

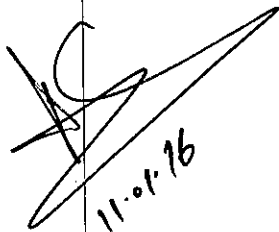
S.No. of proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	11.01.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u> <u>CAMP COURT SWAT</u></p> <p style="text-align: center;"><u>SERVICE APPEAL NO.426/2015</u></p> <p>(Muhammad Islam-vs- Govt: of Khyber Pakhtunkhwa through Chief Secretary, KPK, Peshawar and others.)</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u></p> <p>Appellant with counsel and Mr. Muhammad Zubair, Senior Government Pleader for respondents present.</p> <p>Muhammad Islam hereinafter referred to as the appellant has preferred the instant appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against orders dated 07.01.2015 and 08.01.2015 whereby two penalties in the shape of withholding of one increment for one year and recovery of Rs. 184500/- and posting against management cadre position in future were imposed against the appellant and where-against review petition dated 29.01.2015 was rejected on 21.04.2015.</p> <p>Brief facts of the case of the appellant are that the appellant was serving as ADO (Establishment) Shangla when one Muhammad Javid Ex-DDEO (M) District Shangla was subjected to departmental enquiry on certain allegations including sale of forms, collections of unauthorized money and embezzlement thereof. While conducting the enquiry against the said Muhammad Javid Ex-DDEO (M) the Enquiry Officer found that the appellant and a Naib Qasid namely Saeed Ahmad were also involved in the business</p>

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11.01.16.

collecting money without any justification and the enquiry officer, therefore, recommended initiation of action against the appellant and his removal from the Establishment and posting in teaching cadre vide his report dated 28.08.2014. Based on the said recommendations, the competent authority, the Chief Minister, Khyber Pakhtunkhwa, issued show cause notice dated 24.09.2014 to appellant which was responded by him and vide impugned orders referred to above, dated 7th and 8th January 2015, minor penalties in the shape of withholding of one increment for one year, recovery of Rs. 184500/- and imposition of ban on posting of the appellant against management cadre position in future were awarded.

Learned counsel for the appellant argued that neither prescribed procedure of enquiry was followed nor opportunity of hearing was afforded to the appellant. That the appellant was in a subordinate position to the principal accused Muhammad Javid Ex-DDEO(M) against whom the enquiry was directed and conducted and that the appellant has neither taken any benefit of the said collection nor has given the directions of collection of the same. That another subordinate namely Saeed Ahmad Naib Qasid was exonerated and that the appellant was also entitled to similar treatment.

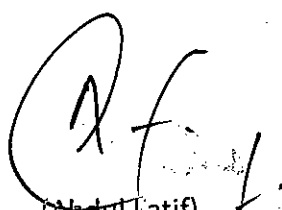
Learned Senior Govt. Pleader argued that the allegations against the appellant came to surface during the enquiry conducted against the said Muhammad Javid Ex-DDEO (M) and on the strength of the same show cause notice was issued to the appellant. That since the allegations were established and as such there was no need to conduct detailed enquiry and the competent authority has, therefore, passed the said impugned orders after affording full opportunity to the appellant including personal hearing extended to him through Secretary Establishment Department on behalf of the competent authority.

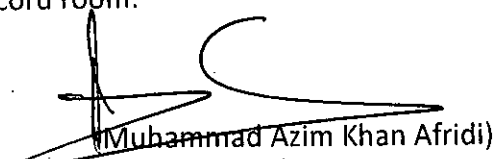

11.01.16

We have heard arguments of the learned counsel for the parties and perused the record.

It is note worthy that the respondents failed to contest the appeal despite affording repeated opportunities including last opportunity for submission of written reply/comments. The stance of the respondents is, therefore, not before us in writing.

The competent authority in case of Muhammad Javid Ex-DDEO (M) directed and confined enquiry to his extent and the appellant was not subjected to any enquiry despite the fact that the allegations of participation in sale and collection of unauthorized money was attributed to the appellant as well. After the findings of the enquiry officer it was, therefore, appropriate for the competent authority to have ordered enquiry in the mode and manners in which the same was ordered against Muhammad Javid Ex-DDEO (M) in which the appellant has appeared and examined as a witness. Without touching the merit of the case and having no defense of the respondents before us at this stage, we deem it more appropriate to hold and direct that the appellant was entitled to and be afforded opportunity of hearing in the mode and manners extended to the afore-stated accused officer and the competent authority after conducting enquiry afresh, may pass any orders deemed appropriate. The impugned orders are, therefore, set aside. The appeal is accepted in the above terms. No order as to costs. File be consigned to the record room.


(Abdul Latif)
Member


(Muhammad Azim Khan Afridi)
Chairman
11.01.16.

ANNOUNCED
11.01.2016

5. 3.8.2015

Appellant in person and Mr. Muhammad Zubair,
Sr.G.P for respondents present. Written reply not
submitted. Requested for further adjournment. Last
opportunity granted. To come up for written reply/comments
on 5.10.2015 before S.B at camp court Swat.


