scrvice in the Local Government, Elections and Rural Development Department.

4. The method of appointment to the posts of Director (BPS-19) is stipulated in the Notification dated 26.02.2003 of the Population Department. According to the Notification 75% of the vacancies of the Directors (BPS-19) in the Department are to be filled by promotion from amongst the Deputy Directors provided they have "twelve years service in BPS-17 and BPS-18 or, in 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;". In order to be considered for promotion to BPS-19, the Deputy Director has to meet one of the two eligibility requirements, either he should have to his credit 12 years service in BPS-17, he must have served for seven years in BPS-18.

5. The moot question is whether the three years service in the Population Department Welfare is a condition applicable to both or only the latter eligibility criteria. The appellant argued that although he had not served at the relevant time in the Department for three years, the said condition cannot be applied to him as it was restricted to those who had served only in BPS-18.

6. The construction placed by the appellant on the said provision appears to be correct. The use of the word 'or' in the Rule makes the two eligibility criteria in the alternate. The provision for the first criteria ends before the word 'or', which is followed by a comma. The entire remaining portion of the Rule relates to the second criteria. Those employees who had never served in BPS-17 require only seven years service in BPS-18 as against 12 years for those serving /in ""



Ansistent Registrar y preme Court of Pakiston A Peshawar. c

CA 172-P/2010

the former, the Rule has imposed an additional condition that the employee must have served for three years in the Population Department. We thus hold that the Department had wrongly held that the appellant was not eligible for promotion as he had not served the Department for three years. He was eligible according to the first criteria.

7. The learned counsel representing the private respondents tried to argue that the appellant's previous service in the Local Government Department cannot be counted towards his present service in the Population Department for the purpose of seniority as the previous service would only be relevant for protection of pay. The learned counsel however was unable to refer to any Rule in support of his contentions. On the other hand the working paper prepared for the promotion to the posts of Director (BPS-19) the Department had acknowledged that the appellant possessed the requisite 12 years service in BPS-17 and BPS-18.

8. The learned Additional Advocate General has, however, pointed out that regardless of the interpretation that may be placed on the relevant Rule for promotion to BPS-19, the appellant was junior to those promoted through the impugned Notification. In this context the learned Additional Advocate General drew our attention to the working paper and we found that the appellant was appointed in BPS-18 on 29.09.2004 whereas those promoted were appointed earlier in May 2004. The appellant tried to argue that promotion is to be made on the basis of seniority-cum-fitness. Correct that seniority alone is not the sole but it is equally true that it is the most relevant factor to be considered for promotion to a higher post. The appellant, however, did not state as to how his performance finad surpassed those of the private

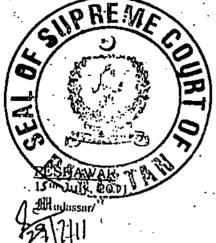
egistrar Supreme Court of Pakisters A Reshawar

CA, 172-P/2010

respondents. Even otherwise the assessment of fitness for promotion is a matter within the exclusive domain of the Competent Authority. 9. For the foregoing reasons, we do not consider that this

Not approved for reporting."

appeal has any merits. The appeal is, therefore, dismissed.



Certified to be tras copy Assistant Bolton al Supreme Court of Pakistan Peshawar.

sal Masir ul Mulk J.

sdf. Tavis, Parvez, J.

G.R. No. 832-P/2011 • No of the of S · ~ 0 Regard ... 9.30 Cognition 74.50 Court rest. Date of ton - 1005 02/08/201 Roceived by Tarver Khan Total Astocart Advance S. Bainaice......

GOVERNMENT OF KEYBER PARETUNKEW ESTABLISHMENT & ADMN: DEPARTMENT (REGULATION WING)

No. SOR-II (E&AD) 3-249/07 (Vol-I) Dated Peshawar the 30th May 2011

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

Subject:

To

ABERLSENTATIC	<u>DN FOR</u>	WITHDRAWING		
LETTER NO.	SOR. II	A set of the set of th		IMPUNGED
9.7.2009 OF		T.STTON TO	49)/2007	
DEPARTMENT.		MALION-II 0	F ESTAB	LISHMENT

Dear Sir,

29-4-2015

am directed to refer to this Department's letter of even number dated 9.7.2009 and to enclose a copy the representation dated 10.5.2011 • of to Secretary Khyber Pakhtunkhwa by Mr. Pervez Khan District the Chief Population Welfare Officer/Deputy Director Welfare Department Peshawar which is self explanatory. Population (

I am further directed to convey the following observations o£ the Establishment Department continuation of this Department's letter NO. SO (PSB) ED/1-(18/2010/P-10 dated 2.2.2011:-

xiii While counting the previous service of the officer towards the length of service the Service Tribunal interpretation at para-6 of its judgment in the case of Pervez Khan VS other in appeal No. 1099/2007 to the effect "the service in BPS-16 and below is one time concession for promotion from BPS-17 to BPS-Section 8 Admin FP. followed by Population Welfar Gove of NWEP. each and every promotion cases including the one in hand.

> Xiv The PSB-II Proforma of the instant working paper should clearly reflect the length of service in respect of all the panelist with clear calculation of the previous service in BS-17 especially in respect of candidates at S.No.4, 5 and 6 so that their service in BS-17 can correctly be counted towards length of their services as required in the Service

Whether the service rendered in BS-17 by Mr. xiv, Pervez Khan has been calculated towards his length of service or not and why he has been proposed for acting charge basis if he has completed the length of service. Should he not be preferred over the officer at S. No. 34 & 5 on, the question of "Fitness" as they (officers as S. NO. 4 & 5) have not completed the requisite length of service for promotion to BS-18? Yours faithfully (NASIR AMAN) Section Officer (R-II) Phone No.9211785 Ends. of even No. £ date. Сору forwarded Section to, Officer (PSB) Establishment Department for information with reference to his letter referred to above. Section Officer (R-II) * (11) Officer (Re disting of the

GOVERNMENT OF NWEP OPULATION WELFARE DEPARTMENT FC Trust billing sunchri Maisud@und

Printing Cantte

Dated Pesh, the February 19, 2007

NOTIFICA TON

No.SOE/PWD/4-27/2006/PC/Vol.II : On the recommendations of the Provincial Selection Board and with the approval of the Competent Authority, the following Deputy Directors (NT)/DPWOs (BPS-18) are hereby promoted as Directors (NT) BPS-19 in the Population Welfare Department NWFP on regular basis with immediate effect :-

- Syed Mudasir Shah
- Mahbaram Khan

2.

3.

- Arbab Muhammad Ramzan
- Shahi Nawab
 - Muhammad Anwar Qureshi

2. The officers on promotion will remain on probation for a period of one year in terms of Section 6(2) of NWFP Civil Servants Act, 1973 read with Rule 15(1) of NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. Consequent upon the above, the following posting/transfers amongst the officers are made in the interest of public service henceforth :-

5.	Naine	From	3 820	Remarks
N				
<u>o.</u> 1	Syed Mudasir Shah	District Population Welfare Officer	Welfare Officer	Against T BPS-19 po (already
		Abbettabad (BPS-18)	Abbottabod (8 F 5-19)	occupied `` the offic
				yn his o pay scale)
2	Mr. Mahbaram Khan	District Population Welfare Officer D.I.Khan (BPS-18)	District Population Welfare Officer D.I.Khan	Against t BPS-19 pc (already
· • •			(BPS-19)	occupi ed the offic
				in his o pay scale)
3	Arbab Muhammad Ramzan	Deputy Director (M&E) Provincial Office (BPS-18)	District Population Welfare Officer Mardan (BP5-19)	Vice No. 8
4 .	Mr. Shahi Nawab	District Population Welfare Officer Hangu (BPS-18)	District Population Welfare Officer Swot (BPS-19)	Against BPS-19 p occupied
			Dentil diese Melline	officer 5.No. 11 Vice No.0
5	Mr. Muhammad Anwar Qureshi	Deputy Director (Admn) Provincial Office	Distric t Pop alation Welfare Officer Kohat (BPS-19)	
	Mr. Noor Afzal Khan	(BPS-16) District Population Welfare Officer Kohat (BPS-19)	District Population Wellare Officer Peshawar (BPS-19)	Vice No. 7

· · ·		• • • • • •	Pagè		Y-
	7	Mr.Nowsherawan	District Population Welfare Officer Peshawar (BPS-18)	District Population Welfare Officer Charsadda (BPS- 18)	Vicu No. 9
	8	Mr. Ikromuliah	District Population Wellare Officer Mardan (BPS-18)	District Population, Wellaro Officer Korak (BPS-18)	Vice No. 10
: -	9	Mr, Akhtor Zaman	District Population Welfare Officer Charsadda (BPS-17)	Deputy Director (M&E) Provincial Office (BPS-18)	Vice No. 3 in his own pay scale
	10	Mr. Ghulam Farid	District Population Welfare Officer Karak (BPS-17)	District Population Welfare Officer Hanga (BPS-18)	Vicc No.4 in his own pay scale
		Mr. Fazal Rabi	District Population Welfare Officer Swat (in his own pay scale)	Accountant (BPS-16) District PW Office Swat	Against his original post of Accountant BPS-16
] 	2	Mrs. Nayab Ahmad	On study leave obroad	Depity Director (Admn) Provincial Office (BPS-18)	For the purpose of pay .: & allowances

CHIEF SECRETARY GOVERNMENT OF NWEP

1141

Endst number and date even

Copy to :-

1. 2.

4.

9

- The Accountant General NWFP Peshawar
- The Director General Population Welfare NWFP Peshawar.
- 3. 1. PS to Minister for Population Welfare NWFP.
 - P.5 to Chief Secretary NWFR.
- 5. . All District Population Welfare Officers in NWFP.
 - District Accounts Officers Kohat/D.I.Khan/Abbottabad/Swat/ Hangu/Karak/Charsadda and Mardan.
 - · Officers concerned.
 - Manager, Govt Printing Press Peshawar.
 - Personal Files of the Officers.

(USMAN'S SECTION OFFICER (ESTAB)

IMMEDIATE

GOVERNMENT OF KHYBER PAKHTUNKHWA

Population Welfare Department. PESHAWAR NO: SOE (PWD)4-27/11 Dated 12・0ろ・201 文

Section Officer (PSB)

Establishment Department,

Peshawar.

Τo,

Subject: WORKING PAPER FOR PROVINCIAL SELECTION BOARD OF DY. — DIRECTORS BP-18 TO THE POST OF DIRECTORS BP-19 POPULATION WELAFRE DEPARTMENT.

I am directed to refer to this Department Letter of even No.dated 5th March, 2012 on the subject cited above

l am enclosing the Working Paper and PSB-II Proforma(07 Sets) as corrected and approved, for replacement with the earlier papers submitted by this Department.

The working a paper has been revised as per policy instructions of the Establishment -Department letter NO.SOR-II (E&AD) 3-249/07 Vol-I dated 30.05.2011 as desired

It is requested that the working paper may kindly be placed before the next PSB at your earliest as the accrued interests of the officers are long standing please.

WORKING PAPER FOR PROVINCIAL SELECETION BOARD (PSB)

Nomenclature of the Post/Basic Scale Service Group/Cadre Sanctioned Strength of the cadre İII.

Director(NT)/DPWOs(BS 19)

Civil Services(Population Welfare)

İ0

iv.

i.

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· .		Direct	Promotion	Transfer
į.	Percentage of Share	30 Percent	70 Percent	
	No.of Posts allocated to each	03	07 ·	
	category			<u>.</u>
`iii.	Present Occupancy Position	03	. 03	
	No.of Vacancies in each category	-	04	

V.	How did the vacancy(lies) under Promotion Quota Accrue and since when?	Due to the Retirement of Four Officers in BS.19, namely: Mr.Arbab Muhammad Ramzan, Mr.Mahbaram Khan Syed Mudassar Shah, Mr.Muhammad Anwar Qureshi Since 15-01-2009, 31-05-2009, 28-02-2010 and 11-12-2011 respectively		
Vi	Recruitment Rules	 i) Thirty Percent by initial Recruitment ii) Seventy Percent by Promotion on the basis of Seniority- cum-Fitness amongst the Deputy Director(NT), District 		
1 -		Population Welfare Officers(BS.18) and the Executive		
		District Officer(Population) in BS.18 with twelve Years		
		sevice in BS.17 and Bs.18 or in case of Person who has		
		not rendered any service in BS.17.Seven Years Sevice in BS.18 of which Three Years Service shall be in the Population Welfare Department and		
		iii) If no suitable Candidate is available for Promotion, then by		
		Transfer		
Vii	Required Length of Service	- As Above		
Viii	Whether to be Promoted on	Regular Basis		
•	Regular Basis or appointed			
	on Acting Charge Basis?			
lx	Mandatory training if any.			
x	Minimum Required Score on El	60		

Signature: Designation: Secr KPK Population Welfare Department -

Dated:

PANEL OF OFFICERS FOR CONSIDERATION

According to the seniority list (Annex-III) the following are the senior most Deputy Directors (non-tech)/District Population Welfare Officers (BPS-18) being placed before the PSB for consideration for promotion against the four vacant posts of Director (non tech)/City Population Welfare Officers/District Population Welfare Officers/Executive District Officer (BPS-19) fallen vacant under promotion quota, with their antecedents and eligibility as of latest and noted against each:-

.

5	Name of	Qualification	Date of Regular	Date of	Whether completed	Whether eligible fo
	Officer		appointment in	🖞 Regular 👘	qualifying 12 years	promotion as per
	- 30-		BS-17	appointment	service in BS-17& 18 OR.	departmental
		- ×		in BS-18	07 years service in BS-18	service rules?)
	• •				2	· · ·
-	Dilawar Khan	M.Phil	16.09.87	29.05.2004	Yes	Yes
	Dr.Habib Shah	MBBS	06.01.1994	29.05.2004	Yes	Yes
	Mohammed	MA	23.08.2003	29.05.2004	NO, in view of Policy	NO
	Wali			-	instruction of Establishment	
	VVdii			• •	Department communicated	
	· .				vide NO.SOR-II(E&AD) 3-	
	· -				249/07 Vol-1 dated	•
					30.05.2011	
_	Mohammed	MA	23,08,2003	29.05.2004	NO, in view of Policy	. NO
	Aleem			• .	instruction of Establishment	
ı.	Alcent	and a second	· ·		Department communicated	
	· · ·			1	vide NO.SOR-II(E&AD) 3-	
ł	-				249/07 Vol-I dated	
:	·.				30.05.2011	
•						Yes
	Pervez Khan	MSc/LLB	03.11.1988	29.09.2004	Yes	
	Nowsherwan	MSc	-	01.07.2004	Yes	Yes on completing
	· · ·					of ACRs
		• .			·	· · · · · · · · · · · · · · · · · · ·
•	Ikramullah	MSc	21.10.1998	28.07.2004	Yes	Yes on appearir
			· ·	.	-	of vacancy
• •		· .				
-	Malik Taj	MPA	-	01.07.2004	Yes	Yes on appearing
		·		1	-	of vacancy
	· ·					



It is certified that:-

- a. Certified that the officers included in the panel at serial NO 1,2 5 are eligible in all respects and possess the requisite length of service required for promotion to the next higher grade.
- b. None of the officer at S.NO. 01 to 10 has ever been convicted in any criminal case from the court of law nor any major disciplinary penalty imposed on them.
- c. The Officers are regular members of the service/cadre and are presently serving in their respective service/cadre and have completed the length of service noted there against, for promotion.
- Now, the provincial selected board is requested to determine the suitability of the four officers at serial NOs 1, 2, 5, & 6 and consider promotion of officers at serial NO 1, 2 & 5 with immediate, to the post of Director (non-Tech)/City Population Welfare Officer/District Population Welfare Officer/Executive District Officer, Population Welfare (BPS-19) on regular basis.

Secretary to Government of Khyber Pakhtunkhwa Population Welfare Department

12.3.2012

PSB-II

Panel of Officers for Consideration

S. No.	Name of Officers	Remarks
	Mr. Dilawar Khan	His date of birth is 11.12.1955. He joined Government Service on 13.01.1982.
ŀ	Dy: Director / DPWO (BPS-18)	He was promoted to BPS-17 on 16.09.1987, absorbed in Population Welfare
	Dy. Director / DP WO (DI 5-10)	Deptt: on 13.05.1997 and promoted to BPS-18 on 29.05.2004. The service of
		officer is more than 12 years of service, mandatory qualifying service with three
		years service in the Population Welfare Department as required in the service
,		rules of the Department. Recommended for promotion to the Post of Director
1. 11		(N.T)/ DPWO (BPS-19) on regular basis.
		His date of birth is 15.03.1967. He joined Government Service on 06.01.1991
2	Dr.Habib Shah	He was absorbed in Population Welfare Department on 15.07.2003. He was
	Dy: Director / DPWO (BPS-18)	promoted to BPS-18 on 21,05.2005. The service of officer is more than 12 years
.*		mandatory qualifying service with three years service in the Population Welfare
		Department as required in the service rules of the Department. Recommended for
		promotion to the Post of Director (N.T)/ DPWO (BPS-19) on regular basis.
	Mr. Mohammad Wali	His date of birth is 01.03.1964. He joined Government Service on 03.05.1988.
3.	Dy: Director / DPWO (BPS-18)	He was promoted to BPS-17 on 23.08.2003 and to BPS-18 on 29.05.2004.
	Dy Director / Dr wo (br 3-ru)	Presently working as Assistant Chief (Coordination) in P&D Department.
. <u>.</u> .	1	Khyber Pakhtunkhwa on deputation. The officer has not yet completed 12 years
		of service in BPS 17 & 18, mandatory qualifying service as required in the
		service rules of the Department as well as Establishment department policy
	1 - C	instruction NO.SOR-II(E&AD) 3-249/07 Vol-1 dated 30.05.2011 in his case.
		therefore, not recommended for promotion to the Post of Director (N.T) DPWO
		(BPS-19).
4	Mr. Muhammad Aleem	His date of birth is 18.02.1964. He joined Government Service on 19.03.1990.
	Dy: Director / DPWO (BPS-18)	He was promoted to BPS-17 on 23.08.2003 and to BPS-18 on 28.06 2004. The
		officer has not yet completed 12 years of service in BPS 17 & 18, mandatory
		qualifying service as required in the service rules of the Department as well as
		Establishment department policy instruction NO.SOR-II(E&AD) 3-249 07 Vol-1
- 1		dated 30.05.2011 in his case, therefore, not recommended for promotion to the
		Post of Director (N.T)/ DPWO (BPS-19).
5	Mr.Pervez Khan	His date of birth is 31,12,1963. The officer concerned joined government service
	Dy: Director / DPWO (BPS-18)	in BPS 17 on 03.11.1988. He joined Population Welfare Department through
		Commission as in-service candidate and through proper channel on 29.09.2004
	•	The officer has completed 12 years mandatory qualifying length of service in
	-	BPS 17 & 18 service with three years of service in Population Welfare
•.		department as required in the service rules of the Department. Recommended for
		promotion to the Post of Director (N.T)/ DPWO (BPS-19) on regular basis.
6	Mr. Nowsherawan,	His date of Birth is 15-07-1967. The officer concerned joined this Department
, .	Dy: Director / DPWO (BPS-18)	through Khyber Pakhtunkhwa Public Service Commission as Dy: Director
	Dy. Director / Dr. it o (Dr. o 10)	DPWO (BPS-18) on 01-07-2004 as fresh candidate. He has completed 07 years
		service in BPS 18 with three years in the department. Being eligible, he will be
· .		considered for promotion to the Post of Director (N.T)' DPWO (BPS-19) once
5 - 26 -		ACR are completed and submitted by the officer.
	Mr. Ikram Ullah,	His date of Birth is 20.12.1968. He joined Government service on 16.10.1995.
l	Dy: Director / DPWO (BPS-18)	He was promoted to BPS-17 on 21.10.1998. The officer concerned joined this
	Director / DF WO (BF3-10)	Department through Khyber Pakhtunkhwa Public Service Commission as Dy:
		Director / DPWO (BPS-18) on 28.07.2004 as in-service candidate. He has
		completed 12 years service in BPS 17 & 18 with three years service in
	ŧ.	Population Welfare Department, therefore eligible. He will be recommended for
	· ·	consideration for promotion to the Post of Director (N.T)' DPWO (BPS-19 on
		appearing of additional vacant post in the cadre and grade.
0	Adv. Mulok Tai	His date of Birth is 22.04.1972. The officer concerned joined this Department
8	Mr. Malak Taj,	through Khyber Pakhtunkhwa Public Service Commission as Dy: Director
	Dy: Director / DPWO (BPS-18)	
· .		DPWO (BPS-18) on 01-07-2004 as fresh candidate. He has completed 07 years
	· ·	service in BPS 18 with three years in the Population Welfare Department. Being
· ·		eligible, he will be considered for promotion to the Post of Director (N.T). DPWO (BPS-19) on appearing of additional vacant post in the cadre and grade.

It is certified that:-

- (170
- a. Certified that the officers included in the panel at serial NO 1,2 5 are eligible in all respects and possess the requisite length of service required for promotion to the next higher grade.
- b. None of the officer at S.NO. 01 to 10 has ever been convicted in any criminal case from the court of law nor any major disciplinary penalty imposed on them.
- c. The Officers are regular members of the service/cadre and are presently serving in their respective service/cadre and have completed the length of service noted there against, for promotion.

Now, the provincial selected board is requested to determine the suitability of the four officers at serial NOs 1, 2, 5, & 6 and consider promotion of officers at serial NO 1, 2 & 5 with immediate, to the post of Director (non-Tech)/City Population Welfare Officer/District Population Welfare Officer/Executive District Officer, Population Welfare (BPS-19) on regular basis.

Secretary to Government of Khyber Pakhtunkhwa Population Welfare Department

2.3- 2012

PSB-II

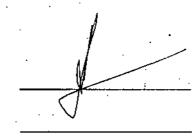
Panel of Officers for Consideration

S. No.	Name of Officers	Remarks
1	Mr. Dilawar Khan	
	Dy: Director / DPWO (BPS-18)	His date of birth is 11.12.1955. He joined Government Service on 13.01.1982.
	,	He was promoted to BPS-17 on 16.09.1987, absorbed in Population Welfare
		Deptt: on 13.05.1997 and promoted to BPS-18 on 29.05.2004. The service of
	1	officer is more than 12 years of service, mandatory qualifying service with three
		years service in the Population Welfare Department as required in the service
•		i rules of the Department. Recommended for promotion to the Post of Director
		(N.1) DPWO (BPS-19) on regular basis.
2.	Dr.Habib Shah	His date of birth is 15.03.1967. He joined Government Service on 06.01.1994.
	Dy: Director / DPWO (BPS-18)] He was absorbed in Population Welfare Department on 15.07.2003. He was
		promoted to BPS-18 on 21.05.2005. The service of officer is more than 12 years
		a mandatory qualifying service with three years service in the Population Welling
		Department as required in the service rules of the Department. Recommended for
	· · · · · · · · · · · · · · · · · · ·	promotion to the Post of Director (N.T)/ DPWO (BPS-19) on regular basis.
3 .	Mr. Mohammad Wali	His date of birth is 01.03.1964. He joined Government Service on 03.05.1988.
	Dy: Director / DPWO (BPS-18)	He was promoted to BPS-17 on 23,08,2003 and to BPS-18 on 29,05,2004.
		Presently working as Assistant Chief (Coordination) in P&D Department,
	· ·	Khyber Pakhtunkhwa on deputation. The officer has not yet completed 12 years
		of service in BPS 17 & 18, mandatory qualifying service as required in the
		service rules of the Department as well as Establishment department policy
		instruction NO:SOR-II(E&AD) 3-249/07 Vol-1 dated 30.05.2011 in his case.
		therefore, not recommended for promotion to the Post of Director (N.T) DPWO
		(BPS-19).
4	Mr. Muhammad Aleem	
•	Dy: Director / DPWO (BPS-18)	His date of birth is 18.02.1964. He joined Government Service on 19.03.1990.
	Director / Dr WO (DF3-10)	He was promoted to BPS-17 on 23.08.2003 and to BPS-18 on 28.06.2004. The
		officer has not yet completed 12 years of service in BPS 17 & 18. mandatory
		qualifying service as required in the service rules of the Department as well as
		Establishment department policy instruction NO.SOR-II(E&AD) 3-249 07 Vol-1
		dated 30.05,2011 in his case, therefore, not recommended for promotion to the
		Post of Director (N.T)/ DPWO (BPS-19).
5	Mr.Pervez Khan	His date of birth is 31.12.1963. The officer concerned joined government service
	Dy: Director / DPWO (BPS-18)	1 m BPS 17 on 03.11.1988. He joined Population Welfare Department through
		Commission as in-service candidate and through proper channel on 29 (19 200.)
		I the officer has completed 12 years mandatory qualifying length of service in
		BPS 17 & 18 service with three years of service in Population Welfing
	/	department as required in the service rules of the Department. Recommended for
		promotion to the Post of Director (N.T)/ DPWO (BPS-19) on regular basis.
6	Mr. Nowsherawan,	His date of Birth is 15-07-1967. The officer concerned joined this Department
	Dy: Director / DPWO (BPS-18)	through Khyber Pakhtunkhwa Public Service Commission as Dy: Director
		DPWO (BPS-18) on 01-07-2004 as fresh candidate. He has completed 07 years
		service in BPS 18 with three years in the department. Being eligible, he will be
		considered for promotion to the Post of Director (N.T)' DPWO (BPS-19) once
		ACR are completed and submitted by the officer.
7 `	Mr. Ikram Ullah,	Lie date of Dial is 20 to 10 to 20
•	Dy: Director / DPWO (BPS-18)	His date of Birth is 20.12.1968. He joined Government service on 16.10,1995.
	Dy. Director / DPWO (BPS-18)	I he was promoted to BPS-17 on 21.10.1998. The officer concerned joined this
		Department through Khyber Pakhtunkhwa Public Service Commission as Dur
		Director / DPWO (BPS-18) on 28.07.2004 as in-service condidate. He has
		completed 12 years service in BPS 17 & 18 with three course constant in
		Population wettare Department, therefore eligible. He will be recommanded for
		Consideration for promotion to the Post of Director (NT) DPWO (RDS_10.00)
		appearing of auditional vacant post in the cadre and orade
8	Mr. Malak Taj,	His date of Birth is 22.04.1972. The officer concerned joined this Department
	Dy: Director / DPWO (BPS-18)	Whough Knyber Pakhtunkhwa Public Service Commission of Day Discourse
		DPWO (BPS-18) on 01-07-2004 as fresh candidate. He has completed 07 years
		service in BPS 18 with three very in the based of the base completed 07 years
		service in BPS 18 with three years in the Population Welfare Department. Being eligible he will be considered for preparation to the department.
		eligible, he will be considered for promotion to the Post of Director (N,T) DPWO (BPS-19) on appearing of additional vacant post in the cadre and grade.
		$\Box = \Delta a$ or Δb or Δb or appearing of augmentional vacant post in the cadre and or Δb

<u>Certificate</u>

1. Certified that the officers included in the panel at serial NO 1,2.5 are eligible and fit for promotion in all respects and possess the requisite length of service required for promotion to the part higher and e promotion to the next higher grade.

