

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 976/2015

Date of Institution ... 01.09.2015

Date of Decision ... 31.08.2018

Dr. Lal Zari, Ex: Deputy Director (BPS-18), Population Welfare Department
FATA, FATA Secretariat, Warsak Road, Khyber Pakhtunkhwa Peshawar.

... (Appellant)

VERSUS

1. The Additional Chief Secretary FATA, FATA Secretariat, Warsak Road,
Khyber Pakhtunkhwa, Peshawar and 4 others. ... (Respondents)

Mr. Noor Muhammad Khattak,
Advocate

--- For appellant.

Mr. Ziaullah,
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER (Executive)

--- MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the
parties heard and record perused.

FACTS

2. Brief facts of the case are that the appellant was appointed as Women
Medical Officer in Population Welfare Department vide notification dated
27.07.2006. That she was promoted as Deputy Director Population Welfare FATA
vide notification dated 01.12.2012. That on the basis of an
anonymous/pseudonymous complaint/letter, disciplinary proceedings were initiated
against her and winding up major penalty of dismissal from service was imposed
vide impugned notification dated 21.05.2015. The appellant preferred departmental

appeal on 25.05.2015, which was rejected on 10.08.2015, hence, the instant service appeal.

ARGUMENTS

3. Learned counsel for the appellant argued allegations leveled against her were unfounded/baseless, hence, denied in her reply to charge sheet/statement of allegations. Proper inquiry in accordance with the procedure laid down in E&D Rules 2011 was not conducted. Show cause alongwith copy of inquiry report was not served on the appellant. It is not clear whether statements of witnesses were recorded by the inquiry committee, as the record is silent. Proper opportunity of cross examination was also denied to the appellant. Purchase committee notified by the respondents was headed by Secretary Social Sector, FATA, alongwith seven other members. However, they were not touched by the inquiry committee, which lend credence to the fact that the appellant was made scapegoat to save the skin of others. Similarly the report is also silent on the role of technical committee. The inquiry committee also recommended disciplinary action against Mr. Fakhar Alam, Store Keeper and Mr. Rashid Ahmad under E&D Rules, 2011, but to no avail. It appears that only the appellant was victimized, which amounts discrimination under Article-25 of the Constitution. Respondents also failed to produce record to substantiate whether Accountant General PR was approached to take action against its officials. Reliance was placed on case reported as 2011 PLC(CS) 1111, 2005 PLC (CS) 311, 2012 TD Tr.(Services) 12, PLJ 2011 Tr.C(Services) 1, PLJ 2008 SC 65 and 2007 SCMR 1860.

4. On the other hand, learned Deputy District Attorney argued that impugned notification was issued in accordance with law and rules. All codal formalities were observed during the inquiry proceedings and the appellant was found guilty. Article 4 and 25 of the Constitution were not violated.

CONCLUSION

5. Upon minute examination of the inquiry report some glaring discrepancies were noticed which led us to conclude that it was not conducted in just, fair and transparent manner. Perusal of reply of the appellant to the charge sheet and statements of allegations revealed that purchase committee headed by the Secretary Social Sector (FATA) alongwith seven others members was constituted to oversee the process of procurement. Similarly the technical committee was constituted after obtaining approval from the Secretary Social Sector (FATA). Bids invited were opened on the directions of the Secretary SS by a broad based committee having representation of relevant stakeholders. Comparative statement was signed by the concerned and finally by the Secretary Social Sector (FATA). In case there were deficiencies in the comparative statement was it not the responsibility of Secretary concerned as Head of the department to take corrective measures/stop the process? He can't absolved of his responsibility. The inquiry committee should have recorded statements of members of purchase committee/technical committee and thereafter should have analyzed their role in their findings. While responding to the charge at Sr. No. b of the charge sheet the appellant in her reply stated that representative of A&C Department was included to participate in the proceedings of the procurement committee on the verbal advice of SSS (F). Why this fact was not got verified from the Secretary SS to meet the ends of justice? While in reply to charge at Sr. no. d she leveled certain accusations against Mr. Fakhar Alam, Store Keeper and Mr. Muhammad Kamran. It was the duty of the inquiry committee to have recorded their statements, but the ^{report} ~~report~~ was silent on this issue.