Chairman
Camp Court Swat

5.10.2015

Appellant is person and Mr. Muhammad Zubair, Sr. GP present.
None present for respondents. Last opportunity was extended to
respondents for submission of written reply but despite the same none
appeared on their behalf. No further opportunity is extended to
respondents for submission of written statement. To come up for final
hearing before D.B on 11.1.2016 at Camp Court Swat.


Chairman
Camp Court Swat

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15.05.2015

Counsel for the appellant present. Learned counsel for the appellant argued that vide impugned order dated 7.1.2015 minor penalty of withholding of one increment for one year and recovery of Rs. 184500/- was imposed against the appellant followed by another order dated 8.1.2015 vide which the appellant was not to be posted against any post of Management Cadre in future. That the appellant preferred departmental against the said order on 29.1.2015 which was rejected on 21.4.2015 and hence the instant service appeal on 11.5.2015.

That the appellant was neither charge sheeted nor inquiry was conducted against him in the prescribed manners and that he was punished in an inquiry conducted against one Muhammad Javed DEO Shangla.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for 6.7.2015 before S.B at Camp Court Swat as the matter pertains to the territorial limits of Malakand Division. Notice of stay application be also issued for the date fixed. Till the next date of hearing the recovery shall not be made from the appellant.


Appellant Deposited
Security & Process Fee


Chairman

4

6.7.2015

Appellant in person and Mr. Muhammad Zubair, Sr.G.P for respondents present. Requested for adjournment. To come up for written reply/comments on 3.8.2015 before S.B at camp court Swat. The restraint order shall continue.


Chairman
Camp Court Swat

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 426 /2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11.05.2015	<p>The appeal of Mr. Muhammad Islam 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.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 11/5/15</p>
2	13-5-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>15-5-2015</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

69.	<p>EIGHT (08) POSTS OF MALE SERVEYOR IN MINES AND MINERALS DEPTT:</p> <p>QUALIFICATION: F.SC Pre Engineering or equivalent qualification from recognized Board of Intermediate and Secondary Education with (a) Mine Surveyor Competency Certificate under Mines Act 1923 and (b) Certificate in Auto cad from a recognized institute</p> <p>AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-11 ELIGIBILITY: Male ALLOCATION: Two each to Zone-1,2,3 and One each to Zone-4 & 5.</p>
70.	<p>THREE (03) POSTS OF COMPUTER OPERATOR IN DIRECTORATE GENERAL OF TECHNICAL EDUCATION AND MANPOWER TRAINING</p> <p>QUALIFICATION: (a) Bachelor Degree from a recognized University and (b) Diploma of one year duration in Information Technology from a recognized Institute.</p> <p>AGE LIMIT: 20 to 32 years. PAY SCALE: BPS-11 ELIGIBILITY: Male ALLOCATION: One each to Zone-1, 2 and 3.</p>
PUBLIC HEALTH ENGINEERING DEPTT:	
71.	<p>TWO (02) POSTS OF RESEARCH OFFICER/ HYDRO-GEOLOGIST.</p> <p>QUALIFICATION: Second Division M.Sc (Hydro-Geology) OR B.Sc (Civil/ Agriculture Engineering) with two years relevant experience Or Second Division M.Sc (Water Resources/ Civil Engineering) from a recognized University.</p> <p>AGE LIMIT: 21 to 32 years. PAY SCALE: BPS-17 ELIGIBILITY: Both Sexes ALLOCATION: One each to Merit and Zone-1.</p>
72.	<p>EIGHTEEN (18) POSTS OF ASSISTANT SOCIAL ORGANIZER.</p> <p>QUALIFICATION: Second Class Master Degree in Social Sciences from a recognized University.</p> <p>AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-16 ELIGIBILITY: Both Sexes ALLOCATION: Five to Merit, Three each to Zone-1, 2, 3 and Two each to Zone-4&5.</p>
73.	<p>TWO (02) POSTS OF ASSISTANT SOCIAL ORGANIZER (WOMEN QUOTA).</p> <p>QUALIFICATION: Second Class Master Degree in Social Sciences from a recognized University.</p> <p>AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-16 ELIGIBILITY: Female ALLOCATION: Merit.</p>
74.	<p>SEVEN (07) POSTS OF ASSISTANT RESEARCH OFFICER (WATER QUALITY).</p> <p>QUALIFICATION: Second Division B.Sc (Microbiology or Chemistry) from a recognized University.</p> <p>AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-16 ELIGIBILITY: Both Sexes. ALLOCATION: One each to Merit, Zone-2, 3, 4, 5 and Two to Zone-1</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 426 /2015

Muhammad Islam

V/S

Education Deptt:

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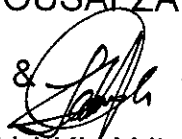
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6.	Copy of order dated 1.7.2015	D	14
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APPELLANT

THROUGH:



(M. ASIF YOUSAEZAI)



(TAIMUR ALI KHAN)

ADVOCATES, PESHAWAR.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 426 /2015

Muhammad Islam,

ADEO(Estb), DEO (Male) office Shangla.

