
Peshawar.
29.06.2020.

Special Judge,
Anti-Corruption (Provincial),
Khyber Pakhtunkhwa, Peshawar.

EXHIBITED

J
EXAMINER
Court of Special Judge
Anti Corruption Khyber Pakhtunkhwa Peshawar

PW-10 Statement of Hazoor Bux Mahar, Deputy Chief, Ministry of Planning, Development and Special Initiatives, Islamabad, on Oath:

On the application of Pervez Khan for the post of Monitoring and Evaluation Specialist, (Social Sectors, Infrastructure and other Sectors) under the development project on promoting "Professional Excellence in Planning Commission/P&D Division (Phase-I)". The employment contract was given to him vide letter No.4(383)G/PC//07-Part-I Islamabad, dated the 30th May, 2007 and vide office order No.4(383)G/PC//07-Part-I Islamabad, the 23rd June, 2007 and he was appointed on contract basis initially for a period of one year with effect from 5th June, 2007. In the meanwhile a report from the Projects Wing Planning Commission Government of Pakistan dated 01-09-2007, on the basis of which his contract was terminated on 29th September, 2007 vide letter No.4(383)G/PC//07-Part-I. I produce the contract letter consisting of two pages (original seen and returned) while its copy is Ex.PW10/1, while the joining report of the accused is Ex.PW10/1A. The appointment letter copy of which is Ex.PW10/2, the report dated 01-09-2007 copy of which is Ex.PW10/3 and the termination letter dated 29-09-2007 copy of which is Ex.PW10/4.

XX

I am working in the Ministry as a Deputy Chief. It is correct that Ex.PW10/1 does not bear the signature of accused. Self stated that the accused has accepted the terms and conditions by submitting his joining report on 5th June, 2007. I request that the copy of this report may be placed on file. It is incorrect to suggest that the alleged joining report is false and fabricated. It is further incorrect to suggest that even the signature on this joining report is not of the accused. It is incorrect to suggest that the address of the accused as mentioned in the CNIC is not reflected in Ex.PW10/1. It is further incorrect to suggest that the accused was never resides on the address mentioned in Ex.PW10/1. It is also incorrect to suggest that there is no proper document of contract bearing signature of both of the parties for the job contracted. It is also incorrect to suggest that the acceptance is fabricated and the signature affixed thereupon does not tally with the signature of the accused. It is also incorrect to suggest that the entire documentation has been fabricated and planted against the accused on the behest of one Ahmad Haneef Orakzai, who is working on a senior post in

23.06.2020
SPECIAL JUDGE
Anti Corruption
Khyber Pakhtunkhwa Peshawar

ATTESTED
EXAMINED
Court of Special Judge
Anti Corruption

Pak Secretariat, Islamabad. It is further incorrect to suggest that said Ahmad Haneef had malice and malafide against the accused who being one of the accused in the complaint filed by the accused! I have not produced today the proof in which any salary was deposited in the account of the accused.

RO & AC,
Peshawar.
23.06.2020.

Handwritten signature

Special Judge,
Anti-Corruption (Provincial),
Khyber Pakhtunkhwa, Peshawar.

ATTESTED

Handwritten signature

EXAMINER
Court of Special Judge
Anti Corruption KPK Peshawar

PW-9

Statement of Nazar Hussain Shah, Education Clerk, Deputy Commissioner Office, District Khyber, on Oath:

The entry of Domicile in the name of Pervez Khan S/o Haji Fateh Khan, R/o Anai Chingi Khel, Bazar Zakha Khel, Landi Kotal is available at serial No.646 dated 25-07-1992 in the relevant register of the office while the name of four elders of the tribal area are also mentioned. A letter No.4 (9) 2011/Admn: dated 12-02-2011 regarding the re-verification of the Domicile certificate of Pervez Khan was received from the Assistant Director, Admn: Directorate General of Population Welfare, Government of Khyber Pakhtunkhwa was addressed to Political Agent, Khyber on the basis of this the verification process was done and it was brought on record that the three elders out of four were dead while one elder Pio Din who was alive, reported that the said Pervez Khan could not be traced out in Anai Chingi Khel, Bazar Zakha Khel, Landi Kotal. He further added that according to his memory he had attested the said domicile on the verification of his colleague/elder Ali Khel, who is since expired. In this respect the Assistant Political Agent, Landi Kotal conducted inquiry from the people of the area but neither Mr. Pervez Khan nor his father Haji Fateh Khan were known as residence of Anai Chingi Khel, Bazar Zakha Khel, Landi Kotal. Thus it was established that Pervez Khan had obtained the domicile fraudulently. Today I have produced the domicile and the letter of the Political Agent Khyber addressed to the Assistant Director Admn:, Directorate General of Population Welfare, Khyber Pakhtunkhwa regarding the re-verification of domicile. (Original seen and returned). The copies thereof are Ex.PW9/1 & Ex.PW9/2 respectively.

XX

It is correct that the record of domicile in question is available in our office and was issued by the competent authority. It is correct that after due verification by four elders and Tehsildar regarding the particulars of the applicant, the APA and Political Agent issued the Domicile. The inquiry report was based on the fact that three out of four elders were died before the inquiry and one of the elder has given the statement to the effect that he had verified the accused on the request of his friend. It is incorrect to suggest that the elder was supposed to be proceeded for false statement if it was so, but the concerned APA while joining hands with the population

ATTESTED
 EXAMINER
 Court of Special Judge
 Anti Corruption KPA F. S. M. M. M. M.

73.00.2020

department did not proceeded against that elder. Self stated that I do not know whether any proceeding was initiated against him or not, however the details would be available on the record. It is incorrect to suggest that domicile are issued either on Form P-1 as issued to the accused which signify only citizenship of Pakistan or on Form-A which shows permanent residency and the government allow concession in admission and appointment in government department on the latter. The witness volunteered that there is only one proforma of domicile in Khyber Agency which do not bear any letter "A" or "P". I do not know about the relevant provision under which the domiciles are issued. I cannot answer the question in affirmative or in negative that the permanent residence means that the person who wants to obtain the domicile must be the resident of Pakistan and not a resident of any particular District/Area/Agency. It is incorrect to suggest that the accused was supposed to be proceeded under the relevant provision of Pakistan Citizenship Act, 1951.

he has consented to this
any other part of it is not so

RO & AC,
Peshawar,
23.06.2020.

Special Judge,
Anti-Corruption (Provincial),
Khyber Pakhtunkhwa, Peshawar.

ATTESTED

EXAMINER
Court of Special Judge
Anti Corruption KPK Peshawar

94

PW-6 Statement of Zahoor Ahmad, Junior Executive RHO, Peshawar, on Oath:

I am permanent employee of Ministry of Interior Government of Pakistan and posted as Junior Executive RHO, Peshawar (NADRA). I am authorized by the competent authority to appear and produce the relevant record of Pervez Khan of his CNIC/MNIC. My authority letter in my favour is Ex.PW6/1. I have produced the attested copy of the form-Alif of accused Ex.PW6/2 for issuance of his MNIC wherein his date of birth is mentioned as 1958. I have also produced the attested copy of form () submitted by the accused for correction of his date of birth on the basis of matric certificate and his affidavit these documents are Ex.PW6/3, Ex.PW6/4 & Ex.PW6/5. I have also brought the CNIC record of the accused (computer generated form) consisting of 05 pages which is Ex.PW6/6. I also produced the computer generated copy of SNIC and service card which are Ex.PW6/7 to Ex.PW6/8.

X X

It is correct that the changes in the MNIC and SMNIC in respect of date of birth were made after fulfilling the legal requirement. Self stated that the changes firstly were made in the MNIC and thereafter in the SMNIC. I cannot say whether the prevailing legal formalities were fulfilled in respect of the changes in the MNIC. I have no knowledge that whether there was any complaint against the accused or not.

RO & AC.
Peshawar.
24.02.2020.

Special Judge,
Anti-Corruption (Provincial),
Khyber Pakhtunkhwa, Peshawar.

ATTESTED
[Signature]
EXAMINER
Court of Special Judge
Anti Corruption KPK Peshawar

95

PW-5 Statement of Farman Ali, clerk Ghulam Ishaque Khan (GIK) Institute of Engineering Science & Technology District Swabi, on Oath:


I am permanent employee of GIK Institution and posted as clerk and custodian of the record. I am authorized by the competent authority to appear and produce the requisite documents. My authority letter is Ex.PW5/1. I have produced the appointment order of Pervez Khan accused. The copy of which is Ex.PW5/2 consisting of 03 sheets. (Original seen and returned). I also produced the joining report of Pervez Khan against the seat Director Student Affair. (Original seen and returned), the copy of which is Ex.PW5/3. Likewise, I also produced the notice of resignation of Pervez Khan which is Ex.PW5/4. (Original seen and returned).

XX

I was not summoned by the Anti-corruption Officer during inquiry as well as during investigation in this case. It is not in my knowledge that whether there was any departmental inquiry against the accused or not. I have not brought the record of the salary of the accused.

RO & AC.
Peshawar.
24.02.2020.

Special Judge,
Anti-Corruption (Provincial),
Khyber Pakhtunkhwa, Peshawar.

ATTESTED

EXAMINER
Court of Special Judge
Anti Corruption KPK Peshawar

PW-8

Statement of Asmat Jan, Office Assistant, Degree Section,
University of Peshawar, on Oath:


Today I have produced the Gazette Book of the University of Peshawar of MA Economic (Final) Annual examination 1984 showing the result of the candidates who appeared in the November, 1984 examination wherein the name of Pervez Khan is mentioned at Roll No.6467 securing marks 386 in III Division. Original perused and returned and the copy of the same is Ex.PW8/1. Similarly, I have produced the registration record of Pervez Khan S/o Fateh Khan bearing registration No.79-P-20062. The said record is available at page-159 of the register. Original register perused and returned and the copy of the said page is Ex.PW8/2.

XX

It is correct that the period of appearing in the examination date back to 1984. It is correct that the secured marks 386/900 is equal to III Division. It is correct that as per record produced today by me, there is no proof that the accused had claimed second division against the same MA Degree. It is correct that the ACE has not requisitioned any record or contacted me in connection of this case during inquiry and our investigation. I am record keeper by designation. It is correct that no record from our section can be given or examined by anyone without permission. It is correct that I am not in possession of any letter/summon through which any department or ACE has contacted us in the matter in question.

RO & AC,
Peshawar.
22.06.2020.

Special Judge,
Anti-Corruption (Provincial),
Khyber Pakhtunkhwa, Peshawar.

ATTESTED

EXAMINER
Special Judge
Anti-Corruption (Provincial) Peshawar

PW-12

Statement of Saleh Muhammad, Project Accountant, MSPAID, Peshawar, on Oath:

I received an E-mail from head office Islamabad bearing ID hro@aidglodal.net to my E-mail ID salehm62@gmail.com along with the attachment comprising employment contract and termination letter of accused Pervez Khan Khalil. The print out of the attachment of contract and termination of the accused consisting of 5 pages is Ex.PW12/1. (Objected by the defence counsel on the ground that these documents cannot be exhibited through this witness as he is not the author of the email. Moreover, the addresses mentioned above of the emails also not confirmed.

Ruling Reserved for the reasons that the evidential value and exhibition shall be considered at the time of final judgment in light of Article 164 of Qanun-e-Shahadat Order, 1984.

I was also instructed by the head office to attend this court for the purpose of statement. It is incorrect to suggest that neither I was present at the time of the contract nor I had seen the accused. Self stated that I was in finance wing of the Associates in Development (Pvt:) Ltd, and the payment was made through me to the accused. I have seen the contents received through email in which the column regarding CNIC is blank. It is also correct that in clause-7 the date of joining and date of conclusion of contract are not mentioned. It is correct that I am not in possession of the copy of the CNIC of the accused. It is correct that the signatures of the parties on the contract were not put in my presence on the contract. It is correct that I am not the scribe of the contract. It is correct that I received the copy of the contract through email yesterday. It is correct that I was not examined by the ACE officials during inquiry or investigation. There is no regular record keeper in our office. It is correct that the head office was requested by the officials of the Welfare Department for bringing the record and to give statement in this case and I was directed by the head office to attend this court as a witness. I am working in this organization as Project Accountant AIDMSP. It is correct that I belongs to Finance wing of the said institution whereas the record of contract is normally maintained by the HR wing. It is incorrect to suggest that I am maligning today an innocent person whom I never met before nor I was privy to any of his transaction with the

ATTESTED

EXAMINER
Court of Special Judge
Anti Corruption NPW Peshawar

SPECIAL JUDGE

Anti Corruption
Khyber Pakhtunkhwa Peshawar

Not
signed
signature

employer. It is also incorrect to suggest that the officials of population welfare department are the die-hard enemies of the accused in the department and because of their litigation with the accused, I also deposed today against accused on their behest. It is also incorrect to suggest that I have never seen the accused before.

RO & AC,
Peshawar.
01.07.2020.

Special Judge,
Anti-Corruption (Provincial),
Khyber Pakhtunkhwa, Peshawar.

ATTESTED



EXAMINER
Court of Special Judge
Anti Corruption KPK Peshawar

98 99

SHOW CAUSE NOTICE

I, Amir Haider Khan Hoti, Chief Minister Khyber Pakhtunkhwa, as Competent Authority, under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000, do hereby serve you Mr. Pervez Khan, Deputy Director (BS-18) Directorate General, Population Welfare Khyber Pakhtunkhwa, Peshawar as follows :-

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

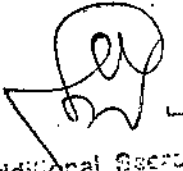
2 I am satisfied that you have committed the act of "Misconduct" as specified in Section-3 of the said Ordinance.

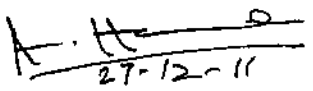
3. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalty of "Removal from Service" under Section-3 of the said Ordinance.

4. You are, therefore, required to show cause as to why the aforementioned penalty should not be imposed upon you.

5. If no reply to this notice is received within 07 days, it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

6. A copy of the findings of the enquiry officer is enclosed.


Additional Secretary
Population Welfare Department
Khyber Pakhtunkhwa Peshawar
21-83-914


27-12-11
(AMIR HAIDER KHAN HOTI)
CHIEF MINISTER
(COMPETENT AUTHORITY)

Mr. Pervez Khan,
Deputy Director
Director General, Population Welfare, Peshawar.

(100)

GOVERNMENT OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT
STREET NO.7/B HOUSE NO.125/111 DEFENCE OFFICER COLONY
KHYBR ROAD PESHAWAR CANTT:
P.O.BOX NO.583

Dated Peshawar the, 10th May, 2012

NOTIFICATION

NO. SOE (PWD) 1-61/PF:- Whereas, upon a reference received from Director General, National Accountability Bureau, Khyber Pakhtunkhwa, Peshawar Mr. Pervez Khan, Deputy Director / District Population Welfare Officer (BS-18) was proceeded against under the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance 2000 for the charges of fake M.A Degree, fake Domicile and serving in other government / non government organizations while simultaneously serving and getting pay from Population Welfare Department, Khyber Pakhtunkhwa after holding fact finding departmental enquiry;

AND WHEREAS, Mr. Waqar Ayub, Senior Member Board of Revenue was appointed as enquiry officer to conduct formal enquiry against the said officer for charges leveled against him in the charge sheet / statement of allegations in accordance with the rules;

AND WHEREAS, the enquiry officer after having examined the charges, evidence on record and explanation of the accused officer, submitted his report wherein the charges against the officer being of serious nature have been established beyond reasonable doubt;

AND WHEREAS, on the basis of findings and recommendations of the enquiry committee Show Cause Notice was served upon the accused officer to which he replied;

NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the enquiry committee, the explanation of the accused officer and hearing him in person and exercising his powers under Section-3 read with Section-8 of the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance 2000 has been pleased to impose major penalty of "**REMOVAL FROM SERVICE**" upon Mr. Pervez Khan, Deputy Director / District Population Welfare Officer (BS-18) with immediate effect.

SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT

Dated Peshawar the, 10th May, 2012

Copy forwarded for information / necessary action to the; -

1. All Administrative Secretaries, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
3. Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. Director General, Govt. of Pakistan, National Accountability Bureau, Khyber Pakhtunkhwa, Block-III, PDA Complex, Phase-V, Hayatabad, Peshawar with reference to his letter No. 1/34(CV)/IW-I/NAB(KP)/670 dated 7th June, 2011.
5. All Heads of Attached Departments, Khyber Pakhtunkhwa, Peshawar.
6. Director General, Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.
7. PS to Minister for Population Welfare, Khyber Pakhtunkhwa.
8. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
9. Principal, Regional Training Institutes, Population Welfare, Peshawar & Abbottabad.
10. All District Population Welfare Officers in Khyber Pakhtunkhwa.
11. Officer concerned C/O Director General, Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.
12. Section Officer (R-II), Govt. of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
13. PS to Secretary, Govt. of Khyber Pakhtunkhwa, PWD, Peshawar.
14. Manager, Government Printing Press, Peshawar.
15. Master file.

(USMAN SHAH)

Additional Secretary
Population Welfare Department
Khyber Pakhtunkhwa Peshawar
21-05-2012

(101)

GOVERNMENT OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT
STREET NO. 7/B HOUSE NO. 125/111 DEFENCE OFFICER COLONY,
KHYBER ROAD PESHAWAR, CANTT.
P.O. BOX NO. 583

Dated Peshawar the, 10th May, 2012

NOTIFICATION

NO. SOE (PWD) 1-61/PF.- Whereas, upon a reference received from Director General, National Accountability Bureau, Khyber Pakhtunkhwa, Peshawar Mr. Pervez Khan, Deputy Director / District Population Welfare Officer (BS-18) was proceeded against under the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 for the charges of fake M.A Degree, fake Domicile and serving in other government / non government organizations while simultaneously serving and getting pay from Population Welfare Department, Khyber Pakhtunkhwa after holding fact finding departmental enquiry;

AND WHEREAS, Mr. Waqar Ayub, Senior Member Board of Revenue was appointed as enquiry officer to conduct formal enquiry against the said officer for charges leveled against him in the charge sheet / statement of allegations in accordance with the rules;

AND WHEREAS, the enquiry officer after having examined the charges, evidence on record and explanation of the accused officer, submitted his report wherein the charges against the officer being of serious nature have been established beyond reasonable doubt;

AND WHEREAS, on the basis of findings and recommendations of the enquiry committee Show Cause Notice was served upon the accused officer to which he replied;

NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, findings of the enquiry committee, the explanation of the accused officer and hearing him in person and exercising his powers under Section-3 read with Section-8 of the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 has been pleased to impose major penalty of "**REMOVAL FROM SERVICE**" upon Mr. Pervez Khan, Deputy Director / District Population Welfare Officer (BS-18) with immediate effect.

SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT

Endst: **NO. SOE (PWD) 1-61/PF**

Dated Peshawar the, 10th May, 2012

Copy forwarded for information / necessary action to the

1. All Administrative Secretaries, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
3. Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. Director General, Govt. of Pakistan, National Accountability Bureau, Khyber Pakhtunkhwa, Block-III, PDA Complex, Phase-V, Hayatabad, Peshawar with reference to his letter No. 1/34(CV)/IW-INAB(KP)/670 dated 7th June, 2011.
5. All Heads of Attached Departments, Khyber Pakhtunkhwa, Peshawar.
6. Director General, Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.
7. PS to Minister for Population Welfare, Khyber Pakhtunkhwa.
8. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
9. Principal, Regional Training Institutes, Population Welfare, Peshawar & Abbottabad.
10. All District Population Welfare Officers in Khyber Pakhtunkhwa.
11. Officer concerned C/O Director General, Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.
12. Section Officer (R-II), Govt. of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
13. PS to Secretary, Govt. of Khyber Pakhtunkhwa, PWD, Peshawar.
14. Manager, Government Printing Press, Peshawar.
15. Master file.

0 / (USMAN SHAH)
/ C SECTION OFFICER (ESTT)

(102)

GOVERNMENT OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT
STREET NO. 7/B HOUSE NO. 135/111 DEFENCE OFFICER COLONY
KHYBER ROAD PESHAWAR CANTT.

Dated Peshawar the 16th January, 2013

NOTIFICATION

NO. SOE (PWD) 1-61/PF: - Consequent upon acceptance of appeal by the appellate authority, the penalty of "Removal from Service" imposed upon Mr. Pervez Khan, Ex-Deputy Director, Population Welfare Department issued vide this Department Notification of even number dated 10-05-2012 is converted into "Compulsory Retirement from Service" with immediate effect.

SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT

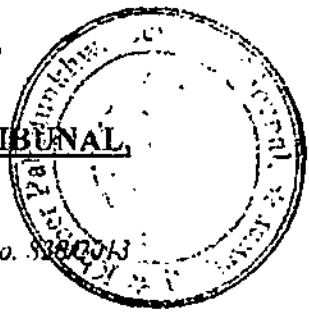
Endst: No. SOE (PWD) 1-61/PF/13739-45 Dated Peshawar the 16th January, 2013

Copy forwarded for information and necessary action to the: -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. All Administrative Secretaries, Khyber Pakhtunkhwa, Peshawar.
3. All Heads of Attached Departments, Khyber Pakhtunkhwa, Peshawar.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
5. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
6. Secretary, Govt. of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
7. Director General, Khyber Pakhtunkhwa, Population Welfare Department, Peshawar.
8. PS to Minister for Population Welfare, Khyber Pakhtunkhwa.
9. PS to Secretary, Govt. of Khyber Pakhtunkhwa, PWD, Peshawar.
10. Manager, Government Printing Press, Peshawar.
11. Officer concerned.
12. Personal file of the officer.
13. Master file of SO (E).

21/1/13
/c SECTION OFFICER (ESTABLISHMENT)

103



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

SERVICE APPEAL No. 388/2013

Pervez Khan Deputy Director @, Population Welfare Department Khyber Pakhtunkhwa, Peshawar..... (Appellant)

-: VERSUS: -

Government of Khyber Pakhtunkhwa through its Chief Secretary, Civil Secretariat Peshawar and two others..... (Respondents)

Application under section 7 (2) (b) of NWFP Service Tribunal Act 1974, directing respondents to supply the court as well as appellant attested copies of the documents/material on which the proceedings of Removal from service and subsequent Compulsory retirement was based including attested copies of appellant's 03 NOs original personal files and reports of the three inquiries conducted on loss of these files.

Respected Shewth:

Put up to the court with relevant appeal. Review concerned 6/2/14

1. That the instant service appeal is fixed today for submission of written reply from the respondent before this honorable court.
2. That the respondents throughout proceedings of the Removal from service of the appellant as well as his Compulsory Retirement did not give appellant any documentary evidence, either primary or secondary, in support of their allegations nor the appellant ever confronted therewith at any stage of the proceedings despite his yell.
3. That, inspections of the said documents in Xerox form are of vital importance for determination of merits of the instant appeal as well as for defense of the appellant.
4. That, during the impugned proceedings the appellant nine times in writing as well as numerous times verbally requested the respondents for supply of copies of the record /evidence on which the allegations were based but no positive response.
5. That the entire impugned proceeding was based on photocopies received with the pseudonymous complaint of one Khairullah S/O Hizbullah which has been held by ACE authorities a fake identification and non-existent.
6. That opponents of the appellant sitting on the helm of affairs in the department actually removed appellant's 03 NOs original files under their custody in office, tempered, mutilated and attached these tempered copies with the pseudonymous complaint themselves in order to erect a false malicious case against the appellant and thus stop him from execution of various judgments arrived and pre-empt initiation of proceeding in courts merited there-against.
7. The record solicited from the department/respondents is the following:
 - i. Copies of pseudonymous complaint with annexures, record of inquiries reports both Departmental and Regular, along with incriminating material & annexures on which the allegations based, including note parts of the files moved therewith, throughout.
 - ii. Copies of 03 volumes of the appellant's personal file NO. SO-E (PW) 1-61/PF, containing record received from his parent department and PSC.

ATTACHED

[Handwritten signature and stamp]

(104)

- iii. First Inquiry Report on loss of the appellant personal files, conducted by Mr. Israr Khan AS Agriculture Department, along with another BPS 19 officer from Law Department, Second inquiry report conducted by Mr. Asghar Khan Director PDMA and third inquiry report of Mr. Muhammad Arafeen Secretary Establishment, along with respective annextures and note parts.
 - iv. Copy of summary/proposal along with annextures whereby Mazhar Sijjad IO was replaced by the respondents.
 - v. Copy of Summary to the Chief Minister (competent authority) for approval of the Statement of allegations, Charge Sheet, imposition of penalty and Show cause notice along with annextures & respective note parts.
 - vi. Copies of two summaries/proposals sent by the department to Governor KPK for considering appellant's appeal against his removal and another for the recovery of paid salaries etc from him, along with annextures and note parts.
 - vii. Copies of correspondence made with Law Department, NAB KPK, Directorate of Prosecution and AGE KPK, and latest letters sent by the department under the approval of Ahmed Hanif respondent 3, all-along with note parts and annextures.
 - viii. All correspondence along with note parts, made with Establishment & Law Departments and other outside organizations relating petitioner so far.
 - ix. Copies of the appellant's correspondence made with departments and note parts, showing actions taken there-upon so far by the respondents on his pending grievances, now part of the instant service appeal.
 - x. Promotion proposal along with note parts and annextures, sent to PSB in the case of Mudassir Shah & others (First in 2005 which was returned back due to issuing show-cause notices to them and Second last one in 2007 which was succeeded).
 - xi. Promotion proposal sent to PSB in the case of Dr. Habib Shah & others (both First and Second last one), his complete absorption case sent to Governor KPK, along with note parts and annextures.
 - xii. Copies of complete inquiry case of Mr. Shahi Nawab DPWO and record whereby his major penalty was withdrawn on the department recommendation, along with note parts and annextures.
8. That production and perusal of the requested record/ documents before the honorable tribunal is of vital importance to reach at just conclusion. It is also equally essential for appellant self defense being his fundamental right and to advance his career.
9. That the referred inquiries and actions have already been concluded therefore record essential for the just and effective disposal of the instant appeal.
10. That the appellant hence-before has made several applications as well as verbal requests to the respondents for supply of the requested record. That the Law Department, Establishment Department and latest Information Commission, KPK while exercising powers under Right to Information Ordinance 2013, have advised the respondents to provide the requested record (copies of letters annexed). However despite that the same were not provided out of naked malafide therefore this application as of last resort.

Copy of original copy
 Peshawar
 Service Tribunal

PRAYER:

In view of the above it is very humbly requested that the respondent 2 may kindly be directed to produce documents/material cited above in attested form in court for inspection of the tribunal, determining the prayers of the instant appeal as well as to the appellant for his defense please.

Pervez Khan (Appellant in person)
 Ex-Dy. Director/EDO Population
 Welfare Department, Peshawar

Date of presentation of Application 29-11-2015

No. of Words 800

Copying Fee 6

Urgent 6

Total 6

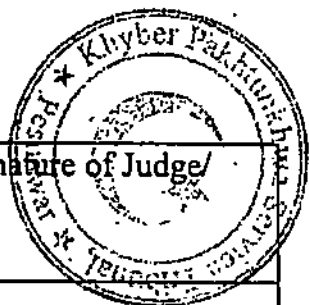
Name of Copyist [Signature]

Date of Completion of Copy 28-12-2015

Date of Delivery of Copy _____

[Signature]
 6/2/14

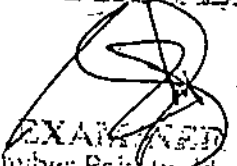
105



Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	19.11.2015	<p>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</p> <p>Appeal No. 838/2012 Pervez Khan Versus Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar etc.</p> <p><u>JUDGMENT</u></p> <p><u>PIR BAKHSH SHAH, MEMBER.-</u> Appellant in person and Government Pleader (Mr. Muhammad Jan) with Saghir Musharaf AD for the respondents present.</p> <p>2. The appellant, serving as Deputy Director (BPS-18) in the KPK Population Welfare Department, Peshawar, was removed from service vide order dated 10.5.2012, against which he filed departmental appeal and then instituted this Service appeal No. 838/2012 before this Tribunal. His departmental appeal was decided vide order dated 16.1.2013 and his penalty of removal from service was converted into compulsory retirement. The record of this Tribunal shows that on 27.09.2013, the appellant submitted fresh memo: of appeal which was admitted for regular hearing in which he impugned both orders of the competent authority and the appellate authority. His appeal is for the following:-</p>

Deposited in
court for
reference in
order by the
Judge and
N.B. considered
has made the
present Party


ATTESTED


EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

106

- a. To set aside the impugned removal from service notification No. SOE(PWD)1-61/PF, dated 10.05.2012 and subsequent impugned Final Notification of Compulsory Retirement No.SOE(PWD)1-61/PF- dated 16.01.2013, delivered on 21.4.2013, both defective in present form and substance, based on incompetent mischievous letter of NAB KPK, dated 7th June, 2011 and part of malicious conspiracy against the appellant,
- b. To set aside the inquiry proceedings being malicious, void ab-initio, without locus standi, without jurisdiction and adopting due process of law & settled principles of fair trial in inquiry proceedings, perverse to law and terms & conditions of service as pointed out in body of the appeal. Findings of the Enquiry Officer being unsigned, therefore, no legal value.
- c. To confirm and allow all back benefits including service, & pecuniary benefits, and promotion from the back date of 19.02.2007, accruing from the policy decision of the respondent No.1, communicated to respondent No. 2 vide NO.SOR-II(E&AD)3-249/07, Vol-I, dated 30.05.2011, and dictum of the Supreme Court of Pakistan contained in judgment dated 15.07.2011 on appellant's Civil Appeal No. 172-P/2010, holding that the required mandatory period of 12 years service of the appellant for promotion to BPS-19 was complete at the time of consideration of his promotion case by PSB and three years stay in the department in appellant's case was not required.
- d. To confirm and allow adding up previous non-gazetted service of the appellant to his total service as already requested to the department.
- e. To confirm and direct respondents to make payment of arrears of appellant's full salary for unpaid period with increments and mark-up upto-date, and of House Subsidy for the period served in capital city and TAs/Das bill pending with mark up.
- f. To confirm and direct respondents to allow move-over to the appellant from the due date i.e. 31.12.2000 and pay him arrears with mark-up thereof, in analogy to his ex-colleagues.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

g. Direction to respondent No. 2, to fairly process ACR of the appellant, submitted by appellant's reporting officer, now maliciously kept pending since long.

h. Any other relief not specifically prayed for but necessary or arise during the pendency of the appeal may also be allowed, all above with cost and mark-up throughout please.

3. Appointed in the non-gazette-position in the year, 1980, the appellant was freshly appointed in BS-17 in the Local Government & Rural Development Department Khyber Pakhtunkhwa on contract basis. Later-on, he was once again fresh appointed on 29.09.2004 as Deputy Director/Executive District Officer (BS-18) in the Population Welfare Department through recommendation of the Public Service Commission. Per charge sheet and statement of allegations he was put to face the following charges:-

- (i). You have two domicile certificates i.e. one from settled area of District Peshawar which is your original place of domicile and second obtained from Khyber Agency, which you have used for your recruitment as Deputy Director/DPWO (BS-18) in the Population Welfare Department.
- (ii). You have tampered your M.A Economics Degree, session 1984 Annual under Roll No. 6467 and changed your 3rd Division to 2nd Division to make yourself eligible for recruitment to BS-17 and above posts in the initial recruitment quota for which you were ineligible with your 3rd Division Degree.
- (iii). You, through concealment of facts from the court, have managed to get ex-parte decree from court and thus reflected your age nearly five years less than actual besides the fact that you have also been granted 14 months relaxation in upper age limit at the time of your recruitment to

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Serv. Commission,
Peshawar

charges

108

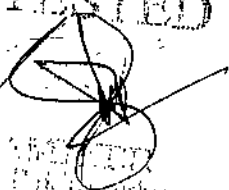
the post of Deputy Director (BS-18) in the Population Welfare Department.