6. In addition to this reply furnished to the enquiry committee by the official respondents was also worth perusal. In this reply fingers were pointed out towards Secretary Social Sector (FATA) being responsible for certain lapses. It was quite strange why the Secretary Social Sector not associated with inquiry proceedings?

Was it intentional or otherwise? Fairness demanded that his statement should have been recorded to counter the allegations leveled by the appellant and those contained in the official reply. We apprehend that the appellant was made scapegoat to save the skin of others. Action of the enquiry committee also goes against the spirit of E&D Rules 2011. Firstly statements of all concerned, including Secretary should have been recorded in the presence of the appellant and thereafter opportunity of cross examination should have been given to her. It is a serious departure from the laid down procedure and is sufficient for making the proceedings illegal/unlawful. The inquiry committee also proposed disciplinary action against Mr. Fakhar Alam, Store Keeper and Mr. Rashid Ahmad but during the course of hearing official respondents when confronted on this point were clueless. Similarly, no documentary evidence was produced to substantiate that action against the officials of AGPRs as proposed by the enquiry committee was taken.

7. Another glaring illegality noticed in the impugned order was that no show cause notice was served on the appellant and as such Sub-Rule (1) (4) (c) of Rule-14 of E&D Rules 2011 was violated. Reliance is placed on case law reported as 2005 SCMR 678, the Supreme Court of Pakistan held that "according to the **principle** of natural justice enshrined in "Audi Alteram Partem" is one of the most important principles and its violation is always considered enough to vitiate even most solemn proceedings. Where adverse action^{is} contemplated to be taken against person/persons, he/they would have a right to defend such action, not ~~with~~^{standing to} the fact that the statute governing their rights does not contain provision of the principles of natural justice and even in the absence thereof, it is to be considered as a part of such statute in the interest of justice". In these circumstances, the opportunity of fair trial was not afforded to the appellant and condemned unheard. Similarly no speaking order was passed on the departmental appeal of the appellant. The competent authority

was required under the law/rules to give reasons for rejection of appeal. As such Section-24-A of General Clauses Act was violated.

8. As a sequel to the above, the appeal in hand is accepted and impugned order is set aside. The respondents are directed to conduct de-novo enquiry against the appellant strictly in accordance with the law and conclude the same within a period of ninety days from the date of receipt of this judgment. The issue of back benefits shall be subject to the final outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
31.08.2018

Service Appeal No. 976/2015

29.08.2018

Appellant with counsel and Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments heard. To come up for order on 31.08.2018 before D.B.



(Ahmad Hassan)
Member



(Muhammad Amin Khan Kundi)
Member


31.08.2018

Appellant with counsel and Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments heard and record perused.


Vide our detailed judgment of today placed on file, the appeal in hand is accepted and impugned order is set aside. The respondents are directed to conduct de-novo enquiry against the appellant strictly in accordance with the law and conclude the same within a period of ninety days from the date of receipt of this judgment. The issue of back benefits shall be subject to the final outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

31.08.2018




(AHMAD HASSAN)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

11.06.2018


Learned counsel for the appellant and Mr. Muhammad Jan, learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 01.08.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

01.08.2018


Appellant with counsel and Mr. Ziaullah, Deputy District Attorney for the respondents present. Adjournment requested. Respondents are directed to produce complete inquiry record including the statement of witness recorded during the inquiry process. Adjourned. To come up for record and arguments on 27.08.2018 before D.B.


(Ahmad Hassan)
Member (E)


(Muhammad Hamid Mughal)
Member (J)

27.08.2018


Appellant with counsel and Mr. Kabirullah Khattak, Additional AG for the respondents present. Record mentioned in previous order sheet dated 01.08.2018 not produced by the respondents. Last opportunity is granted to the respondents for production of record. Adjourned. To come up for record and arguments on 29.08.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

12.01.2018

Counsel for the appellant present and Mr. Zia Ullah, DDA for the respondents present. Due to rush of work arguments could not be heard. To come up for arguments on 14.02.2018 before D.B.