(Appellant)

K.P. Province
Service Tribunal
Diary No. 474
Dated 11-5-2015

VERSUS

1. The Govt: of KPK through Chief Secretary, KPK, Peshawar.
2. The Chief Secretary Govt: of KPK, Peshawar.
3. The Secretary (E&SE) KPK, Peshawar.
4. The Director (E&SE) KPK, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDERS DATED 21.04.2015, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDERS DATED 07.01.2015 AND 08.01.2015 HAS BEEN REJECTED THROUGH WHICH THE PENALTIES OF STOPPAGE OF INCREMENT, RECOVERY AND NON-POSTING AGAINST MANAGEMENT CADRE POST IMPOSED ON THE APPELLANT.

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDERS DATED 21.04.2015, 07.01.2015 AND 08.01.2015 MAY BE SET ASIDE. THE RESPONDENT DEPTT: MAY PLEASE BE DIRECTED TO RESTORE INCREMENT, NOT RECOVER RS. 1,84,500 AND TO POST THE APPELLANT ON HIS ORIGINAL POST OF MANAGEMENT CADRE. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to the
Registrar
11/5/15

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant is serving as ADEO (Estb) in the DEO (Male) and performed his duty to best of his abilities and no complaint has been filed against him.
2. That the inquiry committee recommended certain penalties for Mr. Muhammad Javid DEO(M) Shangla and also opined that if deem proper action may also be taken against the appellant. (Copy of inquiry report is attached as Annexure-A)
3. That on the basis of above opinion of inquiry officer a show cause notice was directly issued to the appellant by the Chief Minister KPK without assigning any charge sheet etc to the appellant which was duly replied by the appellant and clear all the position about the allegations leveled against him in the inquiry report. (Copy of show cause notice and reply to show cause notice are attached as Annexure-B&C)
4. That, there after an order was passed on dated 7.1.2015 and 8.1.2015 whereby, two penalties withholding of one increment for one year and recovery of Rs. 1,84500 and not to be posted against Management Cadre position in future were imposed upon the appellant. (Copy of order of dated 7.1.2015 and 8.1.2015 are attached as annexure-D&E)
5. That against the orders dated 7.1.2015 and 8.1.2015, the appellant filed the review petition on 29.1.2015 which was also rejected for no ground on 21.4.2015. (Copy of departmental appeal and rejection order are attached as Annexure-F&G)
6. That the appellant has no other remedy but come this august Tribunal on the following grounds amongst others.


GROUND:

- A) That the impugned orders dated 21.4.2015, 7.1.2015 and 8.1.2015 are against the law, facts, norms of justice, and material on record, therefore not tenable and liable to be set aside.

- B) That no charge sheet and statement of allegation was served to the appellant which is against the law and rules.
- C) That the appellant was not directly charge, but the inquiry officer nominated him in his inquiry report which was initiated against DEO Shangla, therefore, a separate inquiry against the appellant was necessary which was not done.
- D) That the appellant did not acted by himself but he was acted to implement the decision of immediate authority i.e Muhammad Javid DEO (M) Shangla, which is clearly mentioned in the inquiry report that Mr. Javid DEO (M) Shangla himself admitted that he has decided to collect the amount to meet the expenditure on recruitment process and remaining amount of Rs. 171000 was deposited in to Govt: treasury through challan. Which means the appellant was made scape goat and punished for the fault of others.
- E) That no regular inquiry was conducted against the appellant which is the violation of law and principles of justice.
- F) That the inquiry officer in his inquiry mentioned "*though it was not mentioned in the charge sheet, yet the Govt: i.e Secretary of Education (if consider advisable) may initiate action against Muhammad Islam ADEO (Estb) Shangla of the DEO offices.* Therefore involvement of the appellant in the instant inquiry is against the principle justice and fair play.
- G) That according Supreme Court reasons should be given be given in the case of rejection of departmental of a civil servant but in the case of appellant no reason is mentioned for rejection of the departmental appeal of the appellant. Which is the violation of General Clause Act 24-A and Supreme Court Judgment reported in SCMR 1991 page- 2330.
- H) That the appellant has been condemned unheard and has not been treated according to law and rules.
- I) That the order dated 8.1.2015 is without lawful authority as no such punishment was either included in its show cause notice nor mentioned in the penalty clauses of E&D Rules 2011. Therefore not maintainable and liable to be set aside.
- J) That the appellant is a Scale-16 employee whereas the orders passed by the Chief Minister against the appellant were without law full authority and corum non-judice. Therefore liable to be set aside as the Chief Minister was not competent authority for the appellant.
- K) 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


Muhammad Islam

THROUGH:


