


1st August, 2023 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Learned counsel for the appellant requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 17.11.2023 before the D.B. PP given to the parties.

SCANNED
K.F. ST.
Peshawar


(Fareeha Paul)
Member (E)



(Rashida Bano)
Member (J)


30.05.2023

Junior of learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy in the august Peshawar High Court, Peshawar. The appeal in hand pertains to the year 2017, therefore, last opportunity granted. To come up for arguments on 04.07.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)


Naeem Amin


4th July, 2023

1. Junior to counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

2. Lawyers are on strike. Therefore, case is adjourned. To come up for arguments on 01.08.2023 before the D.B. P.P given to the parties.

SCANNED
KPST
Peshawar


(Rashida Bano)
Member (J)


(Kalim Arshad Khan)
Chairman


Mutazem Shah

30th Jan, 2023

Junior of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Last opportunity is granted to argue the case on the next date failing which the case will be decided on the available record without arguments. Adjourned. To come up for arguments on 09.05.2023 before D.B.

SCANNED
KPST
Peshawar


(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman


09.05.2023

Junior to counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Junior to counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Supreme Court of Pakistan. Adjourned. To come up for arguments on 30.05.2023 before D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar

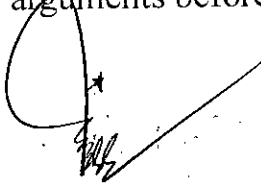

(Muhammad Akbar Khan)
Member (E)


(Salah-ud-Din)
Member (J)

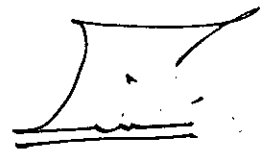
27.10.2022

Nemo for the appellant. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Notice for prosecution of the appeal be issued to the appellant as well as his counsel through registered post and to come up for arguments before the D.B on 25.11.2022.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

25.11.2022

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

Learned counsel for the appellant sought adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 30.01.2023 before the D.B.



(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

SCANNED
KPST
Peshawar

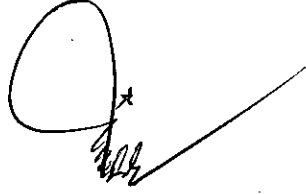
Noted
22/11/22

SCANNED
KPST
Peshawar

12.04.2022

Appellant in person present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the august Supreme Court of Pakistan. Adjourned. To come up for arguments on 07.06.2022 before the D.B.



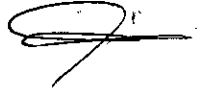
(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

7.6.22

proper D.B is at Tawa, therefore the case is adjourned to 25-8-22 for same.



25.08.2022

Mr. Taimur Ali Khan, Advocate, for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned Member (Judicial) Ms. Rozina Rehman is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments on 27.10.2022 before the D.B.



(Salah-Ud-Din)
Member (Judicial)

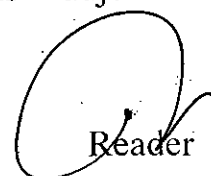
26.02.2021

Due to Pandemic of Covid-19, the case is adjourned to
11.05.2021 for the same.


Reader

11.05.2021

Due to demise of the Worthy Chairman, the Tribunal is
non-functional, therefore, case is adjourned to
31.08.2021 for the same as before.

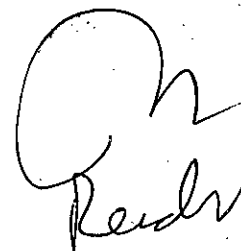

Reader

31.08.2021

Due to summer vacations, the case is adjourned to
27.12.2021 for the same as before.


READER

*Due to winter vacations the
case is adjourned to come up for
the same on 12-04-2022*


Reader

19-5.2020

Due to COVID19, the case is adjourned to

10/8/2020

for the same as before.

Reader

10.08.2020


Due to summer vacations case to come up for the same on
13.10.2020 before D.B.


Reader

13.10.2020

Mr. Taimur Ali Khan, Advocate for appellant is present. Zara
Tajwar, Deputy District Attorney for the respondents is also present.

Junior counsel for the senior submitted that his senior is busy
before the Hon'ble Peshawar High Court, Peshawar and requested for
adjournment. Adjourned to 07.12.2020 on which to come up for
arguments before D.B.


(Atiq-ur-Rehman Wazir)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

07.12.2020

Due to COVID-19 the case is adjourned for the same on
26.02.2021 before D.B.

READER

13.12.2019

Appellant in person present. Addl: AG alongwith Mr. Fida Muhammad, Supdt for respondents present. Appellant seeks adjournment due to general strike of the bar. Adjourned. Case to come up for arguments on 10.02.2020 before D.B.



Member



Member

10.02.2020

Appellant alongwith his counsel and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 18.03.2020 for arguments before D.B.




(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

18.03.2020

Counsel for the appellant present. Addl: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 19.05.2020 before D.B.



(MAIN MUHAMMAD)
MEMBER



(M.AMIN KHAN KUNDI)
MEMBER

03.10.2019

Nota for the appellant present with AG along with
Mr. Masood ul Hassan, SO and Mr. Ismail, Supdt for
respondents present. Called for several times but no one
appeared on behalf of the appellant, therefore the appeal
is hereby dismissed in default. File be consigned to the
Records.