- (iv) He has served Planning Commission of Pakistan as Monitoring Specialist at monthly salary of Rs. 75,000/- w.e.f. 05.06.2007 to 29.7.2007 without getting NOC from his Parent Department i.e. Population Welfare Department which is a gross violation of Rules as he has also been receiving salary from the department.
- (v) He has served Ghulam Ishaq Khan Institute of Sciences and Technology as Director (Students' Affairs) at monthly salary of Rs. 30450/- w.e.f. 01.04.2005 to 10.6.2005 without getting NOC from his parent department i.e. Population Welfare Department which is explicit violation of Rules.
- (vi) He has served in clear violation of Rules in an Organization "Associates in Development (Pvt) Ltd. W.e.f. 25.01.2008 to 25.11.2008 at annual salary of Pak Rupees equivalent to Us\$ 40710/- per annum with other fringe benefits while being employed and paid as Deputy Director Population Welfare Department.

Initially Mazhar Sajjad, then Addl- Secretary Industries Department was appointed as enquiry officer who vide his letter dated 18.2.2011 declined to conduct the enquiry and sated as follows:-

"On 13.02.2011, I decided to pay a courtesy call on the Secretary Population. I reached the office at about 10.00 am. I was informed that Secretary Population is out of office. Therefore, in his absence, I visited the adjacent office of Mr. Noor Nawaz Khattak, acting Director General, Population Welfare Department. After formal introduction, we started discussing ways and means to complete the task in accordance with the procedure. The acting Director General expressed his earnest desire convicting the accused at any cost as he (accused officer) is making problems for the department officers in promotions case by challenging it in the courts of law. IO replied that the said accused will be given due opportunity to prove his innocence. Cross examine the witnesses and to afford him all lawful opportunities to defend himself under the law. I told acting D.G to be present for recording his

ATTESTED


Khalid Iqbal Khwaja
Deputy Director,
Peshawar

109

statement and his cross-examination by the accused officer as he (the accused officer) had alleged against him (acting D.G) behind the whole process. The acting D.G was not ready to be cross-examined in accordance with law. The officer, apparently, became disappointed and expressed that they needed an officer who could immediately solve their problem. The officer kept emphasizing that major punishment to the accused officer is inevitable in the department's interests. On expressing my inability for such pre-determined results of the proceedings he said that he would try to appoint another suitable person for the job. I received this impugned letter in response at a time when I had actually started the proceedings and was half-way to complete it.

I have no objection if the enquiry is entrusted to anyone and the competent authority may like to replace the undersigned and appoint a suitable person for the task."


4. The record shows that thereafter the departmental regular enquiry was conducted by Mr. Waqar Ayub, Senior Member Board of Revenue who submitted his report comprising of 7 pages. A final show cause notice was issued to the appellant to which he submitted his reply. Vide impugned order dated 10.5.2012, he was removed from service which penalty was converted into compulsory retirement by the appellant authority.

5. The respondent department contested the appeal. Their written reply is available on record.

6. Arguments heard and record perused.

7. The appellant is fortunately a practicing lawyer at Peshawar. He submitted his exhaustive

ATTESTED


 JEWANAT
 Khayal
 Peshawar

No finding recorded
against these charges.

arguments, almost for complete two days, which are summarily reproduced as follows:-

(1) that the charges leveled against the appellant per charge sheet do not constitute mis-conduct given in the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 (herein-after referred as RSO 2000), because a mis-conduct should be during the service life of a civil servant at the cost of the public office but here it is evident that at the time of commission of the alleged charges No. (i) to (iii), the appellant was not a civil servant. It was further submitted that so far the commission of charges No.(iv) to (vi) is concerned, so during this time, the appellant was either under suspension or on extra-ordinary leave, who was not receiving any salary from the Government exchequer.

Points in
defense

3/14-A

(2) That according to Rule 16 of the Khyber Pakhtunkhwa Civil Servants (Conduct) Rules, 1987 (here-after referred to Conduct Rules, 1987) a civil servant is restrained only from trade etc. but he is not restricted to adopt a part time job particularly when he is not receiving any salary from the government.

(3) While placing the definition of mis-conduct, as

(111)

given in the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 in juxtaposition with RSO, 2000, his third arguments was that legislature purposely excluded the Conduct Rules 1987 from the definition given in RSO, therefore, the appellant is not liable for violation of any provision of the Conduct Rules.


And this being the legal position, the respondent department had unlawfully concluded that the appellant had violated Rule-16 of the Conduct Rules, 1987.

(4). That Section 11 of the RSO, 2000 has also overriding effect hence operation of the Conduct Rules, stands superseded and having become ineffective, the appellant was wrongly punished for this reason.

(5) That the competent forum to question these issues of domicile, qualification and date of birth was the Public Service Commission under its relevant rules and not Population Welfare Department.

(6) That though the charge against him is that he had committed tempering and fraud in making his 3rd division as 2nd division and not that he was ineligible for the post of BS-18. The appellant put enough stress on the distinction between the two and submitted that charge of tempering is not

ATTESTED


Khyber Pakhtunkhwa
Secretary, Peshawar

Art 2-12
BOS-18 PSC
1-2-302
PSC
2-2-2002

2-13-
10-10

(112)

proved against him, while the second limb of the allegation if proved is also protected under the principle of locus poenitentiae

(7) The appellant while quoting definition of "duty" in G.F.R submitted that a civil servant, after rendering his formal duty of 6-7 hours, cannot be asked as to why he has thereafter performed duty with other organizations. And to add to this argument, the appellant submitted that a period under suspension or on E.O.L cannot be counted the duty span of the appellant.

419
F-423

8. While defending himself on factual aspects of the charges, we would like to briefly reproduce his defensive plea to each charge as follows:-

Charge No. i:- two domiciles.

i. That the post of Deputy Director BPS-18 was to be filled on merit and not on the basis of the FATA domicile, therefore, he did not need it.

✓
12 334

ii. That the appellant had duly surrendered his domicile of Zone -II to his departmental authority before he would have acquired FATA domicile, therefore, he could not be charged for having two domiciles at the same time.

33-3

iii. That fore-fathers of the appellant belonged to the Tribal area, later on in the stream of time shifted to

34-3

ATTACHED



Signature and stamp of an official, possibly a member of the Tribunal, with some illegible text below it.

Peshawar and per Section 17 and 20 of the Pakistan Citizenship Act, 1951 read with Pakistan Citizenship Rules, 1952, a permanent residence (abode) at FATA was not essential for the appellant to acquire a FATA domicile. Reference was also made to PLJ 1983-Quetta-1.

Charge No. ii:- Fraud committed in change of division (grade) in M.A Economics.

(i) That he never concealed this fact from the Public Service Commission that he was a 3rd Divisioner in M.A Economics in which respect he also referred to photocopy of the Public Service Commission form on record.

(ii) That for the post of BS-17 the required qualification was B.A and not M.A Economics.

(iii) That while applying for BS-18 he was M.Sc. in Rural Development as required in addition to M.A Economics, therefore, he never needed any fraud.

Charge No.iii:- Date of birth & Ex-parte court decree.

(i) That on the basis of his service in provincial government (BS-17 and below) he was already entitled for the concession of age relaxation upto 10 years, therefore, this fraud was purposeless and allegation of committing fraud to get ex-parte

ATTESTED

EXAMINER
Kyber Pakhtunkhwa
Service Tribunal,
Peshawar

decree is totally baseless and irrelevant.

- (ii) That to question a court decree is the jurisdiction of the very court and nobody-else can question that decree, much-less to be counted by population Department as mis-conduct on the part of the appellant.

12-2

370-77

Charge No. (iv) to (vi):- Service with GIK etc.

- (i) That with a purpose, Conduct Rules were already excluded from the definition of mis-conduct of the RSO, 2000, therefore, he is not liable under the Conduct Rules.
- (ii) That mis-conduct of the appellant under Rule 16 of the Conduct Rules would not arise for the reasons as he was under suspension and on E.O.L, therefore, during his service with the Planning Commission etc. he never received any salary from his parent department; and secondly, that no NOC was required for the appellant for the service with the Planning Commission.

Never admitted
allegedly

9. While concluding his arguments, the appellant stated that the whole drama started on the basis of a pseudonymous & anonymous complaint under the name of one Khairullah and according to instructions of the Establishment Department an anonymous

/pseudonymous complaint cannot be entertained much-less to be made basis of disciplinary action against the appellant. That the appellant was victimized and became target of the high ups of the department which is also evident from letter dated 18.2.2011 of Mazhar Sajjad. Lastly, the appellant submitted that by dint of his hard work and fair play he had reached to this high position and as the proceedings were based on malafide, therefore, the impugned orders may be set aside and he may be given all the reliefs requested from this Tribunal in the appeal

10. The learned Government Pleader resisted this appeal by submitting that Conduct Rules, 1987 was not excluded by RSO, 2000 and the interpretation made by the appellant is wrong and incorrect. He further submitted that the charges leveled against the appellant are proved on record and as the charges constitute mis-conduct, therefore, the appellant was rightly punished by the authority. That all codal formalities of the charge sheet etc. have been complied with and full opportunity of defence and personal hearing was provided to the appellant, therefore, the appeal is liable to dismissal. That the appellant was not proceeded illegally or unlawfully and his allegations about malafide or ill will on the part of the high ups of the department including the enquiry officer is wrong

ATTESTED

EXAMINED
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

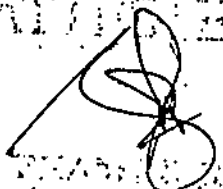
and baseless as evident from record. He submitted that there is no merits in this appeal, therefore, the same may be dismissed. Reliance was placed on 2009-SCMR-1492.

11. The Tribunal would like to reproduce here the definition of misconduct in RSO, 2000.

12-13
12-16
2-10-15

Misconduct INCLUDES conduct prejudicial to good order or service discipline or conduct unbecoming of an officer or a gentleman or involvement or participation for gain either directly or indirectly in industry, trade or speculative transactions or abuse or misuse of the official position to gain undue advantage or assumption of financial or other obligations to private institutions or person of such as may cause embarrassment in the performance of official duties or functions" (2)(c) of RSO, 2000). The opening sentence of the definition shows that the word INCLUDES has been used instead of MEANS which was used in the government Servants (E&D) Rules, 1973 which shows that the definition of misconduct in RSO, 2000 is elastic and comprehensive encompassing so many other violations and the same cannot be restricted only to the omissions/commissions given in the definition. About discretionary powers of the competent authority, we may also refer to Section 3(1) of the RSO, 2000 which ~~w/c~~ further provides, wherein the opinion of the

ATTACHED



Secretary
Peshawar

12-16 p.s.
G

malatide

competent authority, a person a government or corporation service is

(a)

(b) Is guilty of misconduct. According to which 'opinion' of the competent authority is a linchpin and that to count on consider an omission/commission to be misconduct is the discretion or prerogative or opinion of the competent authority. Misconduct has also been given in 2011 PLC (CS)162 which is as follows:-

Misconduct means. Misconduct would not mean what was stated in such definition but every transgression of every rule, every conduct inconsistent with faithful discharge of duty, acts of bad governance, improper conduct, doing of something by a person inconsistent with conduct expected from him under the rules of institutions or organization would be misconduct.

We would like to further add that the word misconduct is antonym to the word Conduct. The word conduct has not been defined in the Service Laws. Its amplitude has however been described in Section 15 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 as follows:-

"The conduct of a civil servant shall be regulated by rules made, or instructions issued, by government or a

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Generalized

RSO
2000

118

Compartmentalization of a misconduct, in the pre-service and post service span is alien to the service code. A misconduct may or may not be an offence but an offence is undoubtedly a misconduct. As a result of the foregoing discussion, we would observe that the Conduct Rules, 1987 were very much effective. We are afraid to state that the views of the appellant that at the time of charges (i) to (iii) he was not a civil servant, therefore, it is not a misconduct or that the competent forum for these charges was Public Service Commission are misconceived. In support of our view, we may refer to 2012 PLC(CS) 893 as follows:-

"Appointment made on fake and forged documents by senior officer of the department. Validity---Such acts for being prejudicial to good order and discipline and unbecoming of an officer would amount to misconduct."

Appointing authority who is not in office level

12. Letter dated 18.2.2011 of the earlier enquiry officer Mr. Mazhar Sajjad was also attentively perused. It is evident that Mazhar Sajjad was not summoned by Secretary or Director General, but he himself happened there. Had this been in the planning of the Secretary, he would have instructed Mr. Mazhar Sajjad long before his appointment as Enquiry Officer. We would not further go into this letter as he is neither the enquiry officer nor a witness of the appellant in the enquiry proceedings. The enquiry report of Mr. Waqar Ayub

مذہب ساجد

ATTACHED

EXAMINED
Kawther Raza Khan
Service Tribunal,
Peshawar

119

prescribed authority, whether generally or in respect of specified group or class of civil servant."

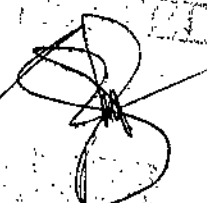
The Conduct Rules, 1987 were framed under Section 26 of the said Act. So far charge No. iv to vi against the appellant are concerned, according to the findings of the enquiry officer, the appellant had violated Rule 16 of the Conduct Rules, 1987. One of the arguments of the appellant is that Section 11 of RSO, 2000 excludes Conduct Rules, 1987. We have gone through Section 11 of RSO, 2000, and as nothing repugnant was shown by the appellant in the Conduct Rules, 1987 to the provisions of RSO, 2000, therefore, the Tribunal is of the considered view that interpretation made by the appellant is not correct. As a result of the foregoing discussion, the Tribunal holds that the Conduct Rules, 1987 were very much effective. Ordinarily, what conduct is, it is not a misconduct and vice versa. According to Black Law Dictionary 10th Edition page 358, the word conduct means personal behavior whether by action or inaction, verbal or non-verbal; the manner in which a person behaves; collectively, a person's deeds. According to the view of the Tribunal misconduct is not a static phenomenon. Life of a civil servant flows like a stream, the constant flow of which is possible with the push of waters in the rear. When water in the rear is stagnant, the flow is not possible. Stream is not the name of the stagnant waters.

Handwritten notes in Urdu script.

Handwritten notes in Urdu script.

Extraneous considerations
Handwritten notes in Urdu script.

Philosophy

APPROVED

 hwa
 Postmaster

No

shows that the same has been conducted with impartial approach and who has put in his entire self with bonafide to sift grain from chaff. He submitted his enquiry report dated 20.11.2010. We have gone through this report and have come to know that the enquiry officer has attended to all valid and legal objections and queries of the appellant. The enquiry report is worth perusal. After attending to objections and queries of the appellant and after a thorough discussion, the enquiry officer has given his findings on the issues in the light of material before him and the rules on the subject. This also shows that full opportunity of defence and hearing has been provided to the appellant. About factual aspects of the charges, we would like to reproduce relevant portion from his report as follows:-

Charge No. (i).

The officer has not denied obtaining of two domiciles. However, he has explained that before applying for issuance of domicile certificate from Political Administration of Khyber Agency, he had surrendered his earlier domicile The officer could not produce proof of receipt of the application in Deputy Commissioner's Office, whether the application was accepted, The department provided a copy of P.A Khyber Agency's letter in which he has opined that the domicile has been obtained fraudulently,

Charge No. (ii).