M.ASIF YOUSAFZAI

& 

TAIMUR ALY KHAN

(ADVOCATES PESHAWAR)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2015

Muhammad Islam

V/S

Education Deptt:

**APPLICATION FOR SUSPENDING THE OPERATION OF ORDER DATED 08.01.2015
AND STOPPAGE OF RECOVERY OF RS.1,84,500 VIDE ORDER DATED 7.1.2015 TILL
THE DISPOSAL OF MAIN APPEAL.**

R. SHEWETH.

1. That the appellant has filed an appeal along with this application in which no date is fixed so far.
2. That impugned orders 7.1.2015 and 8.1.2015 were passed in the utter violation of law and rules.
3. That the appellant was not directly charged but still he was held responsible by the inquiry officer which means that the appellant was made scape goat.
3. That if the recovery of Rs. 1,84,500 is not stopped it will cause great irripible loss to the appellant and will make his appeal infructuous.
3. That the grounds of main appeal may also be considered as integral part of this application.
4. That the appellant has a good prima facie case and all the three ingredients are in favour of the appellant.

It is therefore most humbly prayed that the operation of the order dated 08.01.2015 and recovery of Rs. 184500/ may be suspended till the decision of main appeal.

APPELLANT

THROUGH:



(M.ASIF YOUSAFZAI)



(TAIMUR ALI KHAN)

ADVOCATES PESHAWAR

AFFIDAVIT

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



DEPONENT

INQUIRY REPORT.

1. Briefly, the competent authority appointed the undersigned to make probe/conduct Inquiry against Mr. Muhammad Javed Ex-DDEO (Male) District Shangla. The Notification along with copies of Charge Sheet and Statement of allegations were received on 7.8.2014 vide E&SE Department No.SO(S/M)E&SED/4-17/2014/M.Javed Ex-DEO Shangla, dated 06.08.2014. The accd: officer was summoned through the Director Education and accordingly, at his request, Charge Sheet and Statement of allegations were handed over to him on 12.8.2014. The Director, E&SE Deptt also nominated an Assistant Director to associate and assist the undersigned. The requisite record was also produced by him on the various dates fixed for hearing.

2. The accd: officer submitted his reply on 19.8.2014 placed on file. The members of the preliminary Inquiry Committee, DEO Shangla along with the relevant officer with the complete record and the complainants (Private Persons) were also called for recording their statements on the fixed date i.e. 19.8.2014. One of the members of the Preliminary Inquiry Committee (who was Principal of the GCMHS Batkhela in those days) appeared and his statement was recorded (containing 2 pages). As the same officer, being at present, posted against the seat of DEO Shangla, requested for his another statement along with his subordinate officer to be recorded on the same date (Being called for tomorrow i.e. 20.8.2014). The accd: officer having no objection on it, therefore, both the above officers namely Saeed Khan DEO Shangla and Mohammad Islam ADEO (Estab) Shangla were examined. The relevant record was brought on file during the Statements which are Exh: PA to Exh :PE.

3. One of the Naib Qasid namely Saeed Ahmad and Muhammad Pervez ADEO (Sports), posted in District Shangle were also summoned through Director Education. Both of them appeared and their statements were recorded. The complainants did not appear on the date fixed i.e. 21.8.2014. However, their contention was received (containing 2 pages) on the same date with copies of the applications earlier submitted to the high-ups. The same were placed on file for record.

ATTESTED

4. The allegations against the accused officers have been described in the charge sheet that (i) amount has been embezzled, wrongfully distributed etc. and (ii) delayed disciplinary proceedings against the absented teachers. Therefore, the charges leveled against the officer and the evidence brought on record, are evaluated as below:

5. Going through the statement of Muhammad Javed accd: officer (page 6 to 9) he himself admitted, "There is no budgetary Provision for this purpose and every department sell application forms to generate revenue to meet all the needs of recruitment process". Further while elaborating expenditure etc., he says, "...and decided various remuneration/honoraria rates and process activities." The accd: officer nominated Muhammad Islam to collect the amount by selling forms as well. This attitude of the accd: officer shows that under his umbrella, the forms were sold for Rs.100/- each and a big amount of Rs.5,40,000/- was collected without any lawful authority. The accd: officer himself categorically told that high number of forms were purchased by the candidates due to which the excess amount of Rs.1,71,000/- was deposited in Govt Treasury. This is authenticated by Challan Exh: PE (Page 35). On account of his statement that illegal sale of forms to the candidates was marketed, further examination of witnesses was not required, but to the demand of justice, other officers/officials of the office of DEO Shangla were summoned too.