Amir Masood
03.10.2019

(Amir Masood)
Member

(Ismail)
Member

03.10.2019 Counsel for the appellant present. Addl: AG
along with Mr. Masood ul Hassan, SO and Mr. Ismail,
Supdt for respondents present. Learned counsel for the
appellant seeks adjournment. Adjourned by way of last
chance. To come up for arguments on 06.11.2019 before
D.B.


Member

Member

06.11.2019

Appellant in person present. Mr. Usman Ghani learned
District Attorney present. Appellant seeks adjournment as his
counsel is not in attendance. Adjourn. To come up for arguments
on 13.12.2019 before D.B.


Member


Member

03.05.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 19.06.2019 for arguments before D.B.


(AHMAD HASSAN)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

19.06.2019

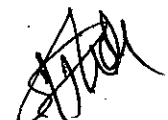
Junior to counsel for the appellant and Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 19.08.2019 before D.B.

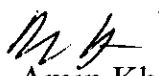

Member


Member

19.08.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 03.10.2019 before D.B


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

06.12.2018

Counsel for the appellant present. Mr. M. Ismail, SO alongwith Mr. Kabirullah Khattak, Additional AG for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 17.01.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

17.01.2019

Mr. Taimur Ali Khan, Advocate junior counsel for the appellant present. Mr. Riaz Ahmad Paindakhel, Assistant AG for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy before the Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 12.03.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

12.03.2019

Appellant absent. Learned counsel for the appellant is also absent. However, junior counsel for the appellant present and seeks adjournment on the ground that learned senior counsel for the appellant is busy before the Hon'ble Peshawar High Court. Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Adjourn. To come up for arguments on 03.05.2019 before D.B.


(M. AMIN KHAN KUNDI)
MEMBER


(M. HAMID MUGHAL)
MEMBER


11.05.2018


Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for the same on 04.07.2018.


Reader

04.07.2018


Counsel for the appellant present. Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 31.08.2018 before D.B.



(Ahmad Hassan)
Member


(Muhammad Amin Kundi)
Member

31.08.2018

Counsel for the appellant and Mr. Riaz Ahmad Paindakhel, Assistant AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 22.10.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

22.10.2018

Neither appellant nor his counsel present. Mr. Ziaullah, Deputy District Attorney for the respondents present. Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. To come up for same as before on 06.12.2018.


Reader

30.01.2018

Junior to learned counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Ismail, Superintendent for the respondents present. Junior to learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 04.04.2018 before D.B.



(Muhammad Amin Khan Kundi)
Member (J)



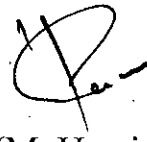
(Muhammad Hamid Mughal)
Member (J)

04.04.2018

Counsel for the appellant and Addl; AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 01.05.2018 before D.B.



(Ahmad Hassan)
Member



(M. Hamid Mughal)
Member

02.05.2018


Learned counsel for the appellant and Mr. Muhammad Jan, Learned Deputy District Attorney present. The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore the case is adjourned. To come up for the same on 11.05.2018



READER


06.06.2017


Counsel for the appellant and Mr. Jamshid Ali, Supdt. alongwith Addl. AG for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 24.07.2017 before D.B.


(Ahmad Hassan)
Member

06. 24.07.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Fida Hussain, Supdtt: for the respondent present. Counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 22.11.2017 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

22.11.2017. Clerk to counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney alongwith Ismail Superintendent for the respondents present. Clerk to counsel for the appellant requested for adjournment as his counsel is not available. Adjourned. To come up for arguments on 30.01.2018 before D.B.


(Gul Zeb Khan)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

04.04.2017

Learned counsel for the appellant argued that the appellant was appointed as Senior Government Pleader when enquiry was conducted against him on the allegations of inefficiency and vide impugned order dated 13.12.2016 2 increments for 2 years were withheld where-against departmental appeal of the appellant was rejected on 06.03.2017 constraining him to prefer the instant service appeal on 27.3.2017.

That the impugned orders are not in line and harmony with the findings of the enquiry officer.

Points urged need consideration. Admit. Subject to deposit of security and process fee notices be issued to the respondents. To come up for written reply/comments on 09.05.2017 before S.B.

Appellant Deposited
Security & Process Fee

Chairman

09.05.2017

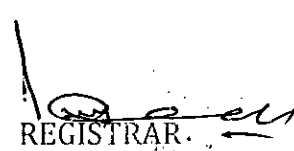
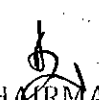
Clerk to counsel for the appellant and Mr. Fida Muhammad, Supdt: alongwith Mr. Muhammad Adeel Butt, Addl: AG for the respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply comments on 06.06.2017 before S.B.


(Muhammad Amin Khan Kundi)
Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 282/2017

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 28/03/2017 | <p style="text-align: center;">The appeal of Mr. Jamshed Khan Afridi presented today by Mr. Muhammad Asif Yousafzai Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR.</p> |
| 2- | 29-3-2017 | <p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>04-04-2017</u></p> <p style="text-align: right;"> CHAIRMAN</p> |

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 232 /2017

Jamshed Khan Afrid

V/S

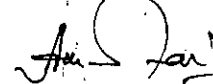
Govt: of KPK

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APPELLANT

THROUGH:



(M.ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,

&

S. NOMAN ALI BUKHARI
ADVOCATE PESHAWAR.

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. _____/2017

Mr. Jamshed Khan Afridi,
Senior Government Pleader, Hangu.