The Public Service Commission in response to the query made by me indicated that the accused officer provided documentation that he had secured 495 marks out of 1100 in M.A Economics. This works out

ATTENDED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

to be 45% marks which is 2nd Division in accordance with paragraph 19(d) of the Khyber Pakhtunkhwa Public Service Commission Regulation, 2003. Earlier through annexure-I it was confirmed by the Public Service Commission that the officer was considered for test/interview on basis of M.A Economics.

Cross
Examination

Charge No. (iii).

Judgment passed by the Civil Judge 1st Class, Peshawar on 13.12.1984 dismissing the suit brought by the accused against the Secretary, Board of Intermediate & Secondary Education, Peshawar for correction of his date of birth from 13.4.1958 to 31.12.1964. Additional District Judge-III, Peshawar dated 24.2.1985 dismissing appeal, and Senior Civil Judge, Peshawar granting an ex-parte decree on 21.6.1989 in a subsequent suit for change of date of birth were provided by the department....

Two things have been noted from the examination of the aforesaid judgment. Firstly while instituting the subsequent suit before the Senior Civil Judge, Peshawar which was decreed ex-parte on 21.6.1989, the officer did not inform the court that in earlier litigation on the subject matter a decision was already in the field. Had he done so, the subsequent suit would have been thrown out being hit by the principle of *res judicata*. This points to the willful concealment of fact in order to get a favourable decision, which in term of Section 12(2) of Civil Procedure Code is not a valid decision. Secondly, it is exceptional for a boy at the tender age of 10 years to appear and pass matriculation examination.

10 year
age related

Charges No. (iv) to (vi)

As all the three charges are of similar nature they are being discussed together.

Rule 16 of the Civil Servants (Conduct) Rules, 1987 in unambiguous terms prescribes that whenever a civil servant seeks to engage in any trade or undertake employment or work, other than his duties he has to obtain prior sanction of the government. ... The officer's stints outside the Population Welfare Department without the express permission of the government are violations of the aforementioned Rule. ... It is of no consequence whether he was under suspension or he did not get salary from the employers whom he joined outside Population Welfare Department.

2002?

21/5

122

13. Summing up the entire discussion, we hold that the respondent department has successfully proved mis-conduct of the appellant on factual as well as legal foundations. The appellant was proceeded under RSO, 2000 and its Section 11 does not exclude the Conduct Rules, 1987. The record shows that appellant was provided full opportunity of defence. He has also been personally heard. The competent authority removed him from service which penalty was converted into compulsory retirement by the appellate authority. The appellate authority has already taken a lenient view. The Tribunal concludes that the penalty of compulsorily retirement, in the circumstances, of the case, is not harsh. Resultantly, finding no merit in this appeal, the appeal is hereby dismissed. No order as to costs. File be consigned to the record room after its completion and compilation.

ANNOUNCED
19.11.2015

1. *Self- Pir Bakhtish Shah,*
Member

Certified true copy
EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Self- Abdul Latif,
Member

Date of Presentation of 24-11-2015
 Number of Words 7200
 Copying Fee 38
 Urgent
 Total 38
 Name of Copyist [Signature]
 Date of Completion 29-02-2016
 Date of Delivery of 01-03-2016

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Munib Akhtar

Civil Petitions No.216-P of 2016 and 449-P of 2017

[Against the judgment dated 19.11.2015, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeal No.335/2012 and against the judgment dated 01.08.2017, passed by the Peshawar High Court, Peshawar in W.P.No.3553-P/2016]

Pervez Khan.

(in both cases)
...Petitioner(s)

Versus

Government of KP through its Chief Secretary, Civil Secretariat Peshawar and others.

...Respondent(s)

Petitioner (in both cases) : In person

For the Respondent(s) : Barrister Qasim Wadood,
Addl.A.G. KP
Muhammad Aleem, Director,
Population Welfare Department,
KP

Date of Hearing : 13.09.2019

ORDER

Gulzar Ahmed, J.—

C.P.No.216-P/2016.

We have heard the petitioner at some length. No substantial question of law of public importance in terms of Article 212(3) of the Constitution is raised. The petition is, therefore, dismissed and leave refused.

2. **C.P.No.449-P/2017.** We have heard the petitioner, who has appeared in person. He was appointed as Chief Executive Officer in Water and Sanitation Services Company on contract basis, which contract was for the period of five years. Such

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

contract was terminated vide Notification dated 22.09.2016. He filed writ petition against such termination of his contract seeking reinstatement of employment on contract basis. Obviously, a contract employee could not file a writ petition seeking reinstatement in service for that contract employment is governed by the rule of Master and Servant and in any case the contract employment is not a document, which is specifically enforceable. At the best, what the petitioner could have claimed on termination of his employment is damages, for which relief he has not gone rather has sought remedy under writ jurisdiction, which was not available to him. In any case, the High Court has extensively considered the case of the petitioner and has found that the petitioner was not a competent person to be appointed for the said post and therefore, his termination was found to be illegal and not proper. Nothing has been pointed out to us which could show that the impugned judgment suffers from any illegality, perversity or impropriety. We find no merit in this petition, the same is, therefore, dismissed and leave refused.

Sd/-J
Sd/-J

Certified to be True Copy



Court Associate
Supreme Court of Pakistan
Islamabad

17487/18

GR No: _____
 Date of Filing: 13.9.18
 No of Pages: _____
 No of Exhibits: _____
 Reg. No. of Petitioner: _____
 Copy Fee Paid: _____
 Court Fee Stamp: _____
 Date of Court Order: 28.9.18
 Date of delivery: 28.9.18
 Complainant: _____
 Respondent: _____

ابتدائی اطلاعی رپورٹ

فائل

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 152 مجموعہ ضابطہ فوجداری

شعبہ لٹین / ACE / 84

تاریخ مختلف باہر اوقات ماحول

درجہ و تفصیل درج کرو

1۔ تاریخ و وقت رپورٹ	دوسری اوقات 30 مئی 2013ء
2۔ نام و سکونت اطلاع دہندہ مستفید	سکین احمد سید صاحب پالو لٹین دسٹریکٹ
3۔ مختصر کیفیت جرم (معدوقہ) حال اگر کچھ لیا گیا ہو۔	Pc 419/420/468/471/477
4۔ جائے وقوعہ فاصلہ قحانہ سے اور سمت	پالو لٹین دسٹریکٹ
5۔ نام و سکونت ملزم	میر محمد خان حلیل
6۔ کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو	19 مئی 2013ء کو 19 مئی 2013ء کو 19 مئی 2013ء کو 19 مئی 2013ء کو
7۔ قحانہ سے روانگی کی تاریخ و وقت	بیسپا

ابتدائی اطلاع نیچے درج کرو۔

2013 SOE-(PWD)-6/12/VOL-21392

1۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

2۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

3۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

4۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

5۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

6۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

7۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

8۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

9۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

10۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

11۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

12۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

13۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

14۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

15۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

16۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

17۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

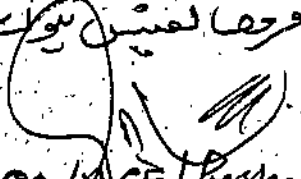
18۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

19۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

20۔ اطلاع دہندہ نے اطلاع دی کہ میر محمد خان نے میر محمد خان سے 75000 روپے کی رقم لی اور اسے اپنے پاس رکھا۔

رہائی جو برطانوی مشین گان
شمارہ (1003) پرشل
فائل نمبری شیٹ

دستور و پابندیت کو برسر کار لای کر اسے *depreciation*، سود 5984211 روپیہ اور
depreciation، سود 21348368 روپیہ نقصان پہنچانے کا قریب باکر ماسٹرز پورٹ
 میں برسر کار لای گئی تھی۔ جن پر ڈائریکٹریٹ نے فیڈ بیک کی ہے اور اس پر 7571 روپیہ
 19/11/13 کے حکم کے تحت حیدرآباد کے ایف ڈی کے لئے اور مقررہ کارڈ کی اجازت و مابقی کے لئے
 حیدرآباد کے ایف ڈی کے لئے حیدرآباد کے ایف ڈی کے لئے حیدرآباد کے ایف ڈی کے لئے
 حیدرآباد کے ایف ڈی کے لئے حیدرآباد کے ایف ڈی کے لئے حیدرآباد کے ایف ڈی کے لئے
 حیدرآباد کے ایف ڈی کے لئے حیدرآباد کے ایف ڈی کے لئے حیدرآباد کے ایف ڈی کے لئے


 CO/ACE/Peshawar
 19/11/2013

دستخط

عہدہ

اطلاع کے لئے اطلاع دہندہ کا دستخط ہوگا یا اس کی سربراہان لگایا جائے گا۔ اور اس پر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔ حروف الف یا ب سرخ روشنائی سے بالمتقابل
 ایک دوسرے پر مشتمل ترتیب واسطے باشندگان علاقہ غیر یا وسط ایشیا یا افغانستان جہاں موزوں ہوں، لکھنا چاہئے۔

127

Charge Sheet.

(Case FIR No.08 date 19.11.2013)

State Versus:-

Pervez khan S/o Fateh khan,
R/o Darmangi Peshawar Palosi,
Talarzai, Rtd: Deputy Director,
Population Welfare Peshawar.

I, Muhammad Bashir, Special Judge, Anti-Corruption (Provincial) Khyber Pakhtunkhwa, Peshawar, hereby charge you accused named above as follows:-

Firstly:- That you accused Pervez khan within the Criminal Jurisdiction of P.S. ACE, Peshawar, simultaneously prepared/obtained two fake and bogus domicile certificates, one from the settled area and the other from Khyber Agency, you accused obtained a decree from the court that your date of birth was 13.12.1963 by concealing the fact that your real date of birth was 20.04.1958, you accused also obtained Master Degree in Arts in Economics in IIIrd division, tampered the same and converted your passing division from third to second division and thus committed an offence punishable u/s 468 of PPC and within the cognizance of this court.

Secondly:- That you accused Pervez khan within the Criminal Jurisdiction of P.S. ACE, Peshawar, simultaneously after preparing/obtaining two fake and bogus domicile certificates, one from the settled area and the other from Khyber Agency used the same as genuine, you accused after obtaining decree from the court that your date of birth was 13.12.1963 by concealing the fact that your real date of birth was 20.04.1958 used the same as genuine, you accused also after obtaining Master Degree in Arts in Economics in third division, tampered the same and converted your passing division from third to second division, used the same as genuine and thus committed an offence punishable u/s 471 of PPC and within the cognizance of this court.

19/11/13
P/S ACE

REGISTERED

COPIES SENT TO...

Thirdly:- That you accused Pervez Khan within the Criminal Jurisdiction of P.S. ACE, Peshawar, got yourself appointed as Deputy Director in Population Welfare Department by obtaining two domicile certificates, one from the settled area and the other from Khyber Agency and used the same as genuine for the above said post and that you in order to make yourself eligible for the above said post, by concealing the fact that your real date of birth was 20.04.1958, you obtained a decree from the court that your date of birth was 13.12.1963 and that in the year 1984, you obtained Master Degree of Arts in Economics in third division and by tampering the said degree, you converted your passing division from third to second and that by not obtaining the NOC from your department and violating the rules, you obtained employment in Planning Commission of Pakistan as Monitoring Specialist and that again by not obtaining the NOC from your department and thus violating the rules, you served in Gulam Ishaq Khan Institute of Science and Technology from 01.04.2005 to 10.06.2005 by receiving monthly salary of Rs.30,450/- and that from 25.01.2008 to 25.11.2008 you served in Organization Associates Development Private Ltd: for the annual salary of 40,710/- US Dollars and also continued to get the perks and privileges from your own department, thus you accused caused huge loss to the government ex-chequer and corresponding illegal benefit to yourself, thus committed an offence of Criminal Misconduct as defined in section 5(1)(C) and punishable u/s 5(2) of Prevention of Corruption Act and within the cognizance of this court.

دورانی

I hereby direct you accused to be tried in this court on the above charge.

[Signature]
 Special Judge,
 Anti-Corruption (Provincial),
 Khyber Pakhtunkhwa, Peshawar.

CJ-2018

[Handwritten mark]

Anti-Corruption Department
Peshawar

... of the Government or ... or
 ... convert ... use any ...
 ... allow any person to do so.

129

In the Court of Ikhtiar Khan, Special Judge, Anti-Corruption,
(Provincial), Khyber Pakhtunkhwa, Peshawar.

Case No. 10 of 2018.

Date of Institution. 01-02-2018.

Date of Decision. 01-12-2020.

State--versus:-

Pervez Khan S/o Fateh khan,
R/o Darmangi Peshawar Palosi,
Talarzai, Rtd: Deputy Director,
Population Welfare Peshawar.

(Accused)

Case FIR No.08 dated 19-11-2013 w/s 419/420/468/471 PPC read with
section 5(2) PC Act of P.S. ACE, Peshawar.

Mr. Azhar Ali, Senior Public Prosecutor for State.

Mr. Qaiser Zaman Advocate for Population Welfare Department.

Accused in person and also assisted by Mr. Shah Hussain Nasapi,
advocate.

Judgment:

The Population Welfare Department, Khyber Pakhtunkhwa vide letter dated 25.01.2003 had requested the Secretary Public Service Commission for recruitment of as many as 137 seats/posts in different categories including the posts of Deputy Director (Non-Technical) (BPS-18). The Public Service Commission had initiated the recruitment process with Advertisement No.2 of 2003 in the daily newspapers. Accused Pervez Khan was amongst the candidates for the post of Deputy Director (Non-Technical) (BPS-18) and on recommendation of the Commission was appointed on 29.09.2004. A complaint before the President of Pakistan with copies to others was filed against Pervez Khan on various allegations. The Population Welfare Department Khyber Pakhtunkhwa vide Notification No. SOE/PWD/1-61/PF dated 19th February, 2011 had constituted two members committee comprising of Mr. Noor Afzal Khan, BPS-19, DPWO, Kohat and Mr. Muhammad Haleem BPS-18, Deputy Director (Admin) to investigate the complaint. The said committee in its findings had held that the accused had obtained

ATTESTED

EXAMINED
Court of Special Judge

Anti Corruption KPK Peshawar

Khyber Pakhtunkhwa, Peshawar

Anti Corruption

01.12.2020

130

two domiciles, one from district Peshawar and second from FATA, Khyber Agency and used the later at the time of his recruitment as Deputy Director/DPWO (BPS-18), had tampered his MA Economic degree by showing it as second division in application Form submitted before Public Service Commission in order to make him eligible for the said post, had fraudulently obtained Ex-parte Decree from the court by concealing the dismissal of his previous suit & appeal for the correction of his date of birth, resultantly had obtained age relaxation for the said post and that he had served in different institutions/organizations without getting NOC from his parent department. The committee also recommended the dismissal of accused from service and for recovery of the salaries from him.

2. The competent authority (Chief Minister Khyber Pakhtunkhwa) had appointed Mr. Waqar Ayub Senior Member Board of Revenue as inquiry officer to conduct departmental proceedings against accused which was accordingly done and the accused was found guilty and recommended from dismissal. However in departmental appeal his dismissal was converted into compulsory retirement. The Section Officer (Establishment) Population welfare Department, Peshawar vide letter No.SOE (PWD) 1-61/12/Vol-V/13920 dated 19.01.2013 had referred the matter to the Director Anti-Corruption Establishment for criminal proceedings against the accused. After inquiry instant case was registered against the accused. The accused had obtained BBA which was confirmed and thereafter complete challan was submitted against him before this court for the purpose of trial.

3. The accused was summoned and after observing formalities under section 241-A Cr.PC he was charge sheeted to which he pleaded not guilty and claimed trial.

4. The prosecution in support of its case has produced as many as thirteen (13) PWs and following is the gist of their statements:-

- i) Shaukat Ali, S.I. (PW-1) had issued notice/parwana Ex.PW1/1 for ascertaining the parentage and address of the accused and after receiving the DFC report. he vide application Ex.PW1/2 applied and obtained warrant u/s 204 Cr.PC against the accused and entrusted the same to the DFC for its execution. PW-1 vide application Ex.PW1/3 obtained proclamation notice u/s 87 Cr.PC against the accused.
- ii) Sikandar Shah, Assistant Director Safe City Peshawar (PW-2) submitted challan Ex.PW2/1 against accused.