6. Statement of saeed Khan (Preliminary Inquiry Officer nominated) presently posted as DEO Shangla, confirmed the Preliminary Inquiry Exh: PA conducted by him along with other member. Wherein, during cross examination he said, the text is reproduce below:-

"تحقیقات کی روشنی میں صرف حاصل کردہ رقم اور اس کے استعمال کو خلافِ ضابطہ پایا گیا تھا۔۔۔۔۔"

Further to a question put to him by Muhammad Javed the accd: officer, the witness answered "یہ درست ہے کہ اس سے قبل اسی طرح معاملات یعنی appointments مکمل" Yet this tendency can't allow other to carry on the business which is ab-initio void. The said officer in his statement as DEO Shangla (Page 29) disclosed

"آمدواروں میں پایا کہ فارم حاصل مبلغ 100/- روپیہ پر لے ڈھول کر میں ہل 400 فارم تقسیم کر کے۔۔۔۔۔ باقاعدہ رقم رکھا گیا۔۔۔۔۔"

The witness also admitted as reproduced below:- "باقی ماندہ رقم 1,71,000/- ہے۔۔۔۔۔ فرج کر دی گئی ہے۔۔۔۔۔ نہ درست ہے کہ حکومت کی طرف سے یہ رقم رکھی گئی ہے۔۔۔۔۔"

ATTESTED

All this speaks of the facts that the illegal amount by selling 5400 forms to the candidates, was received by ADEO Muhammad Islam through his Naib Qasid on the verbal direction of the aced: officer. There has been an attempt to show that: اس سے قبل اسی طرح معاملات میں appointments کیے گئے But there is no justification found or order of the Provincial Government produced before me to rebut the illegality so committed. The record shows that the prescribed form denoted fee Rs.100/- (can be seen on Exh: PC). It means that the candidates were shown justification to take the amount freely which was not required.

7. Going through the statement of Muhammad Islam ADEO (Estab), it shows how the amount was taken and the expenditure made thereof. He admitted that:-

- a) Honoraria amongst the sub-committee members
Distributed Rs.1,91,300/-
- b) Expenditure on stationery etc. Rs.80,514/-
- c) Deposited in Government account Rs.1,71,00/-
- d) Form distributed free of cost. Rs.10,000/-
- e) Expenditure on Computer etc. Rs.87,186/-

But during cross examination to a question put to him he said :- یہ DEO کا کام ہے

But he did not speak a word about the illegality of honoraria distributed by saying that :- یہ تو میرا کام ہے اور نہ ہی میرے فرائض میں شامل ہے کہ اعزاز پر سنا تمہارا اور تمہاری تو دیا جانا چاہئے کہ نہیں

Further stated that "یہی حکم زبانی تھا" It means that he collected a big amount without any approval of the Government yet on verbal direction of the DEO namely Muhammad Javed the aced: officer. Also got his own share as an

"Honoraria" yet ironically he was having no knowledge (according to him) regarding being the practice illegal and without any legal footing. It shows that he was also member of the group collecting illegal amount, but nobody asked for it.

8. Naib Qasid Saeed Ahmad also confirmed by stating that

To a question in cross examination he told میں ADEO کی بنیاد پر امیدوار سے 100 روپیہ فی فارم لیتا رہا

یہ درست ہے کہ میرا کام رقم جمع کرنا نہیں تھا لیکن میں نے محمد اسلام کی زبانی یہ بات پر 100 روپیہ فی فارم وصول کرتا رہا۔ حقے لپور اعزاز پر سن ہزار روپیہ مل چکے

9. The accd: officer, wrote a letter on dated 13.06.2012 to the D.D.O.(M) Piry: Edu: (Annex: G) to submit performance of the teachers who were habitual to abstain from their duties (having the names of the two Abur Rauf and Abdu Rasheed too). But going through the "Show Cause Notice" issued (Annex: H) it reveals that it has no "mention" on which date it was issued. The only 2013 is reflected. Yet the irregularities mentioned therein from S.No. i to ix of Para 01, it manifested that Abdur Rauf, a habitual absentee teacher's issue can be witnessed from the year 2011 and that too, the Enquiry Committee had recommended strongly against the said teacher. But no concrete action since 2011 was taken and it was delayed abnormally as was charge sheeted.

Findings

10. As a sequel to the above discussion, I, the Inquiry Officer, is of the firm opinion that the charges leveled against the accd: officer Mr. Muhammad Javed (X-DEO Shangla) have been proved without any shadow of doubt. Besides, I may say that he was not alone to commit the illegal acts (as explained above) but he was duly associated by Muhammad Islam ADEO (Estb) Shangla (PBS-16) along the N.Q Saeed Ahmad to carry on the business of collecting money without any justification. But no action was initiated against the two officials. The deposit of Rs.1,71,000/- in Govt exchequer, can't facilitate the embezzlement of the remaining amount out of Rs.5,40,000/-.