2. Also certified that none of the officer at S.NO. 01 to 08 in the panel has ever been convicted in any criminal case from the court of law nor any major disciplinary penalty imposed on them so far.



Date

Signature

Designation

12.3.2012

* Remarks will pertain to information such as earlier consideration for promotion and the result thereof, if applicable.

It is certified that:-

- (73)
- a. Certified that the officers included in the panel at serial NO 1,2 5 are eligible in all respects and possess the requisite length of service required for promotion to the next higher grade.
- b. None of the officer at S.NO. 01 to 10 has ever been convicted in any criminal case from the court of law nor any major disciplinary penalty imposed on them.
- c. The Officers are regular members of the service/cadre and are presently serving in their respective service/cadre and have completed the length of service noted there against, for promotion.

Now, the provincial selected board is requested to determine the suitability of the four officers at serial NOs 1, 2, 5, & 6 and consider promotion of officers at serial NO 1, 2 & 5 with immediate, to the post of Director (non-Tech)/City Population Welfare Officer/District Population Welfare Officer/Executive District Officer, Population Welfare (BPS-19) on regular basis.

Security Population Western Department Khyber Pakhtipunket Produka.

Secretary to Government of Khyber Pakhtunkhwa Population Welfare Department

Bedruation Wolfgee Department Pedruation Wolfgee Department Krvn- Partnurkhwa Peshawar



Government of Khyber Pakhtunkhwa Local Government, Elections and Rural Development Department

NOTIFICATION

Dated Peshawar, the 16th January, 2017

<u>No.SO(LG-I)3-13/88</u>.- The Competent Authority, in consultation with the Departmental Promotion Committee is pleased to allow move-over from BPS-17 to BPS-18 in respect of Mr.Parvez Khan Khalil, ex-Assistant Director / Planning Officer, LG&RDD with effect from

01-12-2001

SECRETARY TO GOVT.OF KHYBER PAKHTUNKHWA, LG,E&RDD

Copy is forwarded to:-

Endst. Even No. & Date

- 1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department with reference to letter No.SOR-IV(E&AD)6-1/2015, dated 04-07-2016.
- 3. The Secretary to Government of Khyber Pakhtuankhwa, Law Department with reference to letter No.SO(OP-1)/LD/5-6/2012/Vol-III/8918-19, dated 3-6-2016.
- 4. The Secretary to Government of Khyber Pakhtunkhwa, Population Welfare Department, Peshawar.
- 5. The Director General, LG&RDD, Khyber Pakhtunkhwa, Peshawar.
- 6. The Section Officer (General), LG&RDD.
- Mr.Parvez Khan Khalil, ex-AD/PO, Khalil House C/O Kundi Super Store, Warsak Roud, Peshawar.
- 8. The PS to Secretary, LG, E&RDD, Peshawar.
- 9. Office order file.

UL-HAO) (BAS SECTION OFFICER (ESTAB) Ph: # 091-9213224

ف روس المدو2 منجانب (ملك طر برومومان بنام م مقد. Re-instatement in & دعوى nie 7. appeal باعث تحرير آنكه مقدمہ مندرجہ عنوان بالا میں اپنی طرف ہے واسطے پیر دی وجواب مربی دکل کا روائی متعلقہ آن مقام لسنا ور مقرركر کے اقرار کمیاجا تاہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کوراضی نامه کرنے وتقرر ثالث وفیصلہ پر حلف دیئے جواب دہی اورا قبال دعویٰ اور بصورت ذگری کرنے اجراء اور وصولی چیک ورو پیدار عرضی دعویٰ اور درخواست ہوشم کی تصدیق زرایں پردستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری بکطرفہ با پیل کی برامدگ اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا۔از بصورت ضرورت مقدمہ مذکور کے کل یاجزوی کاروائی کے داسطےاوروکیل یا مختار قانونی کواپنے ہمراہ یا اپنے بجائے تقرركا اختيار ہوگا۔اورصاحب مقرر شدہ كوبھیٰ وہی جملہ مذکورہ بااختيارات حاصل ہوں گے اوراس کاساختہ پر داختہ منظور وقبول ہوگا دوران مقدمہ میں جوخر چہ ہرجانہ التوائے مقدمہ کے سبب ، وہوگا کوئی تاریخ بیشی مقام دورہ پر ہو یا حد سے باہر ہوتو وکیل صاحب پابند ہوں گے۔ کہ پیروی مٰدکور کریں۔لہٰذا دکالت نام کھدیا کہ سندر ہے۔ المرقوم ۶**2**0 کے لئے منظور ہے . Ace. مقام پانار چوك مشتكرى بينادر تى نون: 2220193 Mob: 0345-9223239



GOVERNMENT OF KHYBER PAKHTUNKHWA, POPULATION WELFARE DEPARTMENT

02nd Floor, Abdul Wali Khan Multiplex, Civil Secretariat, Peshawar

Dated Peshawar the 24th December, 2018

NOTIFICATION

<u>No. SOE (PWD) 1-61/2018/PF</u>: In pursuance of Rule-5.5 (1), (2), red with Rule-7.7 (1) (a), (b), (c) & (2) of Government of Khyber Pakhtunkhwa Civil Servants Pension Rules, 2006, after observance of all codal formalities, sanction is hereby accorded for counting of non-gazetted service w.e.f. 16/04/1980 to 02-11-1988 as Assistant (BPS-11), with gazetted service w.e.f. 03-11-1988 to 16/01/2013 (date of compulsory retirement) in favour of Mr. Pervez Khan (BPS-18), Deputy Director, Directorate General PW, KP, Peshawar.

2. It is certified that after counting of non-gazetted service into gazetted service in respect of the above officer his total qualifying service for pension becomes 32 years, 09 months & 27 days.

SECRETARY POPULATION WELFARE DEPARTMENT KHYBER PAKHTUNKHWA

Endst: No. SOE(PWD)1-61/2018/PF/

Dated Peshawar the 24th December, 2018

Copy for information & necessary action to the: -

- 1. Accountant General, Khyber Pakhtuńkhwa, Peshawar.
- Principal Secretary to Governor Khyber Pakhtunkhwa, Peshawar.
- 3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
- 4. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa, Peshawar.
- 5. Registrar, Supreme Court of Pakistan.
- 6. Registrar, Peshawar High Court, Peshawar.
- 7. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- 8. Director General, Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.
- 9. PS to Secretary, PWD, KPK, Peshawar.
- 10. Mr. Pervez Khan, ex-Dy. Director, PW, KP; r/o Khalil House, C/O Kundi Super Store, Warsak Road Peshawar with the request to submit pension paper to this Department.
- 11. Master file.

SECTION OFFICER (ESTABLISHMENT)

GOVERNMENT OF KHYBER PAKHTUNKHWA LOCAL GOVERNMENT, ELECTIONS & RURAL DEVELOPMENT DEPARTMENT

Dated Peshawar; 22nd September, 2016

F

記録題

<u>NOTIFICATION</u>

<u>No.PO(LG)WSSC/Swat/2015-16:</u> The Provincial Government of Knyber Pakhtunkhwa has been pleased to remove Mr. Pervez Khan S/O Haji Fatheh Khan from the Post of Chief Executive Officer, WSSC Swat, appointed vide this Department Notification No.PO(LG)WSSC/2015-16, dated 31/05/2016, and appoint Mr. Shaida Muhammad S/O Fida Muhammad as Chief Executive Officer of the WSSC Swat, on the recommendations of BoD of WSSC Swat duly approved by Hon'able Chief Minister, Khyber Pakhtunkhwa with immediate effect:

Terms & Conditions are as under:-

i. The Chief Executive Officer (CEO) shall have the executive powers to run, supervise and effectuate the day to day operations, administration and management of the Company, implement decisions and directions of the Board, enforce the Articles of Association, the rules and regulations of the Company and exercise such other powers, functions and authority as may be delegated or entrusted to him by the Board from time to time. He shall also have the general charge and control over the employees of the Company.

Provided that the Board shall not delegate its authority, relating to operational matters, to any Director or committee, except the CEO.

- ii. In the absence of the CEO or his inability to act as CEO, his powers and functions may be delegated to any of the General Managers, or any other officer as approved by the Board upon such condition and limitations as it may deem fit.
- iii. Unless otherwise directed by the Board, the CEO shall act as the authorized representative of the Company before the Commission and other governmental agencies and authorities, instructions, companies, associated companies, general public and outsiders on all matters and affairs of the company.
- iv. The CEO shall also have the powers in the matter which concern disciplining of the trading members' activities under the Articles of Association, Rules and Regulations of the Company.
- v. The Board of Director shall decide the salary package and any other terms & condition of CEO & allied staff as per Company Ordinance 1984.

2. If the above terms & conditions are acceptable to you, then you should immediately communicate your acceptance in writing to the Chairman Board of Director, WSSC Swat accordingly.

Car SECRETARY LGE&RDD

Endst: of Even No. & Date

Copy forwarded to:-

- 1. The Additional Chief Secretary, Khyber Pakhtunkhwa.
- The Secretary, P&D Department, Khyber Pakhtunkhwa.
- The Secretary, Finance Department, Khyber Pakhtunkhwa.
- The Secretary, Establishment Department, Khyber Pakhtunkhwa.
- 5. The Director General, LGE&RDD, Khyber Pakhtunkhwa.
- 2. The Divisional Commission of Malakand of Burt
- 6. The Divisional Commissioner Malakand at Swat.
- 7. PSO to Chief Minister, Khyber Pakhtunkhwa.
- 8. PSO to Chief Secretary, Khyber Pakhtunkhwa.
- 9. The Secretary LCB, Hayatabad, Peshawar.
- 10. The Chairman BoD, Malakand at Swat.
- 11. The Chief Executive Officer, WSSP, Peshawar.
- 12. The Deputy Commissioner Malakand & Swat,
- 13. PS to Senior Minister, LGE&RDD, Khyber Pakhtunkhwa.
- 14. PS to Secretary, LGE&RDD Khyber Pakhtunkhwa.

15. Officer Concerned.

CHIEF PLANNING OFFICER

<u>ORDER</u>

27.05.2021

Instant application has been submitted by the Reader alongwith the appeal.

On previous date i.e. 12.04.2021 the matter was adjourned through Reader Note without any fault on the part of the appellant. Application is allowed. Office is required to fix instant appeal in the first week of June, 2021.

 M_{ij}

Cháirman

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL



Pervez Khan Ex-Project Director Population Welfare Department KPK, Peshawar.

VERSUS

Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.

APPLICATION FOR EARLY HEARING.

Respectfully Sheweth:

- 1. That the Appellant has filed Service Appeal for his re-instatement into service now pending before this Honorable Tribunal. That 12 April, 2021 was fixed for preliminary hearing which was adjourned due to the sad demise of hon'ble Chairmants 20-7 2021-
- 2. That the wrongful removal from service of the petitioner through a malicious wrongful proceedings and defective order has landed family of the petitioner in abrupt severe economic crises unfairly. Whereas date of superannuation of the appellant is fast approaching.
- 3. In the circumstances, it is therefore very humbly prayed that this hon'able tribunal may kindly be pleased to fix the appeal for early hearing within next couple of days in the interest of justice and expeditional process and decide the matter in the interests of justice please. Appellant & his counsel may kindly be effectively informed of the fresh date please.

DE: 24.5.2021

Pervez Khan (Appellant) Through his Counsel.

AFFIDAVIT:

Affirmed on oath that the contents of the application are correct to the best of my knowledge & belief and nothing has been concealed.

Dated 24.6.202 érvez Khan (Depónent)

Janive Intom - Juse مورخه Service Appeal مرد خوی بنام مقدمه دبحوى ج م باعث تحريراً نك مقدمہ مندرجہ عنوان بالامیں اپنی طرف سے واسطے ہیروی دجواج دیں کک کاروائی متعل آن مقام الرباب المهما و رکیلئے اردا سال کار کرم مقرر کرے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کا رُوائی کا کال اختیا وسيل صاحب كوراضي نامه كرني وتقرر ثالث وفيصله برحلف ديئي جواب دببي اوراقبا بصورت ڈ گری کرنے اجراءاور دصولی چیک در و پیدار عرضی دعویٰ ادر درخواست ہر زرایں پردستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کیطر فہ یا اپل اور منسوخی نیز دائر کرنے ایپل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا۔از بصو مقدمہ مذکور کے کل یاجز دی کاردائی کے داسطے اور وکیل یا مختار قانونی کوائیے ہمرا، تقرر کااختیار ہوگا۔اورصاحب مقرر شدہ کوبھی وہی جملہ مذکورہ بااختیارات حا اوراس کاساخته پرداخته منظور وقبول ، وگا دوران مقدمه میں جوخر چه ہرجانه التو سبب ہے وہوگا۔کوئی تاریخ پیشی مقام دورہ پر ہو یا حدے باہر ہوتو وکیل ۔ ے۔ کہ بیروی مذکور کریں ۔ لہٰذا د کالت نامہ کھھدیا کہ سندر ہے۔ المرقوم 6.0 ul مقام

بجنيكون سوس سرسول بعدالت 25 20 الموضح متجانب إلاا NPK Singer MAX ليزوير جان مقدم دعوىٰ Re-instatement inte Service جرم باعث تحريراً نكه مقدمه مندرجه عنوان بالامين اين طرف ہے داسطے پیروی وجواب دہی دکل کار دائی متعلقہ كيلي حداً حف فال لوسفر في الأدليل سم الأور مل أن الأسقام (تساور مقرر کرکے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کوراضی نامه کرنے وتقر رثالث و فیصلہ پر حلف دیئے جواب دہی اورا قبال دعویٰ اور بصورت د گری کرنے اجراءاور وصولی چیک در دیپیدار عرضی دعویٰ اور درخواست ہر شم کی تصدیق زرای پردستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیردی یاد گری یکطرفہ یا اپل کی برامد گ اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر تانی و پیروی کرنے کا مختار ہوگا۔از بصورت ضرورت مقدمہ مذکور کے کل یاجزوی کا روائی کے واسطے اور وکیل یا مختار قانونی کواپنے ہمراہ یا اپنے بجائے تقر رکاا فتیار ہوگا۔ادرصاحب مقرر شدہ کوبھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اوراس کاساختہ پر داختہ منظور وقبول ہوگا دوران مقدمہ میں جوخر چہ ہر جانہ التوائے مقدمہ کے سبب ، وبوگا ۔ کوئی تاریخ بیشی مقام ددرہ پر ہو یا حد ، اہر ہوتو دیل صاحب پابند ہوں ے۔ کہ پیر دی ندکور کریں۔ لہذا دکابت نامد کھھڈیا کہ سندر ہے۔ d.g. 66 **ر 2**0 ودس مردم المعالى وز مقاك کے لئے منظور ہے مشتكري يشادرني

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL,

In Service Appeal No. 2514 /2021.

Mr. Perveez Khan

Versus

The Govt. of Khyber Pakhtunkhwa through Chief Secretary & another ... (Respondents)

S.No.	Documents	Annexure	Page
1	Para-wise Comments		1-11
2	· Affidavit		12
3	Copy of Judgment Service Tribunal KP Peshawar on 19- 11-2015.	A	13-30
4	Civil Petition No. 216- P/2016	·B	31-32
5	Copy of review petition No. 569/2019	C	33
6	Copy of Judgment of Anti- Corruption Court	· D·	34-52

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..... (Appellant)

Deponent Ahmad Yar Khan Assistant Director (Lit)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL,

In Service Appeal No. 2514 /2021.

Mr. Perveez Khan

Versus

(Appellant)

The Govt. of Khyber Pakhtunkhwa through Chief Secretary & another ... (Respondents)

PARAWISE REPLY/COMMENTS ON BEHALF OF THE RESPONDENTS.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

- 1. That the appellant has got no locus standi to file the instant appeal.
- 2. That the appellant has a baseless prayer in his appeal and not falling with in the ambit of section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, hence the Honorable Tribunal lacks the Jurisdiction to entertain and adjudicate upon the matter.
- 3. That the instant appeal is bad in the eye of law.
- 4. That the appellant has not come to this Tribunal with clean hands.
- 5. ¹ The appeal is based on distortion and concealment of facts and is not tenable in eye of law.
- 6. That the appellant has been estopped by his own conduct to file the appeal.
- 7. That the instant appeal is liable to be rejected due to non-joinder and mis-joinder of parties.
- 8. That the appellant motive behind the filing of instant service appeal is to skillfully camouflaged the ground reality of the penalty of compulsory retirement from service awarded to him for possessing of (i) fake master degree (ii) dual domicile (iii) concealment of facts from the Court, have managed to get ex-parte decree from Court (vi) parallel service rendered in other Govt/Non-Govt organization being employee as Deputy Director of Population Welfare Department, Khyber Pakhtunkhwa duly inquired by the SMBR, appointed as inquiry officer by the Chief Minister, Khyber Pakhtunkhwa.

- That the appellant after compulsory retirement filed an appeal before the Service Tribunal Peshawar which was dismissed on 19-11-2015
- 10. That after dismissal of the Service Appeal by the Khyber Pakhtunkhwa Service Tribunal Peshawar the appellant filed CPLA before the August Supreme Court of Pakistan which was also rejected on 13-09-2019.
- 11. That after dismissal of the CPLA the appellant filed review petition before the Honorable Supreme Court of Pakistan. The review petition has also been dismissed on 04-12-2019.
- That the service appeal of the appellant is hit by rule 23 of the Khyber Pakhtunkhwa Service Tribunal 1974, which is reproduced below:-
- a. No entertainment of appeal in certain cases: No Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent Jurisdiction.
- 13. That according to Rule 23 of the Khyber Pakhtunkhwa Service Tribunal Rules1974, the matter of the appellant has been directly decided by the Honorable Tribunal of competent jurisdiction. The appellant has firstly exhausted his remedy by preferring an appeal No. 838/2012 title "Pervez Khan Vs Govt of Khyber Pakhtunkhwa through Chief Secretary etc" which was decided by Honorable Khyber Pakhtunkhwa Service Tribunal KP Peshawar on 19-11-2015 (Annex-A). After that the appellant has also exhausted his right of appeal before the Supreme of Pakistan vide Civil Petition No. 216-P/2016 (Annex-B) and the same was also dismissed by the Supreme Court of Pakistan. In this context the appellant has exhausted his remedies in connection to his service matter. In this score alone with due respect the Honorable Tribunal cannot entertain the present service appeal.
- 14. That according to the Judgment of Supreme Court of Pakistan <u>"disciplinary</u> <u>proceedings & criminal proceedings as used in the service matter are</u> <u>distinguished. Both the proceedings cannot be termed as synonymous and</u> <u>interchangeable. Disciplinary proceedings and criminal proceedings are quite</u> <u>different from each other have altogether different characteristics and there is</u>

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" (PLD 2002 SC 13).

- 15. That it was also held by the Honorable Islamabad High Court in its reported Judgment 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 see cannot be substituted with definition of criminal misconduct".
 - 16. That since the Special Judge, Anti-Corruption (Provincial), Khyber Pakhtunkhwa, Peshawar cannot consider the definition of misconduct in service matter, the interpretation of various rules and case law which have no nexus with the criminal proceedings. In this scenario 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 proceeding.
 - 17. That the Provincial Government has also preferred appeal against the Judgment of the Anti-Corruption Court Peshawar which is subjudice before the Peshawar High
 - Court, Peshawar.

- 18. That the CPLA as well as review petition No. 569/2019 (Annex-C) has been rejected/ dismissed by the Supreme Court of Pakistan and the service matter once decided by the Honorable Supreme Court attains finality.
- 19. That the service appeal is <u>time barred</u> and warrants dismissal.
- 20. That the delay of each day is required to be explained by the appellant in filling of the petition beyond the limitation period. In this regard **1998 SCMR 1863** is referred.

- 21. That the appellant is required to give justifiable reasons for delay of each day. In this regard 1995 SCMR 1419 is referred.
- 22. That the appellant has neither explained nor made any attempt to explain the delay of each day. In this regard 1974 SCMR 425 & 1974 SCMR 492 are referred.
- 23. That the appellant has not moved an application for the condonation of delay under section 5 of the Limitation Act and thus this instant appeal being time barred warrants immediate dismissal.

ON FACTS:

- 1. Para-1 of the appeal is Pertains to record hence need no comments.
- 2. Para-2 of the appeal is incorrect verbatim is based on distortion of facts. The factual position of the case is that no conspiracy has been hatched against the appellant by any officer of the department. A complaint addressed to the President of Pakistan with copies to others was filed against the appellant on various allegations. The appellant have been guilty of misconduct by having two domiciles, one from District Peshawar & 2nd from FATA Khyber Agency. The appellant had also tempered his MA Economics degree by showing it as a 2nd division in application form submitted before Public Service Commission in order to make him eligible for the said post. The appellant had fraudulently obtained Ex-parte degree from the Court by concealing the dismissal of his previous suit and appeal for the correction of his date of birth. The appellant was also reported in the complaint for serving simultaneously in Ghulam Ishaq Khan (GIK) and in Planning Commission and US-AID and also drawing salary from population welfare as DPWO/Deputy director BPS-18.
- Para- is incorrect, denied as draft being misconceived as no such statement has been made by the IO before the Court.
- 4. Para-4 of the appeal is incorrect to the extent that such illegal and fallacious inquiry report, a show cause notice was served upon the appellant. The show cause notice has been issued to the appellant by completing all codal formalities on the basis of which the Honorable Khyber Pakhtunkhwa Service Tribunal has rejected/dismissed

his appeal and later on Supreme Court of Pakistan rejected/dismissed his CPLA and review petitions respectively. It has clearly been mentioned in the Judgment of Khyber Pakhtunkhwa Service Tribunal, the relevant portion of the Judgment is reproduced below:-

"We have gone through this report and have come to know that the inquiry officer has attended to all valid and legal objections and queries of the appellant the inquiry report is worth perusal. After attending to objections and queries of the appellant and after 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".

Similarly both the Courts have not taken into consideration the plea of illegal and fallacious inquiry report rather both the courts have admitted inquiry report according to law. Hence such inquiry cannot be called into question at such stage.

- 5. Para- 5 is incorrect. The competent authority according to law gave a proper opportunity of personal hearing to the appellant. The appellant has availed such opportunity which was even the honorable tribunal has recorded in its Judgments. The relevant portion of the Judgment is reproduced below "this also shows that full opportunity of defence and hearing has been provided to the appellant". The appellant has used a word meaningless personal hearing is beyond comprehension for the reason that the appellant has attended such personal hearing.
- 6. Para-6 pertains to record, needs no comments.
- 7. Para-7 is incorrect and based on mis-information. The entire enquiry procedure has been conducted in a transparent manner and according to law. The appellant has not been condemned unheard, he has been given full opportunity of personal hearing as well as during inquiry and before the appellate authority that is why his removal from services was converted in to compulsory retirement.
- 8. Para-8 pertains to record, needs no comments.
- 9. Para-9 pertains to record, needs no comments.

10. Para-10 of the appeal is correct to the extent that a criminal case was registered against the appellant but the proceedings of the criminal case has got nothing to do with the proceeding already being conducted by the inquiry officer or appeals decided by the competent forum in Service matter. According to the Judgment of Supreme Court of Pakistan; (2006 SCMR 1653).

Civil Servant found to be guilty of such charges in departmental proceedings had availed full opportunity of hearing. Such penalty imposed on civil Servant was upheld by Service Tribunal and Supreme Court. Subsequent acquittal of civil servant from charge of embezzlement by Criminal Court upheld up to Supreme Court. Department and Service Tribunal dismissed appeals of civil servants seeking his reinstatement in service on account of his acquittal from criminal charge. Validity Department and criminal proceeding could be taken simultaneously and independent of each other. Civil Servant in first round of litigation had failed to make out his case, in which his criminal liability was also considered by the Supreme Court. Second round of litigation started by Civil Servant was deliberate and hit by principal of Res-Judicata. Supreme Court refused leave to appeal to civil servant.