ATTESTED

EXAMINER

Court of Special Judge
Anti Corruption KPK Peshawar

07.07.10
 Special Judge
 Anti Corruption
 Khyber Pakhtunkhwa

(131)

- iii) Muhammad Maroof, DSP Security Governor House, Peshawar appeared as PW-3 and stated that on his transfer as C.O. ACE Peshawar he had submitted final report consisting of 3 pages Ex.PW3/1 with request for registration of case which was allowed vide letter Ex.PW3/2 and he registered FIR Ex.PA against the accused. He also probed into the application filed by the accused to the Director ACE regarding his innocence and submitted his report Ex.PW3/3.
- iv) Zia Hassan, SP Motor Transport & Telecommunication, Khyber Pakhtunkhwa appeared as PW-4 and stated that during the relevant days he was posted as C.O. ACE Peshawar. A letter Ex.PW4/1 consisting of 4 pages addressed to Director ACE was marked to him with letter Ex.PW4/2 through proper channel and he after obtaining permission for open inquiry initiated the inquiry. He vide application Ex.PW4/3 obtained the record Ex.PW4/4 consisting of 68 pages from Deputy Director Population Welfare Department. He also placed on file the inquiry Ex.PW4/5 conducted by Mr. Waqar Ayub consisting of 9 pages while the covering letter is Ex.PW4/6. PW-4 also placed on file the attested copy of the inquiry conducted by Muhammad Arshad and Muhammad Israr consisting of 7 pages Ex.PW4/7 and the two letters Ex.PW4/8 & Ex.PW4/9. Thereafter he submitted his final report Ex.PW4/10.
- v) Zulfiqar Ali, Superintendent Population Welfare Department Civil Secretariat Government of Khyber Pakhtunkhwa (but inadvertently marked as PW-4) being well conversant with the signature of Noor Muhammad and identified his signature on the application Ex.PW4/1 consisting of four pages.
- vi) Farman Ali, Clerk of Ghulam Ishaque Khan Institute of Engineering Science & Technology Swabi appeared as PW-5 and produce the appointment order Ex.PW5/2 consisting of 03 sheets of Pervez Khan. He also produced the joining report of Pervez Khan as Ex.PW5/ and his notice of resignation as Ex.PW5/4.
- vii) Zahoor Ahmad, Junior Executive RHO Peshawar, NADRA (PW-6) produced attested copy of the Form

07.12.2010
 Amir
 Khyber Pakhtunkhwa

ATTESTED


EXAMINER
 Court of Special Judge
 Anti Corruption KPK Peshawar

"Alif" of accused Ex.PW6/2 for issuance of his MNIC wherein his date of birth was mentioned as 1958. He also produced the attested copy of form "Hey" submitted by the accused for correction of his date of birth on the basis of matric certificate and his affidavit Ex.PW6/3 to Ex.PW6/5. He also brought the CNIC record of the accused (computer generated form) consisting of 05 pages Ex.PW6/6 and the computer generated SNIC and service card of the accused Ex.PW6/7 & Ex.PW6/8.

- viii) Waqar Ayub Rtd: PCS (EG) Officer (PW-7) then posted as Senior Member Board of Revenue, Government of Khyber Pakhtunkhwa, was appointed by Competent Authority/Chief Minister as Inquiry Officer to scrutinize the conduct of Mr. Pervez Khan. He stated that the accused was summoned for inquiry, charge sheet, statement of allegations and other documents were provided to him on 16-09-2011. After conducting the inquiry, he submitted the inquiry report with annexures consisting of 39 pages Ex.PW7/1. He also stated that all the six allegations were proved against the accused. He recommended legal action on 3 counts i.e. obtaining of two domicile certificates, producing MA Economics Degree (2nd division) to Khyber Pakhtunkhwa Public Service Commission and obtaining employment in different organizations without obtaining NOC.
- ix) Asmat Jan, Office Assistant, Degree Section, University of Peshawar (PW-8) and produced the record/result of MA Economic (Final) Annual examination 1984 wherein the name of Pervez Khan is mentioned at Roll No.6467 securing marks 386 in 3rd division as Ex.PW8/1. He also produced the registration record of accused bearing registration No.79-P-20062 as Ex.PW8/2.
- x) Nazar Hussain Shah, Education clerk, DC Office District Khyber (PW-9) produced the record of domicile of the accused mentioned at serial No.646 dated 25-07-1992 in the relevant register as Ex.PW9/1. He also produced a letter No.4 (9) 2011/Admn: dated 12-02-2011, Ex.PW9/2 regarding the re-verification of the domicile certificate of accused received from the Assistant Director, Admn: Directorate General of Population Welfare, Government

ATTESTED

EXAMINER

Court of Special Judge
Anti Corruption KPK Peshawar

Khyber Pakhtunkhwa

01.12.2020

133

"Alif" of accused Ex.PW6/2 for issuance of his MNIC wherein his date of birth was mentioned as 1958. He also produced the attested copy of form "Hey" submitted by the accused for correction of his date of birth on the basis of matric certificate and his affidavit Ex.PW6/3 to Ex.PW6/5. He also brought the CNIC record of the accused (computer generated form) consisting of 05 pages Ex.PW6/6 and the computer generated SNIC and service card of the accused Ex.PW6/7 & Ex.PW6/8.

- viii) Waqar Ayub Rtd: PCS (EG) Officer (PW-7) then posted as Senior Member Board of Revenue, Government of Khyber Pakhtunkhwa, was appointed by Competent Authority/Chief Minister as Inquiry Officer to scrutinize the conduct of Mr. Pervez Khan. He stated that the accused was summoned for inquiry, charge sheet, statement of allegations and other documents were provided to him on 16-09-2011. After conducting the inquiry, he submitted the inquiry report with annexures consisting of 39 pages Ex.PW7/1. He also stated that all the six allegations were proved against the accused. He recommended legal action on 3 counts i.e. obtaining of two domicile certificates, producing MA Economics Degree (2nd division) to Khyber Pakhtunkhwa Public Service Commission and obtaining employment in different organizations without obtaining NOC.
- ix) Asmat Jan, Office Assistant, Degree Section, University of Peshawar (PW-8) and produced the record/result of MA Economic (Final) Annual examination 1984 wherein the name of Pervez Khan is mentioned at Roll No.6467 securing marks 386 in 3rd division as Ex.PW8/1. He also produced the registration record of accused bearing registration No.79-P-20062 as Ex.PW8/2.
- x) Nazar Hussain Shah, Education clerk, DC Office District Khyber (PW-9) produced the record of domicile of the accused mentioned at serial No.646 dated 25-07-1992 in the relevant register as Ex.PW9/1. He also produced a letter No.4 (9) 2011/Admn: dated 12-02-2011, Ex.PW9/2 regarding the re-verification of the domicile certificate of accused received from the Assistant Director, Admn: Directorate General of Population Welfare, Government

Khyber Pakhtunkhwa

07.12.2020

ATTESTED



EXAMINER

**Court of Special Judge
Anti Corruption KPK Peshawar**

134

of Khyber Pakhtunkhwa. He further stated that the verification process was done and it was brought on record that three out of four elders on whose verification the domicile was issued were dead while Pio Din had stated that he verified the accused on the verification of his other colleagues. PW-9 further stated that accused was not traced out on his given address and was not known to other residents of Anai Chingi Khel, Bazar Zakha Khel, Landi Kotal. Therefore, it was established that accused had obtained his domicile fraudulently.

- xi) Hazoor Bux Mahar, Deputy Chief, Ministry of Planning, Development and Special Initiatives, Islamabad appeared as PW-10 and deposed that on the application of accused Pervez Khan for the post of Monitoring and Evaluation Specialist, (Social Sectors, Infrastructure and other Sectors) under the Development Project on promoting "Professional Excellence in Planning Commission/P&D Division (Phase-I)" the employment contract was given to the accused vide letter No.4(383)G/PC//07-Part-I Islamabad, dated the 30-05-2007 Ex.PW10/1 and vide order dated 23-06-2007 his joining report is Ex.PW10/1A. The appointment letter is Ex.PW10/2, the joining report is Ex.PW10/3 and the termination letter dated 29-09-2007 of the accused is Ex.PW10/4.
- xii) Faheemullah Khan, Senior Law Officer, Khyber Pakhtunkhwa, Public Service Commission appeared as PW-11 and produced recommendation of the candidates wherein accused is mentioned at serial No.2 which as Ex.PW11/2, the descriptive sheets along with experience sheets of the candidates including Pervez Khan at serial No.4 as Ex.PW11/3 & Ex.PW11/4. He also stated that after recommendation of accused Pervez Khan his application Form along with his testimonials were sent to the requisitioning department. He also stated that the Commission has no other documents of the accused Pervez Khan except the descriptive sheet, experience sheet and copy of the recommendation made by the Public Service Commission.
- xiii) Saleh Muhammad, Project Accountant, MSPAID, Peshawar appeared as PW-12 and stated that he received

ATTESTED


EXAMINER

Court of Special Judge
Anti Corruption KPK Peshawar

87.12.2020.

135

an E-mail from head office Islamabad bearing ID hro@aidglodal.net to his E-mail ID with the attachment comprising employment contract and termination letter of accused Pervez Khan Khalil. So he produced the print of contract and termination of the accused consisting of 5 pages which is Ex.PW12/1.

5. After close of prosecution evidence the accused was examined u/s 342 Cr.PC wherein he denied the allegations and claimed his innocence but he neither opted to produce any defense evidence nor to give statement on oath.

6. Arguments already heard.

7. Mr. Azhar Ali, Senior PP for state assisted by Mr. Qaiser Zaman Advocate learned counsel for Population Welfare Department argued that the prosecution has successfully proved that accused facing trial was a public servant who had fraudulently obtained two domiciles one from District Peshawar and second from FATA Khyber Agency and used the later for obtaining Govt. job as Deputy Director in Population Department and age relaxation. He had made tampering in his application submitted by him before the Public Service Commission KPK by showing his MA Economic degree as second division instead of third division in order to make himself eligible for the said post. He had also reduced his age for five years through misrepresentation before the court of Civil Judge by concealing the dismissal of his earlier suit and appeal filed by him for the same relief. The accused while in active service of Population Department had served in Ghulam Ishaq Institute of Science & Technology as Director (Students Affairs) from 01.04.2005 to 10.06.2005 at the salary of Rs:30450 per month, in Planning Commission of Pakistan as Monitoring Specialist from 05.06.2007 to 29. 07. 2007 at the salary of Rs:75000 per month and in organization "Associate in Development Pvt. Ltd." from 25.01.2008 to 25.11.2008 at annual salary of Pakistani rupees equivalent to Us\$ 40710 per annum without obtaining NOC from his parent department. The accused facing trial was departmentally proceeded and the inquiry conducted by PW-7 in his report Ex.PW7/1 had fully established the allegations against him and was found guilty. He was dismissed from service by the competent authority but during departmental appeal the dismissal order was converted into compulsory retirement. The appeal filed by the accused before the Service Tribunal was dismissed followed by the dismissal of his CPLA by the august

01.12.2010
 Anti Corruption
 Khyber Pakhtunkhwa

ATTESTED

m

EXAMINER

Court of Special Judge

Anti Corruption KPK Peshawar

Supreme Court of Pakistan. Therefore, the accused may kindly be convicted and sentenced in accordance with law.

8. On the contrary accused facing trial in his oral submissions/written points as well as in his detailed and lengthy answers to the questions put to him u/s 342 Cr.PC has claimed his innocence inter alia on the grounds:-

- a. that he was not a public servant during the period in which the alleged offences are falling, therefore, he cannot be tried under Anti-Corruption Laws.
- b. that obtaining of two domiciles is not an offence as the accused has surrendered his domicile of District Peshawar two/three weeks before obtaining his second domicile in the year 1992 and in this fact is admitted by PW3. The copy of the letter of accused addressed to the Deputy Commissioner Peshawar for surrender of his domicile is available at age 257 of the file.
- c. that the post of BPS-18 and above was not against regional quota as admitted by PW-11 and the age relaxation was given to the accused due to his previous government service as such no benefit was obtained by him from his domicile of Khyber Agency/FATA in his appointment as Deputy Director.
- d. that there is no evidence regarding the alleged tempering in the application submitted by the accused before the Public Service Commission. In fact the accused has mentioned in his application Form "MA third division" as evident from the copy of the said Form Ex.PW4/D-1 available at page 268 of the main file. The accused was not appointed against the subject post on the basis of MA Economic rather he was having M.Sc. in Rural Development on the basis of which he was appointed. Even otherwise there is no expert opinion regarding the alleged tempering in the application Form.
- e. that there is no evidence that accused had dishonestly and fraudulently with guilty mind was posted as public servant. Thus the case of prosecution is neither covered by section 5(1) of PC Act, 1947 nor by any schedule offence contemplated in Pakistan Criminal Law Amendment Act, 1958.
- f. that no inquiry was conducted by the ACE officials and the case was registered on the report of inquiry committee

Member Peshawar

Anti Co.

11.10.20

ATTESTED

EXAMINER

Court of Special Judge
Anti Corruption KPK Peshawar

137

conducted by Muhammad Aleem and Noor Afzal who never appeared as PWs in this case. Thus the statutory requirements of section 3 of West Pakistan Ordinance, 1961 were violated.

- g. that neither crime scenes were visited by the I.O./PW nor the allegations of the inquiry committee were verified through sources, therefore, the very submission of challan u/s 173 Cr.PC without compliance of section 3 of the Ordinance *ibid* was unlawful.
- h. that the accused cannot be convicted on the tainted inquiry report which was conducted by the adversaries of the accused with mala fide and ulterior motive.
- i. that no person/witness of the departments appeared in the witness box, thus the witnesses who are record keepers, if eliminated from the list of witnesses then no witness in support of the charges are available.
- j. that the civil misconduct reported through unverified departmental inquiry cannot be substituted as a proof for criminal misconduct or any offence.
- k. that the plea of losses to the government exchequer has been negated by the fact that all the disputed amount of about 8 million had been paid to the accused.
- l. that this court being the court of evidence cannot convict the accused without concrete and cogent evidence necessary for establishment of criminal offences.
- m. that the dismissal of CPLA by the august Supreme Court of Pakistan and the dismissal of service appeal by the Services Tribunal are not valid ground for establishing the criminal liability of the accused as the CPLA was dismissed on the ground that there was no question of public importance while the dismissal of the appeal by the Services Tribunal was the result of misinterpretation of rules and mis-concealing of record.
- n. that prosecution was under legal obligation to prove the contents of FIR under the provision of Qanun-e-Shahadat cannot press into the service issue in criminal case.
- o. that the misconduct of the accused on the civil side is not equivalent to the criminal misconduct as the standard of proof in both the cases are different.

Member
Anti Corruption
KPK Peshawar

07.07.10

ATTESTED

M

EXAMINER

Court of Special Judge
Anti Corruption KPK Peshawar

- p. that the mere allegations of serving in other department without NOC which are denied and not proved makes no criminal offence.
- q. that the validity and authenticity of civil suit for correction of the date of birth cannot be agitated before this court.
- r. that the issue of two domiciles also does not come within the domain of this court.
- s. that the accused was appointed by the Public Service Commission and it was the domain of the commission to consider the application and certificates before the appointment of accused which was did accordingly.

9. Therefore, for the above mention reasons and in light of the judgments reported in PLD 1987 SC 250, 1984 PCr.LJ 3098 (Lahore), PLJ 1980 SC 300, 2017 PCr.LJ 218, PLD 1961 (W.P) Lahore 684, 2004 PCr.LJ 1895, PLD 1965 SC 605, PLD 1987 SC 304, 1983 PCr.LJ 1577, PLD 1975 SC 331 and 1997 MLD 2282 the accused is liable to be acquitted.