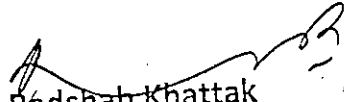
Recommendations

11. Therefore, I may recommend that:-
- a. One of the major penalties i.e. one step down demotion, under the E&D Rules upon the charge-sheeted accd: officer may be imposed,
 - b. Though it was not mentioned in the charge-sheet, yet the
 - (i) Govt: i.e. Secretary of Education Department (if considers advisable) may initiate action against Muhammad Islam ADEO (Estb) Shangla of the DEO office and

ATTESTED

(ii) To remove him from the Establishment and to post him anywhere in the School to teach. As he was member of the "Teaching Cadre" while serving on the "Management Cadre post" since 2010 without any reason.

c. The remaining amount of Rs.3,69,000/- may be recovered from the two i.e. Muhammad Javed (X-DEO) and Muhammad Islam posted as ADEO(Estb) Shangla on equal proportionate ratio and deposited in the Government exchequer.


Aqal Badshah Khattak
(Enquiry Officer)
Additional Secretary, (Opinion)
Law, Parliamentary Affairs & Human Rights
Department.

28/8/14

Dated 28-08-2014

ATTESTED



B (12)

SHOW CAUSE NOTICE

I, Pervez Khattak, Chief Minister Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Muhammad Islam Assistant District Officer (Estab) BS-16 Shangla as follows:-

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

I am satisfied that you have committed the following acts/omissions specified in rule-3 of the said rules:

- (a) Guilty of Misconduct
- (b) Guilty of Corruption

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Stoppage of 03 increments for three years. under rule 4 of the said rules.
Recovery of Rs. 184500/=

3. You are, thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. A copy of the findings of the inquiry officer is enclosed.

Pervez Khattak
(PERVEZ KHATTAK)
CHIEF MINISTER KHYBER PAKHTUNKHWA
COMPETENT AUTHORITY
24.09.2014.

Mr. Muhammad Islam Assistant District Officer (Estab) BS-16 Shangla.

ATTESTED

To

e
= (13)

The Honorable,
Chief Minister Pakhtunkhwa
(Competent Authority).

REPLY TO THE SHOW CAUSE NOTICE.

In the response of show cause notice issued to me my detail reply is submitted as:-

The undersigned is working as Assistant District Education Officer (M) Establishment Secondary since 2010 in the office of the District Education Officer (M) Shangla. Education Department Shangla advertised different posts of teachers and ministerial staff in daily "the Ajj" and "the Mashriq" dated 18/5/2013. Following the procedure of the District since 2001 as well as the province form fee was fixed Rs. 100/- per form. In large number of candidates applied for different posts up to 5400. So, amount was collected 540,000/-.

I was assigned the duty to supervise the whole process including form distribution, collection, interviews, and preparation of merit list and display of it. I did it accordingly and expenditure was made as:-

- 1 Honoraria among subcommittee members 191300/-.
- 2 Stationary charges (including files, papers, pens, tags, staple & stapler) 80514/-.
- 3 Free of cost forms for office employee children 10,000/-.
- 4 Deposited in Govt. exchequer 171000/-.

Total Amount Rs. 540,000/-.

In the above referred show cause notice I have been charged/alleged for mis-conduct and corruption, while, minor penalty of stoppage of three increment, for three years and recovery of Rs.184500/- has been imposed tentatively upon me.


It is very clear that neither, I have acted against rules, nor committed mis conduct and corruption, but only performed my duty in the best interest of public service.

By God, I was not aware that this act is against law and rules. If knew it I would never do it.

It is requested humbly that by acceptance my reply this Honorable forum may very graciously be pleased to exempt me from the above said penalty. I shall be careful in future and your this act of kindness will be highly appreciated.

The undersigned is ready for personal hearing if needed, please.

ATTESTED


(MUHAMMAD ISLAM)
ASSISTANT DISTRICT EDUCATION OFFICER (M)
OFFICE OF THE DEO (M) SHANGLA.



D 14

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Dated Peshawar the January.07, 2015

NOTIFICATION

NO.SO(S/M)E&SED/4-17/2014/M. Javed Ex-DEO Shangla & others:

WHEREAS

Mr. Muhammad Islam, Assistant District Officer (Estab:) BS-16 Shangla, was proceeded against under the Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet and statement of allegations.

2. **AND WHEREAS** Mr. Aqal Badshah (PCS EG BS-19), Additional Secretary, Law Department was appointed as inquiry officer to conduct formal Inquiry against the accused officer, for the charges leveled against him in accordance with the rules.

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

4. **AND WHEREAS** a show cause notice was served upon Mr. Muhammad Islam Assistant District Officer (Estab:) BS-16 Shangla dated 24-09-2014 which was communicated to the accused on 02-10-2014.

5. **AND WHEREAS** the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) after having considered the charges and evidence on record, inquiry report, explanation of the accused officer in response to the Show Cause Notice and personal hearing granted to him by Secretary Establishment Department, on behalf of Chief Minister Khyber Pakhtunkhwa on 17-12-2014 at 1100 hours, is of the view that the charges against the accused officer have been proved.

6. **NOW, THEREFORE,** in exercise of the powers conferred under section 14 of Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) is pleased to impose minor penalty of **"Withholding of one increment for one year"** and recovery of Rs. 1,84,500/- upon Mr. Muhammad Islam, Assistant District Officer (Estab:) BS-16 Shangla with immediate effect.