(APPELLANT)

VERSUS

1. Government of KPK, through Chief Secretary KPK, Peshawar.
2. The Chief Secretary KPK, Civil Secretariat Peshawar.
3. The Secretary Law, Parliamentary Affairs and Human Rights Department, Civil Secretariat Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 03.03.2017, WHEREBY THE DEPARTMENT APPEAL OF THE APPELLANT HAS BEEN REJECTED AGAINST THE ORDER DATED 13.12.2016 FOR NO GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 03.03.2017 AND 13.12.2016 MAY BE SET ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO RESTORE THE TWO ANNUAL INCREMENTS WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWTH:

FACTS:

1. That the appellant is working as senior Government Pleader in the Law Department and performed his duty up to the entire satisfaction of his superiors and no complaint has been filed against the appellant's performance.

2. That the appellant met with accident on 8.6.2014 and took the injured person to LRH Hospital and FIR No. 605 was lodged against the appellant and the appellant was informer/ complainant too in that FIR. The appellant conveyed the situation to his high ups.
3. That about and half year, the appellant was served with the charge sheet and statement of allegation on 26.11.2015 in which it was mentioned that FIR No. 605 was registered against you but you did not bring the same fact into the notice of the head of the department, the appellant submitted detail reply to the charge sheet but without keeping the copy of the same, which may be requisitioned from the department. (Copies of charge sheet and statement of allegation are attached as Annexure-A&B)
4. That inquiry was conducted against the appellant in which the inquiry officer did not held him responsible and recommended for proper training. (Copy of inquiry report is attached Annexure-C)
5. That the respondent department issued a notification dated 18.08.2016 wherein penalty of "withholding of two annual increments for two years" was imposed upon the appellant with immediate effect. (Copy of notification dated 18.8.2016 is attached as Annexure-D)
6. That show cause notice was issued to the appellant on 22.8.2016 after they notification dated 18.8.2016, which was properly replied by the appellant, however the appellant did not keep the copy of show cause notice with himself which may be requisitioned from the department. (Copy of reply to show cause notice is attached as Annexure-E)
7. That the respondent department issued another notification dated 13.12.2016 wherein penalty of "withholding of two annual increments for two years" was imposed upon the appellant w.e.from 01.01.2016 to 01.01.2017. (Copy of notification dated 13.12.2016 is attached as Annexure-F)
8. That the appellant filed review petition against the notification dated 13.1.22016 on 29.12.2016 which was also rejected on 3.3.2017 without giving any reason. (Copies of review petition and rejection order are attached as Annexure-G&H)
9. That now the appellant come to this august tribunal on the following grounds amongst others.

GROUNDS:

- A) That the impugned order dated 3.3.2017 and 13.12.2016 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.

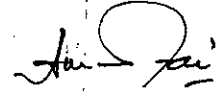
- B) That the inquiry officer did not held responsible the appellant and only recommended for proper training, but despite that the penalty of withholding of two annual increments for two years, imposed upon the appellant, which is the violation of Supreme Court judgment reported as 2008 SCMR page 1174 in which the Apex directed that the recommendation of inquiry officer should be honoured.
- C) The competent authority for the appellant for the personal hearing is the Chief Minister while it was conducted by Secretary Home and Tribal Affairs who was stranger to the proceeding which means that the proceeding was not conducted according to the rules.
- D) That the appellant has conveyed the situation of accident to his high ups which might not have been reached to the concerned officials either due to communication or misplacing the same at a stage in the communication channel, therefore the appellant has not committed any misconduct and as such should not punished for the fault of others.
- E) That the respondent department issued a notification dated 18.08.2016 wherein penalty of "withholding of two annual increments for two years" was imposed upon the appellant with immediate effect and then again issued another notification dated 13.12.2016 wherein penalty of "withholding of two annual increments for two years" was imposed upon the appellant w.e.from 01.01.2016 to 01.01.2017. which shows the malafide of the department as two notifications were issued for the imposition of same penalty .
- F) That first notification of penalty was issued before the show cause notice and then again issued another notification of penalty after the show cause notice which means that the proceeding was conducted in a haphazard manner which is the violation of rules and law.
- G) That the penalty of withholding of two annual increments for two years is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- H) That the appellant has been condemned unheard and has not been treated according to law and rules.
- I) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT

Jamshed Khan Afridi

THROUGH:



(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT,



(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT,

&

S. NOMAN ALI BUKHARI

ADVOCATE PESHAWAR.



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS
& HUMAN RIGHTS DEPARTMENT

CHARGE SHEET

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, hereby charge you, Mr. Jamshed Khan Afridi, Senior Govt. Pleader (BPS-19), Hangu, Law, Parliamentary Affairs & Human Rights Department as follows:-

FIR No. 605 was registered against you in Police Station Chamkani, District Peshawar, the same fact was not brought by you into the notice of the head of the Department which was required to be brought into the notice of the head of the Department under Rule-20 of the Khyber Pakhtunkhwa Conduct Rules, 1987

2. By reason of the above, you appear to be guilty of misconduct under Rule-3 of Khyber Pakhtunkhwa Govt. Servants (E&D) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the rules ibid.
3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the inquiry officer.
4. Your written defense, if any, should reach the inquiry officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.