10. I have considered the above submission in light of the record and evidence produced by the prosecution.

11. Before giving findings on the merits of the case in light of the evidence produced by the prosecution against the accused, it is worthy to mentioned that both the prosecution and accused during the arguments have referred to the merits of the departmental proceedings, to the decision of Service Tribunal in appeal filed by accused against departmental appeal and to the Judgment of August Supreme Court in CPLA filed by the accused. The learned Senior PP while placing reliance on report Ex.PW7/1 of PW-7 during departmental proceedings, on the judgment of Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 19-11-2015, appeal No.838/2012 by the accused and on the judgment of august Supreme Court in C.P. No.216-P/2016 vide which leave was refused to accused has tried to convinced this court in departmental proceeding vide report Ex.PW7/1 the accused was found guilty and appeal before Service Tribunal and CPLA of accused was dismissed. The CPLA filed by the accused was also dismissed by the August Supreme Court of Pakistan and leave was refused, therefore, the accused is also liable to be convicted in this case as well. I am afraid that instant criminal proceedings are separate and distinguishable from departmental proceedings and decision of Service Tribunal in Civil appeal of accused and the dismissal of CPLA cannot be pressed into for conviction of accused on the charges of criminal

Khyber Pakhtunkhwa Anti Corruption Commission

Special Judge
Anti Corruption

12.2020

ATTESTED

[Signature]

EXAMINER

Court of Special Judge
Anti Corruption KPK Peshawar

offences in instant case. The august Supreme Court in its judgment reported in PLD 2002 SC 13 has held that-

"Disciplinary proceedings" and Criminal proceeding as used in service matter are distinguished. Both the proceedings cannot be termed as synonymous and interchangeable. Disciplinary proceedings and criminal proceedings are quite different from each other have altogether different characteristics and there is nothing common between the adjudicative forums by whom separate prescribed procedure and mechanism is followed for adjudication and both the forums have their own domain of jurisdiction. Decision of one forum would have no bearing on the decision of other forum in any manner whatsoever.

12. The said principle was also followed by the honourable Islamabad High Court in its judgment reported in PLC (C.S.) 537, thus the criminal liability in the case cannot be proved on the basis of departmental proceeding, judgments of Service Tribunal and of August Supreme Court. Moreover, the definition of misconduct in service matter may include any transgression of every rules, every conduct, inconsistent with faithful discharge of duty, act of bad governance, improper conduct, doing of something by a person inconsistent with conduct expected from him by relevant rules but such act on the part of civil servant *per se* cannot be substituted with definition of criminal misconduct.

13. Similarly, the submissions of accused to the effect that the departmental proceedings and the inquiry report Ex.PW7/1 were done in violation of rules and was initiated on the ground of personal grudges and as a result of rivalry of his departmental colleagues are also misconceived and this court while determining the guilt or innocence of accused in present criminal case, have no authority or power to pass any comments in this judgment about the merits of departmental proceedings or for that matter to give any opinion on the judgment of Service Tribunal in appeal of accused. In the same way this court cannot consider the lengthy arguments of the accused in respect of the definition of misconduct in service matter, the interpretation of various rules and case law which have no nexus with criminal proceeding. This court is only required to determine that whether the prosecution has proved its case beyond any shadow of doubt or not. It may also be added that any offence if proved may be termed as misconduct but it cannot be held that the proof of misconduct in service matter also be an offence. Thus it can safely be

ATTESTED



EXAMINER

Court of Special Judge

Anti Corruption KPK Peshawar

Khyber Pakhtunkhwa High Court

01.11.10

190

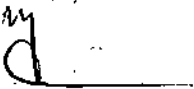
concluded that the acquittal of accused from criminal liability being not proved beyond any shadow of doubt cannot be based for any benefit to the accused in departmental proceedings. Likewise no benefit can be taken from departmental proceedings in favour of prosecution in this case as the standard of proof in both proceedings are different.

14. Having said that, now I will consider the prosecution evidence in light of the principle of criminal jurisprudence and standard of evidence requires for proof of criminal offence.

15. It is the case of prosecution that the accused had succeeded in getting his job as Deputy Director, Non-Technical (BPS-18) by making tampering in his application to the extent of MA Economics Degree by showing it as passed in "Second Division" instead of "Third Division". The second allegation against the accused is that he had obtained two domiciles one from District Peshawar and second from Khyber Agency in a fraudulent manner. The later domicile was used for obtaining the seat of Deputy Director Non-Technical (BPS-18) and for getting age relaxation in order to make him eligible for the said post. The third allegation leveled by the prosecution is that the accused had obtained a court decree by concealing the dismissal of his previous suit and appeal for the same relief. The other allegation of the prosecution against the accused while in service of Population Welfare Department had served in Planning Commission of Pakistan, Ghulam Ishaque Khan Institution of Science and Technology and in Association of Rural Development without obtaining NOC from his parent department and during the said period he was also getting salary from government against the original seat and also received remuneration from the said three organizations.

16. In support of the allegations of serving in other institutions by the accused against remuneration without getting NOC from his parent department, the prosecution had produced Farman Ali Clerk of Ghulam Khan (GIK) Institute of Engineering Science & Technology (PW-5) who brought the appointment order of accused Ex.PW5/2, joining report Ex.PW/3 and notice of resignation of accused Ex.PW5/4. Hazoor Bux, Deputy Chief Ministry of Planning Development & Special Initiative, Islamabad (PW-10) produced the contract letter consisting of 05 pages as Ex.PW10/1, appointment letter of accused as Ex.PW10/2, the joining report of accused as Ex.PW10/3 and his termination letter as Ex.PW10/4. Saleh Muhammad, Project Accountant MSPAID, Peshawar (PW-12) produced the contract and termination of accused as PW12/1. The statements of PW-5, PW-10 and PW-12 and the documents produced by them can only prove that the accused had served in these

ATTESTED



EXAMINER

Court of Special Judge
Anti Corruption KPK Peshawar

Special Judge
Anti Corruption
Khyber Pakhtunkhwa Peshawar

0707.71.10

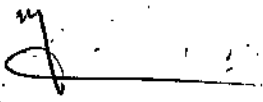
141

departments without NOCs from his parent department but it do not prove that the accused was involved in any trade. The serving of accused in other departments without NOCs *per se* makes no criminal offence. The failure on the part of accused to obtain NOC might had been in violation of the Rule of Civil Service but such failure is not a criminal offence. Thus obtaining jobs in other institution without NOCs from parent department might be a misconduct within the definition provided in the service laws but such act on the part of accused makes no criminal offence, as such he cannot be convicted for serving in other department without obtaining NOCs from his parent department. In this respect reference can be made to the judgment reported in PLD 1961 (W.P) Lahore 684.

17. The prosecution also alleged that the accused had obtained *Ex-Parte* Court decree in fraudulent manner for changing his date of birth from 20.04.1958 to 13.12.1963 by concealing the dismissal of his previous suit and appeal for the same relief. The learned prosecutor also contended that the fraud of accused in respect of change of his date of birth is also evident from the fact that he had passed his matric examination in 1975 which was not possible in 11/12 years, if he was born on 13-13-1963. In this respect the prosecution produced Zahoor Ahmad, Junior Executive RHO, Peshawar NADRA as PW-6 who brought on record i.e. Form 'Alif' of accused Ex.PW6/2 for issuing his MNIC, attested copy of Form 'Hey' Ex.PW6/3, affidavit Ex.PW6/4 submitted by accused for correction of his date of birth on the basis of his matric certificate Ex.PW6/5, CNIC record of accused Ex.PW6/6, computer generated CNIC of accused Ex.PW6/7 and his service card Ex.PW6/8. The documents produced by PW-6 only tell that the date of birth of accused was changed to 13-12-1963 after fulfillment of legal formalities in the result of court decree. However, so far as obtaining of *ex-party* decree in civil case for changing the date of birth of accused is concerned, it was obtained through judicial verdict on the basis of which correction to the extent of date of birth in SSC certificate and in his CNIC were made. The forum for agitating the *Ex-Parte* decree is the court which passed the decree. The validity of the decree can only be challenged on the grounds mentioned in section 12(2) CPC. If any misrepresentation or concealment of fact was done by the accused in his civil suit, it is for that court to consider it but it does not come within the domain of this court. The only legal course available for challenging the *ex-parte* decree is filing of application u/s 12(2) CPC before the court which passed this decree. Moreover, the *ex-parte* decree was obtained by accused before joining his service in Population Welfare

0707-71-10
Special Judge
Anti Corruption
Kyber Pakhtunkhwa Peshawar

ATTESTED



EXAMINER
Court of Special Judge
Anti Corruption KPK Peshawar

142

Department and PW-7 in his report Ex.PW7/1 also held that the charge of the department in this regard will not be in order.

18. The allegation in respect of obtaining the two domiciles is considered in light of the evidence produced by the prosecution and the defense taken by the accused. In this respect the prosecution has produced Nazar Hussain Shah, Education Clerk, Deputy Commissioner Office, District Khyber as PW-9 who brought on record the entry of domicile of accused at S.No.646 dated 25-07-1992. He also produced the letter No.4 (9) 2011/Admin: dated 12-02-2011 regarding re-verification of the domicile of accused received from Assistant Director, Admin: Directorate General Population Department Ex.PW9/2. He further stated verification process was done and it was brought on record that three out of four elders on whose verification the domicile of the accused was issued were dead while Pio Din had stated that he verified the accused at the instants of his other colleagues. PW-9 also stated the accused could not be traced on the given address and was not known to the residents of that area. Therefore, it was established that the accused had obtained his domicile fraudulently. After taking into consideration the statement of PW.9 and arguments of the prosecution and defense, this court reached to the conclusion that there is no legal bar in obtaining of second domicile by the citizen of Pakistan. The pre-requisite for obtaining of second domicile is that a person who wants to obtain second domicile shall surrender his first domicile to the Deputy Commissioner concerned who issued the first domicile. In the present case a letter addressed by the accused to the Deputy Commissioner Peshawar is available on the file vide which he requested for surrender of his domicile of District Peshawar. The learned Senior PP argued that second domicile can only be obtained if first domicile is cancelled but the accused did not prove that his domicile of District Peshawar was cancelled by the Deputy Commissioner Peshawar. He further argued that the record produced by the clerk of the office Deputy Commissioner District Khyber, PW-9 in unambiguous terms has proved that the domicile from Khyber FATA was obtained in fraudulent manner. The first argument of the prosecution cannot be accepted for the reason that when the accused had sent a letter to Deputy Commissioner Peshawar for surrendering his domicile, then it was for the Deputy Commissioner to pass an order on the letter. The accused could not be expected to prove that whether his first domicile was cancelled or not. Even otherwise if it is accepted that second domicile was obtained in the presence of first domicile, itself was not an offence. So far as the second arguments of the prosecution to effect that the domicile from Khyber was fraudulently obtained is concerned, it is

ATTESTED

EXAMINER

Court of Special Judge
Anti Corruption KPK Peshawar

01.12.2020

suffice to say that the penal clause for obtaining domicile through fraud is provided in Rule 26 of Citizenship Rules, 1952 which is produced as under:

(1) Any Magistrate of the first class, a provincial government or the Federal government on receiving information that person has obtained his certificate of citizenship certificate of registration as a citizen of Pakistan, certificate of domicile or certificate of naturalization, by fraud, false representation or the concealment of any material fact or that his certificate of naturalization has been revoked, may authorize or require a competent Magistrate to authorize a police officer under section 155 of the Code of Criminal Procedure, to investigate the truth of the information.

(2) If on the result of the investigation it appears that person has made statement or furnished information which comes within the mischief of section 2 of the Act, the Federal or Provincial Government may direct that the said person be prosecuted under section 177 of the Penal Code (XIV OF 1908), or under any other law for the time being in force.

(3) A conviction by the Court shall render null and void any certificate mentioned in sub-rule (1).

19. Similarly, PW-7 during departmental inquiry in his report Ex.PW7/1 has recommended that action under paragraph 20(d) of Khyber Pakhtunkhwa Public Service Commission Regulations, 2003, the Commission may initiate action against the accused in addition to action under section 3 of Khyber Pakhtunkhwa Removal of Service (Special Powers) Ordinance 2000 for have been found guilty of misconduct, as defined in section 2 (c) *ibid*, subject to opinion of Establishment Department. Thus keeping in view the above legal provisions this court cannot convict the accused for second domicile in this case and the accused could only be prosecuted by the provincial government under Rule 26 of the Citizenship Rules, 1952 or by the Commission under paragraph 20 (d) Regulation, 2003.

20. It is evident from Ex.PW11/2 that no zonal allocation was involved in the subject seat being Grade-18 post as such all the five posts were to be filled purely on merit basis and the accused was at serial No.2 of the merit list and was appointed as Deputy Director Non-Technical, thus the allegations of the prosecution that the accused had used the domicile of FATA for securing his job is without substance. Similarly the arguments of the prosecution to the effect that the accused had obtained age

ATTESTED

EXAMINER

Court of Special Judge
Anti Corruption KPK Peshawar

01.12.2020

144

relaxation on the basis of domicile from Khyber Agency is also devoid of any merit, as the age relaxation of 10 years was given to the accused on the basis of his previous government service vide letter bearing No.SOR-IV (E&AD)6-1/2004/Vol:III dated 08.01.2004 of the Establishment Department Khyber Pakhtunkhwa addressed to the Secretary, Local Government and Rural D and Development, the copy of which was endorsed to the Commission as admitted by PW-11 in his cross examination.

21. The prosecution also alleged that accused while submitting his "Application Form" before the Public Service Commission for the seat of Deputy Director (Non-Technical) (BPS-18) had made tempering in his form by mentioning the marks of his MA Economic degree as 495/1100 "Second Division" instead of Third Division. The accused had purposely made the tempering as otherwise he was not eligible for the subject post. Thus he had fraudulently succeeded in getting the subject seat and had caused losses to the exchequer. On the contrary, it is the stance of the accused that he never claimed his MA Economic degree as "Second Division" and he had mentioned it as "Third Division" in his application form. He also contended that his appointment was because of his M.Sc degree in Rural Development from Sindh University.

22. The statement of Asmat Jan, Office Assistant, Degree Section, University of Peshawar produced the Gazette Book of MA Economic (Final) annual examination 1984 in which accused appeared with roll No.6467 and scored 386 marks and passed his MA Economic in third division as evident from Ex.PW8/1. The accused also admitted that he had passed his MA Economic in third division, so there is no serious dispute regarding the "Division" of the MA Economic degree.

23. The fundamental question which needs consideration of this court is that whether the accused while submitting his "Form" before the Public Service Commission had mentioned his MA Economic degree "Second Division" due to which he was appointed on the subject seat or not? The prosecution in this respect produced the representative of Public Service Commission as PW11 who produced the copy of recommendation of the Commission as Ex.PW11/2, the descriptive sheet along with experience sheet of the candidates including Pervez Khan at serial No.4 as Ex.PW11/3 & Ex.PW11/4 in which his qualifications are mentioned as Matric II Division, FA 518/1100, BA 321/550 (1992 improved) and MA Economic 495/1100 (in parts) and no other qualifications of the accused is mention in the said documents. The descriptive sheet tells that the marks of MA Economic are mentioned as 495/1100 in the descriptive sheet

ATTESTED

[Signature]

EXAMINER

Court of Special Judge

Anti Corruption KPK Peshawar

09.07.2010
 Applied to
 Adm. Secy
 U.P.

(145)

which came to 2nd division. It can also be seen in Ex.PW11/4 that the marks of Matric, FA and BA are typed one while the marks of MA Economic are written with hand writing. Thus this fact creates reasonable doubt that why the marks of MA Economic are mentioned with hand writing. Moreover, during departmental proceeding conducted by PW-7 the Public Service Commission had provided the detail of qualifications of the accused through a letter from Deputy Secretary, Public Service Commission to the Secretary Board of Revenue and Estate Department Peshawar and this letter is available at page 33 of Ex.PW7/1. The said letter tells that the accused was also having the degree of M.Sc in Rural Development. The seniority list of the accused Ex.PW4/D-4 is also available on file wherein his name is mention at serial. No.13 with qualifications of M.Sc/LL.B. The prosecution while placing reliance on the statement of PW7 and on his report Ex.PW7/1 during departmental proceedings argued that the accused was appointed on the basis of his MA Economic degree which was tempered one, however, the report Ex.PW7/1 during departmental proceedings is not equal to the evidence required in a criminal case as the standard of proof in departmental proceedings and in criminal case are totally different. In the former proceedings the evidence is always considered on the balance of probability while in criminal case the standard of proof is that the prosecution shall prove its case behind any shadow of reasonable doubt. So, the writing of the marks of MA Economic Degree with pen and non-mentioning of other qualification of accused in descriptive sheet also creates doubt in the prosecution case.