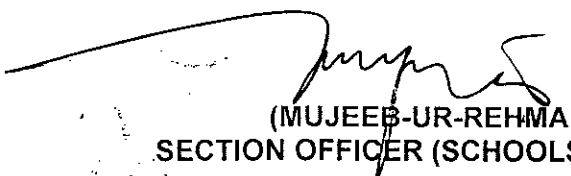
SECRETARY

Endst: of Even No. & Date:

Copy forwarded to the: -

- 1- Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2- Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3- PSO to Chief Minister Khyber Pakhtunkhwa, Peshawar.
- 4- District Education Officer (Male), Shangla.
- 5- Mr. Muhammad Islam, Assistant District Officer (Estab:) BS-16 Shangla,
- 6- District Accounts Officer, Shangla.
- 7- PS to Chief Secretary Khyber Pakhtunkhwa Peshawar.
- 8- PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
- 9- Office order file.

ATTESTED


(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

E (15)

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Dated Peshawar the January 08, 2015

NOTIFICATION


NO.SO(S/M)E&SED/4-17/2014/M. Javed Ex-DEO Shangla & others: Consequent upon the completion of inquiry and imposition of penalty upon Mr. Muhammad Islam, Assistant District Officer (Estab:) BS-16 Shangla vide this department notification **NO.SO(S/M)E&SED/4-17/2014/M. Javed Ex-DEO Shangla & others:** dated January 07, 2015, the Competent Authority is pleased to order that the said officer may not be posted against Management Cadre position in future.

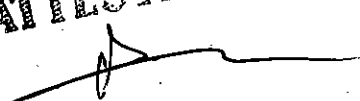
SECRETARY

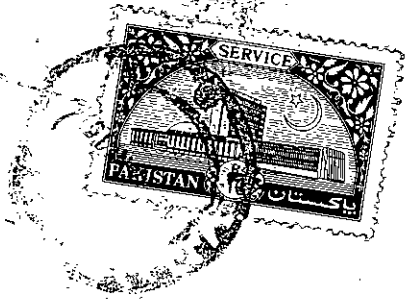
Endst: of Even No. & Date:

Copy forwarded to the: -

- 1- Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 2- Director, Curriculum & Teachers Education Abbottabad, Khyber Pakhtunkhwa, Abbottabad.
- 3- PSO to Chief Minister Khyber Pakhtunkhwa, Peshawar.
- 4- District Education Officer (Male), Shangla.
- 5- Mr. Muhammad Islam, Assistant District Officer (Estab:) BS-16 Shangla.
- 6- Section Officer (Board/ Training), E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 7- PS to Chief Secretary Khyber Pakhtunkhwa Peshawar.
- 8- PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
- 9- Office order file.


(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

ATTESTED




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PAKISTAN
POST OFFICE
KARACHI
1958

F (16)

BEFORE THE HONOURABLE CHIEF MINISTER KHYBER PAKHTUNKHWA PESHAWAR

Subject:- REVIEW PETITION UNDER SECTION 17 OF KPK E & D RULES 2011 AGAINST THE ORDERS PASSED BY HONOURABLE CHIEF MINISTER KHYBER PAKHTUNKHWA PESHAWAR CONVEYED BY WORTHY SECRETARY ELEMENTARY & SECONDARY EDUCATION GOVT OF KHYBER PAKHTUNKHWA VIDE NOTIFICATION NO. SO (S/M)E&SED/4-17/2014/M.JAVED EX-DEO SHANGLA & OTHERS DATED 07-01-2015 AND NOTIFICATION NO. SO (S/M)E&SED/4-17/2014/M.JAVED EX-DEO SHANGLE & OTHERS DATED 08-01-2015.

Respected Sir,

With due regards it is submitted that the brief history of the case and grounds of this review petition are appended below for kind perusal and sympathetic consideration please:-

Brief History of the case.

That the petitioner has been charged for to assist Mr. Muhammad Javid Ex-DDEO/DEO (M) Shangla based on the finding / recommendations of enquiry report, enquiry conducted by Aqal Bashah Khattak Additional Secretary (Opinion) Law, Parliamentary Affairs & Human Rights Department regarding collection of money of Rs. 100/- on each application forms for recruitment process without any justification and punishment awarded to the petitioner "withholding one increment for one year and recovery of Rs. 184500/- vide Notification dated 07-01-2015 and another punishment regarding non posting the petitioner against management post in future vide Notification dated 08-01-2015" in spite of the facts that this enquiry committee was constituted to probe the conduct of Mr. Muhammad Javid Ex-DDEO/DEO (M) Shangla only.

Grounds of Review Petition.