Para-11 is incorrect, denied as draft being false, concocted, deceive, fraudulent. The Special Court of Anti-corruption has no jurisdiction to set aside the removal order of the appellant; furthermore the Court of Anti-corruption has not set aside the removal order of the appellant. The major penalty of compulsory retirement imposed upon the appellant was not set aside by the court of competent jurisdiction i.e. Service Tribunal or Supreme Court of Pakistan. The major penalty of compulsory retirement was confirmed by highest Court of the country i.e Supreme Court of Pakistan. After confirmation of compulsory retirement, the appellant was subject to criminal case for the recovery of an amount he has illegally received/acquired during his service. The Honourable Court has acquitted the appellant from criminal charges, and not setting aside the major penalty of compulsory retirement. In order to create a fresh cause of action the appellant after acquittal filed an appeal for reinstatement which was properly till (Annex-D).

12- Para-12 is legal.

<u>GROUNDS</u>

- Para-A is incorrect. The appellant has been treated according to law, policy and dicta set by the superior courts. The appellant has no right to file an appeal before the Khyber Pakhtunkhwa Service Tribunal as the service matter of the appellant after dismissal of his CPLA and review petition by the Supreme Court of Pakistan is a closed chapter and has gain finality. Keeping in view the above mentioned scenario no right of the appellant has been violated.
- B. Para-B is correct to the extent that the appellant was charged in FIR No 8 dated 19-11-2013 and later the Court of Anti-corruption acquitted him against which the Provincial Government filed an appeal before the Peshawar High Court Peshawar. While rest of the para is incorrect.

"Acquittal did not give to a delinquent clean certificate absolving him from the departmental proceedings. Both the proceeding were conducted regarding the case registered against the delinquent while departmental proceeding were regarding the charges of malversation and mis-conduct. Both ¹the proceeding could go side by side as their nature was totally different". (2008 SCMR 1151).

- C. Para-C is incorrect. The major penalty of compulsory retirement was imposed upon the appellant after completing all codal formalities. Detail reply has already been given in para-13 of the preliminary objections
- D. Para-D is incorrect. Detail reply has been given in Para-14 of preliminary objections.
- E. Para-E is incorrect. It has been held by the Supreme Court of Pakistan in its reported Judgment (2006 SCMR 1005) "Standard of evidence and method

of proving charge of misconduct and criminal charge before a regular Court was not the same, therefore, acquittal of a person from charge of criminal misconduct by criminal Court might be a relevant factor to ascertain nature of misconduct in departmental proceeding but could not be, as such, a reason to exonerate him form the charge of misconduct under Government Servants (Efficiency and Discipline) Rules 1973". The appellant has been guilty of misconduct as proved in the inquiry conducted against him and subsequent decision of the Khyber Pakhtunkhwa Service Tribunal up held by the august Supreme Court of Pakistan. Not even a single right of the appellant has been violated, hence entire para-E is denied.

- F. Para-F is incorrect. The disciplinary proceedings conducted against the appellant were at par with law and regulation. The appellant had filed a bogus suit of 80 million against the officials in the Civil Court which has not been decreed moreover, such suit has been dismissed plenty of times due to non-prosecution. The rest of the para has got no concern with the reinstatement. Hence denied.
- G. Para-G is incorrect. That according to the Judgment of Supreme Court of Pakistan <u>"disciplinary proceedings & criminal proceedings as used in the</u> <u>service matter are distinguished. Both the proceedings cannot be termed as</u> <u>synonymous and interchangeable</u>. 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". (PLD 2002 SC 13).

So in light of the above Judgment of the Supreme Court, charges leveled against the appellant has been proved in departmental proceedings on the basis of which major penalty of compulsory retirement has been imposed on him and such penalty and inquiry proceedings have been admitted correct by the Khyber Pakhtunkhwa Service Tribunal up held by the in CPLA as made on Supreme Court review petition filed by the appellant. Hence entire para is based on conjecture and surmises.

- H. Para-H pertains to record. The facts laid down in the para has no concerned with the respondents. Neither any conspiracy was hatched against the appellant nor interested in the appellant appointment anywhere else. Hence denied.
 - Para-I is incorrect. The appellant has tried to malign the Service Tribunal by
 referring a baseless misrepresentation. The Service Tribunal as well as
 Supreme Court has thoroughly gone to the appellant appeals and found it to be baseless and bereft of merit. Hence denied.

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J. Para-J is incorrect. The detail reply has been given in para-10 of facts. The Supreme Court of Pakistan in its reported Judgment (2006 SCMR 1005) "standard of evidence and method of proving charge of misconduct and criminal charge before a regular Court was not the same, therefore, acquittal of a person from charge of criminal misconduct by criminal Court might be a relevant factor to ascertain nature of misconduct in departmental proceeding but could not be, as such, a reason to exonerate him form the charge of misconduct under Government Servants (Efficiency and Discipline) Rules 1973".

Para-K is incorrect. Inquiry conducted against the appellant was admitted to be correct by the Service Tribunal as well as by the Supreme Court in its Judgment. Hence such allegation cannot be agitated at this forum again. While the plea of appreciating evidence by the special judge of Anti-Corruption has no relevancy with the appreciating evidence at departmental level. The evidence appreciated by the Judge Anti-Corruption cannot be taken into consideration by the Service Tribunal as both have different domain of trying cases as one court cannot rely on the evidence appreciated by the other.

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Para-L needs no comments as explained in para-14 of the preliminary objections

M. Para-M to Para-Z1:-

It is stated that the Judgments of the Supreme Court are not relevant to the case of the appellant. In the mentioned Judgments the Supreme Court has taken such view before the appeal of the parties. The Supreme Court Judgments are entirely based on different scenario but not related to the petitioner/appellant case. The appellant service case had been decided by the Khyber Pakhtunkhwa Tribunal Service Tribunal as well Supreme Court of Pakistan and has also attested the evidence to be reliable in service matter and maintained his major penalty. Whereas the Judgments mentioned has different finding on different subject of compulsory retirement. The Judgment has only appreciated that if an accused is dismissed in departmental proceedings and he has not appealed to Service Tribunal and later on acquitted by the criminal court, and on the basis of such acquittal, accordingly the service tribunal or the Supreme Court made certain observations in the referred Judgments, while the service matter of the appellant has been decided by the highest court of the country i.e Supreme Court of Pakistan than gain finality and cannot be entertained by the service tribunal.

Whereas, any Judgment if referred or found that would be Judgments per-Incuriam for the reason that Rule 23 of the Service Tribunal rule is very clear in the appellant case. Hence entire paras are irrelevant and not applicable to the appellant.

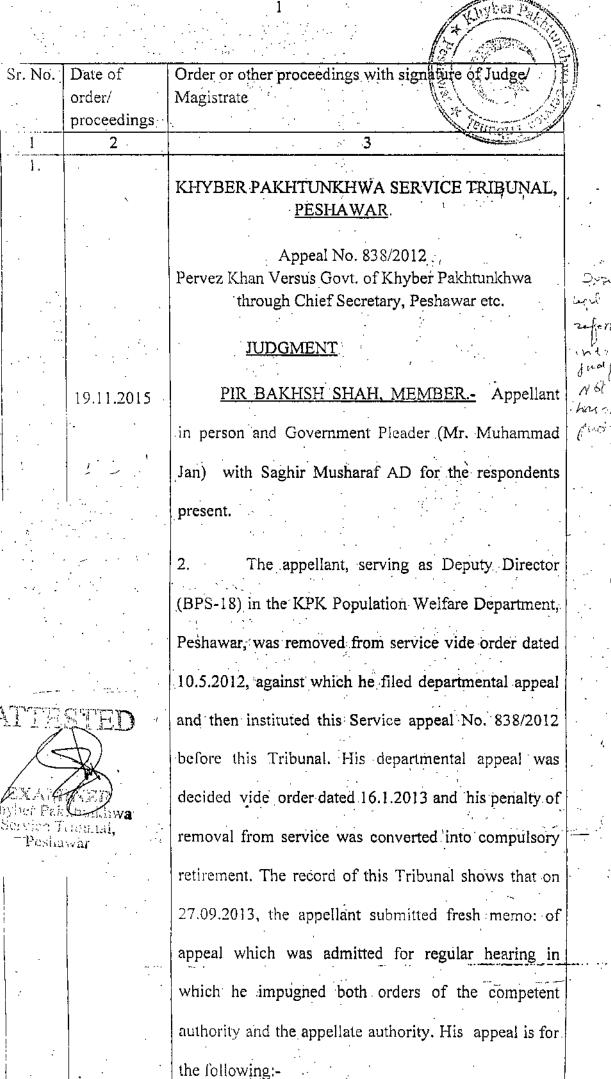
So far as the question of double jeopardy is concerned the Supreme Court in its Judgment (2005 SCMR 1098) stated <u>"Depending upon facts and</u> circumstances of a particular case, order of dismissal from service could not absolve a Civil Servant of his liability to make good the pecuniary loss caused to the Government or other organization by or under which he was employed. Principle of double jeopardy was not attracted to the facts and circumstances of the present case. Supreme Court declined to take any exception to the findings of fact recorded by departmental authorities and Service Tribunal in the matter after taking into consideration the plea of the civil Servant. No substantial question of law of public importance was involved so as to warrant interference by Supreme Court. Leave to appeal was refused. 2005 SCMR 1098 & 2007 PLC(C.S)171"

- Z2 Para-Z2 is incorrect. Fitness is not the only criteria for promotion; seniority is the foremost criteria alongwith availability of post for promotion.
- Z3 Para-Z3 is incorrect. It has got no relevancy to the respondents as the facts laid down in the para relates to the other department. Hence denied.
- Z4 Para-Z4 is incorrect and irrelevant as the appellant is no more a civil servant in case for reinstatement has attained finality after rejection of his review petition by the Supreme Court of Pakistan.
- Z5 Para-Z5 is incorrect. The appellant has no cause of action to file the service appeal the Khyber Pakhtunkhwa Service Tribunal. The service matter of the appellant has been decided by the Khyber Pakhtunkhwa Service Tribunal, retain the penalty of compulsory retirement which was up held by the Supreme Court in the CPLA as well as in the review petition by the appellant.
- Z6 Para-Z6 of the appeal is legal, however instant appeal is not maintainable in eyes of law and may kindly be rejected.
- Z7 Para-Z7 of the service appeal is incorrect. With due respect the HonorableTribunal has got no jurisdiction in the instant case.
- Z8 Para-Z8 needs no reply. However the respondents seek leave to raise any additional point during the course of arguments.

It is therefore, most humbly prayed that on acceptance of the instant reply the appeal of the appellant may kindly be dismissed with cost.

Any other relief which the respondents have not prayed for, deem appropriate in the circumstances of the case may also be granted to the respondents.

Beretary to Govt of Khyber Pakhtunkhwa Population Welfare Department ٢. Respondents No.2 •



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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 air trial in inquiry proceedings, perverse to law and terms & conditions of service as pointed out in body of the appeal. Findings of the Enquiry Officr 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. the required 172-P/2010, holding that 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 nongazetted service of the appellant to his total service as already requested to the department.

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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 hill-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 markup thereof, in analogy to his ex-colleagues. 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.

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(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.

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(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.

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 25.112008 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.

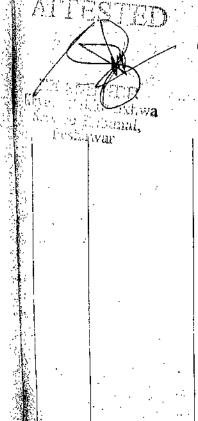
Initially Mazhar Sajjad, then Addl- Secretary Industries Department was appointed as enquiry officer

maustices 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



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' 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." The record shows that thereafter the 4. 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 ^{Elista}wa was converted into compulsory retirement by the strand, Peshalvar appellant authority. 5. The respondent department contested the appeal. Their written reply is available on record \hat{q} Arguments heard and record perused. 6, The appellant is fortunately a practicing 7.

lawyer at Peshawar. He submitted his exhaustive

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

defense

(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 (hereinafter referred as RSO 2000), because a misconduct 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.

(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.

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

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 (487 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 <u>11</u> 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

cnough states and the distinction between the two.

and submitted that charge of tempering is not

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.

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.

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.

 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.

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

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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.

<u>Charge No. ii:-</u> 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.

<u>Charge No.iii:-</u>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

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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.

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

(ii)

 (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.

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.

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 muchless 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 dent 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

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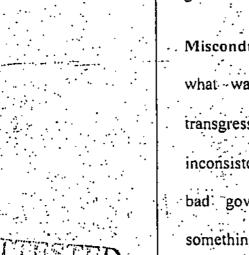
and baseless as evident from record. He submitted that there is no merits in this appeal, therefore, the same may be dismissed. Reliance was placed on 2009-SCMR-1492.

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

Misconduct INCLUDES conduct prejudicial to good order or service discipline or conduct unbecoming of 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 assumption of financial or other obligations to or 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 were further provides, wherein the opinion of the

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ENALVIE Kajoer Pasilockinva Service Trongal, Poshawar (b) Is guilty of misconduct. According to which 'opinion' of the competent authority is a linchpin and that to count or consider an omission/commission to be misconduct is the discretion or prerogative or opinion of the

competent authority, a person a government or

corporation service is

(a)

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 *General* 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.

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We would like to further all the word misconduct is amongin to the word Ometion the word conduct has not been defined in the Service Levis des angulance has however been defined in the Service Levis des

The conduct of a civil servant shall be regulated by

rules made, or instructions issued, by government or

Compartmentalization of a misconduct in the preservice and post service span is alien to the service code. A misconduct may or may not be an offence but an office 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."

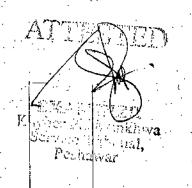
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12. Letter dated 18:2:2011 of the earlier enquiry officer Mr. Mazhar Sajjad was also attentively perused. It is evident that Mazhar Sajjad was not summoned by Secretary or Director General but he himself happened there. Had this been in the planning 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



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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,

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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).

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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 Office, whether the Commissioner's Deputy 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 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.

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Charge No. (iii).

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Judgment passed by the Civil Judge Ist 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:

Charges No. (iv) to (vi)

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

Rule <u>16 of the Civil</u> Servants (Conduct) Rules, <u>1987</u> 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.

Summing up the entire discussion, we hold 13. 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. Tribunal concludes that the penalty of The 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.

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18df-Pir Bakhsh Shah, Member Self-Abdul Latit, Newber

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#### SUPREME COURT OF PAKISTAN (Appellate Jurisdiction)

## PRESENT:

Mr. Justice Gulzar Ahmed Mr. Justice Munib Akhtar ß

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

Regainst, the judgment dated 19.11.2013, passed by the Khyber Pakhtunkhwa Sarvice Tribungi. Peshawar in Appeal No.818/2013 and against the gudgment dated 01.08.2017, passed by the Peshawar High Court, Peshawar In W.P.No.3655-P/2016

(in both cases) Pervez Khan. ...Petitioner(s) Versus through its Chief (in both cases) КP Government of

Secretary, Civil Secretariat Peshawar and others. ...Respondent(s)

: . In person

: Barrister

KP

Addl.A.G. KP

Muhammad

Oasim

Population Welfare Department,

Aleem,

Wadood,

Director,

Petitioner (in both cases)

For the Respondent(s)

Date of Hearing

ORDER

: 13.09.2019

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.

C.P.No.449-P/2017. We have heard the petitioner, 2. 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

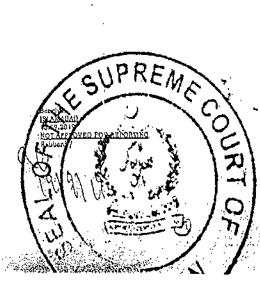
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7-Civil Petitions No.449-P of 2017 und 216-P of 2016

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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 Mastercand 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



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# SUPREME COURT OF PAKISTAN (Review Jurisdiction)

## PRESENT:

Mr. Justice Gulzar Ahmed Mr. Justice Maqbool Baqar

# . C.R.Ps.No.569-570 of 2019

[Review from the order dated 13.09.2019, passed by this Court in C.Ps.No.216-P

Pervez Khan, (in both cases) ...Petitioner(s) Versus Government of' through its Chief KPSecretary, Civil Secretariat Peshawar and ...Respondent(s)

Petitioner : In person.

For the Respondent(s) : N.R.

Date of Hearing : 04.12.2019

ORDER

Gulzar Ahmed, J .- Heard the petitioner, who has

appeared in person. No ground for review is made out. The review petition & dismissed.

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## In the Court of Ikhtiar Khan, Special Judge, Anti-Corruptil (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)

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## Case FIR No.08 dated 19-11-2013 u/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

EXAMILIED Court of Special Julge Anti Corruption KPK Peshawar

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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.

The competent authority (Chief Minister Khyber Pakhtunkhwa) 2, 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 compulsory retirement. Officer The Section into converted (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 undersection 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:-

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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.

Sikandar Shah, Assistant Director Safe City Peshawar (PW-2) submitted challan Ex.PW2/1 against accused.

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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.

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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.

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.

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.

Zahoor Ahmad, Junior Executive RHO Peshawar, NADRA (PW-6) produced attested copy of the Form

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EXAMINER Court of Special Judge Anti Corruption KPK Peshawar iii)

"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.

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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 (2<sup>nd</sup> division) to Khyber Pakhtunkhwa Public Service Commission and obtaining employment in different organizations without obtaining NOC.

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 3<sup>rd</sup> division as Ex.PW8/1. He also produced the registration record of accused bearing registration No.79-P-20062 as Ex.PW8/2.

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

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Court of Special Judge : Anti Corruption KPK Peshawai

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viii)

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Court of Squeen Judge Anti Corruption KPK Peshawar ix)

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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.

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.

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.

Saleh Muhammad, Project Accountant, MSPAID, Peshawar appeared as PW-12 and stated that he received

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Court of Special Judge Anti Corruption KPK Peshawar

an E-mail from head office Islamabad bearing ID <u>hro@aidglodal.net</u> 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.

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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

EXAMINER Court of Special Judge nti Corruption KPK Peshawar

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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:-

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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.

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.

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.

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.

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.

that no inquiry was conducted by the ACE officials and the case was registered on the report of inquiry committee

ATTESTED

EXAMINER Court of Special Judge Anti Corruption KPK Peshawar

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.

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.

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.

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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.

that the civil misconduct reported through unverified departmental inquiry cannot be substituted as a proof for criminal misconduct or any offence.

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.

that this court being the court of evidence cannot convict the accused without concrete and cogent evidence necessary for establishment of criminal offences.

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 misconcealing of record.

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.

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.

## ATTESTED

ENAMINER Court of Special Judge Anti Corruption KPK Peshawar that the mere allegations of serving in other department without NOC which are denied and not proved makes no criminal offence.

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that the validity and authenticity of civil suit for correction of the date of birth cannot be agitated before this court. that the issue of two domiciles also does not come within the domain of this court.

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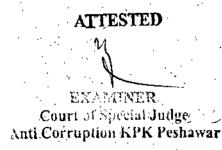
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that the accused was appointed by the Public Service Commission and it was the domain of the commission to consider the application and certificates before the appointment of accused which was did accordingly.

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



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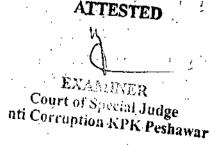
offences in instant case. The august Supreme Court in its judgment reported in PLD 2002 SC 13 has held that-

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"Disciplinary proceedings" and Criminal proceeding as used in service matter are distinguished. Both the proceedings cannot be termed as synonymous and interchangeable. Disciplinury 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 see* 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



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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.

In support of the allegations of serving in other institutions by the 16. 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

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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.

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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

Court of Special Judge Anti Corruption KPK Peshawar was obtained by accused before joining his service in Population Welfare

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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.

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18. The ailegation 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 instant 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 for as the second arguments of the prosecution to effect that the domicile from Khyber was fraudulently obtained is concerned, it is

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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:

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(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).

Similarly, PW-7 during departmental inquiry in his report 19. 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 Anti Corruption KPK Peshawarof the prosecution to the effect that the accused had obtained age

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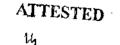
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relaxation on the basis of domicile from Khyber Agency is also devoid of any merit, as the age relaxation of 10 years was given to the accused on the basis of his previous government service vide letter bearing No.SOR-IV (E&AD)6-1/2004/Vol:III dated 08.01.2004 of the Establishment Department Khyber Pakhtunkhwa addressed to the Secretory, 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



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which came to 2<sup>nd</sup> 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

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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 2<sup>nd</sup> 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 Zulfigar 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 ti Corruption KPK Peshawar from service. He has assailed his dismissal in departmental appeal which

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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 Knam) 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.

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



BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE

## TRIBUNAL,

In Service Appeal No. 2514 /2021.

Mr. Perveez Khan

..... (Appellant)

Versus

The Govt. of Khyber Pakhtunkhwa through Chief Secretary & another ... (Respondents)

# PARAWISE REPLY/COMMENTS ON BEHALF OF THE RESPONDENTS.

Respectfully Sheweth,

## PRELIMINARY OBJECTIONS.

- 1. That the appellant has got no cause of action to file the application.
- 2. That the appellant has not come to Court with clean hands.
- 3. That the application is filed only to waste the precious time of the Honorable Tribunal.
- 4. That the application is hopelessly time barred.

5. That the application is bad in its present form.

- That the application is based on distortion and concealment of facts and is not tenable in eye of law.
- 7. That the appellant has been estopped by his own conduct to file the application.
- That the application is liable to be rejected due to non-joinder and mis-joinder of parties.
- 9. That the appellant motive behind the filing of application is to skillfully camouflaged the ground reality of the penalty of compulsory retirement from service awarded to him for possessing of (i) fake master degree (ii) dual domicile (iii) concealment of facts from the Court, have managed to get ex-parte decree from Court (vi) parallel service rendered in other Govt/Non-Govt organization being employee as Deputy Director of Population Welfare Department, Khyber Pakhtunkhwa duly inquired by the SMBR, appointed as inquiry officer by the Chief Minister, Khyber Pakhtunkhwa.
- That the appellant after compulsory retirement filed an appeal before the Service Tribunal Peshawar which was dismissed on 19211-2015.

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- 11. That after dismissal of the Service Appeal by the Khyber Pakhtunkhwa Service Tribunal Peshawar the appellant filed CPLA before the August Supreme Court of Pakistan which was also rejected on 13-09-2019.
- 12. That after dismissal of the CPLA the appellant filed review petition before the Honorable Supreme Court of Pakistan. The review petition has also been dismissed on  $04^{+}_{1}12$ -2019.
- 13. That Fraud, misrepresentation or want of jurisdiction are grounds for filing of application under this section, but if these grounds are missing in an application, then it is not maintainable. However, the superior courts of Pakistan had held decision on this issue as follows:

"12(2) C.P.C. Where the material on record failed to indicate that there was any element of fraud or misrepresentation in the matter or there was any want of jurisdiction of the court, provision of S 12 (2) of C.P.C. would not attract". Bear perusal of CPC are as under:-

- "Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by "making an application to the Court which passed the final judgment, decree or order and not by a separate suit".
- 4. That summoning witness is the sole prerogative of the Service Tribunal and if deem appropriate may call a witness but such application has not been moved in Service Appeal No. 838 of 2012 in which the inquiry was alleged to be conducted against the procedure. The punishment of compulsory retirement was upheld till Supreme Court of Pakistan.

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15. That on perusal of the allegations made against the appellant and findings of the Honorable Tribunal as well as the Supreme Court of Pakistan do not suffer from any factual or material lacunas and are completely based on facts.

Hence it is submitted that the entire allegations leveled against the appellant were proved in Service Tribunal Peshawar Khyber Pakhtunkhwa which was even upheld by the Supreme Court of Pakistan. So far this application for requisitioning file of Service Appeal No. 838/2012 and summoning of Alhajj Mazhar Sajjad first Inquiry Officer is based on malafide intention and hence denied. making an application to the Court which passed the final judgment, decree or order and not by a separate suit". In such scenario neither fraud nor misrepresentation of the facts has been made by the respondents which were acknowledged by the competent court of jurisdiction (i.e Service Tribunal in its judgment dated 19-11-2015). Moreover the application under section 12(2) CPC is to be filed before the Court which pass the final judgment, in such case the application under section 12(2) CPC is to be filed before the Honorable Supreme Court of Pakistan which has ultimately rejected his appeal as well as review petition.

- 6. Para-6 of the application is incorrect. Detail reply is already given in para-5 of the facts.
- <u>7.</u> Para-7 of the application is incorrect. Detail reply is already given in para-5 of the facts.
- 8. Para-8 of the application is incorrect. No fraud or misrepresentation has been done.
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- <u>9.</u> Para-9 of the application is incorrect. The appellant has tried to mingle the facts brought in the proceedings in the Criminal Court which has no relevancy with the proceedings of this Honorable Court. The ingredients of section 12(2) CPC is not applicable to the present case of the appellant.
- 10. Para-10 of the application not pertains to respondent hence denied.

### <u>PRAYER.</u>

It is therefore, most humbly prayed that on acceptance of the instant reply the application of the appellant may kindly be dismissed with cost.

Any other relief which the respondents have not prayed for, deem appropriate in the circumstances of the case may also be gran ted to the respondents.

tary to Govt of Khyber Pakhtunkhwa Population Welfare Department Respondents No. 2

Op (1)

Before the Khyber Pakhtunkhwa Service Tribunal, Peshawar.