24. It is an admitted fact that the original application "Form" submitted by the accused before the Public Service Commission while applying for post of Deputy Director Non-Technical (BPS-18) is not available with Commission as the application "Form" along with his testimonial and recommendation letter were sent to the requisitioned department as admitted by PW-11. It is also admitted fact that the personal files of the accused facing trial were missing and lost and never traced out. In this respect disciplinary proceeding against one Muhammad Khalid PMS (BPS-17) was initiated but the charges cannot be proved. However, the copy of the application "Form" of accused is available on file which is Ex.PW4/D-1 wherein his MA Economic is mentioned as "Third Division" and in his qualification his M.Sc. in Rural Development from University of Sindh is also mentioned and this fact is also evident in the letter from Deputy Secretary, Public Service Commission addressed to the Secretary to Government of Khyber Pakhtunkhwa, Board of Revenue & Estate Department Peshawar, available at page-33 of Ex.PW7/1. So in presence

ATTESTED



EXAMINER

Court of Special Judge

Anti Corruption KPK Peshawar

Special Judge
 Anti Corruption
 KPK Peshawar
 01.14.2020

of two degrees one of MA Economic in third division and second M.Sc. in Rural Development. It is not clear that whether the accused was appointed on the basis of M.Sc. in Rural Development or on the basis of MA Economic by showing it to be passed in 2nd division. These facts creates reasonable doubt in the prosecution case.

25. It is also worthy to mention that the inquiry in this case was initiated on the basis of letter Ex.PW4/1 from the Section Officer (Establishment) addressed to the Director. ACE, Khyber Pakhtunkhwa but this Section Officer was never produced by the prosecution as PW in support of Ex.PW4/1. Similarly, PW-4 who conducted the inquiry in this case had taken into possession the record consisting of 68 pages as Ex.PW4/4 and the report of inquiry conducted by Noor Afzal and Muhammad Aleem is part of PW/4/4 in which they had recommended legal action against the accused but the prosecution did not produce the said two persons in support of their inquiry report. Mr. Noor Afzal could not be produced being dead and the prosecution instead of producing the other inquiry officer Muhammad Aleem has examined Zulfiqar Ali, Deputy Superintendent, Population Welfare Department who had only identified the signature of Noor Afzal on the letter Ex.PW4/1 but did not say any single word about the inquiry report of Noor Afzal Khan and Muhammad Aleem. The original of Ex.PW4/4 was also not produced during the instant trial. Thus adverse inference in terms of Article 129 (g) of Qanun-e-Shahadat Ordinance, 1984 will be taken against the prosecution for non-production of Muhammad Aleem, the other inquiry officer.

26. It is also worthy to mention that most of the allegations including the tampering in MA Economic Degree leveled by the prosecution against the accused pertains to the period in which he was not a public servant, therefore, in light of the judgment of the august Supreme Court of Pakistan reported in PLD 1987 SC 250 the criminal proceeding under the ACE law also create doubt on the prosecution case. It is further added that previously an inquiry No.1522/2011 was conducted on the similar allegations but was filed without any legal action against the accused.

27. So far as, the application of the learned Public Prosecutor for summoning of the auditor in support of the losses caused to the exchequer is concerned, it cannot be considered at this belated stage for the reasons that the report of auditor available on the file only shows the salaries and other emoluments received by accused but during the departmental proceeding the accused was found guilty and recommended for dismissal from service. He has assailed his dismissal in departmental appeal which

ATTESTED

[Signature]

Court of Special Judge
Anti Corruption KPK Peshawar

0702-7110

1147

was accepted and he was compulsory retired from his service. The appeal before the Service Tribunal and his CPLA before the august Supreme Court of Pakistan against his compulsory retirement were also dismissed, thereafter, the Provincial Government had paid all the pension benefits to the accused and in this scenario the statement of Auditor as PW has no significance in this case.

28. As a result of the above discussion, I am of the considered opinion that the criminal liability of the accused facing trial is not established through concrete and trustworthy evidence required in a criminal case. therefore, I while extending benefit of doubt in favour of accused Pervez Khan, acquit him from the charges leveled against him. He is on bail. He and his sureties are discharged from the liabilities of bail bonds. The application of prosecution for summoning of auditor as PW stands dismissed.

29. This file be consigned to the record room after completion and compilation while the files of previous two complaints/inquiries bearing No.23/2005 and 1522/2011 requisitioned on the application of accused be returned to the office of Director, ACE.

Announced.
Peshawar.
01-12-2020.



(Ikhtiar Khan)
Special Judge.
Anti-Corruption (Provincial),
Khyber Pakhtunkhwa, Peshawar.

Certificate.

Certified that this Judgment consists of Eighteen (18) pages, each of which has been signed by me.

Special Judge,
Anti-Corruption (Provincial),
Khyber Pakhtunkhwa, Peshawar.

ATTESTED

11/12/2020
EXAMINEE

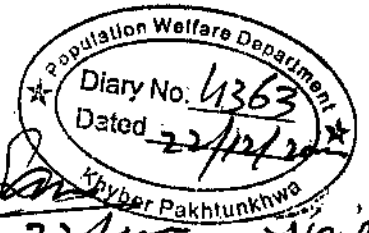
Court of Special Judge
Anti-Corruption KPK Peshawar

148

22/12/2020

To,
The Chief Secretary,
Government Khyber Pukhtunkhwa,
Civil Secretariat, Peshawar.

PS/O.S Khyber Pakhtunkhwa
Diary No. 7318
Date 22-12-2020



(THROUGH: Secretary, Population Welfare Department, KPK Peshawar)

Sub: EXONERATION FROM CHARGES CONTAINED IN F.I.R NO. 08 DATED 19.11.2013, VIDE JUDGMENT DATED 1.12.2020 PASSED BY KPK SENIOR SPECIAL COURT OF ANTI-CORRUPTION, PESHAWAR, RE-INSTATEMENT INTO SERVICE WITH BACK BENEFITS IN VIEW OF ACQUITTAL ON MERITS.

REPRESENTATION/APPEAL:

Dear sir,

1. Reference is made to the judgment of Senior Special Judge Anti-Corruption court, Peshawar vide which the Appellant/Representer was acquitted and he was exonerated of the charges contained in F.I.R NO. 08 Dated 19.11.2013, registered on the letter NO. SOE (PWD) 1-61/12/Vol-V/13920-21 dated 29.01.2013 of Section Officer Establishment, Population Welfare Department Khyber Pakhtunkhwa, Peshawar.
2. Departmental colleague of the appellant, opposite party with appellant in seniority & promotion cases, planted the instant baseless case against the appellant out of deep conspiracy. While misrepresenting and grossly misusing their public offices the appellant was subjected to pre-mature compulsory retirement in intransparent manner in order to stop him from seeking appropriate remedies against them departmentally in the matters of seniority, promotion and status of their service in pursuance of judgment of FST Islamabad and two judgments of the apex court arrived there-against.
3. The charges contained in F.I.R and Statements of Allegation & Charge Sheet dated 29.08.201 leading to the departmental action are one & the same which have been disappeared/evaporated in the air with the judgment in hand. That the same charges were made the basis of show cause notice and charge sheet framed u/s 242 Cr.P.C by the trial court, which have now been discredited by the senior special court vide its judgment dated 01.12.2020, arrived on facts through evaluation of evidence adduced by the prosecution over a period of long 08 years in court. Therefore re-instatement and restoration of the appellant to his old position is in the fitness of things, in accordance with the spirit of law, natural justice, equity, fair-play and inevitable to wash away stigma of fraud and embezzlement on the appellant leading to unnecessarily outrage his professional honesty and dignity in the society on the one hand and depriving him of his bread & butter through-unceremonious compulsory retirement on the other, not only from Population Welfare Department KPK but senior MP-1 Position of Chief Executive Officer Water & Sanitation Services Company, Swat and potential re-instatement to BPS-21 position in federal government Islamabad. This triple jeopardy of the appellant can only be addressed through his re-instatement on his original position in the department first.
4. The whole departmental proceeding was planted, motivated, fabricated and maliciously pursued under the garb of state backing. F.I.R was registered on the instance of the persons who themselves were already sued by the appellant for 80 million damages in the court of senior civil judge, Peshawar and were also booked in F.I.R for blackmailing and harassing the appellant to delay implementation of the two judgments of the apex court supra, arrived in favour of the appellant and against his adversaries in the department, the players behind the departmental proceedings.
5. On exoneration of the appellant from the subject criminal charges by the competent court the very basis of his compulsory retirement has now been washed away as it was solely

(149)

founded on the subject 06 criminal charges and not on service indiscipline, inefficiency, negligence, abuse of official position to gain undue advantage for himself or for others, assumption of financial or other obligations causing embarrassment in the performance of his official duties or functions. That the acquittal of the appellant is also not based on 249-A or 265-K Cr.P.C application, or on technical ground either but on merits. The incriminating materials with evidence were placed by the prosecution before the court which were examined and evaluated on pure merits and pronounced in judgment attached.

6. Repeated that the departments vide the said F.I.R charged the appellant of 06 specific accusations which were the true replica of the 06 allegations contained in the Statement of Allegation & Charge Sheet dated 29.08.2011 for departmental proceedings. In fact these were criminal charges of fraud and embezzlement simpliciter and were not related to indiscipline, inefficiency and negligence either. The prosecution after presenting a Q of witnesses and pile of photocopies miserably failed to prove the said charges against the appellant despite appointing private lawyer at the exorbitant fee of RS 3.30.000 in addition to the State Public Prosecutors and dragging the case for long 08 years. Now, on appellant honorable acquittal, the said charges have been washed away as the honorable court has pointedly dealt with the charges one by one in its judgment while assessing its culpability and evaluating its indebtability on the basis of evidence procured and relevant law and found the charges spineless, without legal substance thus acquitted the appellant on merits. The allegation did not establish, rather belied from the evidence and official record produced thus the very basis of compulsory retirement was disappeared as it was solely founded on the same criminal charges and record relied upon. The learned court by means of its detail judgment has discredited the allegations leveled against the appellant on various accounts and in categorical terms.
7. Apparently, planted on the letter of Additional Director NAB KPK while forwarding pseudonymous complaint of one Khairullah S/O Hizbullah of Tehkal Payan, the said officer himself now facing criminal trial from the acquitted appellant in the same court. The charges were picked up against the appellant on pseudonymous complaint despite it suffering from the following patent and fatal legal infirmities.
 - i. The case FIR was, founded on the basis of Pseudonymous complaint received to the department under the name of one Khairullah S/O Hizbullah of Tehkal Payan who was reported by ACE police untraced and fake vide its report dated 10.03.2011 placed on the judicial file (p-24-25). The charges were prosecuted in absence of the original record in hand, admittedly lost from the department and was not available for departmental proceeding and criminal indictment. Thus, action on the Pseudonymous complaint was against the Instruction of S&GAD (now Establishment Department KPK), circulated vide circular letter NO.SORII (S&GAD) 5(29) 97 Vol-II dated 15.11.1999, holding such proceedings on Pseudonymous complaint, wastage of time & energy of the government functionaries and stationary of the government which could usefully be utilized in pursuit of other public interests. Interestingly, this Pseudonymous complaint was entertained while four similar complaints from the same Pseudonymous complainant, received through Establishment Department against the cut throat departmental adversaries of the appellant at the same time, the real players behind the instant criminal proceedings, were ignored, which shows selective, prejudiced and biased treatment in public business.
 - ii. All charges were relatable to the time period when appellant was neither public servant nor were on government duty, posted against any public post and discharging any public functions in the Population Welfare Department KPK and committed alleged acts and omission in the line of duty. Not a single witness was produced from the department in support of the charges either.
 - iii. All the charges had no record in support as the 03 NOs personnel files of the appellant was, admittedly, lost from Establishment section of the department on 02.02.2010 as officially reported, and were not available for the departmental proceedings and registration of impugned F.I.R. The case was built on extraneous photocopies falsely generated by his departmental adversaries and sent with Pseudonymous complaint. The said 06 allegations were nothing more than hearsay.
 - iv. That Chief Minister Khyber Pakhtunkhwa, the competent authority, on inquiry of the learned Inquiry Officer conducting inquiry in the loss of appellant's 03 personnel files, while approving recommendation of inquiry had issued protective sovereign order that until lost 03 personnel files of the appellant are recovered "loss of his personal files

must not be used as a pretext in any way to his disadvantage". The said directive was concealed by adversaries of the appellant in the department during the departmental proceedings thus they have earned serious misconduct themselves. The said directives after approval of the CM, were notified by Establishment Department Government of Khyber Pakhtunkhwa vide Notification NO.SOE-11(ED) 3(642)/2005 of April 12, 2011 (p-315,316 of judicial file) and circulated. The competent authority, who had granted sovereign protection to the appellant from such frivolous and record-less allegations till availability of his 03 NOs personnel files, lost from Establishment section of the Population Welfare Department, were sidetracked. Thus they committed fraud and earned serious criminal misconduct. No waiver to the said decision/instruction of the CM was obtained from the competent authority (CM) on file either. Directive circulated is reproduced below verbatim.

"It may be ensured that the legitimate rights of Mr. Pervez Khan Deputy Director PWD are protected and loss of his personal files is not used as a pretext in any way to his disadvantage".