Mr. Jamshed Khan Afridi,
Senior Govt. Pleader, Hangu.

Pervez Khattak
(Pervez Khattak)
Chief Minister, Khyber Pakhtunkhwa.
26 / 11 / 11

DISCIPLINARY ACTION

B (6)

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as competent authority am of the opinion that Mr. Jamshed Khan Afridi, Senior Govt. Pleader (BPS-19), Hangu rendered himself to be proceeded against, as he has committed the following acts/omissions within the meaning of Rule-3 of the Khyber Pakhtunkhwa Govt. Servants (E&D) Rules, 2011.

STATEMENT OF ALLEGATION

FIR No. 605 was registered against him in Police Station Chamkani, District Peshawar, the same fact was not brought by him into the notice of the head of the Department which was required to be brought into the notice of the head of the Department under Rule-20 of the Khyber Pakhtunkhwa Conduct Rules, 1987

2. For the purpose of inquiry against the said accused with reference to the above allegation, an Inquiry Officer/Inquiry Committee, consisting of the following, is constituted under rules 10(1)(a) of the ibid rules.

iii. Mr. Hussain Shah (P.S. Sr-20)

iv. _____

3. The Inquiry Officer/Inquiry Committee shall, in accordance with the provision of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make within thirty (30) days of the receipt of this order, recommendations as to punishment and other appropriate action against the accused.

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the Inquiry Officer/Inquiry Committee.

Pervez Khattak
(Pervez Khattak)
Chief Minister, Khyber Pakhtunkhwa,
26/11/15.

Mr. Jamshed Khan Afridi,
Senior Govt. Pleader, Hangu.

ATTEST

C

7

INQUIRY REPORT

The competent authority directed the undersigned vide charge sheet and statement of allegation (Flag A & B) to conduct an inquiry under the Khyber Pakhtunkhwa Government Servant (E & D) rules 2011 into the charges/allegation raised therein.

CHARGES/ ALLEGATIONS

Fir No. 605 was registered against you in Police Station Chamkani, District Peshawar, the same fact was not brought by you into the notice of the head of the Department which was required to be brought into the notice of the head of the Department under Rule-20 of the Khyber Pakhtunkhwa Conduct Rules, 187.

The accused officer was asked to submit his written statement in his defense and submit the same to the inquiry officer alongwith any evidence in his defense (Flag: C). The accused officer submitted his written defense vide Flag: D, wherein he stated that the road accident at Chamkani was an act of God without any intention. After accident the accused was terrified mentally and took the injured unknown person to LRH Hospital for treatment and also lodged an FIR No. 605. He also stated that he conveyed the situation to the higher ups but unfortunately that might not have been reached to the quarter concerned either due to communication or misplacing the same at a stage in the communication channel.

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(8) 97

The accused has also taken the plea that the Government pleader (Public prosecutor) are not trained on the role of a civil servant as enumerated in the Khyber Pakhtunkhwa Civil Servant Act 1973 and rule/ policies/ standing order issued/ notified from time to time under the provisions of the Civil Servant Act, 1973. They have also not been provided any opportunity of training as a civil servant. In his written statement he has humbly prayed that he may be absolved of the charges as neither the incident nor the non-information about the incident was intentional and due to unavoidable circumstances.

The accused officer was asked to produce the FIR NO. 605 which he provided and annexed as Flag: E. the FIR testifies the fact that the accused reported to Police in LRH Casualty for reporting the incident alongwith the injured person of the car accident for treatment.

ANALYSIS

Rule 20 of the Government Servant (Conduct) Rules 1987 is reproduced as under.

Report of Government Servant in case of his involvement in a criminal case:- If a Government Servant is involved as an accused in a criminal case, he shall bring the fact of such involvement or conviction, as the case may be, to the notice to the Head of the Office or Department immediately or, if he is arrested and released on bail, soon after such release.

If the provision of this Rule is interpreted within the context of the traffic accident/ road incidents then the provisions do not appear to be very strict as compared to other criminal cases like murder, kidnapping, moral turpitude etc. etc. The traffic accidents by its nature is unintended and having lesser chances to


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avoid. Similarly the driver or the person who is driving the car is not to be held solely responsible for the incident. As everybody who drives a car might have observed it at least once in their life time.

As regarding information of the Head of Office is a provision within the interest of the civil servant. Because a civil servant can either be on leave or absent. In case of arrest in a criminal case this information to the Head of Office becomes very meaningful and protecting the civil servant from being marked as absent. In such eventualities the civil servant is put on suspension so as to cover his absence from official duties.

As the none reporting of this incidence to the Head office in under inquiry. The accused, though, stated that he informed the Department but this information report could not have reached or might not have reached to the Head of office. The inquiry officer do not doubt his claim because the accused officer is holding a responsible position and protecting the interest of the State^s the Government in the verities of very important court cases. On the other side, being a responsible officer, the accused was expected to have produced a documentary evidence of the fact to testify that he had fulfilled his responsibility of informing the higher ups.