In the matter of Service Appeal NO 2514/2021

## PERVEZ KHAN VERSUS CHIEF SECRETRY GOVT. OF KPK & OTHERS

# <u>REJOINDER ON BEHALF OF THE PETITIONER IN RESPONSE TO</u> <u>PARA-WISE COMMENTS</u>

With the instant Rejoinder the petitioner very respectfully seeks permission hereby to further fortify his averments made in his appeal and rebut the negative averments made in Reply of the respondents. Para-wise response is as follows:

#### PRELIAMENAY OBJECTIONS:

- 1. Contents of para-1 of the reply are incorrect and misleading. On accrual of fresh cause of action from the judgment dated 01.12.2020 of the Special Judge, Anti-Corruption Establishment Court (provincial) on the same charges the appellant has got *locus standi* to file the instant appeal as held by the superior courts in its reported judgments referred in appeal, now binding on the respondents under Articles 189 & 190 r/w 201 of the 1973 constitution of the Islamic Republic of Pakistan.
- 2. Contents of para-2 of the reply are incorrect and misleading. The appellant being civil servant and aggrieved from the final orders dated 14<sup>th</sup> January 2021 and of 01<sup>st</sup> February 2021 (**page 152,153**) of respondents 1 & 2 respectively communicated, has preferred his instant appeal which is within the prescribed period of time. This Tribunal has got jurisdiction to entertain the same as a fresh cause of action has arisen within its jurisdiction.
- 3. Incorrect. The appeal is in accordance with law and judgments of the superior courts as quoted in appeal. Therefore entertainable.
- 4. Contents of the para-4 of the respondents' reply are incorrect and misleading, therefore, is denied.
- 5. Contents of the para-5 of the respondents' reply are incorrect and misleading. The whole malicious disciplinary case was concocted against the appellant

in misrepresentation of facts and law on record, with malafide intension and in utter misuse of authority and abuse of public offices to settle personal scores with the appellant. The respondents and the subordinates representing them, who were in litigation with the appellant at the time of impugned disciplinary proceedings created false smoke screen of 'Misconduct' followed with inapt disciplinary proceedings and proceeded against the appellant with their personal venom and motives to suppress the factum of their federal origin status, they being liable to be removed from seniority list of the appellant and repatriated to federal government from where they had been sent as stop-gap arrangement as opined & advised by the provincial government in Law Department K.P.K to the respondant-2 (annexed at pages 54,55,56 of the appeal). Respondents had no case of 'Misconduct' within the meaning of RSO 2000 against the appellant at all. The whole disciplinary proceeding was concocted without any support of official record and was misrepresented before the learned tribunal throughout as proven from the contents of the fresh judgment dated 01.12.2020 of the Anticorruption Court Peshawar (annexed at page129), duly relying on official record presented first time by the responding party which was not produced before the tribunal previously. Application of the appellant dated 06.02.2014 to the hon'ble tribunal (p-103 of appeal) for summoning the relevant record contained in 03 personnel files of the appellant was avoided by the responding party which gave way to surmises and conjectures instilled by cut-throat opponents of the appellant in respondant-2 department through government pleaders, all misled the learned tribunal that led to miscarriage of justice.

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6. Contents of para 6 of the reply are also incorrect and misleading.

7. Contents of the para-8 of the reply are totally incorrect and misleading. All the referred grounds/charges which in fact were criminal in nature, were repudiated by the competent criminal court and the appellant was exonerated thereof on merits. Harping on the belied charges and repeating the same is audacious. The Inquiry Officer/SMBR, the sole star witness of the respondents in criminal proceeding himself has shattered relevance and legality of his own findings as reveals from his examination-in-chief and cross-examination copies whereof annexed to the appeal at pages 77-80. There was no case for 'civil misconduct' with the respondents as the appellant was not charged for any act or omission committed during his service in respondant-2 department while posted against any public post. The charges were categorically belied by the official record first time produced by the responding party before any judicial forum and the appellant was exonerated. As per established judicial norms Judgment dated 0101202 of the Anti-corruption court arrived on facts and official record shall be relied and prevail.

8. Contents of para-9 of the reply is misleading. In view of arrival of the judgment of Anti-Corruption court on facts and relevant law and examination of official record itself produced by the responding party, testimony of the 14 witnesses repeating the concocted and beaten charges is so audacious. At the relevant time the subordinate staff in the department including incumbent D.G who was in litigation with the appellant who misrepresented the facts on record before tribunal. Instead of assisting the tribunal with true official record which was missing, admittedly, lost from the respondent-2 at the time of enquiry and hearing of service appeal, was not provided by the responding department to the tribunal for consideration. The cut-throat adversaries of the appellant in the respondant-2 department misled and defrauded the learned bench with their official clout hence this appeal which is founded U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 R/W section 12-2 C.P.C on the ground of misrepresentation, inter alia. As reveals from record No evidence in support of allegations from official record was previously brought before the tribunal. Attested copy of application dated 6.2.2014 of the appellant made to the tribunal for summoning of official record from responding party in support of charges for misconduct proceeding is placed at page 103 of instant appeal which is self-speaking. Surprisingly, no record was produced before, later produced before the ACE court. Para-2 and para-7 (ii) of the appellant's application dated 6.2.2014 is worth perusal. The questions raised in para-7 of the tribunal's judgment dated 19.11.2015, recorded and copy placed at page 109 of the service appeal went unanswered in tribunal judgment which now have been effectively answered by the Anti-Corruption Court, Peshawar in its fresh judgment, duly supported with cogent evidence from official record while effectively attending the allegations. First time any judicial forum has put to the litmus the 06 allegations vis-à-vis official record obtained from the responding party, examined and appellant was honorably exonerated of the charge altogether. The Anti-corruption court which is a court of evidence put the charges to the litmus of trial and rules of evidence procured by the responding party and repudiated them altogether.

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9. Incorrect. The malicious misrepresented disciplinary proceeding resulting in compulsory retirement of the appellant was dishonestly processed by his diehard opponents in respondant-2 department in suppression of facts on record and distortion of relevant law on the subject with personal malice and malafide to satisfy personal ill-motives. They blatantly misused their authorities and abused of official powers to settle personal scores with appellant. On arrival of the ACE judgment they are no facing criminal prosecution for playing fraud and misrepresentation on the appellant as well as damages suits. The Anti-corruption court which is a court of evidence put the charges to the litmus of trial and rules of evidence procured by the responding party and repudiated them altogether. The two line judgment of the apex court referred has dismissed the appeal of the appellant, apparently, for lacking the element of public importance and none else. No merits of the case was touched and adjudicated upon either in the judgment referred. The sentence in the reply is frivolous and trivial. The legal maxim Actus Curiae Neminem Gravabit (An Act of the Court shall prejudice no e) and the principle that every case has its own circumstances and merits shall prevail here. General things do not derogate special things. General statements or provisions do not derogate special statements or provisions (Generalia Specialibus non derogant). Thus, the judgment of the learned tribunal obtained through misrepresentation of facts and relevant law and having no support from official record presented, admittedly, previously missing at the time of departmental proceeding now came to light at the time of criminal proceedings, cannot be ignored for doing ultimate justice. Responding party argued the same commonplace argument of finality before the Anti-Corruption court (provincial) Peshawar which was attended by the trial court in para-11 of its judgment (page-138) but not agreed and a detail judgment dated 01.12.2020 came out on its own merits (at page 129 of appeal).

10. Incorrect as 09 above.

11. Incorrect as 09 & 10 above.

12. Instant para of the respondants' party reply is beguiling and misleading. The instant appeal is entirely distinct and filed on different grounds and cause of action created by the fresh judgment dated 01.12.20202 of the Anti-Corruption Court Peshawar; an entirely new and Res Integra (untouched matter). The ground of attack and the ground of defense of both the parties in pleadings are different and fresh. Thus neither the principle of *resjudicata* nor rule 23 of the NWFP Service tribunal Rules 1974, is attracted.

In fact the instant <u>grounds of attack</u> of the appellant against the impugned punishment of compulsory retirement derives strength from the decision dated 01.12.20202 of the competent criminal court on facts as well as on law, are quite different, new and fresh. The <u>ground of defense</u> of the respondents should also be different, new and fresh instead of repeating the old hackneyed pleas considered and repudiated on facts by the competent court of Anti-Corruption Court Peshawar in para-11 of its judgment. Both the grounds of attack and grounds of defense are new and fresh and were not directly and substantially in issue and decided previously, therefore, **rule 23** of the NWFP Service tribunal Rules, 1974 stands irrelevant and not attracted to the instant appeal. In previous proceeding the **grounds of attack** of the appellant and **ground of defense** of the respondents were totally different, therefore, should have not been quoted here as bar. Let me reproduced dictum of the Supreme Court of Pakistan set in similar conditions.

"It would have been futile attempt on part of the civil servant to challenge his removal from service before earning acquittal in the relevant criminal case.---it was unjust and oppressive to penalized civil servant for not filling his departmental appeal before earning his acquittal in criminal case which had formed the foundation for his removal from service----Appeal before the Service Tribunal was not barred by limitation" Citation: PLD 2010 Supreme Court 695.

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13. Again, the instant para-13 of the reply has maliciously been inserted to mix the two distinct situations and make them the one. The instant appeal is powered by the judgment dated 01.12.2020 of the Senior Special Judge (Provincial) Anti-Corruption, Peshawar who has procured cogent answers to the allegations with official evidence from record produced afresh by the responding party which was missing previously throughout the disciplinary proceedings. Learned tribunal in the past transaction had reproduced substantial questions of the appellant to the then impugned disciplinary proceedings in para-7 of its judgment (page-109) but the learned tribunal did not find answer thereto from the record, admittedly, lost and missing from the respondent-2 department and not produced before the tribunal, now surfaced and produced before ACE court. The facts and official record have throughout been misrepresented in disciplinary proceedings, being strictly proceeded under administrative influence of the persons who were facing damages suit of Rs. 80 million from the appellant and service appeals at the relevant time. The said 06 charges were taken into accounts in the competent court of Anti-Corruption Peshawar being criminal in nature. Strict observance of law of evidence has been followed to hold a person guilty or innocent as per record. Responding party by adducing evidence in trial stretching over a period of 8 and half years and buying extra time failed to prove charges from their record produced. Furthermore, the charges did not pertained to any omission or commission of misconduct committed during the service with respondant-2 but dated back to the appellant's pre-joining period which is 29.09.2004 with respondant-2. Moreover, the charges with its face value were criminal in nature per se and not fall in the sphere of 'misconduct' defined in section 2 (c) of Removal from Service (Special Powers) Ordinance, 2000. Therefore, Anti-Corruption court Peshawar had the exclusive jurisdiction to try it. This plea further derives strength from conduct of the responding parties who being not complacent with relief from the tribunal, registered F.I.R for prosecution of the SAME CHARGES and put challan in the criminal court for decision on merits. The compenet criminal court announced the appellant innocent. The principle of Estopel as well as principle of approbates and reprobate shall apply here against the respondents. One cannot blow hot and cool in the same breath.

14.Instant Para of the reply is misconstrued and misinterpreted. The instant excerpts have been borrowed from para-7 of judgment of the learned Senior Special Judge Anti-Corruption, Peshawar, recorded at page 139, who while fortifying his own judgment and jurisdiction with findings and not agreeing to the plea of finality of the respondents as alluded in last two lines of his judgment (page-135) passed judgment on merits by relying on judgment of

the apex court reported in PLD 2002 SC 13 and judgment of the Islamabad High Court reported in PLC (CS) 537 quoted. In fact the two quoted judgment under reference have allowed running disciplinary & criminal proceedings both side by side where two distinct set of charges have been framed in the two different proceedings at two distinct jurisdictions, where there is nothing common between the two set of charges brought against the accused civil servant. In appellant case the matter is not so. Both the charges of disciplinary proceedings and criminal proceedings are one & the same if Charge Sheet for disciplinary proceeding (p-20) & F.I.R. (p-125, followed with charges framed by the criminal court (p-127) are compared and perused inter se. In fact all the allegations are criminal in form as well as in substance as reveals from its body text. No different set of allegations has been assorted and leveled against the appellant at the two different forums having distinct jurisdictions. All the 06 charges which were criminal on its face value, first were erroneously brought forth by the respondents for civil misconduct proceeding and then *lpse Dixit* before the Anti-Corruption Police in the shape of F.I.R for criminal trial. If definition of 'Misconduct' provided in Section 2 (c) of N.W.F.P Removal from Service (Special Powers) Ordinance, 2000 is perused it does not circumscribes the said allegations in its body-fold/domain, erroneously incorporated by the respondents in the Statement of Allegations & Charge Sheet meant for disciplinary proceedings as no element of inefficiency, indiscipline, negligence, misbehavior or disobedience committed during his service stint with respondant-2 is traceable therein. Per se all the charges, irrefutably, are criminal in nature as well as extraneous. If the charges for a minute are tentatively taken a course of conduct which had any nexus with duties performed by appellant in his capacity as a public servant then as per procedure provided in section 3-A of RSO 2000 respondents should have deferred disciplinary proceedings and tried the appellant for the instant criminal charges in the competent criminal court of Anti-Corruption Establishment first. On success of the criminal proceeding and conviction the respondents, should then have initiated departmental proceeding against the appellant and imposed major penalty as per procedure provided in section 3-A of RSO 2000 which was not done in appellant case. Conversely, in appellant case a preposterous proceeding of civil misconduct was preceded to criminal proceeding for the criminal charges without any evidence. Thus the respondents put a cart before a horse. Section 3-A of N.W.F.P Removal from Service (Special Powers) Ordinance, 2000 is reproduced verbatim below for ready reference.

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**"3A. Procedure in case of conviction by a court of law.---(**1) Where a person in Government service or in corporation service on conviction by a court of law is sentenced to imprisonment or fine, the competent authority shall examine the facts and the grounds on which the order convicting such person was passed by a court of law *(criminal court).* 

(2) Where on examination the competent authority finds that order of imprisonment or fine is based on -

(a) established charges of corruption or moral turpitude, it shall pass order of dismissal from service of the delinquent person in Government service or in corporation service which shall be effective from the date of his conviction by a court of law;"

Here, in instant case its abundantly clears that the respondent party has violated the statutory scheme of law by preceding with departmental proceeding followed with criminal proceeding for the same criminal charges which was wrong. So far violation of Rule 16 of the NWFP Govt. Servant (Conduct Rules) 1987 as alleged in the last three charges is concerned, it was pressed into service as offence of fraud & misrepresentation before the criminal court and not violation of rules. To know width and breadth of Rule 16 of Conduct Rules the same is reproduced verbatim for ready reference followed with legal explanation with reference to its inapplicability to the appellant case.

## "16. Private trade, employment or work: (1) No Government servant shall, except with the previous sanction of the Government, engage in any trade or undertake any employment or work, other than his official duties":

The following <u>points of explanations</u> are presented in defense to alleged violation of Rule 16 of NWFP Govt. Servant (Conduct Rules) 1987 which would squarely overshadow the alleged commission of <u>service misconduct</u>, foreign to N.W.F.P Removal from Service (Special Powers) Ordinance, 2000.

- I. Not admitting violation but stating for the purpose of argument that Rule 16 of the Conduct Rules, 1987 were not applicable to the appellant's alleged hypothetical employment when he was, undisputedly, on leave without pay, officially relieved from the Population Welfare Department after handing over charge to his replacement, when he was no more discharging any official duty in the relieving department at all. In the circumstance the appellant could not be physically presumed present in the department and another place on duty as well or proved from the attendance registers of the two alleged places as held essential by Sindh High Court in case reported in 2001 PCLJ 1376 Kar. This fact must be kept in mind that Rule 16 of KPK Conduct Rules 1989 presumes a delinquent present on regular duties on two different working places and drawing double monthly salaries for rendering two duties. This presumption in appellant case does not holds ground as appellant was neither serving in the population welfare department at the relevant time as he was relived from duty on the basis of leave without pay granted and availed. He was also not drawing any regular salary as he was on leave without pay from respondant-2 department for 40+ 365 days duly officially relieved from duty. Later he was placed under suspension from duties drawing subsistence grant only instead of salary. Therefore the charge (s) is absurd, Incongruous and illogical and nothing more than a figment of imagination.
- As reveals from the text of Rule 16 ante it places bar to engagement in 'Private Trade' during public duty contemporaneously. The judgment reported in 2004 P Cr.L.J 1895 vide its para 12 & 13 has confined violation of Rule 16 of the Conduct Rules to 'Trade' (buying & selling) only. Similarly, Lahore High

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Court while discussing Rule 16 of the Conduct Rules in case of Sanaullah VS State (PLD 1961 (WP) Lah 684) has mutatis mutandis held the words 'employment or work' added to the word 'Trade' in Rule 16 as tautology and these do not means 2<sup>nd</sup> regular employments in government sector but trade (buying & selling) only. The same judgments are relied upon by the Anti-Corruption Court Peshawar in its judgment dated 01.12.2020 under reference which was escaped earlier throughout. It was further held by the Lahore High Court in referred judgment that breach of the said rule by the civil servant who was bound by it to observe, did furnished a ground for the government (respondents) for recovery of damages in civil action by way of filing a suit for damages in the civil court only. The dictum reads "The failure on part of the servant to comply with this rule did not amount to any an offence, not having been made punishable under the penal code, or any other special or local law".

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III. Admittedly, No evidence was procured by the 2<sup>nd</sup> Inquiry Officer during the impugned inquiry proceeding in support of the allegation as he neither visited the alleged working places nor recorded statement of any witness in support of charge of double service and appellant allowed to cross-examine any witness either. Since the proceeding suffered from this material irregularity too thus departmental proceeding was vitiated thus "judgment of the tribunal was not substantial and so notification of imposing major penalty of compulsory retirement was not justified. Judgment of service tribunal was set aside and civil servant was re-instated in service with back benefits" (Citation- C from 1996 SCMR 803.

That the appellant is not charged for  $2^{nd}$  service during his active service in IV. the respondant-2 department. He while working as DPWO/EDO Nowshera, obtained leave without pay for 40+ 365 days, relinquished/hand over charge to the new officer posted as his replacement and was practically freed from any public service /duty obligation. Thus, joining another assumed job and not trade (buying & selling) as concluded by the Lahore High Court in the referred judgment supra, the appellant, relieved civil servant, has wrongly been charged for violation of Rule 16 of the Govt. Servant (Conduct Rules) 1987. Appellant has not been charged of commission of any misconduct committed in his public service while posted against any public post and discharging public duties. Thus the question of suffering Population Welfare Department with his any engagement outside as purported by Rule 16 is out of question.

Last but not the least, the Govt. Servant (Conduct Rules) 1987 was already V. scrapped from the definition and domain of 'Misconduct' provided in section 2 (c) of RSO. For a ready reference the definition of 'Misconduct' provided in Rule 2 (4) of NWFP Efficiency & Disciplinary Rules, 1973, the superseded/ repealed provision and section 2 (c) of N.W.F.P Removal from Service (Special Powers Ordinance, 2000, the succeeding applicable provision, are reproduced verbatim below for comparison which would prove in categorical terms that Conduct Rules were extricated from the fold of 'Misconduct' and were no more there on the statutes/in the field at the relevant time. Therefore, the omitted Rule 16 should have not been pressed into service as violation against the appellant in the disciplinary proceedings and maligned him for its alleged breach either. See below the two definitions for ready reference and comparison:

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# NWFP Efficiency & Disciplinary Rules, 1973- Rule 2 (4):

"misconduct" means conduct prejudicial to good order or service discipline <u>or</u> <u>contrary to Government Servants (Conduct) Rules, 1987</u>, or unbecoming of an officer and, a gentlemen and includes any act on the part of a Government servant to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government officer in respect of any matter relating to the appointment, promotion , transfer, punishment, retirement or other conditions of service of a Government servant;" 9

## N.W.F.P Removal from Service (Special Powers) Ordinance, 2000-Section 2 (c):

"misconduct" includes conduct prejudicial to good order or service discipline or conduct unbecoming of an officer or 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 persons such as may cause embarrassment in the performance of official duties or functions;".

By carefully perusing the two set of definitions of 'misconduct' contains in E&D Rules, 1973 & RSO 2000 reproduced above separately it becomes abundantly clear that the former contains 'Conduct Rules' in its body fold however missing and scrapped by design from the definition of 'misconduct' of the later, the RSO 2000. This phenomenon was confronted to Wiqar Ayub Enquiry Officer/PW-7 during his cross-examination in criminal court whose report has been taken the only base of the previous judgment of the learned tribunal and also of the impugned major penalty. Enquiry Officer admitted in cross-examination that Conduct Rules were scrapped from the definition of 'Misconduct' of RSO 2000 under which the appellant was prosecuted on relevant time. He further admitted in cross that section 11 & 12 of RSO 2000 has overridden/repealed E&D Rule, 1973 and the later containing conduct rules in its body fold was no more in the field at the relevant time of serving charge sheet and conducting enquiry by him under RSO 2000 against the appellant. He further admitted in cross examination that he sent file to the competent authority through Authorized officer ( Secretary, Population, appellant's cut-throat opponent facing 80 million damages suit from the appellant) which reached to the competent authority much beyond the statutory period of 25 days ( after 04 months) thus the relevant section 5 (3) of RSO was violated. Enquiry officer/PW-7 further admitted that he made recommendation to the competent authority under the presumption of repealed E&D Rules 1973 mistakably instead under RSO 2000. Anyhow, his recommendations itself speak his misconception of relevant law and its application on the appellant when he talks about section 13 (1) of Civil Servant Act, 1973 r/w Establishment Deptt Circular SOR-1 (S&GAD) 4-13/87 dated 30.11.2000 and paragraph 4 of Establishment Deptt Circular SORII (S&GAD) 3-4/78 dated 21.12.1981 in last para of his inquiry report which, undoubtedly, are relatable to E&D Rules 1973 (Page 81-88). The KPK Service Tribunal itself has two reported judgments on this point while accepting appeal of a punished civil servant and reinstating him for punishing him under misconception/misapplication of relevant law. Thus reciting as well as pressing into service Rule 16 of the repealed Conduct Rules, 1987 and maligning conduct of the appellant vis-àvis its violation is/was inappropriate, stood superfluous, without jurisdiction, without lawful authority and void ab-anitio, therefore, the Enquiry and departmental actions based upon alleged violation of omitted Rule 16 of Conduct Rules 1987 which was blatantly misrepresented by adversaries of the appellant in the respondant-2 department before the tribunal, was nullity in law. All the disciplinary proceeding in tribunal was fraudulent and representatives of the respondent party processed his incrimination in sheer misrepresentation of facts and relevant laws. That is why section 12-2 C.P.C has been invoked with section 4 of KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 in appeal for remedy.

A PARENTHESIS: Someone may say that the word 'include' in the definition of 'Misconduct' of RSO 2000 should circumscribe all other manifestations of misconduct including the one emanating from Rule 16 of Conduct Rules and the Enquiry officer was justified to consider, it, also so opined in para-11 of the judgment of the Service Tribunal Dt: 19.11.15, misrepresented by the appellant's adversaries during previous Service Appeal. Response of the appellant to this proposition is two-fold which is as under:

- a) That, the definition of misconduct may include 101 other forms & manifestations but it does not and cannot include Conduct Rules,1987 because this piece of creature has deliberately and specifically been excluded/scrapped from the fold of 'Misconduct', provided in RSO 2000, therefore, excluding a thing by the law-giver by design specifically, duly assented by the worthy legislature, was for the purpose to narrow down width and breadth of misconduct proceedings, then stretching over a periods of months and sometimes years, which was pointedly in focus of the worthy law-givers in order to complete Enquiry proceedings expeditiously and submitted directly to the competent authority within 25 days as reveals from Preamble as well as section 5 (3) of RSO 2000. Referring Conduct Rules which are scrapped from the fold of 'Misconduct' RSO 2000 cannot be pressed into service, rather it will be confronting intension of the law-giver audaciously which is not purported.
- b) "Charge sheet is precise formulation of specific accusations made against an appellant in disciplinary proceeding who was entitled to know its nature, to tell the appellant as precisely and concisely for which the civil servant is charged and must convey him what department intended to prove against him and of which he have to clear herself during disciplinary proceedings" (Dictum so set verbatim in 2011 SCMR 1). Now looking carefully at the charges contained in Charge Sheet served on the appellant the charges, apparently, were not related to service indiscipline, inefficiency, conduct unbecoming of a civil servant during duty, breach of rules, misbehavior etc but were purely criminal and was intended so by the respondents, therefore, they registered F.I.R with Anti-Corruption Establishment police, Peshawar as proper remedy. ACE police conducted investigation and submitted challan in the criminal court for prosecution of the appellant on the charges. Thus the charges were rightly considered by competent criminal court, decided and repudiated under its inherent & exclusive authority & jurisdiction. The respondents were required to wait for the outcome of the criminal proceedings and if charges were proved, should then have proceeded u/s 3-A of RSO, 2000 for departmental proceedings. Thus the departmental proceeding initiated was preposterous, misplaced, misfounded and against the laid down law.

c) Since Conduct Rules 1987 were not part of the 'misconduct' provided in RSO 2000, therefore, prosecuting the appellant against rule 16 is violation of Article 12 of the Constitution too. The relevant provision is reproduced verbatim below.

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**"12. Protection against retrospective punishment** (1) No law shift authorize the punishment of a person-

(a) for an act or omission that was not punishable by law at the time of the act or omission; or

(b) for an offence by a penalty greater than, or of a kind different from the penalty prescribed by law for that offence at the time the offence was committed".