Member


Chairman

14.2.2018

Clerk of the counsel for appellant present. Mr. Kabir Ullah Khattak, Additional AG for the respondents present. Counsel for the appellant is not in attendance due to general strike of the, To come up for arguments on 19.03.2018 before D.B.


Member


Chairman

19.03.2018

Appellant absent. Learned counsel for the appellant is also absent. However, junior to learned senior counsel for the appellant present and seeks adjournment. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Adjourned. To come up for arguments on 04.05.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

04.05.2018

The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore, the case is adjourned. To come on 11.06.2018



READER

14.06.2017

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 04.09.2017 before D.B.



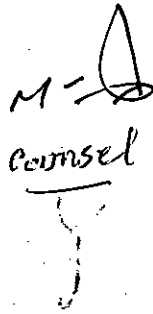
(Muhammad Amin Khan Kundi)
Member



(Gul Zeb Khan)
Member

04.09.2017

Since 4th September, 2017 has been declared as Public Holiday on account of Eid-UI-Azha. Therefore the case is adjourned for the same on 12.10.17 before D.B. Parties be informed accordingly.



Counsel




(Reader)

12.10.2017

Counsel for the appellant and Addl. AG for the respondents present. The learned counsel for the appellant seeks adjournment. Granted. To come up for arguments before the D.B on 12.1.2018.



Member



Chairman


31.05.2016

Counsel for the appellant and Mr. Muhammad Maaz Madni, Assistant for respondents No. 1, 3, 4 and 5 alongwith Addl., AG for the respondents present. Written reply by respondents No. 1, 3 to 5 submitted. Learned Addl. AG relies on the same on behalf of respondent No. 2. The appeal is assigned to D.B for rejoinder and final hearing for 18.10.2016.


Chairman

18.10.2016

Clerk to counsel for the appellant and Addl. AG for respondents present. Rejoinder submitted. To come up for arguments on 15.02.2017.


(ABDUL LATIF)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

15.02.2017

Agent to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Agent to counsel for the appellant requested for adjournment as counsel for the appellant was busy before the Peshawar High Court, Peshawar. Request accepted. To come up for arguments on 14.06.2017 before D.B.


(AHMAD HASSAN)
MEMBER


(ASHFAQUE TAJ)
MEMBER

23.09.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Deputy Director in Population Welfare Directorate FATA when subjected to inquiry on various charges including embezzlement of public money and dismissed from service vide impugned order dated 21.5.2015 regarding which she preferred departmental appeal on 25.5.2015 which was rejected on 10.8.2015 and hence the instant service appeal on 1.9.2015.

That no inquiry whatsoever was conducted in the allegations except charge sheet and statement of allegations and as such the impugned order is against facts and law.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 1.12.2015 before S.B.

Appellant Deposited
Security & Process Fee




Chairman

01.12.2015

Counsel for the appellant and Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 30.3.2016 before S.B.


Chairman

30.03.2016




Agent of counsel for the appellant and Assistant AG for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 31.5.2016 before S.B.


Chairman

FORM-A
FORM OF ORDER SHEET

Court _____

Case No. 976 / 2015

	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	01.09.2015	<p>The appeal of Dr. Lal Zari presented to-day by Mr. Noor Muhammad Khattak, Advocate, may be entered in the institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2.	2-9-15	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>03-9-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	03.09.2015	<p>Agent of counsel for the appellant present. Seeks adjournment. Adjourned to 23.9.2015 for preliminary hearing before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 976 /2015

DR. LAL ZARI

VS

A.C.S. FATA

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	1- 6.
2.	Charge sheet	A	7.
3.	Statement of allegations	B	8- 10.
4.	Reply	C	11- 26.
5.	Impugned Notification	D	27- 29.
6.	Departmental appeal	E	30- 34.
7.	Rejection	F	35.
8.	Vakalat nama	36.

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL No. 976 /2015

E.W.F. Province
Service Tribunal
Entry No. 1021
dated 1-9-15

Dr. Lal Zari, Ex: Deputy Director (BPS-18),
Population Welfare Department FATA, FATA Secretariat,
Warsak Road, Khyber Pakhtunkhwa Peshawar.