CONCLUSION

The accused officer could not produce evidence in the support of his claim about reporting the Head of the Department.

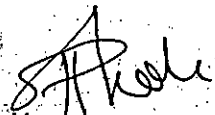


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RECOMMENDATIONS

It is recommended that all the personnel in the technical cadre, working as civil servants on various positions/ posts have to be provided an opportunity of training in their role as a civil servant. All the newly recruited technical staff may be sent for training either to STI, PARD, Provincial Services Academy, Judicial Academy and Accounts & Audit Academy. Similarly the officers already recruited and are in service may be provided an opportunity of in service training in the role of civil servants in the above noted academies.


Hussain Shah
(Inquiry Officer)

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS
& HUMAN RIGHTS DEPARTMENT

F-04
D
11

Dated Peshawar the 18.08.2016

NOTIFICATION

NO.E&A/LD/1-5/2014/PF/IGP/

195394-25

WHEREAS Mr. Jamshed Khan Afridi, Senior Govt: Pleader (BS-19) Hangu, Law, Parliamentary Affairs and Human Rights Department was proceeded against under the Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011.

2. AND WHEREAS, inquiry committee was constituted comprising the following officers to conduct formal Inquiry against the accused officer.

- i. Mr. Hussain Shah (PCS SG-20), Ex-Chairman Health Regulation Authority, now Member General, Provincial Inspection Team.
- ii. Mr. Akbar Khan Section Officer (PMS BS-17) Law, Parliamentary Affairs and Human Rights Department

3. AND WHEREAS, the Inquiry committee after having examined the charges, evidence on record and explanation of the accused officer has submitted the report.

4. AND WHEREAS, the Competent Authority afforded the opportunity of personal hearing to the accused officer.

5. NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, the explanation of the accused officer the Competent Authority has been pleased to impose tentatively minor penalty of "with holding of two annual increments for two years" upon Mr. Jamshed Khan Afridi, Senior Govt: Pleader (BS-19) Hangu, Law, Parliamentary Affairs and Human Rights Department with immediate effect.


2
19-8-16

SECRETARY
Govt: of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs and Human
Rights Department

Endst: of Even No. & Date:

✓ Copy forwarded to the PS to Secretary Law Department Khyber Pakhtunkhwa.

ATTESTED


AKBAR KHAN
Section Officer (General)

To,

The Chief Minister
Khyber Pakhtunkhwa.

Subject: Reply to the show Cause Notice.

Respect Sir,

The undersigned submits as under:

1. That the undersigned may kindly be granted the opportunity of personal hearing.
2. That the Show Cause Notice dated 22-08-2016 is against law, facts, natural Justice and available record on case file, hence, untenable.
3. That the enquiry committee rightly observed that offence committed by the undersigned vide FIR No. 605 do not appear to be very strict in comparison to offences of moral turpitudes, kidnapping etc. Therefore, the proposed punishment is arbitrary one.
4. That the Inquiry Committee also absolved the undersigned of the charges leveled against him while observing that the undersigned does not remain absent from his official duties even for a while, during the subject issue. Therefore the proposed punishment is not in consonance with the findings of the Inquiry Committee.
5. That the undersigned faced the Subject Issue in three rounds. In the very first round the High ups were kind enough to file the Subject matter. Where in second round the undersigned was served with the Notification dated, 18-08-2016 (Flag-A) and now for the third time the present show cause Notice (Flag B) has been issued to the undersigned. Thus the undersigned has been put in mental and physical agonies.
6. That the undersigned served his duties with full devotion and dedication and earned unblemished record, therefore undersigned has not been treated leniently.
7. That the proposed punishment is also in derogation of the conclusion and Recommendation of the enquiry Committee. The Supreme Court of Pakistan in numerous Judgments held that the Recommendation of Enquiry Officer should be honored, reliance is placed on 2008 SCMR Page 1174. (Flag C)

Therefore, it is humbly prayed that on acceptance of this reply, the undersigned may graciously be acquitted from the charges and the show cause notice dated, 22-08-2016 may kindly be withdrawn, please.

With Thanks

ATTESTED

Jamshid
1-9-2016
(Mr. Jamshid Khan Afridi)
Senior Government Pleader,
Hangu.



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS
& HUMAN RIGHTS DEPARTMENT

Dated Peshawar the 13.12.2016

13

NOTIFICATION

NO.E&A/LD/1-5/2014/PF/GP:

WHEREAS Mr. Jamshed Khan Afridi, Senior Govt: Pleader (BS-19) Hangu, Law, Parliamentary Affairs and Human Rights Department was proceeded against under the Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011.

2. AND WHEREAS, Inquiry Committee was constituted comprising the following officers to conduct formal inquiry against the accused officer.

- i. Mr. Hussain Shah (PCS SG-20), Ex-Chairman Health Regulation Authority, now Member General, Provincial Inspection Team.
- ii. Mr. Akbar Khan Section Officer (PMS BS-17) Law, Parliamentary Affairs and Human Rights Department.

3. AND WHEREAS, the Inquiry Committee after having examined the charges, evidence on record and explanation of the accused officer has submitted the report.