1. That it is evidence from Para-1 of the enquiry report in question based on which punishment has been awarded to the petitioner the same enquiry was conducted to probe conduct of Mr. Muhammad Javid Ex-DDEO/DEO (M) Shangla and not for petitioner or others.
2. That in Para-5 of the enquiry report enquiry officer clearly added that Mr. Muhammad Javid Ex-DDEO/DEO (M) Shangla he himself admitted that he was decided to collect the amount to meet out the expenditure on recruitment process and remaining amount of Rs. 171000/- was deposited in to Govt treasury through challan. In the light of this statement it is quite clear that staff posted at DEO (Male) Office Shangla including petitioner was acted to implement the decision of immediate authority and is not involved in any activity beyond the decision taken by Mr.

ATTESTED

✍

- Muhammad Javid Ex-DDEO/DEO (M) Shangla, therefore, showing involvement of petitioner and punishment is against the natural justice.
3. That as per provision contained in section 5 before issuing show cause notice under Rules 7 of E&D Rules 2011 it was imperative upon the authority reason to be recorded in writing, dispense with enquiry, but directly has been charged by issuing show cause notice and punished by ignoring the procedure given in the E &D Rules 2011.
 4. That personal hearing has been conducted through Secretary Establishment Department Khyber Pakhtunkhwa Peshawar being authorized officer by the authority. In this connection it is added that there exist no provision in E & D Rules 2011 that an authority can authorize to another office to conduct personal hearing.
 5. That through findings of enquiry report, enquiry officer stated that charge against Mr. Muhammad Javid Ex-DDEO/DEO (M) Shangla is proved and in recommendations of enquiry indicated in Para-11 sub section-b-(i) " Government i.e. Secretary of Education Department (if considered advisable) may initiate action against Muhammad Islam ADEO (Estb) Shangla, these words of enquiry officer also cleared that he was not authorized to probe the conduct of others except Mr. Muhammad Javid Ex-DDEO/DEO (M) Shangla.
 6. That per provision contain in Para-7 procedure where enquiry is dispense with sub section "F" the competent authority impose any one or more penalties mentioned in rules 4, by an order in writing, if the charge or charges are proved against the accused. In this connection, it is added that neither charges have been framed against the petitioner nor proved but instead of an order by two separate orders penalties have been imposed / notified on the petitioner.
 7. Copy of enquiry report, enquiry conducted by Aqal Bashah Khattak Additional Secretary (Opinion) Law, Parliamentary Affairs & Human Rights Department is attached for ready reference.

In the light of above grounds it is humbly prayed that the punishments awarded to the petitioner through notifications referred in subject captioned above may graciously be set aside / withdrawn in the interest of justice for which the petitioner will highly be grateful please.

Petitioner


(Muhammad Islam) 29/1/15

ATTESTED



Assistant District Education Officer (Estb)
DEO (Male) Office Shangla

REGISTERED



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

G7 = (18)

No.SO(S/M) E&SED/4-17/2014/M. Javed Ex-DEO Shangla and others
Dated Peshawar the April 21, 2015

To

- i. Mr. Muhammad Javed,
Principal BS-18 GHS Shamshad Abad
District Mardan.
- ii. Mr. Muhammad Islam,
Assistant District Officer (Estab:) BS-16,
office of the District Education Officer (M)
District Shangla.

Subject: - REVIEW PETITIONS IN DISCIPLINARY ACTION AGAINST MR. MUHAMMAD JAVED EX-DEPUTY DISTRICT EDUCATION OFFICER MALE SHANGLA HOLDING ADDITIONAL CHARGE OF DISTRICT EDUCATION OFFICER MALE SHANGLA (NOW PRINCIPAL BS-18 GHS SHAMSHAD ABAD MARDAN) AND OTHER.

I am directed to refer to your review petitions dated 22-01-2015 and 29-01-2015 respectively received through Chief Minister's Secretariat Khyber Pakhtunkhwa, Peshawar on the subject noted above and to state that the Chief Minister Khyber Pakhtunkhwa/ Competent Authority has considered your review petition and rejected having no valid grounds.

(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

Endst: Even No. & Date:

Copy of the above is forwarded to the:-

- i. PS to Secretary E&SE Department Khyber Pakhtunkhwa.

SECTION OFFICER (SCHOOLS/MALE)

ATTESTED

VAKALAT NAMA

NO. _____ /20

IN THE COURT OF Service Tribunal, Peshawar

Muhammad Islam

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Education Deptt.

(Respondent)
(Defendant)

I/We Muhammad Islam

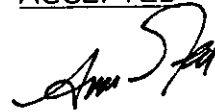
Do hereby appoint and constitute **M. Asif Yousafzai, Advocate, Peshawar,** ^{Q. Taimur Ali Khan (Adv)} to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint 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


(CLIENT)

ACCEPTED



M. ASIF YOUSAFZAI
Advocate



TAIMUR ALI KHAN
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 128 ST

Dated 26 / 1 / 2016


To

The Secretary E&SE,
Peshawar.

Subject: - Judgement.

I am directed to forward herewith certified copy of Judgement dated 11.1.2016 passed by this Tribunal on subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.