..... Appellant

VERSUS

- 1- The Additional Chief Secretary FATA, FATA Secretariat,
Warsak Road, Khyber Pakhtunkhwa Peshawar.
- 2- The Principal Secretary to Governor Khyber Pakhtunkhwa,
Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Social Sectors Department FATA, FATA
Secretariat, Warsak Road, Peshawar.
- 4- The Secretary Finance Department FATA, FATA Secretariat,
Warsak Road, Khyber Pakhtunkhwa Peshawar.
- 5- The Director, Population Welfare Directorate FATA, FATA
Secretariat, Warsak Road, Khyber Pakhtunkhwa Peshawar.

..... Respondents

APPEAL UNDER SECTION- 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED 21-05-2015
WHEREBY MAJOR PENALTY OF DISMISSAL FROM
SERVICE WAS IMPOSED ON THE APPELLANT AND
AGAINST THE APPELLATE ORDER DATED 10.8.2015
WHEREBY THE DEPARTMENTAL APPEAL/REVIEW OF
THE APPELLANT HAS BEEN REJECTED ON NO GOOD
GROUND

PRAYER:

That on acceptance of this appeal the impugned orders dated 21-05-2015 and 10.8.2015 may very kindly be set aside and the respondents may be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:
ON FACTS:

- 1- That the appellant was initially appointed in the Department of Population Welfare FATA as Woman Medical Officer (BPS-17) vide Notification dated 27.7.2006 on the proper

recommendation of Khyber Pakhtunkhwa Public Service Commission.

- 2- That after appointment the appellant submitted her charge report and started performing her duty as Woman Medical Officer (BPS-17) in the Department of population Welfare FATA quite efficiently and up to the entire satisfaction of her superiors.
- 3- That due to excellent record of service and being senior most employee of the population welfare Department FATA, the appellant was promoted to the post of Deputy Director Population Welfare Department FATA on the recommendation of Departmental promotion committee vide Notification dated 02-12-2012.
- 4- That during service as Deputy Director (BPS-18) in the Department of Population Welfare FATA the appellant performed her duty quite efficiently and up to the entire satisfaction of her superiors. That inspite of inexperience to her new job description the appellant performed her duty with all zeal and zest. That it is very pertinent to mention that the appellant was awarded best performance certificate by the then Prime Minister of Pakistan Mr. Yousaf Raza Gilani in the year 2007-08.
- 5- That appellant while serving as Deputy Director Population welfare FATA a charge sheet and statement of allegation were issued to her on the basis of an anonymous/ pseudonymous compliant/ letter. That in the said charge sheet and statement of allegation a plethora of charges/ allegations were leveled against the appellant which are as under:
 - (i)- While procuring medicines of millions of rupees you violated the procurement policy of Government of Pakistan PPRA.
 - (ii)- You added an extra member in purchase committee without approval and did not obtain signature on each page of the comparative statement from the members of purchase committee. Constituted technical committee of non technical persons.
 - (iii) You nominated Dr. Rooh Ullah WMO Khyber dated 17.5.2013 but obtained signature from dr. Naila Wadood AD PWD on comparative statement of purchase committee without lawful authority.

- (iv) Failed to maintained proper store record as per instruction contain at Para 148, 149, 151 & 152 GFR.
- (v) Received misbranded medicine in term of drug labeling packing Rule 1956 & Section 23 of Drug Act 1976.
- (vi) Violated TOR No.4 of tender by entering into an agreement with the suppliers and depositing 10% amount as security from the successful bidders.
- (vii) Received millions of Rupees from state Bank in cash and made cash payment to the suppliers before completion of delivery.
- (viii) Violated Para 117 CPWD code and Para 6.51 a Hand Book for DDO 2003 and made payment before obtain report from Drug testing laboratory of Khyber Pakhtunkhwa.
- (ix) Ignoring MMC List and made purchase from unknown companies and violated the instructions of Government of Khyber Pakhtunkhwa.
- (x) Violated office procedure as per Para 35 C and 38 of the secretariat manual by submitting file to higher authority.
- (xi) That you purchased the 10 numbers of medicines which have been declared sub standard/ spurious and manufacturer of some of which are unknown in which food supplements is in bulk.
- (xii) Made procurement of millions of rupees by giving tender to family members and extended undue favor and give benefits to nears and dears. Copies of Charge Sheet, Statement of allegations are attached as annexure **A & B.**