4. AND WHEREAS, the Competent Authority afforded the opportunity of personal hearing to the accused officer.

5. NOW, THEREFORE, the Competent Authority, after having considered the charges, evidence on record, the explanation of the accused officer the Competent Authority has been pleased to impose minor penalty of "with holding of two annual increments for two years" upon Mr. Jamshed Khan Afridi, Senior Govt: Pleader (BS-19) Hangu, Law, Parliamentary Affairs and Human Rights Department with effect from 01.12.2016 to 01.12.2017.

Sd/-
SECRETARY LAW
KHYBER PAKHTUNKHWA

Copy forwarded to the

- 1- Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2- Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar.
- 3- PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
- 4- PS to Secretary Establishment Department Khyber Pakhtunkhwa.
- 5- PS to Secretary Law Department Khyber Pakhtunkhwa.
- 6- District Accounts Officer Hangu.
- 7- Officer concerned.
- 8- The Manager, Govt Printing Press, Peshawar.

(RIZWANULLAH)
Section Officer (General)

ATTESTED

To

The Hon'ble Chief Minister
Khyber Pakhtunkhwa

Subject: REVIEW AGAINST ORDER DATED 13/12/2016
WHEREBY WITHHOLDING OF TWO ANNUAL
INCREMENTS WAS PASSED.

Respectfully Sheweth:

On Facts:

The undersigned/petitioner submits as under:

1. That the undersigned/petitioner met on unfortunate incident on 08/06/2014. (Copy of F.I.R is aenxnure "A").
2. That the same was transmitted to the department immediately.
3. That on 17/09/2015 after one and half year the undersigned/petitioner was served with an explanation. (Copy is aenxnure "B").
4. That on 09/12/2015 the undersigned/petitioner was served with charge sheet and copy of allegation forwarded to the nominated Inquiry Officer. (Copies are as aenxnure "C", "D", "E" & "F" respectively).
5. That the undersigned/ petitioner joined the inquiry and submitted his written statement.
6. That the inquiry officer exonerated the undersigned/ petitioner from the charges leveled against him and recommended the undersigned/ petitioner for proper training. (Copy of inquiry is aenxnure "G").
7. That the undersigned was served with minor penalty of withholding of two annual increments for

ATTESTED

two years vide order dated 18/08/2016. (Copy is annexure "H").

- 8. That the undersigned/ petitioner on 01/09/2016 filed reply. (Copy of reply is annexure "I").
- 9. That then the undersigned/ petitioner was given opportunity of personal hearing.
- 10. That the competent authority was pleased to impose minor penalty of withholding two increments for two years vide order dated 13/12/2016, copy of which has not been officially served/ received uptill now. (Copy is annexure "J").

Therefore the undersigned/ petitioner file Review against the order dated 13/12/2016 inter-alia on the following grounds:

GROUND:

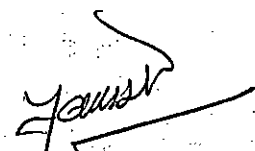
- A. That the impugned order dated 13/12/2016 is against the law, facts, circumstances and natural justice, hence untenable.
- B. That the authority of personal hearing was delegated to the Secretary Home and Tribal Affairs KPK which is clearly against the prevailing laws, as the undersigned/ petitioner is serving in BPS-19.
- C. That the Enquiry Officer rightly observed that offence committed by the undersigned/ petitioner vide F.I.R No. 605 do not appear to be very strict in comparison to offences of moral turpitudes, kidnapping etc. therefore, the proposed punishment is arbitrary one.
- D. That the Inquiry Officer also absolved the undersigned/petitioner of the chares leveled against him while observing that the undersigned/ petitioner does not remain absent from his official duties even for a while, during the subject issue. Therefore the proposed punishment is not in consonance with the findings of the Inquiry Officer.

ATTESTED

- E. That the undersigned/ petitioner faced the subject issue in three rounds. In the very first round the high-up's were kind enough to file the subject matter. Where is second round the undersigned/ petitioner was served with the notification dated 18/08/2016 (Flag-A) and now for the third time the present Show Cause Notice (Flag-B) has been issued to the undersigned/ petitioner. Thus the undersigned/ petitioner has been put in mental and physical agonies.
- F. That the undersigned/ petitioner served his duties with full devotion and dedication and earned unblemished record, therefore undersigned/ petitioner has not been treated leniently.
- G. That the proposed punishment is also in derogation of the conclusion and recommendation of the Enquiry Committee. The Supreme Court of Pakistan in numerous Judgments held that the Recommendation of Enquiry Officer should be honoured, reliance is placed on 2008 SCMR Page 1174. (Flag-C).

It is, humbly prayed that on acceptance of this Review Petition, notification dated 13/12/2016 may kindly be set aside and the petitioner may very graciously be exonerated of the charges leveled against him.

Petitioner



Dated: 29/12/2016

Mr. Jamshid Khan Afridi
Senior Government Pleader,
Hangu.

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

NO.SO(G)/LD/1-5/2014/PF/GP / 8285-93
Dated Peshawar the, 03-03-2017

To

Mr. Jamshed Khan Afridi,
Senior Govt. Pleader, Hangu.