From the above detail discussion it becomes crystal clear that the judgments of the superior court cited in para-15 in preliminary objection of the respondents' reply are misplaced and mis-founded in appellant's case. The arguments of the respondents party in para-14 & 15 both are not cogent and therefore was not entertained by the Senior Special Judge of the Anti-Corruption Court Peshawar as vehemently raised by responding party in ACE court during trial, also discussed by court in para-11 of its judgment. Trial court disagreed with the contention and finally delivered its judgment on merits exonerating the appellant of the charges altogether.

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15.Contents in para-15 of reply of the respondent party are incorrect. Repeated that the dicta laid down in PLD 2002 SC 13 and PLC (CS) 537 speaks about two separate proceedings one civil and another criminal running side by side provided the appellant civil servant has committed two set of offences, for instance one 'Misconduct' u/s- Section 2 (C) of N.W.F.P Removal from Service (Special Powers) Ordinance, 2000 and another Criminal Misconduct u/s 5 of The Prevention Of Corruption Act, 1947). Since in appellant case in both of the proceedings, charges are Xerox the same as reveals from Charge sheet dated 29.8.2011 at page 20, pursued in misconduct proceeding and charges contained in FIR NO. 8 dated 19.11.2013 pursued in criminal proceeding. Copy of F.I.R placed at page 125 and charges framed for criminal prosecution in criminal court at 127 of instant appeal. If carefully perused both set of charges these are one and the same and by its very facade and substance are criminal in nature, therefore, Anti-Corruption court (provincial) Peshawar had proper and exclusive jurisdiction to decide the charges first. No different set of allegations has been assorted and leveled against the appellant at the two different forums having distinct jurisdictions. All the 06 charges which were criminal on its face value, first were erroneously brought by the respondents for civil misconduct/proceeding vide charge sheet before the tribunal and then lpse Dixit before the Anti-Corruption Police in the shape of F.I.R for criminal trial. If definition of 'Misconduct' provided in Section 2 (c) of N.W.F.P Removal from Service (Special Powers) Ordinance, 2000 is perused reproduced ante it does not circumscribes the said allegations in its fold/domain either, erroneously incorporated by the respondents in the Statement of Allegations & Charge Sheet meant for disciplinary proceedings as no element of inefficiency, indiscipline, negligence, bade governance, misbehavior or disobedience allegedly committed by the appellant during his service stint with respondant-2 is complained therein. All the charges,

irrefutably, are criminal in nature per 'se. As per procedure provided in section 3-A of RSO 2000 respondents should have deferred disciplinary proceedings and tried the appellant first for the instant criminal charges in the competent criminal court of Anti-Corruption Establishment. On success of the criminal proceeding and conviction of the appellant the respondents should have then initiated departmental proceeding against the appellant and imposed penalty as per procedure provided in section 3-A of RSO 2000 which was not done in appellant case due to motivating conspiracy and personal venom in haste. Conversely, in appellant case a preposterous proceeding of civil misconduct was preceded to criminal proceeding. Thus the respondents put a cart before a horse and de-arranged the statutory scheme of law. Section 3-A of N.W.F.P Removal from Service (Special Powers) Ordinance, 2000 is reproduced Xerox above which has laid down due process of law in such cases as averred. Thus para 14 & 15 of the reply are misconstruction of law of the respondents and the said judgments are misinterpreted and misquoted. While hearing this appeal this august forum should apply its independent mind afresh as per fresh merits of the case, also so applied by the Hon'ble court of Senior Special Judge Anti-Corruption, Peshawar and decide the case of the appellant on its own merits u/s 12-2 C.P.C interalia, previously misrepresented by the responding party. Every case is supposed to be seen in its attending circumstances and on its own merits as propounded by the superior courts from time to time. No transgression of any applicable rule, conduct inconsistent with faithful discharge of duty or act of bad governance during service with respondant-2 department as indicated by Islamabad High court in its reported PLC CS 537 and referred in para-15 of reply has been ascribed to the appellant and proved in enquiry. All the charges were criminal in nature, therefore, were deliberately placed before the court of criminal jurisdiction and appellant exonerated afresh. Now it will be a travesty of justice and fair play to keep the appellant stigmatized and pull on with mis-founded major penalty. There will be no funniest of the joke with the justice in the circumstances. Justice cannot tremble as justice is for the God. The respondents had preferred two separate remedies at two different forums interchangeably whereas the allegations were the same and criminal in nature therefore are stopped by their own conduct. The referred judgment of Islamabad also held in its concluding para that "such acts of the civil servant cannot be substituted with definition of misconduct". However, in appellant case all six allegations have interchangeably been prosecuted against him at the two different jurisdictions in order to put him to double jeopardy and teach him a lesson for seeking his legal remedies there-against.

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16.Para-16 of the respondent party is again twisted and misleading. It is stated in the instant para of the reply that the Senior Special Judge Anti-Corruption, Peshawar was not required to define 'misconduct'. This statement give rises the following questions which require consideration of the learned tribunal to determine misrepresentation of the responding party.

- a. If the instant dispute was of interpretation of various rules then why it were placed before an incompetent criminal forum, framed as criminal charges for adjudication and decision sought thereupon for prosecution of the appellant.
- b. The alleged violation was of conduct rules. If conduct Rules were extricated from the fold of 'Misconduct' defined in section 2 ( c) of RSO 2000 as undoubtedly it was, then what was the other rule the appellant had allegedly violated and he was prosecuted for criminal offence? NO clue from respondents.
- c. In the charges were criminal simpliciter then was it not the prescribed mode to go by the method prescribed by section 3-A of RSO 2000, the law under which the appellant was being prosecuted ?.
- c Undoubtedly, Senior Special Judge Anti-Corruption, Peshawar was required to consider the 06 allegations respondents have put before him in the form of criminal charges, incorporated in F.I.R NO. 8 dated 19.11.2013 (p-125) which were framed as criminal offences in criminal court (p-127, considered and repudiated on the basis of evidence procured from official record (judgment p-129). The llegations presented on the two forums were the same previously misrepresented before the learned service tribunal. Question arises if the charges were related to civil misconduct simpliciter then why the same were placed before the criminal court, framed as criminal charges for adjudication and decision sought thereupon- Another million dollar question?
- d. It is further observed by the respondents' party in reply that Senior Special Judge Anti-Corruption, Peshawar cannot consider interpretation of various rules and case law which have no nexus with the criminal proceeding. Respondents have not indicated the rule interpreted by the Senior Special Judge Anti-Corruption, Peshawar to their disadvantage. However question arises that why the allegations which related to violation of rules were placed before the criminal court now objected its outcome?

The responding party itself has liked preferring two separate remedies at two different forums having varied jurisdiction however now confused about its true nature, jurisdiction and outcome whereas allegations were the same and criminal in nature per se and framed accordingly throughout. All allegations were pressed into service as criminal offence of fraud simpliciter which was belied by the evidence produced in criminal court. When respondents brought violation of Rule as criminal offence of fraud of the appellant the ACE court had jurisdiction to entertain and decide. Now, the same were decided in negative on the basis of evidence procured by the responding party. The responding party had mixed the two different set of proceedings in one pail having distinct forums for adjudication no repenting for the later, have maliciously prejudiced the appellant twice falsely for the same set of charges fraudulently, now repenting findings of the later competent forum. The ACE court taking the charges purely criminal thereby assumed the jurisdiction, put the charges to the litmus of retrieved official record produced by the responding party and came to its considered findings after

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trial for eight and half years. Respondents are estopped by their forthcoming conduct now and cannot be allowed blowing hot & cool in the same breath. Despite objections of the appellant to false allegation, also recorded in para-8 of its judgment the competent Anti-corruption court assumed the jurisdiction for the charges on the behest of the responding party and decided the same in light of the documentary evidence adduced by responding party in the shape of official record, first time produced which was not produced before the service tribunal previously despite appellant crying hoarse from top of the roof, also proves from his application made to the then learned bench for summoning of official record from responding party vide his application copy whereof placed at page-103 of instant appeal. Thus, the principle of approbate and reprobate shall apply here against responding party. The fact of the matter is that no charge relatable to misconduct in service matter such as inefficiency, indiscipline, negligence, breach of trust, negligence in assigned duty etc committed during his service with the respondent-2 was alleged against the appellant before the tribunal but criminal allegations dating back to appellant's non-public life, when he was neither in civil service nor working in Population Welfare Department KPK, respondant-2, as reveals from the charges reflected in Charge Sheet. No distinction in the charges leveled in the Charge Sheet meant for civil misconduct and charges framed for criminal prosecution was made by the respondents but replicated Xerox at the two varied forums for two different penalties maliciously and audaciously. From the conduct of the responding party it abundantly proves that while taking the allegations as criminal offences simpliciter it was reduced into an FIR and the appellant was prosecuted for 8 and half long years in criminal court which now estopp them to resile from their stated position. If the charges are the same liability are also the same which cannot be bifurcated by the respondent party to their wish. If on production of original official record the charges did not prove the appellant is liable to be lightened of liability whether related to 'Misconduct' or 'Criminal Misconduct' whatsoever. Appellant was burdened previously in misrepresentation of facts and law. The penalty must go now as the allegation evaporated in the atmosphere and the appellant proved innocent. It will be funniest joke with the justice system when allegation goes and penalty exists with stigma.

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17. Irrelevant statement made in para 17 of the respondents' reply. The appellant has not yet noticed , perhaps appeal dismissed *in limini*. However filling of appeal against false and concocted case erected demonstrates spitefulness and desperation of the cut-throat opponents of the appellant sitting in the respondent-2 department who had loosed case of seniority and promotion from the appellant in this tribunal and apex court on the one hand while vide another concurrent judgments they were declared by the FST & apex as federal civil servants. Thereupon, Govt. of Khyber Pakhtunkhwa in Law Department Peshawar on representation of the appellant advised the respondents to strip them all of the benefits they have secured from the KPK

government and they be sent back to federal government for further adjustment while the appellant should be considered for the service benefits there-against (documents at pages 54,55.56,57 of enpeal). They are sitting now on two judgments of the Supreme Court of Lastan arrive. In favour of the appellant and against them who later skillfully and maliciously dislodged the appellant from the department in a grand conspiracy and subsequently wielded the coveted post of Director General & Secretary of the respondant-2 department themselves flouting the said judgments notwithstanding that they were declared junior & ineligible for promotion to the next higher scales in one case and declared federal employees, unlawfully working in the Khyber Pakhtunkhwa government in another. Therefore, law Department had advised the Population Welfare Department KPK, respondant-2, vide their letter NO.OP 5(89) LD/09.10965 dated 21.12.2009 (pages- 55-56) to implement the FST and apex court's Judgments in letter and spirit, to strip off these federal origin employees supra of the benefits they secured from provincial government of Khyber Pukhtoonkhwa and they should be surrendered to federal government Islamabad as further adjustment is their headache. Advice of the Law Department as reveal from the letter at page 55 referred & file note-part at pages 56,57, is reproduced below verbatim:

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" The judgments (s) which have now 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".

"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 list of the persons attached to different provinces and settle their fates".

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

Thus, instead of extending benefits accrued to the appellant from the two judgments of the apex court referred he was mercilessly robbed of the accrue service benefits with the misrepresented disciplinary proceeding additionally. Anyhow, acquittal on merits confers double presumption of innocence to the acquitted appellant as held by the superior courts. The criminal appeal referred demonstrates disappointment & desperation of the potentially affected persons in respondant-2 department who built false and frivolous departmental proceeding against the appellant by leveling false criminal charges against the appellant now all repudiated by the competent criminal court of Law.

18. Reply of the responding party in par-18 of the Reply is also elusive, twisted and misleading. The judgment of the competent court of Anti-Corruption has set aside all the charges of the responding party on the basis of official record freshly retrieved from them in evidence during the trial. The trial court has found the appellant innocent and without committing any pith of illegality and culpability which has created fresh grounds for instant appeal as held by the superior courts referred. The grounds of attack and the grounds of defense between the parties are also different and fresh as emanating from fresh judgment dated 01.12.2020... of the a --Corruption Court, Peshawar, exonerating appellant from the 06 charges. Ke pondents themselves liked to carry the charges with official record to the criminal court of Senior Special Judge of Anti-Corruption Establishment, Peshawar, leading the criminal court to decide the charges within its jurisdiction being these criminal in nature. Judgment on the charges came forth through cogent documentary evidence produced which has to be accepted now. The principle of estoppels and principle of approbate and reprobate have come into play which cannot be denied even in criminal appeals before the High court & Supreme Court as referred.

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The principle of finality is being misconstrued here. It is incorrect to suggest that dispute between the parties was service matter. Dispute was of truthfulness or falsehood of certain criminal charges which pertained to official record. Notwithstanding that allegations in dispute did not relatable to the service period of the appellant with the respondant-2 but beyond and extraneous. The official record 1<sup>st</sup> time was retrieved by ACE police in protracted investigation and brought before any judicial forum for authentication of allegations. Record was examined by the competent court through evidence and allegations were spurned back. Truth discovered must prevail after all. *"Fiat justitia, ruat coelum":* Let justice be done, though the heavens should fall" Reliance on (1) 1989 PLD 166 SUPREME-COURT (2) 2005 PLD 270 SUPREME-COURT.

19. Para 19 of the respondents' reply is incorrect. The instant fresh appeal on fresh cause of action is filed within time. As reveals from page 147 of appeal the appellant on arrival of judgment dated 01.12.2020 of the Senior Special judge Anti-Corruption Establishment (provincial) Peshawar applied for attested copy on the same day. Attested copy was issue to the appellant on 11/12/2020 (page-147). Appellant immediately made representation to the respondents vide his letter dated 16,12.2020, received in offices of both the Respondent-2 rejected representation/ 22-12-2020. respondents on departmental appeal of the appeal and communicated through registered envelope vide his letter dated 14.01.2021 which received to the appellant on 19.01.2021 through mail (page-152) while from respondant-1 rejection vide letter dated 01.02.2021, received to the appellant on 05.02.2021 (page- 152-153). There-against the appellant filed instant service appeal in the Khyber Pakhtunkwa Service Tribunal within the limitation period prescribed.

The fresh cause of action was accrued to the appellant on availability of judgment dated 01.12.2020 of the Anti-Corruption Establishment (provincial) court. It has been held by the Supreme Court of Pakistan in similar circumstances:

"It would have been futile attempt on part of the civil servant to challenge his removal from service before earning acquittal in the relevant criminal case.---it was unjust and oppressive to penalized civil servant for not filling his departmental appeal before earning his acquittal in criminal case which had formed the foundation for his removal from service----Appeal before the Service Tribunal was not barred by limitation" Citation: PLD 2010 Supreme Court 695.

20.Para 20 of the respondents' reply is incorrect. There is delay of not a single day in filling instant appeal. The instant appeal has been filed within the limitation period prescribed by law. Appellant was not required to explain any delay whatsoever because the appeal has been preferred within prescribed time period.

- 21.Para 21 of the respondents' reply is incorrect. Repeated that there is no delay in filing instant appeal at all.
- 22. Para 22 of the respondents' reply is also incorrect. Since no delay has been caused and the appeal has been filed within time, therefore, no explanation is warranted.
- 23.Para 23 of the respondents' reply is incorrect. No application for condonation of delay is required as no delay in filing instant appeal was made. The appeal is within the timeframe prescribed by law.

## **ON FACT:**

- 1. Para-1 is acceptance of the respondents to the claim of the appellant made in para-1 of his appeal, therefore, should be noted by the learned bench for incorporating in its final judgment when deciding issue of promotion from year 2005.
- 2. Para-2 of the reply is denied and para of the appellant appeal is reiterated. The affectees officers in the department led by the then DG/Acting Secretary hailing from the same federal-origin lot hatched the unholy conspiracy to stop the appellant from promotion on confirmation of his eligibility for promotion to next higher scale there-against by the apex court as held in para-3 to 8 of the apex court judgment dated 15.07.2011 delivered in appellant's Civil Appeal NO. 172-P/2010 (p-156 r/w page 161 of the appeal). On declaration of their federal status by the provincial government Khyber Pakhtunkhwa in Law & Human Rights Department in paras 4, 5 & 6 of their advice at pages 55, 56 & 57 their promotion orders at page 163 became ineffective as advised in opinion. Vide the said opinion/advice the benefits including promotion benefits mistakenly doled out to them by the provincial government Khyber Pakhtunkhwa in the past were advised to be

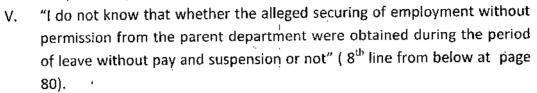
withdrawn followed with repatriating them back to federal government, Islamabad. The conspiracy was also reported by the 1<sup>st</sup> Enquiry officer (Additional Secretary Industries GOKPK). His Enquiry Report is placed at page 58-59 of appeal which is self-explanatory, also noted by the learned tribunal in last para of its previous judgment at page 108. He was replaced by the 2<sup>nd</sup> Enquiry Officer, Pw-7 maliciously and dishonestly who now shattered his own findings during his cross-examination (p-77-80) forming the bottom-line of the disciplinary proceeding leading to impugned major penalty as well as the linchpin of the judgment dated 19.11.2015 of this august tribunal noted at page-105. Repeated that the beaten 06 allegations were belied through unflinching speaking evidence in the Anti-Corruption courts which indeed were criminal in façade & substance, were properly examined by the learned court through pro & contra evidence of the parties stretching over a period of 08 1/2 long years and were out-rightly dismissed being groundless. The fake pseudonymous complaint with the name of Khairullah S/O Hizbullah, of an Afghan Refugee made to the President of Pakistan referred in instant para of the respondents was held fake by Anticorruption Police vide its report at page-50 of the Anti-Corruption Establishment. Pertinent to point out the same agency has exonerated the appellant of the stated allegations twice vide its exoneration orders at pages available at 51 & 53 of the appeal followed with judgment dated 01.12.2020 of the Anti-Corruption court. Repeating the beaten and trodden allegation repeated by the responding party in the instant para is a frantic attempt to reinvent the broken wheal for another mile audaciously.

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- 3. Para-3 of the appellant appeal is correct and re-iterated while of the responding reply is incorrect. The statement & cross-examination of the Enquiry Officer II is placed at page-77-80 of appeal, the only witness of the respondents for the departmental proceedings who eschewed adverse parts of his previous enquiry which is worth notice. In his cross-examination he defiled the whole edifice of his inquiry and impugned penalty imposed by the respondents built on his enquiry report. The following admissions of the 2<sup>nd</sup> Enquiry officers are worth Notice to foil instant para of the respondents.
  - "It is correct that I was instructed to conduct inquiry under the provisions of removal from Service (Special Power Ordinance." (1<sup>st</sup> para of crossexamination at page 77)
  - II. "It is correct that the reference of rule | have made in my recommendations 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 overridden specifically by section 11 &12 of RSO 2000 where instant provisions are in conflict with RSO 2000". (last para of cross-examination at page 80)
  - III. "The personal files of the appellant as it was not produced before me, being reportedly lost at the time of enquiry". (1<sup>st</sup> para of crossexamination at page 77) and Last para at page 79).

IV. "In my inquiry report I have not mentioned that the appellant has tempered any document". (Last para at page 79).



Anyhow, Statements of the 2<sup>nd</sup> enquiry officer in cross-examinations and salutary statements of other official witnesses placed at pages 88-98 have belied all the charges of the Charge sheet through cogent evidence in competent court, discrediting base of the whole departmental proceedings. Truth shall prevail anyhow. "*Fiat justitia, ruat coelum*": Let justice be done, though the heavens should fall" Reliance on (1) 1989 PLD 166 SUPREME-COURT (2) 2005 PLD 270 SUPREME-COURT. That Act of the Court shall prejudice none (Actus Curiae Neminem Gravabit).

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4. 'Para-4 of the appellant appeal is re-iterated. The inquiry report was really planned, motivated, illegal & fallacious as reveals from 05 admissions of the enquiry officer made in his cross-examination, reproduced verbatim in para-3 above as it was conducted in misconception of relevant law (NWFP E&D Rule 1973) and facts as the original official record contained in three personnel files of the appellant was lost, not available for substantiation of charges and were not brought before the Enquiry Officer as he admitted in his cross-examination reproduced verbatim above. Thus the whole edifice of disciplinary proceeding was built on surmises and conjectures. The findings of the Enquiry officer and of the leaned tribunal leading to major penalty were also based on fraud and misrepresentation played by diehard opponents of the appellant in respondant-2 office leading to serious injustices. In addition, the proceeding suffered from the fundamental questions raised by the appellant and recorded by the learned Service tribunal in para-7 (page-109) of its judgment which went unanswered. These were the points for determination and decision thereupon which is missing in the judgment. The judgment due to planed misrepresentation of the appellant's adversaries pursuing the appellant's appeal closely fell short to the stated standards enumerated in Order XX of Civil Procedure Code. Rule 4 (2) of Order XX lays down:

"Judgments of the courts shall contain a concise statement of the case, the points for determination, the decision thereupon and the reasons for such decision " (Rule 4 (2) of Order XX of C.P.C).

The learned tribunal was not properly assisted but was misrepresented throughout under the official clout. The same questions were noted by the learned Anti-Corruption Establishment court in para-8 (at page 136) of its judgment which were discussed & adjudged as vital points for determination. The same were decided with cogent evidence of facts, record



and relevant law in its judgment, the mode similarly suggested by section 367 of Cr.P.C. The enquiry officer attempted the allegations in arbitrary manner as no documentary record contained in three NOs personnel files of the appellant was available before him, the fact, admitted by him in his cross-examination reproduced verbatim in the forgoing para. No opportunity of personal hearing was afforded by the competent authority to the appellant either which is *sine qua non* for such proceedings.

5. Para 5 of the appeal is re-iterated. No personal hearing was afforded by competent authority to the appellant during the departmental proceeding. A meaningless & perfunctory audience was arranged with Commissioner Peshawar who himself was at a loss as how he can discharge function of the Chief Minster as competent authority. He called the appellant during his meeting in session with scores of other peoples and candidly expressed that such meeting can be held with the authority who wields the powers to exonerate or punish the appellant officer after his impartial judgment of facts and not he. Thus a basic right of personal hearing to the appellant officer was denied which caused serious miscarriage of justice. Similar was perfunctory decision of the competent authority for imposition of major penalty on enquiry file in absence of the appellant for statutory hearing which went to the roots of the illegal prosecution of the appellant, *interalia*.

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6. Para-6 is reiterated. In view of the matter the appellant was deserved to be exonerated and freed of harsh penalty arrived on trump up charges and imposed without any support of documentary evidence, when the three personnel files containing original record pertaining the 06 allegations was lost and missing during the entire disciplinary proceeding as well as before the learned tribunal and first time brought before the court of Senior Special Judge Anti-Corruption Establishment (provincial) Khyber Pakhtunkhwa by ACE police for scrutiny in evidence. Falsehood cannot stay when Truth arrives.

7. Para-7 of the appeal is reiterated. No meaningful opportunity of personal hearing was afforded to the appellant and he was condemned un-heard. Even no fair defense and due process of law was afforded to the appellant, neither by the 2<sup>nd</sup> enquiry officer, the competent authority nor by the appellate authority throughout due to personal persuasion and influence applied by the then DG, Secretary & Minister, Population Welfare Department and others, who were facing 80 Million damages suit in personam from the appellant in the civil court. Besides, the dispute of inter-se seniority, promotions, status of service of the DG/Acting Secretary and others behind the malicious prosecution were contemporaneously running in various courts of law. The entire sacrosanct disciplinary proceedings were carried forward in nontransparent manner. So much so that the 1st Enquiry Officer who was impartial and wanted to carry forward the enquiry proceeding in accordance with law and in transparent manner was mid-way replaced with the 2<sup>nd</sup> Enquiry Officer without approval from the CM and a man of choice was picked up for enquiry as the then Secretary vying in the CM house for appointment of the 2<sup>nd</sup> enquiry officer through Principal Secretary to CM, his batch-mate. His mind-boggling report at page- 88,89 transcending his permissible tether is worth perusal. Impartiality and transparency are the mandatory requirements of law in departmental proceedings. Thus appellant was condemned unheard, mistreated and maltreated as all the impugned actions have been taken at the back of the appellant by the then Acting DG, Secretary & Minster Population Welfare Department, respondant-2, with deep malice, conspiracy, insinuation, rancor, misuse of authority and abuses of public offices to settle personal scores with the appellant. They collusively disappeared official record placed in personnel files of the appellant to the disadvantage of the appellant and applied extraneous consideration. Thus their malicious actions stood against the principle of natural justice, equity, fair trial and fair-play in public business. Illegality, perversity, malice, lack of transparency, fraud and misrepresentation knows no limitations.

# The departmental proceedings can easily be inferred misrepresented & fraudulent from the following facts on record.

The appellant was never charged for any wrongful act or omission in his I. status of a civil servant committing in the line of duty while discharging public function and posted against any public post or duty in Population Welfare Department KPK but for alleged omission outside his service period or duty. Besides, the charges were twice prosecuted in departmental proceeding as well as at the level of Anti-Corruption Establishment, Peshawar and were found not culpable and indictable under the 'Misconduct' provided in RSO 2000. Thus respondents had no jurisdiction and *locus standi* to malign the appellant and prosecute him in departmental proceedings 3<sup>rd</sup> time. This fact has been discussed and decided by the ACE court in para-26 of its judgment that the appellant was not public servant during the period the allegations fall in and in support of his contention has also relied on judgment of the apex court reported in PLD 1987 SC 250 which has held that such proceedings can be initiated for punishing civil/public servant while committing such acts and omissions with guilty mind (mens rea) during discharging public functions and duty. The ACE court also concluded that the appellant was inquired by the Anti-Corruption Establishment Peshawar for the same offence/charges and exonerated the appellant from the instant charges. Exoneration orders are placed at pages 51 & 53 of appeal. The relevant dicta of the Supreme Court of Pakistan on the this point is reproduced Xerox as below which is worth notice.