6- That in response to the above mentioned plethora of baseless allegations/ charges the appellant submitted her reply in detail along with documentary evidence and denied the allegations which have been leveled against her. Copy of reply is attached as annexure **C.**

7- That inspite of clarifying her position with documentary proofs the respondents issued the impugned Notification vide dated 21.5.2015 whereby major penalty of Dismissal from service was imposed on the appellant without conducting fact finding and regular Departmental inquiries in the matter. Copy of impugned Notification is attached as annexure **D.**

- 8- That appellant feeling aggrieved from the impugned Notification dated 21.5.2015 issued by the respondents filed Departmental appeal/ review but the same was rejected on good grounds vide dated 10.8.2015. Copies of Departmental appeal/ review and rejection order are attached as annexure **E and F.**
- 9- That appellant having no other remedy filed the instant appeal on the following grounds amongst the other.

GROUND:

- A- That the impugned Notifications dated 21.5.2015 and 10.8.2015 issued by the respondents are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondents in accordance with law and Rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Pakistan 1973 while issuing the impugned Notifications dated 21.5.2015 and 10.8.2015.
- C- That the procurement committee was constituted under the chairmanship of Secretary Social Sector Department FATA i.e. respondent No.3 along with seven members including the appellant meaning thereby that all the members are equally responsible for the irregularities/ flaws if any in the proceedings but in this case the appellant have been made scape goat to save the skin of high ups who are actually responsible for the said irregularities/ flaws.
- D- That before the separation of the population Welfare Department FATA from the Health Directorate of FATA the purchase of medicines for the population welfare Department were used to be made by the Health Department as this Department by the FATA secretariat was administratively attached to that Department but after separation it was for the first time that the procurement of medicines for population welfare set up was made by the population welfare Directorate meaning thereby that all the members of the procurement committee were inexperienced except the Secretary Social sector. That it was the sole responsibility of the high ups to nominate the well experienced members for the procurement committee.
- E- That in the whole case the respondents has been failed to prove/ establish any of the allegations against the appellant but inspite of that respondent Department issued the impugned Notification dated 21.5.2015 against the appellant

in violation of the principle of natural justice.

- F- That the comparative list prepared by the purchase committee, the specification and quantification of the medicines as per requirement of the various agencies and recommendations for issuance of the supply order was the domain of technical committee and the appellant does not come within the picture of this entire process.
- G- That the action has been taken by the respondent Department against the appellant on the basis of an anonymous/ pseudonymous letter. That according to the Establishment Code an anonymous/ pseudonymous complaint/ letter if any received against the civil servant should straight away be thrown in to the dust bin and no action should be taken on such like complaints but in this case the appellant has been severely punished by imposing major penalty of Dismissal from service.
- H- That the appellant has been discriminated by the respondent Department because the high ups who are actually responsible for the irregularities have been exonerated but the appellant has been made scape goat without any fault on her part.
- I- That no fact finding inquiry has been conducted in the matter which is mandatory before the initiation of Departmental inquiry against the civil servant.
- J- That no opportunity of cross examination has been provided to the appellant and as such all the proceedings have been conducted and finalized at the back of appellant.
- K- That no regular inquiry has been conducted before issuing the impugned Notification dated 21.5.2015 against the appellant which is as per Supreme Court Judgments is necessary/ compulsory in punitive actions against the appellant.
- L- That the appellant seeks permission to advance other 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.

Dated:31.8.2015

APPELLANT

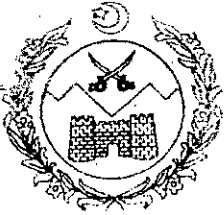
Lal Zari

Dr. LAL ZARI

THROUGH:

Noor Mohammad Khattak

NOOR MOHAMMAD KHATTAK
ADVOCATE



A-7

CHARGE SHEET

I, Engineer Shaukat Ullah as competent authority, hereby charge you, *Dr. Lal Zari Deputy Director Population Welfare Directorate FATA Secretariat, Peshawar* as following.