Subject: REVIEW PETITION ORDER DATED 13-12-2016 WHEREBY
WITHHOLDING OF TWO ANNUAL INCREMENTS WAS PASSED.

I am directed to refer to your review petition NO. 90 dated 29-12-2016 on the subject noted above and to inform that the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) has been pleased to reject your review petition.

(Rizwan Ullah)
Section Officer (General)

Endst: of even No. & Date:

Copy is forwarded for information to:-

- 1- Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2- Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar.
- 3- PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
- 4- PS to Secretary Establishment Department Khyber Pakhtunkhwa.
- 5- PS to Secretary Law Department Khyber Pakhtunkhwa.
- 6- District Accounts Officer Hangu.
- 7- Officer concerned.
- 8- The Manager, Govt Printing Press, Peshawar.

(Rizwan Ullah)
Section Officer (General)

ATTESTED

VAKALAT NAMA

NO. _____/2017

IN THE COURT OF Service Tribunal Peshawar

Jamshed Khan Afridi (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Gout. of KPK. (Respondent)
(Defendant)

I/We, Jamshed Khan Afridi

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

[Signature]
(CLIENT)

ACCEPTED

[Signature]
M. ASIF YOUSAFZAI
Advocate Supreme Court
Peshawar.

[Signature]
Taimur Ali Khan
Advocate High Court

[Signature]
Syed Nauman Ali Bukhari
Advocate

OFFICE:
Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)



BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No.282/2017.

Mr. Jamshid Khan Afridi.....Appellant

VERSUS

Government of Khyber Pakhtunkhwa Chief Secretary & Others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 & 2.

Respectfully Sheweth.

PRELIMINARY OBJECTION:

1. That the appeal is not maintainable in its present form.
2. That the appellant is estopped by his own conduct to file the subject appeal.
3. That the appellant has got no cause of action and locus standi to file the subject appeal.
4. That the appellant has not come to the Tribunal with clean hands.
5. That the appellant has concealed material facts from honorable Tribunal while filing the subject appeal.
6. That the Hon'able Service Tribunal has no jurisdiction to entertain the instant appeal.

On facts:

1. Correct to the extent that the appellant is working now-a-days as Senior Government Pleader / District Attorney at Hangu while rest of Para is denied for want of proof. It is further added that on 08-06-2014 an FIR No.605 was registered against Mr. Jamshid Khan Afridi (appellant), however he did not bother to inform the Administrative Department about the incident / FIR (copy of FIR is Annex-A).
2. Incorrect. As per record of the Administrative Department no report on the issue was received.
3. Incorrect. According to Rule (20) of Khyber Pakhtunkhwa Misconduct Rules, 1987, it was incumbent upon the appellant to bring the factual position before the competent authority but he failed to do so, hence he was proceeded accordingly.
4. Incorrect. The Enquiry Committee in conclusion of the proceedings stated that the appellant could not produce the relevant evidence before the proceedings, hence needed training.
5. The minor penalty of withholding of two increments was imposed against the appellant after fulfilling of all the codal formalities under the prevailing Law.

6. Incorrect. No reply was received to Administrative Department.
7. Incorrect as explained in Para-5, above.
8. Incorrect. The Review / Appeal was considered by the authority and found that due to non-availability of sound reasons, hence the same was regretted.

Grounds:

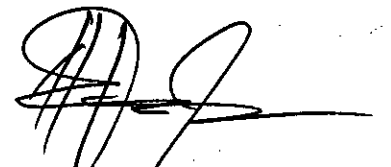
- A) The Disciplinary proceeding initiated against appellant under E&D Rules, 2011 as he has violated Rule (20) of Khyber Pakhtunkhwa Misconduct Rules, 1987.
- B) As explained in Para-4 above.
- C) Incorrect. The Chief Minister Khyber Pakhtunkhwa either himself or an officer authorized by him for personal hearing can perform the same duty.
- D) Incorrect. As explained in the preceding Paras.
- E) Incorrect. The minor penalty of withholding of two increments was imposed against the appellant after fulfilling of all the codal formalities.
- F) Incorrect. As required under the Rule first show cause notice was issued to the accused / appellant and consequent thereupon the notification of minor penalty was issued against the appellant accordingly.
- G) As explained above.
- H) The disciplinary action against the appellant was initiated on the violation of Khyber Pakhtunkhwa Misconduct Rules, 1987.
- I) No comments.

Prayer:

It is therefore, most humbly prayed that on acceptance of this Parawise comments, the appeal being devoid of legal footings and merit may graciously be dismissed with cost.



Chief Secretary,
Khyber Pakhtunkhwa
Respondents No.1 & 2.



Secretary Law Department.
Khyber Pakhtunkhwa
Respondent No.3.