"What necessary is that the offence must be in respect of an act done or purported to be done in execution of duty, that is in the discharge of an official duty. It must purport to be done in the official capacity with which he pretends to be clothed at the time, that is to say under the cloak of an ostensibly official act, though of course, the offence would really amount to a breach of duty. An act cannot purport to be done in execution of duty unless the offender professes to be acting in pursuance of his official duty and means to convey to the mind of another, the impression that he is so acting. The test is whether a public servant expressly or ostensibly commits an offence or does an act in the garb of his office. In other words if the act of misdemeanour bears relation or connection to his status as a public servant or performance of his duties as such public servant, he may attract the penalty of section 5(1) (d) of the Prevention of Corruption Act. But on the other hand if a public servant does an act which bears no relation or even the semblance of it to the performance of his official duties, he cannot be considered to be guilty of a misdemeanour "as such public servant". Acts of public servants to be indictable fall in following groups.

In the first group fall such acts which attach to the official character of the person doing it, in the second group fall such cases where official character or status of the appellant gives him the opportunity to commit an offence and in the third and the last group fall such cases where an appellant is engaged in his <u>official duty</u> and the alleged offence is committed in his official duties. In all cases it would seem that unless the act of a person can be reasonably construed to be his act in his capacity as a public servant, the appellant cannot incur the penalty provided in section 5(I) (d) of the Prevention of Corruption Act for the simple reason that he has to be shown to have acted "as" a public servant while obtaining any benefit for himself".

The learned Service Tribunal misrepresented by the departmental representatives during the proceeding, missed to decide this point, nevertheless, it had noted the point in sub-para (1) of para-7 (at page-110) of its judgment dated 19.11.2015. Therefore, further endeavor for evaluating the charges in reference to this context, alluded in para-11 below was unnecessary. The group of appellant adversaries, affectees of the FST & apex court vying in respondant-2 department are *guilty of a misdemeanor malicious disciplinary proceeding* as opined by the apex court in its judgment quoted above.

II. That, since joining respondant-2 department (Population Welfare Department) on 29.09.2004 upto his retirement on 06.01.2013, the appellant while discharging routine public function in the department in his official capacity as civil servant, was never reported to have committed or alleged to have committed any act and omission falling in the category of ' Misconduct' of RSO 2000 and he indicted there-against. Rather he earned category-1 ACRs.

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- III. While embarking upon prosecution of the appellant on a untraced pseudonymous complaints, received to the department from unknown person (Khairullah S/O Hizbullah), later confirmed as fake by ACE police during their inquiry & investigation (p-49,50 of appeal). Thus, subsequent departmental disciplinary proceedings on trump up charges was not justified, fair and well-reasoned?
- IV. Furthermore, action on pseudonymous complaint was unjustified in view of barring instruction of respondant-1, issued vide S&GAD letter NO.SORII(S&GAD) 5 (29) 97 Vol II dated 15.11.1999 as circulated, copy

whereof placed at page 47 of the appeal, the latest official instruction of its kind dealing with anonymous and pseudonymous complaints?

V. The original record contained in 2-3 personnel files of the appellant was not available in the department at the time of conducting inquiry, departmental proceedings and registration of FIR and was, admittedly, lost/missing from the Population Welfare Department on 02.02. 2010 (p-27 lost report)? Can prosecution be made on photocopies received with a pseudonymous complaint not supported with original record, admittedly not available in the department, also admitted by the 2<sup>nd</sup> enquiry officer, noted in judgment of the tribunal and also confirmed in para-24 of judgment of the ACE court? Kindly also see loss report at pages 27, finding of the enquiry committee in para-1 at page29, decision of the Chief Minster, the competent authority, at page 31 & 32 on loss of the appellant personnel files, letter of Deputy Secretary Population Deptt addressed to the appellant copy at page 34 and Order sheet of KPK RTI Commission at page 35 all proves loss of relevant record. Question arises as whether departmental proceedings could be in negative.

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VI. The departmental proceeding process initiated in the department was not well-based, commenced for the public good and tainted with personal malafide and malice of the competitors and some of senior officers who were seen, exceptionally pursuing incrimination of the appellant in this hon'ble tribunal and outside, who were in litigation with appellant both *in personam* and *in rem* in various courts? Appellant was exonerated twice by the Anti-Corruption Establishment Peshawar of the same complaint/charges vide their report/order at pages 51 &53 of appeal which become the bedrock of departmental proceedings and imposition of major penalty?

The first three allegations are related to selection & recruitment for the VII. subject post. Thus the jurisdiction and locus standi for the first three allegations, if taken true for a while, resided with KPK Public Service Commission who has neither filed any complaint against the appellant nor was active party in the departmental proceedings. Undoubtedly, Commission constitutionally is an independent body under Article 242 of the Constitution of Islamic Republic of Pakistan, 1973, theoretically free from government influence in Recruitment & selection functions and have exclusive jurisdiction for the selection and recruitment in BPS-16 & above posts vide section 7 of NWFP Public Service Commission Ordinance, 1978 ( copy pages 36-38 of appeal). The jurisdiction for raising objection on Domicile, Academic Qualification and Date of Birth unequivocally lied with NWFP Public Service Commission under Regulations, 20, 19 & 15 of Khyber Pakhtunkhwa Public Service Commission Reregulation 2003 respectively. functions determining DOB & age under Reg-15, function Thus. determining qualification & experience of a candidate under Reg-19 & function determining citizenship/domicile of a candidate under Reg-20 are specifically and exclusively relatable to Public Service Commission Khyber

Pakhtunkhwa. Whether Population Welfare Department out of personal malafide and vancour against the appellant, has not brazenly overstepped and usurped jurisdiction and legal character of the Commission and negated these particular constitutional and statutory functions of the Commission by bringing these three allegations to the departmental proceedings on its own independently in disadvantage of the appellant?. Further pointed out that sending complaint by the Population Welfare Department against the appellant to the Public Service Commission KPK while objecting provisional selection of the appellant for the post (p-39 of appeal) by respondant-2 is not admission of the Population Welfare Department on the exclusive jurisdiction of PSC in selection & Recruitment matters? As reveals from the record the complaint of respondant-2 was repelled by the Commission and a few days later Commission confirmed provisional selection of the appellant vide their letter, also so admitted by representative of the Commission/PW-11 in his cross-examination (page-88 of appeal). The Population Welfare Department on defeat of its stance offered the subject post to the appellant and appellant joined the respondent department (P-41). Thus, re-agitating this dead issue again in the departmental proceeding was improper and was based on personal malafide of a few competitors and ill-wishers who were dagger drawn with the appellant as concluded by EO/PW-7 in his report. Population Welfare Department has broken its estoppels thus violated Article 114 of Qanun-E-Shahadat Oder, 1984?

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- VIII. Malafide & malice is thickly floating on the whole instant proceedings? Malafide & malice vitiate even the right proceedings?
- ix. Respondant-2 embarked upon prosecution of the appellant on a single untraced pseudonymous complaints out of five similar complainants from the same pseudonymous complainant against opponents/competitors of the appellant, received to the department but ignored for enquiry & departmental proceedings, the present prosecution was biased, partial, unjustified, unfair and not well-reasoned.
- x. Enquiry officer Waqar Ayub /PW-7 has alluded to the war-like situation in Population Welfare Department KPK in the following words:

" The Acting Director General and Officer (appellant) are dagger drawn." Last para at page-69 of his enquiry report).

In the last para of his recommendation in his Enquiry Report he concluded: " keeping in view the unpleasant environment created in the Directorate General of Population which is not conducive for efficient working of the department......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" Half of the recommendation made by the Enquiry officer, admittedly, made under the misconception of NWFP E&D Rules 1973 with reference to the retirement of the appellant u/s 13(1) of Civil Servant Act 1973, as admitted by the enquiry officer in his cross-examination, was implemented and the rest was ignored till retirement of the concerned acting DG/ adversary of the appellant, in contravention of advice of Law Department KPK.

XI. Fundamental rights of the appellant were violated. Relevant provisions reproduced verbatim below.

"Article 3. Elimination of exploitation – The State shall ensure <u>the elimination</u> of <u>all forms of exploitation</u> and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work".

"Article 4. Right of individuals to be dealt with in accordance with law, etc.- (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular-

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not require him to do".

Article 5. Loyalty to State and obedience to Constitution and law. -(1) Loyalty to the State is the basic duty of every citizen.

(2) <u>Obedience to the Constitution and law is the inviolable obligation of every citizen</u> wherever he may be and of every other person for the time being within Pakistan.

**\*8.** Laws inconsistent with or in derogation of fundamental rights to be **void**.– (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void".

**"10A. Right to fair trial** – For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process".

XII. Respondents while conducting departmental proceedings against the appellant put these commands of the written constitution on the back burner.

Thus, reply of the respondents in instant para is vehemently rebutted with the above 12 points above. The entire departmental proceeding was misrepresented, was non-transparent and illegal altogether. Relevant law of 12-2 C.P.C, therefore, has been invoked, *inter alia*, which is reproduced below for ready reference.

" (2) Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order."

Para -8 is admitted true by the respondent which is worth notice.

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Vide para-9 of the reply the respondents have admitted plea of the appellant in the service appeal that the charges contained in the charge sheet meant for departmental proceedings and charges contained in FIR registered for criminal proceedings were one and the same. This admission on the part of the respondents approves contention of the appellant that since no element of inefficiency. indiscipline, negligence, insubordination. conduct unbecoming of an officer, bad govrance etc was attributed to the appellant and all the charges, irrefutably, are criminal in nature per se. Respondents should, therefore, have deferred disciplinary proceedings and tried the appellant for the instant criminal charges in criminal court of Anti-Corruption Establishment. On success of the criminal proceeding the respondents would have then initiated the impugned departmental proceeding and imposed penalty of any major penalty (compulsory retirement) as per procedure provided in section 3-A of RSO 2000 which so in appellant case. Conversely, in appellant case a was not done preposterous proceeding of civil misconduct was preceded to criminal proceeding. Section 3-A of N.W.F.P Removal from Service (Special Powers) Ordinance, 2000 has been reproduced Xerox above for ready reference which requires attention of the learned tribunal.

9.

Interestingly, this fact has also been concluded by the Anti-corruption Establishment Court in para-12 of its judgment that in the present set of allegations revealed against the appellant it did not include any transgression of rule, unbecoming conduct inconsistent with faithful discharge of duty or bad governance, doing of something by a person inconsistently with conduct expected from him (appellant) by the relevant rules. Thus as offshoot, the departmental proceeding was illegal, misfounted, misplaced and void *abanitio* and ineffective on the appellant. Pressing it into service in the prevailing post ACE court judgment shall be violation of article 12 of the Constitution as explained somewhere above.

10. In para-10 of the reply the respondent's again have admitted that in the 06 subject charges the appellant was exonerated of the charges by the competent court of ACE, however added that the proceeding of the criminal case has got nothing to do with the proceeding already conducted by the enquiry officer or appeal decided by the competent forum in service matter which is incorrect. A million dollar question arises that when judgment of the Senior Special Judge Anti-Corruption (Provincial), Khyber Pakhtunkhwa, Peshawar is admitted as correct it means that the charges which were criminal in nature and competently decided by a criminal court of law was also correct. Was it not proper for the respondents that they should have waited for outcome of the criminal proceedings and in case of conviction of the appellant should have adopted route provided in section 3-A of RSO 2000? Here the appellant repeat the relevant para in rejoinder ante in his support. The point must be noted please.

As response to the statement I para--10 saying that a criminal case was registered against the appellant but proceeding of the criminal case has got nothing to do with already conducted is incorrect. Both the proceeding has the same allegations. The former was misrepresented by the responding party for sheer vested motives to mislead the tribunal on hearsay allegation without having official record in support while the latter forum had the opportunity to access the relevant official record retrieved by ACE police , examine minutely in assistance of witnesses and decide on facts and relevant law. Therefore justice leans in favour of facts discovered but previously suppressed maliciously.

The precedent quoted is distinguishing. Indeed departmental and criminal proceedings could be taken simultaneously where charges of civil misconduct for departmental proceeding and charges of criminal misconduct for criminal proceeding are different. Here in appellant case all the charges contained in Charge sheet for departmental proceeding, charges contained in FIR and charge sheet of Anti-Corruption court for criminal proceedings all were one and the same. All charges in façade and substance were criminal in nature. Therefore, the department should have registered FIR and after culminating of criminal proceeding into conviction of the appellant, should have then resorted to procedure provided in Section 3-A of N.W.F.P Removal from Service (Special Powers) Ordinance, 2000. The competitors and opponents of the appellant working in respondant-2 department out of adopted preposterous route of initiating departmental hurry and haste proceedings first and criminal proceeding later notwithstanding that all the charges were criminal in nature. That violation of Rule 16 of Conduct Rules which was also presented as criminal offence of fraud, was taken by the criminal court as allegation of fraud and misrepresentation for its face value on the instance of the respondents in para-16 of its judgment, decided accordingly and appellant was exonerated of the charge while trial court duly relying on the two judgments i.e. PLD 1961 (WP) Lah 684 and 2004 PCrLJ 1895 Lah specifically dealing with Rule 16 of Conduct Rules did not agreed to the charge and exonerated the appellant on evidence. Apex court has not considered appeal on merits but dismissed in limini for want of element of public importance. Fresh judgment of the ACE court dated 01.12.2020 has created fresh ground for the instant appeal which is founded on distinct grounds.

11. Para-11 of the respondents is beguiling and distorted. Para-11 of the appeal is re-iterated. When the very foundation of the departmental proceeding built upon the instant 06 criminal charges was shaken and discredited by the competent criminal court on cogent evidence of the parties adduced over a period of 8 <sup>1</sup>/<sub>2</sub> how the major penalty of compulsory retirement obtained on fraud and misrepresentation can stay. The Supreme Court of Pakistan has set the dictum on this issue on various occasions. Similarly, section **12-2 C.P.C** also allow where a person challenges the validity of a judgment, decree or order on the plea of fraud, mis-representation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed

the final judgment, decree or order. See section 12-2 C.P.C applicable to the Service tribunal. When the foundation no more exists the superstructure shall likely fall to the ground. The proven innocent appellant cannot forbears stigma furthermore. When the charges no more exist the appellant is fit and proper to resume his normal duty of the state. "Justice is the constant and perpetual will of the God and the state to allot to every man his duc. Law is not law, if it compromise the principles of eternal justice."

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It is incorrectly stated in para-11 of the reply that the appellant was subjected to criminal proceeding for recovery of the amount he illegally received during his service. In fact he was prosecuted for punishment under section 419,420, 468/471 PPC r/w section 5 (2) PCA 1947 physical incarceration on basis of the same charges which had became the base of departmental proceeding for civil misconduct. Civil court has jurisdiction for the recovery of amount and not Anti-Corruption Establishment court.

That, the judgment of acquittal by the competent criminal court from the same charges has brought fresh cause of action to the appellant. The Supreme Court of Pakistan has allowed  $2^{nd}$  and subsequent appeal to the Service Tribunal in the circumstances as cited in appeal. 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. 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 appellant officer is acquitted, <u>the very basis on which such order of removal from service stands, would disappear</u>. 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 <u>additional ground</u>, 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 SCIMR 1483)

So far as the last four lines of para 11 relating perpetuation of penalty of major penalty with stigma of the appellant despite disapproval of the charges is concerned the following dicta of the superior court are reproduced in verbatim below in support of appellant re-instatement in service with full back benefits.

i. In the judgment reported as (province of the Punjab v. Abdul Aziz Qureshi (1994 SCMR 247), the apex court established the rule 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)

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 opeal way ght? allowed by the learned Tribunal." (Citation: 1995 SCMR 247).

### iii. The apex court held in identical case.

ii.

"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 <u>freed/cleared him from an accusation or charge of crime</u>---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.

Futher stated that Para-11 of the reply is poorly misconceived therefore para 11 of the appeal is re-iterated. The jurisdiction of the tribunal or Anti-Corruption court is not moot for the discussion here but the 06 charges which were subject Xerox of the two forums and of the two proceedings. Irrefutably, the charges were criminal in nature, therefore, carried to ACE police and subsequently to the ACE Court. Criminal court examined them with the assistance of evidence and official record produced by the ACE police from the office of respondant-2. The criminal court repudiated all the charges which also subject matter of the proceeding before the service tribunal and appellant acquitted on merits. Indeed the criminal court has not set aside judgment of the tribunal but it has undoubtedly, discredited and set aside the 06 charges on the basis of which the appellant was awarded major punishment by the competent authority which was not disturbed by the tribunal unfortunately. Since the charges which were criminal in nature has been washed away by the competent criminal court of Anti-Corruption Establishment and appellant was found 'not guilty'. Therefore the penalty imposed upon on the basis of charges must also go. Appeal to the service tribunal after acquittal from the criminal charges is a formality as held by the superior court relied herein the rejoinder and service appeal.

It is totally incorrect that the major penalty was confirmed by the higher court but disposed off *in limini* for apparently lacking question of public importance. Neither merits of the case was examined nor any judgment given on merits subsequently. No recovery suit has been filed against the appellant as after retirement with pensionery benefits all of his previous service was recognized and payments endorsed. Rather after retirement further about Rs. 8.0 million was additionally sanctioned by th3 respondents and paid to the appellant. Irrespective of nature of the 06 charges the appellant has been exonerated thereof on merits, therefore, the penalty imposed previously competent authority cannot sustain and must go. If compulsory retirement was on the basis of the same charges the appellant was exonerated of. How the penalty imposed thereupon can stay when the said charges disappeared in the air and the appellant found innocent?

12. Para- 12 of the appeal is reiterated.

#### <u>GROUNDS:</u>.

- A. Reply to Ground-A is incorrect, illusive and misleading, therefore, Ground-A of the appellants appeal is re-iterated. A false & improper case of misconduct was planted against the appellant which was suffering from the fundamental lacunas noted by the tribunal itself in para-7 of its judgment (page-109 of appeal). Once taken as issues and noted for decision the learned tribunal was distracted by the cut-throat opponents vying in respondent-2 office through fraud and misrepresentation. The hon'ble Anti-Corruption Court, being the competent forum for deciding such criminal charges has also taken these questions in para-8 of its judgment (page-136), made them as issues, put them to the litmus of evidence produced by the respondents' and relevant law while dealing with them within the four corners of law and finally repudiated all 06 charges of the respondents altogether while meeting the requirement of section 367 Cr.P.C duly delineating the language and contents of 'Judgment of a court' and put proper answers to these questions which are missing in judgment of the tribunal being misrepresented & misled by the respondent party. Since the Service Tribunal by virtue of section 7 (2) of ST act 1974 for the purpose of deciding any appeal, be deemed as civil court and shall have the same powers as are vested in such court under the Code of Civil Procedure 1908 (Act v of 1908) hence vide instant appeal section 12-2 C.P.C has also been invoked in addition to section 4 of the NWFP Service Tribunal Act, 1974. Therefore, while equipped with benediction of the section 12-2 the appellant has also challenged the validity of the judgment dated 19.05.2015 on the plea of fraud and mis-representation played by the appellants opponent on the learned service tribunal.
- B. Reply to the Ground-B is misleading. As reveals from its face value all the allegations were criminal in form and substance and fell in the pail of 'Criminal Misconduct' contemplated by section 5 of The Prevention Of Corruption Act, 1947 r/w 419,420 PPC. There was no allegation of negligence, indiscipline, inefficiency, mishaviour or conduct unbecoming of a civil servant relating appellant's official duty or functions, also so concluded by Anti-Corruption Establishment, Peshawar in para-26 of its judgment. This fact of non-commission of misconduct also corroborates from the conduct of the respondents by registering FIR NO. 8 dated 19.11.2013 in Police Station Anti-Corruption Establishment Peshawar (p-125) and prosecuted the appellant for the criminal charges simpliciter in the court of Anti-Corruption Establishment. The language of charges framed in the charge sheet in the ACE court (p-127-128) also speaks volume prosecution of the appellant for criminal charges *per se*. The excerpt copied from the judgment 2008 SCMR 1151 in instant para is distinguishing,

misleading and out of the context. The appellant has never been charged for 'Malversation' (Corrupt behavior in a position of trust while in public office). The referred case has two distinct set of allegations while appellant a single set allegations. The appellant has never been charged for any corrupt behavior during his entire stint he spent in the respondent-2 department, right from joining on 29.09.2004 till his retirement on 16.01.2013. The point should be noted. Since charges in departmental proceedings leveled against the appellant were one and the same and criminal in nature, The competent criminal court repudiated the charges now, therefore, appellant is entitled for his reinstatement into service with all back benefits being fit and proper person for continuation in service. The impugned final orders/letters dated 14.01.2021 of the respondents refusing reinstatement of the appellant is unwarranted, illegal and thus not sustainable in the eye of law.

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The very allegations were false and not confirmed from the official record came before the ACE court, admittedly lost and was not available before the tribunal. With the advent of record before the ACE court the criminal charges of having two domiciles, tempering MA Degree and obtaining exparte decree fraudulently, the allegations which were relatable to the period when the appellant was neither civil servant nor joined the respondent-2 department, were disapproved through documentary evidence on merits. Appellant submitted his Application Form NO.35908 to the Khyber Pakthunkhwa Public Service Commission which was diarized under diary NO.1368 on 15 March, 2003, when appellant was not civil/public servant. If taken these three allegations tentatively true for a while, the jurisdiction of prosecution for these allegations lied with the Commission, a constitutional body, constituted under Article 242 of the Constitution having exclusive statutory powers of recruitment for BPS-16 & above posts under section 7 of the NWFP Public Service Commission Ordinance, 1978, independent of the governments/respondents (page-36-37): Respondant-2 had no locus standi relating selection and recruitment issues. This fact also corroborate from letter of June 18, 2004 of the respondent-2 (p-39) sending complaint regarding the same allegations to the NWFP Public Service Commission for action. The Commission ignored the said letter, appellant was finally cleared and his recommendation for appointment against the said post were sent back (p-40). The respondents in compliance of the recommendation issued appointment order dated 27.09.2004 and appellant joined the respondents on 29.09.2024 (p-41). appellant worked till 16.01.2013 in the respondant-2 department, the date of his retirement, without any complaint against him. During the said period the appellant has never been charged for any misconduct or criminal 'misconduct' or 'malversation' either.

So far as excerpt copied from the judgment 2008 SCMR 1151 is concerned in that specific case there was two different set of allegations against the appellant, one relating civil misconduct and another relating criminal misconduct, both having distinct allegations for prosecution. In appellant case there were one & the same allegations both in civil as well as in criminal proceeding which all arrayed as criminal offence, therefore, were carried to the ACE police Station, investigation made, challan submitted in criminal court, appellant prosecuted and finally honorably acquitted. The departmental proceeding for prosecuting criminal charges was wrong, misconceived and misrepresented before the tribunal. The Service Tribunal lacked the jurisdiction to try the same as its jurisdiction was confined to

'misconduct' contemplated by section 2 (c) of RSO 2000 bur responding party influenced the proceeding despite appellant's outcry. The charges of charge sheet (s) against the appellant did not have any allegation of inefficiency, indiscipline, misbehavior, insubordination, conduct against good order or service discipline etc but of criminal offences. As of normal practice and procedure provided in section 3-A<sup>1</sup> of RSO 2000 the respondents should have waited for the outcome of criminal proceeding and in case of conviction of the appellant from criminal court they should have then proceeded for departmental proceeding u/s 3-A of RSO 2000 and imposed major penalty if found guilty. Here the respondents have adopted preposterous procedure, first went for departmental proceedings and then for criminal proceedings for the same charges which were criminal in nature indeed. The impugned route adopted was like putting a cart before a horse which was against the prescribed law, & procedure, was misreading of facts, relevant law and record and was unjustly prosecuted appellant without jurisdiction. The charges leveled against the appellant has now been repudiated by the competent criminal Court of law, 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 was unwarranted, illegal and thus not sustainable in the eye of law.

C. Reply to the Ground-C is too short, elusive, incorrect and misleading. Appellant was forcibly made to pass through the ordeal of 1<sup>st</sup> around as he was entangled uncouthly and preposterously in a forged case. Repeated that since appellant was imposed upon major penalty of compulsory retirement on account of his alleged involvement in criminal offences of **fraud**, **misrepresentation & forgery**, the charges incorporated Xerox in the Statement of allegation & Charge sheet and then in FIR. Thus he is well within the right to claiming re-instatement in service in view of repudiation of the charges by competent criminal court on merits. If the charges are untrue & mis-founded then perpetual right of condemning the innocent employee for penalty of compulsory retirement imposed upon him cannot be gained on the basis of proceeding held in the hon'ble tribunal, falsely implicating the appellant and prosecuting him for criminal offence in the wrong forum under the official clout.

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D. Reply is elusive and misleading. Statement in para-D of the appeal is reiterated as well as rejoinder to para-14 of preliminary objections which may kindly be seen. The excerpts quoted are borrowed and irrelevant to the appellant case. Charges contained in the Charge sheet for departmental proceeding as well as criminal prosecution 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. Responding party has attempted to mix oranges and mangoes together. Superior courts have vehemently exhorted that every case has to be taken in its own circumstances and decided on own merits, Thus the charges being criminal one, were rightly considered by competent criminal court, decided and repudiated under its inherent authority and jurisdiction. The respondents were required to wait for the outcome of the criminal proceedings first 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, mis-founded, misplaced, and

preposterous and against the law laid down. Reliance is placed on PLD 2010 SC 1165 & PLD 2010 695.