1. That you, while posted as Deputy Director Population Welfare Directorate FATA committed the following irregularities in procurement process during Financial Year 2012-13.
 - a) While procuring medicines of millions of rupees you violated the Procurement Policy of Government of Pakistan of PPRA Rule 12 Sub para 1 & 2, Rule 22 Para 1 & 2, Rule 28, Rule 31 & Rule 39.
 - b) Increased member of purchase committee without approval and did not obtain signature on each page of the comparative statement from the members of Purchase Committee. Constituted Technical Committees of non-technical persons.
 - c) You nominated Dr. Rooh-ul-Ala WMO Khyber vide letter No. F.No1(1)/2012-13 POP/7761-65 dated 17-05-2013 but obtained signature from Dr. Naila Wadood AD PWD on comparative statement of purchase committee without lawful authority.
 - d) Failed to maintain proper store record as per instructions contain at Para 148, 149, 151 & 152 of GFR.
 - e) Received misbranded medicines in term of Drug Labeling Packing Rule 1956 & Section 23(1) a iii Drug Act 1976.
 - f) Violated ToR No. 4 of Tender by not entering into an agreement with the suppliers and depositing 10% amount as security from the successful bidders.
 - g) Received millions of rupees from State Bank in cash and made cash payment to the suppliers before completion of delivery. (Delivery not yet completed).
 - h) Violated Para 117 CPWD Code and Para 6.51 a Hand Book for DDO 2003 and made payment before obtaining report from Drug Testing Laboratory of Khyber Pakhtunkhwa.
 - i) Ignoring MCC List and made purchase from unknown companies and violated the instruction / Notification of Government of Khyber Pakhtunkhwa void No. 1676-1926/MCC dated 22-12-2011.

ATTESTED

Governer

Peshawar



A SECRETARIAT
PLANNING & CO-ORDINATION DEPARTMENT
KARSAK ROAD, PESHAWAR

B-8

DISCIPLINARY ACTION

I, Engineer Shaukat Ullah as competent authority, am of the opinion that Dr. Lal Zari Deputy Director Population Welfare Directorate FATA Secretariat, Peshawar has rendered himself liable to be proceeded against, as she committed the following acts / omissions, within the meaning of rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS.

That you, while posted as Deputy Director Population Welfare Directorate FATA committed the following irregularities in procurement process during Financial Year 2012-13.

- m) While procuring huge medicines worth of millions of rupees you violated the Procurement Policy of Government of Pakistan of PPRA Rule 12 Sub Para 1 & 2, Rule 22 Para 1 & 2, Rule 28, Rule 31 & Rule 39 and other relevant rules for the purpose.
- n) Increased members of the purchase committee without approval of the competent authority and did not obtain signature on each page of the comparative statement from the members of Purchase Committee as required. Constituted Technical Committees of non-technical persons unnecessarily.
- o) You nominated Dr. Rooh-ul-Ala WMO Khyber vide letter No. F.No1 (1)/2012-13 POP/7761-65 dated 17-05-2013 but obtained signature from Dr. Naila Wadood AD PWD on comparative statement of purchase committee in lieu of Dr. Rooh-ul-Ala.
- p) Failed to maintain proper store record required under Paras 148, 149, 151 & 152 of GFR.
- q) Received misbranded medicines in term of Drug Labeling Packing Rule 1956 & Section 23(1) a iii Drug Act 1976.
- r) Violated NIT TOR No. 4 of Tender by not entering into an agreement with the suppliers and depositing 10% amount as security from the successful bidders which was essential.

ATTESTED

[Handwritten signature]

Chief Secretary, Khyber Pakhtunkhwa

[Handwritten signature]

Additional Secretary FATA
Additional Officer 07502-14
FATA Secretariat
Peshawar.