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازگی پولیس رپورٹ شدہ زیر دفعہ 153 مجموعہ ضابطہ فوجداری

گیشاور

محل وقوع

| | |
|--|-----------------------------------|
| تاریخ وقت رپورٹ | 08:05 ورت 10:50 |
| نام و سکونت اطلاع دہندہ | محمد علی احمد |
| مختصر کیفیت جرم (بمورد دفعہ) حال اگر کچھ لاپتہ ہو۔ | مذکورہ منوفٹ سرمدی واقع جی ٹی روڈ |
| جائے وقوع نامیلا تھانہ سے درست | |
| نام و سکونت ملزم | سرمدی فریدی |
| کارروائی جو پیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو | |
| تھانہ سے روانگی کی تاریخ و وقت | |

ابتدائی اطلاع کے درج کردہ۔ جن میں زلزلے کے حادثہ نمبر ST10
 درج کیا گیا ہے جس میں اطلاع دہندہ نے لاپتہ ہونے کا ذکر کیا ہے اور اس میں مذکورہ
 حشرہ جو کہ مقدمہ نمبر 879-NWFP میں درج ہے۔ اس میں اطلاع دہندہ نے لاپتہ ہونے کا ذکر کیا ہے
 جس میں اطلاع دہندہ نے لاپتہ ہونے کا ذکر کیا ہے اور اس میں مذکورہ حشرہ جو کہ مقدمہ نمبر
 879-NWFP میں درج ہے۔ اس میں اطلاع دہندہ نے لاپتہ ہونے کا ذکر کیا ہے اور اس میں مذکورہ
 حشرہ جو کہ مقدمہ نمبر 879-NWFP میں درج ہے۔ اس میں اطلاع دہندہ نے لاپتہ ہونے کا ذکر کیا ہے
 اور اس میں مذکورہ حشرہ جو کہ مقدمہ نمبر 879-NWFP میں درج ہے۔ اس میں اطلاع دہندہ نے
 لاپتہ ہونے کا ذکر کیا ہے اور اس میں مذکورہ حشرہ جو کہ مقدمہ نمبر 879-NWFP میں درج ہے۔
 اس میں اطلاع دہندہ نے لاپتہ ہونے کا ذکر کیا ہے اور اس میں مذکورہ حشرہ جو کہ مقدمہ
 نمبر 879-NWFP میں درج ہے۔ اس میں اطلاع دہندہ نے لاپتہ ہونے کا ذکر کیا ہے اور اس میں
 مذکورہ حشرہ جو کہ مقدمہ نمبر 879-NWFP میں درج ہے۔ اس میں اطلاع دہندہ نے لاپتہ
 ہونے کا ذکر کیا ہے اور اس میں مذکورہ حشرہ جو کہ مقدمہ نمبر 879-NWFP میں درج ہے۔
 اس میں اطلاع دہندہ نے لاپتہ ہونے کا ذکر کیا ہے اور اس میں مذکورہ حشرہ جو کہ مقدمہ
 نمبر 879-NWFP میں درج ہے۔ اس میں اطلاع دہندہ نے لاپتہ ہونے کا ذکر کیا ہے اور اس میں
 مذکورہ حشرہ جو کہ مقدمہ نمبر 879-NWFP میں درج ہے۔ اس میں اطلاع دہندہ نے لاپتہ
 ہونے کا ذکر کیا ہے اور اس میں مذکورہ حشرہ جو کہ مقدمہ نمبر 879-NWFP میں درج ہے۔

محمد علی احمد
 8.6.14

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 282/2017

Jamshed Khan

VS

~~Police Dept.~~ Grant of K.P.K

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

RESPECTFULLY SHEWETH:

Preliminary Objections:

- (1-6) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

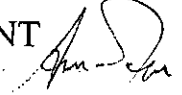

FACTS:

1. First portion of para 1 is admitted correct while the rest of para 1 is incorrect hence denied as that the appellant was complainant in the FIR No.605 and he conveyed the situation to his superiors.
2. Incorrect. While para 2 of the appeal is correct.
3. Incorrect. the appellant has appellant has conveyed the situation of accident to his high ups which might not have been reached to the concerned officials either due to communication or misplacing the same at a stage in the communication channel.
4. Incorrect. While para 4 of the appeal is correct.
5. Admitted correct. Hence no comments.
6. Incorrect. While para 6 of the appeal is correct.
7. Incorrect. That first notification of penalty was issued before the show cause notice and then again issued another notification of penalty after the show cause notice which means that the proceeding was conducted haphazard manner which is the violation of rules and law.
8. Incorrect. The review petition of the appellant was rejected without giving any reason.

GROUNDS:

- A. Incorrect. The appellant did not violate rule (20) of KPK Misconduct Rules, 1987 therefore the impugned order dated 3.3.2017 and 13.12.2016 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B. Incorrect. While para B of the appeal is correct.
- C. Incorrect. While para C of the appeal is correct.
- D. Incorrect. As explained in the proceeding paras.
- E. Not replied according to para E of the appeal. Moreover para E of the appeal is correct.
- F. Incorrect. first notification dated 18.8.2016 was issued wherein penalty of withholding of two annual increments for two years was imposed upon the appellant and after that show cause notice was issued to the appellant which is violation of law and rules.
- G. Not replied according to para G of the appeal. Moreover para G of the appeal is correct.
- H. Incorrect. While para H of the appeal is correct.
- I. No comments endorsed by respondents that para I of the appeal is correct.

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

Through: APPELLANT 
M.ASIF YOUSAFZAI
ADVOCATE SUPREME COURT
& 
(TAIMUR ALI KAHN)
ADVOCATE HIGH COURT

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.


DEPONENT