- E. Reply to the Ground-E of the appeal is illusive and misleading. Agreed to the extent that standards of evidence and methods of proving charges of misconduct and criminal misconduct are not the same. However while applying the dictum to the appellant case the following points inherent in appellant case must also be kept in mind.
  - I. Unlike in reported case appellant has to face one and the same charges which were criminal in nature. That is why responding party registered FIR in Police Station ACE Peshawar thereabout, made investigation through police in the charges, challan prepared and submitted in the criminal court for prosecution of the appellant accused against the charges. There was no two distinct set of charges against the appellant, one for 'misconduct' and another for 'criminal misconduct'.

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- II. The matter under reference was in relation to misconduct triable under E&D Rules 1973 and not RSO 2000 which has special provisions including section 3-A. RSO 2000, has put distinct definition of 'Misconduct' and has also excluded violation of Conduct Rules from its body fold as explained in detail ante.
- III. Said authority itself quotes that "acquittal of a person from the charges of criminal misconduct by criminal court might be a relevant factor to ascertained nature of misconduct in departmental proceedings". This quotation also set method within the lines that criminal proceeding should be preceded to disciplinary proceeding in order to follow remedy for criminal prosecution of the accused civil servant u/s 3-A of RSO 2000 once proved guilty in criminal proceeding. Provision of section under which the appellant's case should have been dealt with is with perusal.
- Besides, this is a settled principle of law also enunciated by the IV. 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 by the competent court from the same charges on merits the charges and its culpability is no more in the field. Therefore he is entitled for reinstatement into service. Thus, refusal of the respondents to reinstate appellant into service after his acquittal as he freshly represented, is violative of natural justice r/w Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 and Judgments of the Supreme Court of Pakistan delivered on the subject matter thickly quoted by the appellant in his service appeal. On arrival of truth through unflinching official record produced 1<sup>st</sup> time penalty must go. Fraud & misrepresentation played on the tribunal by competitors of the appellant seething in respondant-2 department, engaged in litigation with him contemporaneously, is worth notice. After exoneration of the charges and acquittal no stigma remains on the appellant, therefore, he became fit and proper person for continuation in service as the only

ground of his compulsory retirement is disappeared through his acquittal by the competent court making him re-emerged as fit and proper person, entitles to continue with his job guaranteed to him under articles 18 & 27 of the constitution. Apex court has held in similar case:

"The judgment of the learned Special Judge leaves no slur on the conduct of the respondent (appellant) 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." Citation: 2002 SCMR 57

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Of course standard of evidence and method of proving charges in the two forums are slightly different. The latter forum under its prescribed method took in-depth probe into the charges through documentary evidence and testimony stretching over a period of 8 ½ years and exonerated the appellant. Since the allegations were criminal, therefore, aptly adjudged and well evaluated at the later forum having the competent jurisdiction. The grains from the chaff were sifted through retrieved documentary evidence procured by the respondents in support of charges against the appellant. The golden scale of examination-in-chief of the witnesses and cross-examination in the later court enhanced the quality and quantity of testimony. Whereas before the former, the learned Service Tribunal, record contained in three personnel files of the appellant were reported lost and was not available for perusal. Same was the case before enquiry officer. The Anti-Corruption Police brought the relevant record before the criminal court which was examined and cross-examined and a sound informed decision was taken by the competent court vide its judgment dated 01.12.2020 undoubtedly. The availability of evidence through official record and testimony of the witnesses procured at the later stage has improved the levels of veracity and genuineness and enhanced authenticity at the later forum which was misrepresented by the departmental rivals before the tribunal through hearsay allegations previously. Hence section 12-2 C.P.C has been sought as remedy too in addition to section 4 of the NWFP Tribunal Act, 1974. The appellant was wrongly charged and prosecuted through departmental proceeding for misconduct as the 06 charges did not included inefficiency, indiscipline, misbehavior, insubordination, conduct against good order or service discipline falling within the confines of 'Misconduct' defined in 2 (c ) of RSO 2000. He was charged for criminal charges simpliciter which were rightly handled and decided by the competent criminal court. Even the criminal charges were not relatable to the normal duty and functions of the appellant during his stay in the respondant-2 department but beyond. Thus citation of 2006 SCMR 1005 and cited para-E of the reply are distinguishing and irrelevant, therefore, misplaced and mis-founded.

F. Reply in para-F of the reply is incorrect. Ground F of the appeal is reiterated. Disciplinary proceedings which finally culminated into the major penalty were fraught with jurisdictional error, malafide, misrepresentation, violating laid down procedure provided in section 3-A of RSO 2000, malicious and based on 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 respondant-2 department headed by the then Director General/Acting Secretary, who were not Provincial employees and thus not entitled to be included in seniority list of the Provincial Civil Servants where the appellant was becoming senior most w.e.f. 2005 when the department prepared 1<sup>st</sup> proposal for promotion and sent to the PSB (p-153). He had become eligible to clinch their incumbencies they wielded. The Federal origin employees headed by the then Director General were not ineligible to be included in seniority and promoted being Federal employees. Policy decision of respondant-1 at page 161<sup>+</sup> and judgment of the apex court at page-156 all supported appellant case. The accrued eligible position was also stamped by Govt. of Khyber Pakhtunkhwa in Law Department vide their legal opinion dated 21.12.2009 (p- 56-57) sought by the respondant-2 department vide their letter dated 5.11.2009 (pages- 54), all made appellant's diehard competitors in respondant-2 department angry. Minister, Secretary & DG all further offended with damages suit for 80 millions which has been amended now pending in competent court of law.

G. By quoting judgment of the apex court in reply to Ground-G the respondents have once again attempted to mix up the two different assortments with varied inherent properties. Here the question is not about distinct proceedings of the two forums but semblance of the charges in façade & substance tried by the responding party at two different forums against the appellant audaciously & fraudulently. The question is of prosecuting the same set of charges at two alternate forums, especially departmental proceeding at the forum of Service Tribunal when the charges reflecting in the Statement of allegation and Charge sheet were undeniably criminal in nature and did not had the elements of inefficiency, indiscipline, misbehavior, insubordination, conduct against good or service discipline falling within the confines of section 2 (c ) of RSO 2000 but criminal charges which were triable by the Anti-Corruption Establishment court, thus rightly handled and decided by the relevant competent criminal court. The allegations as per its face value did not straightaway qualified for departmental proceeding but at the later stage in contemplation of section 3-A of RSO 2000, when criminal charges are proved against the civil servant departmental proceeding could be initiated u/s 3-A of RSO 2000. Prosecuting the appellant for the same charges at the two separate forums and preceding civl proceeding to criminal proceeding was not proper but misrepresented and played fraud by cut-throat opponents of the appellant in the respondent-2 department who were in litigation with the appellant at that relevant time. Indeed departmental proceeding deals with civil misconduct having the charges of inefficiency, indiscipline, misbehavior, insubordination, conduct against good or service discipline falling within the confines of section 2 (c ) of RSO 2000 whereas criminal offences/charges are prosecuted in the criminal courts. Since the instant sex charges reflected in the Statements of allegations and Charge sheet of the respondents are criminal by its very nature, essence & core, therefore, should have been vindicated at the criminal jurisdiction and on success of criminal proceeding departmental proceeding as contemplated by section 3-A of RSO 2000 should have been followed. The material illegality occurred when departmental proceeding preceded the criminal proceeding. Another

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illegality is exposing the appellant to double prosecutions for the same **Xerox charges** that's too in preposterous manner which was bizarre.

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It is incorrect to suggest that judgment of the tribunal is upheld by the apex court in its two-line judgment which has been disposed off in limini on the question of public importance rather than on merits. This point has been well' taken by the learned court of Anti-Corruption Establishment in para-11 of its judgment while fortifying his judgment with cogent legal references and documentary evidence presented by the responding party itself. The instant excerpt from PLD 2002 SC 13 relied by the trial court for his own adjudication on merits as the responding party was adamant, vehemently moving the criminal court to agree with judgment of the service tribunal and convict the appellant accused which he resisted duly respecting stature of the tribunal however inclined to deliver his judgment on merits based on the documentary evidence freshly produced by the responding party. ACE court quoted judgment reported in PD 2002 SC 13 in order to justify his own jurisdiction as well as adjudication for the charges on merits. Pertinent to point out that no documentary evidence was presented before the learned service tribunal in support of the serious 06 allegations despite of appellant's application available on page 123 of service appeal. The Learned Service Tribunal, respectfully said, while assuming its jurisdiction for the decision on the 06 allegations of the Charge! sheet has not discussed nature & substance of the charges arrayed against the appellant despite taking notice of the formidable questions raised by the appellant it mentioned in para-7 (p-109) of its judgment which all went unattended and unanswered due to misrepresentation of the responding party. Conversely, the learned tribunal has taken jaundiced findings of the 2<sup>nd</sup> enquiry officer as gospel truth while ignoring interim enquiry report of the 1st Enquiry Officer Mr. Mazhar Sijad mentioning in last para of its judgment (page 108 of the appeal) which was . unfortunate. Admissions of the 2<sup>nd</sup> Enquiry officer shattering his own findings subsequently during cross-examination in the criminal trial are reproduced Xerox in one of para above of this rejoinder, derived verbatim from pages 77-80 of service appeal which is worth notice.

All the charges suffered from serious legal lacunas as adjudged and decided by the criminal trial court in its judgment. Now, all allegations are washed away with the judgment in hand of the competent criminal court and evaporated in the air as held by the apex court in several of its reported judgments quoted in appellant's appeal 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 and a miscarriage of justice.

H. Ground -H of appeal is repeated being true and provable from record. Caroused with personal venom and vendetta the appellant's opponents in the respondent-2 office targeted the appellant who was appointed by respondant-1 as Chief Executive Officer Water & Sanitation Services Swat (MP-1 position) in open merits. Due to deep conspiracy of the same Officers and respondents of 80 million damages all got together and removed the appellant unceremoniously from the senior post on the basis of the same hearsay allegations and judgment of the tribunal dated 19.11.2015 vide order dated 22.9.2016 (*Annex- S*) after serving for 13 months while the pay of the appellant is still withheld being maligned by the said judgment. 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 headed by Ex-Secretary Population Welfare Department, then posted on senior instrumental post in the federal government, by referring mis-founded major penalty imposed upon the appellant and judgment of this august tribunal referred. Thus once proved innocent and exonerated of the charges on the basis of documents the stigma with penalty must go in order to provide appellant level playing field as citizen.

I. Reply in para I of reply is incorrect Ground-I of the service appeal is repeated. In Service Tribunal Khyber Pakhtunkhwa the case of the appellant was totally misrepresented by the functionaries representing respondant-2 department, hailing from the affected federal-origin lot, cut-throat adversaries of the appellant, who on concealment of true record, claiming lost of the appellant original 3 personnel files from the department, misled the service tribunal with hearsay allegations while carrying official cloak on their shoulders and state apparatus in their hands, fraudulently overwhelmed the learned tribunal with surmises and conjectures in order to reach a misrepresented conclusion which seriously prejudice caused to appellant's innocence, his life and career. The entire gagged record has since been retrieved now, produced before the trial court of Anti-Corruption Establishment, exhibited on judicial file and thus appellant was exonerated of the charges honorably. The fresh true record retrieved cannot be ignored under 12-2 C.P.C proceeding. Previously missing record on conduction of two other inquiries (p- 51 & 53 ) on the same charges was also recovered by Anti-Corruption Establishment belying the charges which all has accrued a strong and fresh cause of action inter alia.

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J. The same stereo-typed objection of the respondents' party which has well been attended in the forgoing paras of the rejoinder, therefore, need no repetition. Added that allegations as per its face value did not qualify for departmental proceeding straightaway but at the later stage as contemplated by section 3-A of RSO 2000, when criminal charges are proved against the civil servant in criminal proceeding. Prosecuting the appellant for the same charges at the two separate forums which indeed are not synonymous and interchangeable, is illegal. These two forums are different from each other in view of different set of offences triable by them in their separate jurisdiction. Departmental proceeding deals with civil misconduct having the charges of inefficiency, indiscipline, misbehavior, insubordination, conduct against good or service discipline falling within the confines of section 2 (c) of RSO 2000 whereas criminal offences/charges are prosecuted in the criminal courts. Since the instant sex charges as reflected in the Statements of allegations and Charge sheet of the respondents are criminal by its very nature, essence & core therefore should have been vindicated at the criminal jurisdiction first and on success the criminal proceeding should have followed departmental proceeding as contemplated by section 3-A of RSO 2000. The material illegality has been occurred when departmental proceeding preceded the criminal proceeding. Another illegality is exposing the appellant to double prosecutions for the same Xerox charges that's too in preposterous manner which was bizarre. No judgment of the tribunal is upheld by the apex court in its two-line judgment which has been disposed off in limini on the question of public importance rather than on merits. This

point has been well taken by the learned court of Anti-Corruption Establishment in para-11 of its judgment while duly fortifying his jurisdiction with cogent legal references and rejecting instant stance of the respondents to retain the penalty. 32

Repeated that findings of facts were involved in the appellant' case. However, unfortunately, the theory of presumption and hearsay ruled in departmental proceedings due to misrepresentation of facts and suppression of official record, 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 retrieved record. The fullfledged trial in the Anti-Corruption court has knocked out and washed away the charges and appellant was declared innocent on merits. Truth shall ultimately prevail and masquerading presumption and assumption shall give way to camouflaged gospel truth after all.

K. Reply to Ground-K is incorrect. The evidence appreciated by the criminal court is based on official record retrieved by the ACE police from respondant-2 office and latter exhibited by government prosecutor through 14 witnesses/ record keepers, therefore carry greater weight. This record was not placed before the learned tribunal despite appellant's application attested copy placed at page 103 of appeal which affected appreciation of charges and true evidence in support. The impugned inquiry itself has been scuttled by the enquiry officer in his cross-examination which ceases to carry any sanctity after arrival of the Anti-corruption Judgment. Presently the Enquiry Officer is facing criminal case in the Anti-Corruption court as well as facing heavy damages suit in the Court of District judge for his jaundiced views. One learned member of the tribunal, the writer of the judgment in the tribunal who was Special Secretary in the Establishment Department KPK during departmental proceeding of the appellant and also worked under the influence of the Enquiry Officer as well as the then Secretary of the respondent-2 department was requested to separate and disassociate from the bench however it was not possible because the tribunal at that time had three members including chairman. The chairman was hearing appeals for admission while the rest of two leaned members were members of the only bench hearing services cases after admission in which the said Special Secretary was one member. Therefore he could not disassociate himself from hearing the appellant case.

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 this learned tribunal to call the official true original record including personnel files of the appellant from the department for inspection (Annex-Page-103 of appeal). The respondents failed to produce it; rather the respondant-2 office misrepresented the facts before the tribunal through hearsay & speculative assertions without official record. 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 the appellant. The citation from 2006 SCMR 1005 is misquoted here. No justice system nurturing from fundamental rights of written constitution can shut eyes to the speaking facts freshly surfaced. Prayer u/s 12-2 C.P.C cannot be ignored now. The domains of the two forums are different but the charges are not different. The retrieved record has belied the charges altogether which has brought fresh cause of action to the appellant.

- L. Reply to the Ground-L is evasive and with no rebuttal from responding party, therefore, should be taken as admitted. The instant ground is the main attack of the appellant in the instant appeal but with no rebuttal from the respondents now. As reveals from the language of the charges prosecuted against the appellant both the departmental and criminal proceedings dealt the same charges. That the charges in the Charge sheet of the respondents before the tribunal and of F.I.R if carefully perused 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 powers and criminal jurisdiction put to the litmus all the charges one by one in most natural way and cleared the appellant thereof in unequivocal terms. Indeed the charges did not include inefficiency, indiscipline, misbehavior, insubordination, conduct against good order or service discipline etc but criminal offences simpliciter. Since the charges misdirected against the appellant during departmental proceedings were not only false, having no roots in official record retrieved but were misrepresented fraudulently against the appellant at the tribunal level. Justice knows no limitation. With the advent of fresh judgment of the competent criminal court no allegation exists in the field against the appellant as all were evaporated in the air. Therefore the appellant turned innocent, has assumed his status of a fit and proper person for the service as he topped the commission final list in selection. Depriving an innocent person from continuation in service for no fault of his own, when he earned no adverse report or proceeding for any omission or commission during his stay in the department will be a great injustice. He was unlawfully made suffered for no fault of his own but personal vendetta of his competing colleagues.
- M. Paras-M to Para-ZI of appeal are admitted as true as no denial to the dicta set by the superior court in similar case of the appellant has been denied. The appellant has been acquitted by the 'competent original court' of Anti-Corruption Establishment. The plain reading of the dictum recited in Ground-M of the appellant based on**1991 S C M R 209** has set that <u>when</u> the appellant 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 as is the case of the appellant. 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 or should have been taken.

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Similarly, when the charge is dismissed without any suggestion by the court that the conduct of the appellant has been suspicious or any indication that it is merely giving the appellant the benefit of a doubt; the acquittal should be treated as an honourable acquittal. The authority 1991 S C M R 209 further guide that when the civil servant is dismissed, or imposed any other similar major penalty based on his conviction of criminal charge civil servant having been acquitted of criminal charge, his dismissal has to be set aside and he be ordered to be reinstated in service with back benefit. The said authority further guide in case of criminal charges against a civil servant that he should first be prosecuted for the criminal charges in competent criminal court. On his conviction he then be proceeded for departmental proceedings u/s 3-A of RSO. 2000. The departmental proceedings, it seems, were improperly proceeded and illegally preceded of criminal proceedings. In fact departmental proceeding should have followed criminal proceedings, once the civil servant was found guilty and convicted. Thus the penalty imposed in departmental proceeding in view, of the ACE court judgment was improper, illegal and void ab-anitio due to fraud and misrepresentation of the responding party played on the service tribunal.

It is incorrect to suggest in the reply that the Tribunal has attested the evidence brought before it and then maintained major penalty. No evidence has ever been brought against the appellant before the tribunal as the entire official record contained in the three personnel files of the 'appellant was lost and not available both for the enquiry Officer as well as service tribunal. Application of the appellant to the tribunal at **page- 103** of the appeal is sufficient to prove this fact. Similarly, apex court did not entertain the appellant's appeal apparently for lacking question of public importance. It did not discuss judgment of the tribunal or accorded any credence to its findings either as reveal from two-line judgment (page-123). The respondents while prosecuting their criminal case in the ACE court advanced the same arguments which were not entertained and a varied judgment came repudiating all allegations under reference, exonerating the appellant and acquitting him of the charges. Thus the instant lame excuse cannot sustain further. It was held in reported judgment of the superior court:

"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).** 

The respondents have admitted judgment of the ACE court valid and binding but have taken refuge under rule 23 of the Service Tribunal Rules which is all the more weaker ground as the ground of attacks and ground of defenses of the contesting parties in the two cases are totally different. The fresh judgment of the ACE court has provided fresh cause of action and its findings are the fresh grounds of attacked to the major penalty imposed upon the appellant. The ground of defenses of the respondents thereto should also be different. In addition to preposterousness of the double proceedings against the appellant for one of the same allegations at two forums having varied jurisdiction was also improper and fraudulent. The persons behind the preposterous proceedings are facing criminal complaints both in the ACE court as well as damages suits in civil court now. Same allegations being criminal in nature and falling in the jurisdiction of criminal court, prosecuting them at two incompatible forums is improper indeed. Vide instant para if judgment of the ACE court has been taken by the responding party per incuriam despite having detail judgment on the same charges framed and prosecuted vehemently by them what to say of distinguishing judgments of other courts they are pressing in rebuttal to instant appeal? This is a million dollar question.

Reply to para Z-2 is twisted. The appellant was declared eligible for Z-2 · promotion by the apex court vide para-3,4,5,6 of the judgment (pages-157-158). The policy decision of the respondant-1 has also declared the appellant eligible for promotions to the next higher scale vide its policy decision dated 30.05.2011 copy available at page-161 of appeal. Whereas appellant's opponents one of those serving now in BPS-20 while other retired in senior grades, were declared ineligible. Since at the relevant time in 2005 the vacant posts were also available. A proposal for promotion against the vacant posts was prepared by respondant-2 and sent to respondant-1 having name of the appellant. The same was return under objection that inquiry was pending against all competitor of the appellant in the proposal. Since competitor of the appellant did not have required mandatory length of 12 years service in BPS-17 & 18 at that time whereas the appellant had, therefore, appellant was preferred against them as reveals from the policy decision letter at page- 161. Later, all competitors of the appellant were declared federal civil servant by the apex court and on appellant efforts respondant-1 was advised by Law Department KPK to strip them off of the benefits they have obtained from the KPK government and they be sent to federal government Islamabad for further adjustment (pages 55,56,57). The advice tendered was not implemented by the respondant-2 against whom including then DG and Minister Population Welfare, appellant filed a damages suit for Rs. 80 million which is still pending as admitted in instant Reply. The said damages suit became the only base of the malicious departmental proceeding on fake charges through an organized conspiracy culminating into an unfair major penalty of compulsory retirement in nontransparent manner. Since the said allegations have now been proved untrue and false therefore, the penalty maneuvered and manipulated should not stay further as the natural justice demand. Poetic justice knows no legal

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chicanery. Truth shall prevail and falsehood should go. Apex court has set the following dicta in similar 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)

"The judgment of the learned special judge leaves no slur on the conduct of the respondent (appellant) 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).

"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)

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"However, it does not require any elaborate argument to show that in case the sentence is set aside and appellant officer is acquitted, <u>the very basis on which such order of removal from service stands</u>, <u>would disappear</u>. 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 <u>additional ground</u>, 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)

"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)

"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 <u>freed/cleared him from an accusation or charge of crime</u>---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.

---Acquittal---All acquittals are "honourable" and there can be no acquittals which may be said to be "dishonourable". (Citations: 1998 S C M R 1993)

"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--<u>Any condition creating impediment on the job in</u> 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).

The apex court observed in another identical cases 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. <u>The very basis of the recommendation for removal from service having been knocked out, the appeal was rightly allowed by the learned Tribunal.</u> The learned counsel for the appealiant 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)** 

"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 appellant 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)

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(page-161) and of Apex court judgment in appellant's civil appeal NO. 172-P/2010 (page-156), right of promotion to the BPS-19 and

now to BPS-20 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 October 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 (**page-165**) whereas promoted the illegible one copy of notification at page-163. Thus eligibility of the appellant was cleared by the apex court in paras 5, 6, 7, 8 beyond any shadow of doubt.

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Z-3 Respondant-1 on the abetment and conspiracy of opponents of the appellant removed the appellant from the post of Chief executive Officer, Water & Sanitation Services, Malakand Division Swat vide order dated 22.09.2016 (page-176) unfairly and illegally. That, under Article 18 of the constitution of the Islamic Republic of Pakistan every citizen has 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 judgment dated 19.11.2015 of this Hon'ble tribunal and had wrongly caviled/maligned his employment at the two relevant forums referred.

Z-4 Para- Z-4 of appeal is re-iterated with vehemence please.

Z-5 Reply to Ground Z-5 of the respondents' reply is misleading. The judgment of acquittal has created fresh cause of action to the appellant. The Supreme Court of Pakistan has allowed 2<sup>nd</sup> and subsequent appeal to the Service Tribunal in the circumstances referred ante. 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 if approached u/s 12-2 of C.P.C, *inter alia.* 

Z-6 Request in Ground Z-6 of appeal is re-iterated with vehemence.

Z-7 Request in Ground Z-6 of appeal is re-iterated with vehemence. The reliefs solicited in service appeal fall in the Terms & Condition of civil servant and this tribunal has got jurisdiction to entertain. 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 Request in Ground Z-6 is of appeal is re-iterated with vehemence.

#### **PRAYER:**

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

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

Dated: 01.06 2022

1.6.22

Pervez Khan (Appellant)

Senior Private Law Consultant, Peshawar

Through

1. Asif Khan Yousafzai, Advocate Supreme Court of Pakistan

2. Arbab Saiful Kamal Khan, Advocate, Peshawar High Court, Peshawar.

AFFIDAVIT: Affirmed on oath that contents of this rejoinder is based on facts, relevant law and official record relied upon herein. That nothing has been concealed from this august tribunal deliberately.

1.6.2

Pervez Khan (Deponent)

## N.W.F.P. PUBLIC SERVICE COMMISSION <u>2-Fort Road, Peshawar Cantonment.</u> Dated: 14.02.2003

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# ADVERTISEMENT NO. 02/ 2003.

Applications are invited for the following post(s) from Pekistani citizen of N.W.F.P. / F.A.T.A. Domicited by 20.03.2003 (05.04.2003 for candidates from Abroad).

### POPULATION WELFARE DEPARTMENT

Six Deputy Directors (Non-Technical) / District Pop. ation Welfare Officers / Deputy City Population Welfare Officers / Executive District Officer (Population) on contract basis, initially for a period of three years

<u>but contract will be renewable at the discretion of the Government.</u> <u>OUALUTCATIONS</u>: (a) Second Class Master's Degree or equivalent qualification from a recognized University in Sociology / Social Work / Anthropology / Psychology / Business A diministration (MBA) Public Administration (MPA) / Economics / Statistics / Political Science / Chemistry or (b) MBBS or equivalent qualification recognized by the Pakistan Medical and Dental Council (PMDC) and (c) Five years experience in a responsible position (not below the rank of a Government Officer in BPS-17) in Administration Management / Planning Research / Financial Management in a Government Department or a reputable firm / organization. <u>AGE LIMIT</u>: 22 to 35 years. <u>PAX SCALE</u>: BPS-18 ELIGIBILITY: Both Sexes.