[Handwritten signature]

9

- s) Received millions of rupees from State Bank in cash and made cash payment to the suppliers before completion of delivery (Delivery not yet completed) against the rules.
- t) Violated Para 117 CPWD Code and Para No. 6.51 of (A) Hand Book for DDO 2003 and also made payment before obtaining report from Drug Testing Laboratory of Khyber Pakhtunkhwa.
- u) Ignored MCC List and made purchases from unknown companies and violated the instructions / Notification of Government of Khyber Pakhtunkhwa vide No. 1676-1926/MCC dated 22-12-2011.
- v) Violated office procedure as per Para 35C and 38 of the Secretariat, Manual by passing higher officer and submitting file to higher authority (Secretary) directly.
- w) That you purchased the following 10 No's medicines which have been declared sub-standard / spurious and manufacturer of some of which are in bulk unknown in which food supplements.
- xi. Capsules Active C, B.No. Nil.
 - xii. Tablets Ascorbic Acid, B. No. 725.
 - xiii. Tablets Rumin 400mg, B. No. 1111.
 - xiv. Infusion Azogyl, B. No. SL 04.
 - xv. Tablets Folic Acid 5mg, B. No. 41
 - xvi. Tablets Biprim-DS, B. No. 276.
 - xvii. Tablets Rumin-400 (ANKAZ Pharmex Pvt. Ltd.
 - xviii. Inj. Diazepam (S,J&G Fazal Elahi, Pvt. Karachi).
 - xix. Inj. Dexone (Uni-Tech Pharmaceutical Pvt. Ltd. Karachi, Pakistan).
 - xx. Food Supplement (Milko Max).
- x) Made procurement of Millions of rupees by recommending tender of family members and extended undue favor and give benefits to near and dears.

2. For the purpose of inquiry against the said accused with reference to the above allegations / inquiry committee, consisting of the following, is constituted under rule 10(a) of the ibid rules:-

- i. Mr. Zahid Shah
- ii. Dr. Muhammad Naveed

ATTESTED

[Signature]

Resnawar.

[Signature]



10

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

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

Competent Authority.

Governor
Kerala

ATTESTED
[Signature]

Governer

[Signature]
7/2

C - (11)

To: **The Enquiry Committee.**

1. Mr. Sikandar Qayyum ,
Secretary Finance Department, FATA Secretariat.
2. Mr. Shakeel Qadir Khan,
Secretary Law & Order, FATA Secretariat.

Subject:- REPLY TO THE CHARGE SHEET / STATEMENT OF ALLEGATIONS

Sir,

Kindly refer to the order No. PS/FS/FATA/1-7/Inq:File/2014 dated 21-10-2014, received by the undersigned on 21-10-2014 from the office of the Secretary AI&C, FATA Secretariat, Peshawar alongwith charge sheet & statement of allegations.

Before responding to the specific charges, the undersigned submits the following points for perusal / information and consideration of the Enquiry Committee:-

- (1) Previously the purchase of medicines for the Population Welfare Department were used to be made by the Health Department as this department of the FATA Secretariat was administratively attached to that department. After separation of this department from the Health Directorate of FATA, it was for the first time that the procurement of medicines for Population Welfare setup was made by the Population Welfare Directorate.
- (2) The involvement / participation in the entire procurement proceedings was very meagre as the undersigned in the capacity of Deputy Director, PWD was only a member of the Procurement Committee comprising of the following:-

i	Secretary Social Sector Department FATA	Chairman
ii	Representative of (Admn & Co-ord) Deptt:	Member
iii	Representative of Finance Deptt: FATA	Member
iv	Representative of P&D Deptt: FATA	Member
v	Deputy Director, PWD FATA (The undersigned)	Member
vi	Assistant Director (Med) PWD FATA	Member
vii	APWO (North Waziristan) Agency PWD FATA	Member
viii	APWD Bajaur PWD FATA	Member

Attested
[Signature]

It is evident that in the 8 members Procurement Committee, the undersigned was a member but she has been singled out for disciplinary action for the allegations never committed by her, if at all there were certain flaws / irregularities in the proceedings, the committee is collectively responsible for it not only a member thereof which is a discriminative treatment under the law against the canons of justice & equity.