- v. The Population Welfare Department had no jurisdiction, *locus standi* and legal character to level and prosecutes the instant charges as the matter pertained to selection and recruitment matter, which was the exclusive jurisdiction/functions of the Public Service Commission KPK under NWFP Public Service Commission Regulations 2003, the only stakeholder which throughout remained non-existent in the ring of prosecution for the charges leveled and prosecuted. Thus, the first three allegations are without *locus standi* and jurisdiction of the department in view of NWFP Public Service Commission Regulations 2003 r/w Section 7 of NWFP Public Service Commission Ordinance 1978, also alluded and admitted in the impugned regular enquiry proceeding of Inquiry officer and judgment passed.
- vi. That, two inquiries in the same charges were conducted previously in which the appellant was exonerated honorably. It was the 3rd round of prosecution in the same charges which was not only illegal, malicious but also unconstitutional.
- vii. That, the disciplinary/departmental proceedings were initiated under NWFP Removal from Service (Special Powers) Ordinance, 2000 whereas it was mistakenly conducted, processed and ended up with recommendations by the Inquiry Officer/PW-7, under NWFP Efficiency & Disciplinary Rules, 1973, already repealed under section 11 & 12 of RSO 2000. The two facts are admitted by the Inquiry Officer of the departmental enquiry/PW-7, in his cross-examination before the trial court, lethal for validity of the subject inquiry and disciplinary proceedings finalized. In NWFP E&D Rules 1973 NWFP Conduct Rules, 1987 were part of the 'Misconduct' whereas in the later legislation of RSO 2000, NWFP Conduct Rules, 1987 had been scrapped/ excluded from the definition of 'Misconduct' as reveals from section 2 (C) of RSO 2000. Thus Conduct Rules, 1987 were no more in the field at the time of inquiry if compared the two definition of 'misconduct'. Rule 16 of NWFP Conduct Rules, 1987 was not attracted to the appellant case, therefore non-applicable as admitted by Inquiry officer/PW-7 in his cross-examination before the trial court. Thus appellant for violation of conduct Rule 16 was erroneously charged both in departmental proceedings as well as in criminal trial under the misconception of relevant law as admitted by the enquiry officer during his cross-examination.
- viii. That, Government of Khyber Pakhtunkhwa in Law Department itself has declared adversaries of the appellant , the persons behind the prosecution of the appellant, as federal civil servant of the federal government Islamabad vide their advice letter NO.OP 5(89) LD/09.10965 dated 21.12.2009, communicated to the department on appellant representation, advising Population welfare department to implement the judgments of Federal Service Tribunal Islamabad and apex courts supra, arrived against them in letter and spirit, to strip off these federal origin employees of the benefits they have secured from the provincial government of Khyber Pakhtoonkhwa in the past and surrender them to federal government Islamabad for adjustment. How these employees stayed in provincial government, initiated, processed and supervised disciplinary proceedings against the appellant is a million dollar question.
- ix. All the charges date back to the time period when appellant was not civil/public servant, the aspect which the department spearheaded by the adversary federal-origin lot concealed throughout during the proceedings before the relevant forums. Interestingly,

- No charge relating any act or omission committed during discharging normal function and duties in Population Welfare Department has ever been leveled against the appellant.
- x. That the entire disciplinary proceeding as well as criminal prosecution was tainted, intransparent, misrepresented and was based on the photocopies received with a Pseudonymous complaint in the name of one Khairullah S/O Hizbullah of Tehkal Payan Peshawar. Whereas original service record contained in the 03 personnel files of the appellant was missing from the department and was not available for evidence. Not a single person from the department appeared in the witness box as prosecution witness with record in hand in support of the spineless charges leveled as alluded by the trial court in its judgment. Thus, the process of disciplinary proceedings was not executed in accordance with relevant law honestly and fairly but driven in rash, rancor, with malafide intension to settle personal scores with the appellant and to suppress the legal offshoot of two judgments of the Supreme Court of Pakistan supra, arrived in favor of the appellant and against his private adversaries on helm of the affairs in the department, who had initiated and pursued the impugned disciplinary proceeding against the appellant on the basis of trump-up charges with no-evidence in hand.
- 8. The trial court where necessary, has summarily alluded to these i-x intrinsic & inherent legal infirmities in the prosecution case, however, decided the case on merits vide its elaborated judgment while dealing with all charges one by one.

CONCLUSION:

— A detail resume of the dicta set by the superior courts in the matter of re-instatement with back benefits after acquittal from criminal proceedings has been given as annex-A herewith the Appeal which should be taken as necessary part thereof. From the above considered opinions of the superior courts noted, to which the Executive is under legal obligation under Articles 189 and 201 of the Constitution to follow, the following scenario is emerging.

- a) Departmental proceedings & Criminal trail can run side by side simultaneously.
- b) The judgments coming forth from the two proceedings can be at variance.
- c) However, in case of acquittal in criminal case, especially when the charges on both the forums are the same, the accused earn an unflinching right for re-instatement as the 'court' being senior forum in justice system has precedence over the findings of the administrative tribunals as the former is the court of evidence with decision on facts. The golden principles of Examination-in-chief and Cross-examination herein give trustworthy outreach to the inquiry of facts in the case that bring greater satisfaction to the society at large and is also close to the principle of tracheotomy of powers, where courts independently moves and functions beyond the governments influence under the well-explained procedures & strict standards of justice & equity. Here the evidence is evaluated cardinally whereas in the other it is appraised in ordinal manner.

PRAYER: In view of the above facts and points of law it is humbly requested to re-instate the appellant and restore him to his broken position & status, with all back service & financial benefits please.

Enclosed as referred above:

Pervez Khan
 PERVEZ KHAN

Ex-Project Director FATA/DPWO/DD @ Population Welfare Department, KPK, Peshawar. Mailing Address: Khalil House, Village Palosi Tlarzai, P/O P.F.I, Peshawar. Cell: 0346-9166204 Email: pkkhalil@yahoo.com

152

Through Registered AD



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

No. SOE (PWD) 1-61/2019/
Dated Peshawar the 14th January, 2021

To

Mr. Pervez Khan,
Ex-Project Director / Dy. Director,
Khalil House, Village Palosi Tiarzai,
P/o P.F.I, Peshawar.

SUBJECT: - EXONERATION FROM CHARGES CONTAINED IN F.I.R NO. 08 DATED 19/11/2013 VIDE JUDGMENT DATED 01-12-2020 PASSED BY KPK SENIOR SPECIAL COURT OF ANTI-CORRUPTION, PESHAWAR, REINSTATEMENT INTO SERVICE WITH BACK BENEFITS IN VIEW OF ACQUITTAL ON MERITS

I am directed to refer to your application No. 1-1/2020/personal dated 16/12/2020 on the subject noted above and to state that your application has been examined and to state that the instant FIR has purely been lodged against you to recover an amount you had allegedly illegally received during service from the Government. The Provincial Government in Home Department has accorded sanction and directed the Advocate General of Khyber Pakhtunkhwa to file an appeal in the Hon'able Peshawar High Court against the order dated 01-12-2020 passed by the Special Judge, Anti-Corruption Court (Provincial), Khyber Pakhtunkhwa in terms of Section 417 Cr.PC.

2. It is further to mention that your service appeal has also been decided by the Khyber Pakhtunkhwa Service Tribunal and later an appeal against the decision / judgment of Service Tribunal as well as review on such judgment of appeal was rejected / dismissed by the Hon'able Supreme Court of Pakistan and the service matter once decided by the Hon'able Supreme Court attains finality.

3. It is therefore to inform that your present application having no value to consider has been filed.

*Received in office from
SOE
19/11/2021*

(Signature)
(LAL SAEED KHATTAK)
SECTION OFFICER (ESTT)

Copy to the:-

1. PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar for information.
2. Director General, Directorate General PW, Khyber Pakhtunkhwa, Peshawar.
3. PS Secretary, Population Welfare Department, KP, Peshawar.

SECTION OFFICER (ESTT)

153

GOVERNMENT OF NWFP
POPULATION WELFARE DEPARTMENT
FC Trust Building, Sunehri Masjid Road
Peshawar Cantt

WORKING PAPER

SUBJECT: PROMOTION OF DEPUTY DIRECTOR/DISTRICT POPULATION WELFARE OFFICER (BPS-18) TO THE POST OF DIRECTOR (NON-TECH)/DISTRICT POPULATION WELFARE OFFICER/CITY POPULATION WELFARE OFFICER/EXECUTIVE DISTRICT OFFICER (POPULATION) (BPS-19) IN POPULATION WELFARE DEPARTMENT NWFP

5 temporary posts of Director (non-tech)/District Population Welfare Officers/City Population Welfare Officers (BPS-19), falling under the promotion quota, are vacant in the Population Welfare Department NWFP.

2. In terms of Serial No.1 column No.6 of Appendix to Population Welfare Department NWFP Notification No. SO (PW)/4-10/2002/613-23 dated 26.02.2003 (Annex-I) the following method of recruitment has been prescribed for the post of Director (non-tech)/District Population Welfare Officers/City Population Welfare Officers (BPS-19) :-

- i. Seventy per cent by promotion, on the basis of seniority-cum-fitness, from amongst Deputy Directors (non-tech), District Population Welfare Officers, Deputy City Population Welfare Officers and Executive District Officers (Population) BPS-18 with twelve years service in BPS-17 and 18 or in the case of persons who have not rendered any service in BPS-17, seven years service in BPS-18 of which three years service shall be in the Population Welfare Department; and
- ii. Thirty per cent by initial recruitment.

3. There are 10 sanctioned posts of Directors (non-tech)/District Population Welfare Officers/City Population Welfare Officers (BPS-19) in the Population Welfare Department NWFP, out of which 03 posts fall to the share of direct recruitment and 07 to promotion quota. The detail of the promotees vis-à-vis direct recruits presently holding the post is given at Annex-II.

4. According to the seniority list (Annex-III) the following are the senior most Deputy Directors (non-tech)/District Population Welfare Officers (BPS-18) who are due for promotion to the post of Director (non-tech)/City Population Welfare Officers/District Population Welfare Officers (BPS-19) :-

S.No	Name of Officer	Qualification	Service rendered below BS-16	Service rendered in BS-16	Date of regular appointment in BS-17	Date of regular appointment in BS-18	Whether completed 12 years service in BS-17 & above	Whether eligible for promotion
1.	Mrs Hayib Ahmad	MA				16.11.2000	No	No. As detailed in para-5
2.	Syed Mubassir Shah	BA		14.11.75 to 7.1.96	8.1.96	29.5.2004	Yes	Yes
3.	Mr. Mahbaram Khani	BA		10.1.76 to 7.1.96	8.1.96	29.5.2004	Yes	Yes

154

	Arbab Muhammad Ramzan	BA LLB		23.7.76 to 7.1.96	8.1.96	29.5.2004	Yes	Yes
5.	Mr. Shahi Nawab Khallak	BA		5.1.77 to 7.1.96	8.1.96	29.5.2004	Yes	Yes
6.	Mr. Muhammad Anwar Qureshi	MA	28.6.73 to 9.12.86	10.12.86 to 7.1.96	8.1.96	29.5.2004	Yes	Yes
7.	Mr. Subh Sadiq	BA	19.4.73 to 18.5.96	19.5.96 to 26.12.99	27.12.99	29.5.2004	Yes	Yes
8.	Mr. Dilawar Khan	M.Phil		13.1.87 to 15.9.87	16.9.87 to 28.5.2004	29.5.2004	Yes	Yes
9.	Dr. Habib Shah	MBBS			6.1.94	29.5.2004	Yes	Yes
10.	Mr. Ghulam Muhammad Kaleem	MA			23.8.2003	29.5.2004	No	No
11.	Mr. Muhammad Wali	MA			23.8.2003	29.5.2004	No	No
12.	Mr. Muhammad Aleem	MA			23.8.2003	29.5.2004	No	No
13.	Mr. Pervez Khan	M.Sc/LLB			3.11.1988	29.9.2004	Yes	No. He has not completed the mandatory 3-year service in PW Deptt as per requirement of service rules.

5. The officer at S.No.1 above has not yet completed the prescribed compulsory service of three years in the Population Welfare Department, as she availed ex-Pakistan leave without pay w.e.f 1.8.2003 to 31.5.2004. The officer again applied for study leave and this Department issued NOC with the condition that she will apply for study leave or avail extra ordinary leave without pay for 2 years but she left abroad in January 2006 without settling terms & conditions. Her representation addressed to Chief Secretary NWFP for promotion has been regretted on 12.12.2005 vide letter at Flag-A. It is submitted that the condition of 3 years service in the department is part of eligibility criteria. Moreover, the officer has proceeded abroad for higher study. According to the instructions of E&A Department (Annex-IV) no post should be reserved for officers who are on deputation abroad or on long leave and the next junior officer(s) should be considered for promotion. The officer has also not completed the qualifying service of 7 years in BPS-18 as she joined govt service on 27.11.2000. She availed ex-Pakistan/extra ordinary leave without pay w.e.f 15.12.2001 to 8.9.2002, remained in surplus pool upto 14.7.2003. She joined this Department from 15.7.2003 and availed ex-Pakistan leave without pay w.e.f 1.8.2003 to 31.5.2004. As such she actually served in BPS-18 approximately for 2 years and 8 months. The officer is expected to return in January 2008 and will have to obtain one ACR before promotion. Thus she will be eligible for promotion in 2009 when two seats will become vacant in January and June 2009 due to retirement of officers at S.No. 3 & 4 above.


6. The officers at S.No. 2 to 9 have rendered more than 12 years service (the prescribed length of service for promotion from BS-18 to 19) in BPS-17 and above (including service in BPS-16 and below) which can be taken into account for the purpose of length of service as per advice of Establishment & Administration Department NWFP (Annex-V).

7. Attested copies of synopsis from the ACRs alongwith original CR Dossiers and Biodata of the officers concerned (except S.No.1) are placed on board. The ACRs for the period from 24.6.2005 to 26.9.2005 in respect of the officers at S.No.2, 3, 4 & 6,7 & 8 have been initiated by the RO but not signed by the CO being broken period as detailed in Annex-VI.

155

It is certified that :-

- a. Neither disciplinary/departmental proceedings/anti-corruption case/judicial inquiry are pending against the officers at S.No. 2 & 9, recommended for promotion, nor any penalty was imposed on them.
 - b. The Officers are regular members of the service/cadre and are presently serving in their respective service/cadre and have completed the prescribed length of service for promotion.
9. The Provincial Selection Board is requested to determine the suitability of the five officers for promotion to the post of Director (non-Tech)/City Population Welfare Officer/ District Population Welfare Officer (BPS-19) on regular basis with immediate effect.


SECRETARY TO GOVT OF NWFP
POPULATION WELFARE DEPARTMENT

23

(186)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE TARIQ PARVEZ

CIVIL APPEAL NO. 172-P OF 2010

(on appeal from the judgment of the KPK
Service Tribunal, Peshawar dated
23.04.2009 in Appeal No. 1099 of 2007)

Pervez Khan

...Appellant .

VERSUS

Government of KPK, through
Chief Secretary and others

...Respondents.

For the Appellant: In-person.

For the State: Mr. Naveed Akhtar, Addl. AG, KPK.
Noor Afzal, Director DPWO, Kohat.

For Respondents 8-14: Mr. Mr. Waqar A. Seth, ASC.

Date of Hearing: 15.07.2011.

JUDGMENT

NASIR-UL-MULK, J. - The appellant is serving as Deputy Director, Population Welfare Department, Khyber Pakhtunkhwa in PBS-18. He was appointed on the present post on 29.09.2004. Before joining this Department, the appellant had served as Planning Officer (BPS-17) in the Local Government, Elections and Rural Development Department of the Province since 03.11.1988. He felt aggrieved when four of his colleagues in the same cadre were promoted as Director in BPS-19 on 19.02.2007, whereas the appellant was left out. According to the working paper prepared for the purpose of said promotion, the appellant was found ineligible, as he had not served for the requisite three years in the Population Welfare Department. The appellant filed a

ATTESTED

[Signature]
Assistant Registrar

Supreme Court of Pakistan
Peshawar.

(187)

Constitution petition before the High Court. The same was disposed of on 02.04.2007 in terms that the Writ petition was to be treated by the Department as Departmental appeal and decided accordingly. The Court, however, held that it had no jurisdiction as the matter related to the terms and conditions of service of the appellant. On the same day, 02.04.2007, the appellant also made departmental representation, assailing not only the said Notification of promotion but also previous seniority lists pertaining to the year 2005-06. His representation was turned down, whereafter he filed service appeal before the KPK Service Tribunal on 31.10.2007. Apart from Notification dated 19.02.2007, the appellant assailed the seniority list of 22.03.2006, Departmental advice dated 20.09.2005 and proposal for promotion dated 21.11.2006. As regards the seniority list of 22.03.2006, the Tribunal held that since the private respondents had been regularized before 23.07.2005 as a result of which the respondents became senior, it was too late in the day to challenge their seniority. As to the promotion of the private respondents to BPS-19, the Tribunal agreed with the view of the Department that the appellant was not eligible at the relevant time to be considered for promotion as he had not served for three years in the Department. The appellant has now assailed the judgment of the Service Tribunal dated 23.04.2009.

2. The appellant appeared in-person, whereas the Department was represented by Mr. Naveed Akhtar, the learned Additional Advocate General and private respondents by Mr. Waqar Ahmed Seth, the learned ASC.

3. The appellant submitted that the Department have misconstrued the relevant eligibility requirement as the appellant fulfills one of the two alternative requirements of having served for more than 12 years on a post of BPS-17, taking into account his earlier

ATTESTED

[Signature]
Assistant Registrar
Supreme Court of Pakistan
[Signature] Peshawar