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Twenty-five Assistant Directors VaTchsil Population Welfare Officers / Agency Population Welfare Officers / Deputy District Population Officer / Town Population Welfare Officers on contract basis, initially for a period of Three years but contract will be renewable at the discretion of the Government.

OUALUTICATIONS: (a) Second Class Master's Degree or equivalent qualification from a recognized University in Speciology / Social Work 7 Anthropology / Psychology / Business Administration (MBA)/ Public Administration (MPA) // Economics 7 Statistics 7 Political Science. / Chemisury or (b) MBBS or equivalent qualification recognized by the Pakistan Medical and Dental Council (PMDC). AGE LIMIT: 22 to 35 years, PAY SCALE: BPS-17. ELIGIBILITY: Both Sexec.

initially for a period of Three years but contract will be renewable at the discretion of the Government.

OUACITORATIONS: (a) Second Class Master's Degree or equivalent qualification from a recognized University in Economics / Statistics / Mathematica / Demography / Population Studies / Sociology / Committee from a recognized University and (b) Diploma / Certificate in Information Technology from a recognized Institute. ACE University and (b) Diploma / Certificate in Information Technology from a recognized Institute. ACE University and (b) Real States BPS-17

ELIGIBILITY : noth Sexes. ALLOCATION: Four for Merit, Three each to Zone-1 and 2 and Two each to Zone-3, 4 and 5.

<u>Twenty-eight Female Deputy District Population Welfare Officers</u> (<u>Technical Services)</u>, <u>Women Medical Officers on contract basis, Initially</u> for a period of three years built contract will be renewable at the discretion of the Government of the contract of the contract of the second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second se

OUALIMICATIONS: MBBS Degree or equivaled nt qualification recognized by the Pakistan Medical and Dental Council (PMDC) AGE LIMIT: 21 to 32 years, PAY SCALE: BPS-17. ALLOCATION: Seven for Merit, Five each to Zone-1, 2 and 3 and Three each to Zone-4 and 5.

ALLOCATION: Seven for Merit, Five each to Zone-1, 2 and 3 and Three each to Zone-4 and 5. Note: Selection against these pasts will be mode on past specific as per detail of posting of statians given below. The applicants will have largive an indeptating on plain paper with the application forms, to the effect that they will be willing to serve against the specific past(s) in a District / America in the event of their selection. The opplications who are not interested to serve against the indicated pasts need not apply.

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contract will be renewable at the discretion of the Government. OUALIFICATION: Bachelor's Degree or equivalent qualification from a recognized University with 100 ( 40 words per minute speed in Shorthand and Typing in Erglish respectively having Diploma /

Certificate in Computer / Information Technology. AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-15, ELIGIBILITY; Both sexes. ALLOCATION: One each to Zone-1 and 2.

Seven Stenotypist on contract basis, initially for a period of Three years but

contract will be renewable at the discretion of the Government. QUALIFICATION: Intermediate or equivalent qualification from a recognized Board with 60 / 40 words per minute speed in Shorthand and Typing in English respectively having Diploma / Certificate in Computer / Information Technology. AGE LIMIT: 18 to 30 years. BLIGIBILITY: Both sexes. TAY SCALE: BPS-12, ALLOCATION: Two each to Zone-1 and 2 and One each to Zone-3, 4 and 5.

Eleven Male Projectionists on contract basis initially for a period of Three

years but contract will be renewable at the discretion of the Government. IFICATION: (a) Three years Diploma in the filed of Audio / Visual Instruments Electronics / Electrical Technology from a recognized-Institute or (ii) Interpediate from a recognized Board with three years experience in Cinematography / Operation of Film Projectors / Instruments.

AGE LIMITT: 18 to 30 years. PAY SCALE: BPS-12, ALLOCATION: "Three to Zone-1 and Two each to Zone-2, 3, 4 and 5.

Four Assistants on contract basis, initially for a period of Three years but

contract will be renewable at the discretion of the Government. OUALIFICATION: Bachelor's Degree from a recognized University. AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-11, ALLOCATION: One each to Zone-1, 2, 3 and 4. ELIGIBILITY: Both Sexes.

Ten Statistical Assistant on contract basis, initially for a period of Three years but contract will be renewable at the discretion of the Government. IFICATION: Second Class Bachelor's Degree from a recognized University with Statistics / Economics / Mathematics / Sociology or Commerce as one of the subject and having Diploma / Certificate in Computer / Information Technology from a recognized Institute. PAY SCALE: BPS-11, AGE LIMIT: 18 to 30 years. ELIGIBILITY: Both Sexes, ALLOCATION: Two each for Zone-1, 2, 3, 4 and 5.

Fifteen Account Assistant on contract basis, initially for a period of Three years but contract will be renewable at the discretion of the Government. OUALIFICATION: Bachelor's Degree in Commerce or Business Administration from a recognized <u>UVALATICATION</u>: Bechefor a Degree in Committee or Business Auministration from a recognized University and Diploma / Certificate in Computer / Information Technology from a recognized Institute. <u>ACELIMIT:</u> 18 to 30 years. <u>BLIGIBILITY</u>: Both Series. <u>PAY SCALE</u>: BPS-11,

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ALLOCATION: Three each to Zone-1, 2; 3, 4 and 5.

<u>Cont:....7/3</u>

Secratal Vilation Wolfaro Dapartment MULTING POSTIGWA

Thirteen Female Theater Nurse on contract Dasis, initially for a period Three years but contract will be renewable" at "the discretion of the Government.

IFICATION: "A" Grade qualified Nurse: PAY SCALE: BPS-11, AGE IMIT: 18 to 30 years ALLOCATION: Three each to Zone-1, 2 and 3 and Two cach to Zone- 4 and 5. . . . . .

#### PRISON DEPATMENT

One Male Superintendent District Jail. 12. QUALIFICATION: Bachelor's Degree from a recognized University: AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-17, ALLOCATION: Merit

#### NWFP PUBLIC SERVICE COMMISSION

One Computer Programmer on contract hasis, initially for a period of Three 13. years buticontract will be renewable at the discretion of the Government. IFICATION: 2<sup>rd</sup> Cluss Master's Degree in Computer Science / Mathematics / Statistics /

Physics / Economics or Engineering, and One Year Training in Computer Science, Computer Programming from a recognized Govt. sponsored institute for persons not possessing Master Degree in Computer Science. AGB LIMIT: 22 to 35 years. PAY SCALE: BPS-17, ALLOCATION: Merit BLIGIBILITY: Both Sex.

#### EDUCATION DEPATMENT

Terse in journe in Nine Male Librarians in Gover Colleges on contract basis initially period of Three years but contract will be renewable at the discretion of the

OUALIFICATION: B.A./B.Sc. with Diploma in Library Science, from the recognized University / 

Seventeen Additional Public Prosecutors / Additional Govt. Pleaders on

contract basis, initially for a period of Three years but contract, will be

renewable at the discretion of the Government. QUALIFICATION: Degree in Law from recognized University and five years standing at the Bar or six years experience as Prosecuting, Officer in the Police, Department, AGE LIMIT: 24 to 35 years. PAY SCALE: BPS-17, ELICIBILITY: Both sexes is 1/1 2. ALLOCATION: Fout to Meril, Three each to Zone-1, 2 and 3, and Two each to Zone-4 and 5.

NOTE: The candidates who applied in response to our Advertisement No. 01./ 2002, Serial No. 17 need not apply afresh. Their previous applications will be examined in context of the Advertisement. ZXIXIN.

16. C. Oue Data Processing Supervisor for Advocate General Office on contract basis, initially for a period of Three years but contract will be renewable at the discretion of the Government of the one

QUALIFICATION: (a) B.A. / B.Sc. with Economics / Physics / Mathematics & Computer Science as one of the subject from a recognized University (6) Oht year experience in the field of Data Processing and Supervision of Data Control or as Punch Yenifier Operator. AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-14, ALLOCATION: Zone-1. ELIGIBILITY Both Seres.

#### 1. GENERAL CONDITIONS.

تدايته مل Ago in all cases will be reckoned on 20.03.2003. Govt. servants having rendered four years service shall be allowed Ten years relaxation in upper age limit or to the extent of service whichever is less. Three years age relaxation allowed to Zone-1 and 3 candidates However, only one age concession will be allowed to the candidates claiming concession under various categories whichever is more

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inclicial to candidates-Degrees 7 Diploinas 7 Experience Certificates / Testimonials of unrecognized Institution are not accepted. Only regular degree or provisional certificate signed by the Controller of Examination of the respective Institution shall be accepted. Detail Marks Certificate for all the examination shall necessarily be required and be attached with the application forms -1 5

Allocation of vacancies in BPS-17 and below shall be strictly in accordance with the Zonal Allocation as indicated against each post(s). The applications of the candidates other than the specified zone shall be ignored except for vacancies reserved, for Merit quota. However, no zonal reservation stands for post(s) in BPS-18 and above and such postibilishall be filled in on Open Merit. . . . . ÷.,

Ex-armed Forces Personnel must send copy of Discharge Certificate with their applications. Govi. / Semi Govi. / Autonomous / Semi Autonomous Bodies employees may apply d. it, but their Departmental Permission Certificates should reach within 30 days of the closing date. Applications should be on the prescribed forms obtainable from the listed below branches of the NATIONAL BANK. Application Fee is Rs. 200/- for all the candidates. In addition to the application fee, the candidate will have to pay Rs. 02/2 on account of Bank Charges. Separate application form will be required for each advertised category of post. Application form obtained other than the specified branches of the National Bank will be considered invalid and such applications will not be entertained. The applications on plain paper or photostal shall not be accepted. Incomplete and late applications shall also be ignored. Application must be submitted within time as no extra time is allowed for postal transit. The applications if submitted on the last date for receipt of applicatious must reach the Commission's office by the closing hours. Applicants married to Foreigners are considered only on production of the Govt. Relaxation Orders - -

No applicant will be considered in absentia on paper qualifications unless, he possesses exceptionally higher gu, fications than the minimum prescribed for aparticular post(s). Govt, reserves the right not to fill any or fill more or less than the advertised post(s). Candidates who have already availed three chances after 12.01.1985 by physical appearance before the Commission for the post(s). having one and the same qualifications und scale of pay are incligible.

Experience wherever prescribed shall be counted after the ininimum qualifications for the post(s), if not specifically provided otherwise against the advertised post(s)

In case where the number of applications received for post(s) are disproportionately higher than the number of vacancies, shortlisting of the candidates may be done in any one of the following manner:

(a) Written Test in the Subject.
(b) General Knowledge or Psychological General Ability Test.

(c) Academic and / or Professional record as the Commission may decide.

SPECIFIED BRANCHES OF THE NATIONAL BANK OF PAKISTAN. Main Branches of: (1). Paractiner, (2). Saddar Bazar and Tehka Payan of Peshawar, Nowshern Cantt, Mardan, Teshil Bazar Charsadda and Swabi.

Molakand, Mingora, Chitral, Timergara and Dagpar. (4). D.L Khan, Bannu Cily, Karak, Tank, Kohat and Lakki Marwat .(5). Abbottabad, Haripur and Manschran, submitted within . (6).

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Population Welfare Department

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(a) 3 years to candidates from Zones 1 and 3.
(b) Period of service undertained forward 3.
(c) In case of Ex-Armédia Forreir Personnel, the entire period of service in Armed Forces or 10 years? which we have the advertisement.
(d) Special concession influident finithe advertisement.
8. Age, Relaxation -- All Administrative Departments are competent to grant age computent to deat with cases beyond? wear Antiduces and General Administration Department, is computent to deat with cases beyond? wear Antiduces of the certific decompose in the application formation for the parts which are completent to deat with cases beyond? wear Antinuum age limit, however, damot be relaxed in any case.
Certificates -- Selid attest of photo folies of the certific field to supplice the application for the parts highlight down of the grant apply to your write not applicable. In the control of the parts highlight down of the application formation account of the parts and testimentals are completent to the interference of the certificates issued by the control of the parts highlight down of the account of the certificates and testimentals are required at the limit of the limit of the account of the certificates and testimentals are required at the limit of the province is divided into the certificates and test montals are required at the limit of the province is divided into the computer at the summation applies account of the certificates and test montals are required at the limit of the province is divided into the certificates to the summation and test montals are required at the limit of the province is divided into the certificates to the certificates and test montals are required at the limit of the province is divided into the certificates to the certificates to the certificates to the certificates and test montals are required at the limit of the province is divided into the certificates to the c Courter buccial Judge Anti Corruption KPK restauer Zones in Areacles of Builder Mohmand, Kluyber, Kurram, Orakan, Morth Washrietan Scientific Frontier Boundar Statebord to the Districts of Waziristan South Waziristan and Frontier Regions attached to the Districts of

- Manakano Areas (Swat Ranizal and Sam Ranizal and backward areas of Hate Division I.e. (1) Ilaqa Upper Tanawal composed of Darband Area of Teres, Haripur and Shergarh area of District Manschra and (2) Merged Areas composed of Baltagram including Hill Nilshang and Thakot. Allal, Kaya Khabbal and Gadoon Area.
- (d) Zone 4:- Districts of Dera Ismail Khan, Tank, Bannu. Lakki Marwat, Kohat and Karak.
- (c) **Zone 5:** Districts of Haripur, Abbottabad, Mansehra excluding their backward areas included in Zone 3.

11. Zonal Allocation :- Zonal allocation exists for posts to be filled through competitive examinations will be made as pe Government policy.

- 12. Domicile of Female Candidates :-
  - (a) In the gase of married female candidates their husband domicile will be required 2 they are married before entry into Government Service.
  - (b) In case they married after entry into Government Service or still unmarried their own domicile will be regulied.

13. Eligibility :- A candidate must, through this application, satisfy the Commission that he/she is eligible as per condition of the advertisement for the past for which this application is being submitted. The following conditions of eligibility must be strictly kept in view:-

(a) Only those candidates are eligible whose results are declared before the last date fixed for the receipt of applications of inland candidates.

Interview :- Candidates called for interview will attend at their own expense.

15. Warning :-

14.

(a) Any altempt, to influence the Commission in your favour or harm a rival, candidate, will disqualify you.

(b) A false statement in the application or during interview will, even if detected after your selection means your out rejection.

- (c) With-holding of any material information will disqualify you for the post
- (d) Make sure that your application is complete in all respects. incomplete and late applications are ignored.

(e) The commission accepts only the latest passport size attested photograph with your application. The attesting authority should sign with his designation and date at the back of the photograph. The photograph should not be glued (pasted) but attached to the place indicated in the application form. Female candidates may, if they so desire, attach three attested spectmen signatures.

Note: The Commission is charged with the responsibility for the selection of candidates for the advertised posts and does not cive reasons for selection/rejection. Appointment orders are issued by the concerned depuriments

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265 76 N.W.F.P. PUBLIC SERVICE COMMISSION 968 APPLICATION FORM 'B' Deput Diretor (Non tak 'applied for Verdsement Number \_\_ 122- 2001 cent size ograph erial Number of Post Doputy Directors BPS(13) 2tc ( non-technical ) PERVET KHAN Name in block letters KHAN. 1. FATHEH Sull Continu Pather's Name In  $\mathbf{2}.$ yous of alocal, Perton Say 10 block letters. Buy low # 7. Dist Council colons (a) Postal Address З. Road Dalaxak cely-leshan (b) Permanent Add-Teanza Palosi بر الاح 10 ress if different University \_<u>+</u>\_\_\_ -fil from (3a) [13]7 - [9]0: - [2]6]0959 (c) Number of National Identity Card Residence 24344-Office\_\_\_\_ (d) Telephone Number 9 Slam Religion 1963 12. 31 -(a) Date of birth as per 5. Secondary School Certificate. (b) Age on 1st January \_\_\_\_ Month \_\_\_\_\_ Days of the year in - is sought on The basis & more Than 5 years Year which the examination is propos-BE Zelakasin ed to be held. Kby bes\_ Agency -- NWFC (a) Place of birth. 6. District/Agency Pallis Louis and Province. (b) Nationality of your wife/husband. Khyber Agenci (a) District/Agency of 57. your Domicile. Selone Service Generatisten 4 2 3 পি (b) Zone of your Domi-H. W. F. F. Pechever, cile. Tick mark ( $\sqrt{}$ ) 1 the appropriate 1 5 (4 46 2003 box (see details of BAN No. 1368 Zone under Para 10 of Instructions attached with this form). 5 2...3 4 (c) Zone of domicile of 1 your husband (for ЛÂ married female candidates). Addition Are you an ex-Service Period man? (Army, Navy & If yes, attach Discharge Certificate. Klebera i ta stran e Air Force, lick mark 21-03-014 Χo the appropriate box). Yes If yes, attach Medical Certificate. NO Yes Do you claim physical disability?

53) 267 យ MARDAN EXAMINATION hĩ⊼ĩ PESHAWAR 10 CENTRE Tick mark only one centre which you ABBOTTABAD ncefer. DANN For mer, presell and trader 11. (a) Father's Occupation Dead NA. Married Female Candi-12. dates. (a) Name of Husband. (b) date of mairiage Answer the following if you have been abroad. ... NA 10. Purpose of visit Duration Country visited visits to great hully areas, internet-Study 9 good writtings. から見たみ 16. Detail of co-curricular activities including sports & hobbles. Several cannot be listed in this Details of your post-graduate research graduale research work & publication. Sindl Place Please bring these when documents. the called for 16. Record your government, Semi-government or puvate service. List post most recently held Interview. first. Reason for period Permanent/ Grade leaving From-To Post Temporary Employer Continued. 17 Member Hanry Tempusay 2000-2001 outg NWFF Scentry DDU 6RDP ivansfer. 17 1996 - 2010 世界になる。他の時代の時代 Assistant Dirdo Mansfer 17 Planning officer H. 1994-96 17 Pois gram Afiar 1991-94 D17 1933-91 (NAUS) Assident Difector 11 20 134 133 K 03- - 1M

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Year in which

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Post/Examination

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20. Attach the attested photo copies of the following documents with the application. Write page number on every document that you attach and record these in the column' page number. The Secondary School Certificate will be at Page 7.

| Name of document                                                                                                                                                                          | Page Number      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| a. Secondary School Certificate.                                                                                                                                                          | 7                |
| b. Intermediate Certificate/Diploma in Associate Engineering. 🗸                                                                                                                           | ă                |
| c. Degree 🗸                                                                                                                                                                               |                  |
| d. Detail Marks Certificate                                                                                                                                                               |                  |
| e Distinction Certificates from the Controller of Examinations of I concerned Board/University, if any.                                                                                   | the              |
| $f_{i}$ (i) (Character Certificate from the academic institute last attended. $\checkmark$                                                                                                |                  |
| (II) Character Certificate from two responsible persons.                                                                                                                                  | 14               |
| Domicile Certificate from Deputy Commissioner/Political Agent (marr.<br>Sector female candidate if married before joining Government service v<br>Sector produce their husband's domicil. | vill             |
| h. Age Relaxation Certificate. Scovice empicie                                                                                                                                            | <u></u>          |
| Medical Certificate of physical disability (for disabled candidates)                                                                                                                      |                  |
| Departmental permission, where applicable, on form 'D' attached with t                                                                                                                    | 1ls              |
| 1: National Identity Card (photo copy).                                                                                                                                                   | 6                |
| m. Three atlested photographs.                                                                                                                                                            | on the 2" Thirt  |
| a. If applying for the post of Civil Judges, add, the following:                                                                                                                          | anny and a start |

うじ 1 Degree from University or Institute that you have passed the Bachelor of Laws Examination or you are a Barrister of England/Ireland or a member of the Faculty of Advocates of Scotland. (1) A copy of the Notification of admission and enrolment as a Pleader/Advocate, if you are a practising lawyer and c<sup>1</sup> i benefit for (2) . age relaxation. o. Age Concession Certificate. Certificate in support of any other claim not covered by the above. р. q. Any other document that you have attached MA Economics 6) LL.R. \_\_\_\_\_ ····· P.6 D Jour nalisom MSC Rural Development <u>...L.</u> 4 r. I solemnly declare that to the best of my knowledge my replies are correct. س درم Place <u>. 3/2/ 2003</u> Date Signature 🏈 the Applicant ATTESTED **3**; · · · · Anti Correst to the share an

? DOMICIL Khyber Agen¢y - PARVEZ KHAN Certified that Mr./Miss Son/Daughter of H. FATEH KHAN BAZAR ZAKARA KITEL belongs to a recognized tribe of ..... ub Section CHANGI KHEL Section. residence / Village and his/her lather is a permanent bonalide resident of the tribal area of Khyber Ar He/She is an eligible candidate to avail himself Monspil of the seats reserved t special arecas of the Peshawar Division backwardiarea of Khyber Agency. Counters Verified Allested Political Agent In Political slida Mersel k o

910 عمل المار محمل المدى مول في الحيس بهم منابع ويل سفيه إيثا والم المد المر المال قرم المر الزار تمدى كرت إم تبير تندي تر إنى مازام كندى حيث فعلى علام شده الإستغل من والا من ت بي المعرد ادر اس خراب. المرريق ا ساتم الى تقعان مين ساير ے والدین حکومت با ال ال کے مول دار میں. مغيريش خالجان Calific 190-84-946437 to is the second 1600 Arca 200 026 0190 Merch

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60 ، نامه بایت 4 میں سمی \_دلد*ا*ز دج<sub>ه</sub> حلفيه بيان كرتا /كرتى ہوں كه ميں موجود ہ مكان نمبر **ک**ی نمز \_ شرام دن محلّ ... - ضلع جوكه ميراذاتي اكرامياكا مكان ب عرصه \_ سال ہے ستقل رہائش پذیر ہوں اس کے علاوہ پا کمتان میں میر ک کوئی مستقل رمائش نہیں میرے کنبہ میں درجہ ذیل افراد میرے ساتھ دہائش پذیر ہیں۔ ł دستخط ورخواست د بمنده : م يك (ذرجه اول) باادته كمشنر دستخط: , :rt واردنم ÷ شناختى كاردنم تاريخ: Ν . . . <sup>. .</sup>

منددد دلبارات مدين زنايرد به من مورد مورد المار من على 14 1 (بلك) به المار من من المار يل الماري برل المز ة ا (ك) : : : : : بين بمرج مساولاتا مسبب المدارب) مدينية المالم مساولاتا مسبب المدارب) مدينية المالم يتزلهم مرا لروج د من من ال فرى ل ین د آبس الاال الاز و این JU 12 Acc. 11-10 يت البنيزار بشمن : 1/1م1. () » ~ [ رام درد. د مرد مرم بالمسيعة موسولا مين مادس المسترقي تربير و مرك المترجي كالملاس مرازم ورسر وترم داد الماجيل استيسك سيسيك مان المراج المراكزين داد المرسك ( يرين سيس リレン یز در بین مسبب ریسینیس دان عسرمید ترل ۱۰ (۱۹ ایر می زند زایم او شه دن برمان سے 5 رن سنب سربر دو ناترزين با ، يزد الم ا جد المجامع ومعادكا ترما بمراه 1220 . 7.6 11 ۱۹ کمبر ترم تبتن می زمرت ا ۱۰ د دب مرید و زرد کر سے ۱۰ د میں ۱۰ زمکر بر مسل اید ایک ۵۱ مسیسیست ۲۰ بنزشساند این بر بیش تیمیزتر بروکاریت ما نظری الیا ایس ۱۱، ۲۰ ۲۵ میل طادمت سیستر و می ۱۹ ماریم ایس می استیسیس کا ۲۰ مار ۲۰ مال نئاد ز میادی تر ۲۱ ۲ ۱۱ براكارزر بناوير مال ا 10, (ب) شرق (ب) شعق دل می سله د مامال *ميم*ز می ۱۰۰ اراسالان مزم می رفسآرادر م- بزنيتر بتجن شيركام . برارده بران بسته دارم بربه أدمترت · NIN 5 ريا ارب انکنه . مردر ۲۵ مال . کے داخر بر مشجودا عرز م بارون جمین می ۲۱ تا . م. روبيكول مرتب المحير والمحير وال ي مرد كرم مك .. بال بتستيدي ن ب با ب المار مرک به دوری داده در ا جوسيربكرك يوسر يولين المسكمانية كالميتت ( 50 مارسال الم امده برمال عددا . ... - 12 . . THE REPORT OF THE REPORT OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF THE PARTY OF T - 386 -

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ANTARRATT. OL PESHAWAR (アムボスコアム w) Passed/Re-appear/Compartment DETAILED MARKS CERTIFICATE 3. NA. .... Examination, 1982 (Annual/Supplementa Korvez. Irhan Roll No. 4.54 /Miss.... candidate secured the following marks and has been placed in . S. C. mar. Division MARKS OFTAINED Total No. of ! быллвств quarks efforted. In figure In words 150 47 For Ly Seven. = glish Flomomics 150 87 Eighty Seven. inty Seven. Solamic Endies 150 Maniyai (opt, 41 for in one. So 272 VISEVENLY TWO. Total Sov e Examination was taken as a whole / in facts. 2970 CONTROLLER OF EXAMINATIONS UNIVERSITY OF PESHAWAR PARTSTAN 38