- ✓(3) A technical committee was constituted by the Competent Authority with the following TOR:-
 - a. Selection of the item as required per agency.
 - b. Quantification of the item per agency and total.
 - c. Asking the lowest bidders to produce their sample.
 - d. Approval of the sample and recommendation to issue supply order.
 - e. Once the supply is completed the items will be verified by the same committee; per supply order and specification.
 - f. Submission of final report.

3. As such from the comparative list prepared by the purchase committee, the specification and quantification of the medicines as per requirement of the various Agencies and recommendations for issuance of the supply order was the domain of technical committee as cited above and the undersigned does not come within picture in this entire process except as one of the 8 members purchase committee.

4. It is pertinent to mention at this juncture that the entire proceedings of this inquiry were initiated in response to a baseless anonymous complaint that led to an unauthorized raid of AC Peshawar on the store of Population welfare FATA in August 2013. Many anonymous letters were also submitted against the undersigned with the sole intention of blackmailing and pressuring the respondent, the proof of which was submitted in the form of CDs to the then concerned quarters such as ACS FATA, Secretary Social Sector FATA and members of first preliminary committee but no attention was paid to them.

✓5. In spite of several written requests for provision of certain documents required for drafting this reply, the undersigned has just been provided with the second preliminary enquiry report on the enquiry of MISBRANDED DRUGS. Furthermore the undersigned

Attested
SP.

has also been deprived of access to some personal documents lying in the office of Population welfare directorate, which could help me draft this reply.

However, replies to the charges are given below in seriatum in annotated form:-

Charge		Reply	
(a)	While procuring medicines of millions of rupees you violated the Procurement Policy of Govt of Pakistan of PPRA Rule 12 Sub para 1&2, Rule 22 para 1&2, Rule 28, Rule 39	(a)	It may be mentioned that the PPRA ordinance 2002 has not yet been extended to FATA as required under Article-247 (3) of the constitution of Islamic Republic of Pakistan 1973 and as such not legally applicable to the affairs of FATA. However it is on record that proper advertisement was sent to Information Department of FATA Secretariat (Annex- 1_) which was duly floated in the news papers. If the tender requires uploading in PAPRA system. It is the responsibility of Director Information FATA for such up loading the same (Annex- 11_) The bids were received in sealed envelopes and there was no ambiguity of its confidentially neither any of the bidders made objection on the sealed bids at the time of its opening. The bids were opened under the directives of the competent authority i.e. Secretary (SSD) (Annex- 111_) in presence of Representative of Finance Department FATA and Administration Infrastructure & Coordination Department in the office of Deputy Sec (Admin). Minutes of tender opening were submitted to the



Attested
M. J.

Charge	Reply
	<p>competent authority i.e. Secretary SSD and was approved by the Secretary SSD and approval was granted for further processing the purchase process (Annex-IV).</p> <p>It is further submitted that it is the duty of all members of purchase committee and its Chairman to ENSURE observance of rules at all levels. The members who opened the bids, have duly signed each paper of bid have also signed last page of the comparative statement (Annex-V). These honorable members are all well experienced on the subject and no one raised any objection in this regard. It is further added that This was first ever tender experienced of the undersigned and I have tried to observe/follow rules to the best of my abilities and knowledge. The presence of other senior officers including Secretary SSD in the process reveals that the process was transparent and was above any doubt. Thus none of the rules as mentioned in Para 1(a) of the allegation has been violated but implemented in letter and spirit and as such the charge is unfounded, baseless and the undersigned cannot be held responsible for violation thereof as mentioned in the charge sheet.</p>

Attested
[Signature]

Charge	Reply
<p>(b) Increased member of purchase committee without approval and did not obtain signature on each page of the comparative statement from the members of Purchase Committee. Constituted Technical Committee of non-technical persons.</p> <p style="text-align: center;">copy.</p>	<p>(b) a The undersigned has not increased the membership of the committee. However, the representative of A&C Departmental was invited to participate in the bedding process as a co-opted member as required under the relevant notification for constitution of the Procurement Committee. <u>The inclusion was made on verbal advice of Secretary Social Sector (Annex-VI) Dept:</u> As such, the inclusion of this member has not played any negative role rather enhanced the competency of the committee. All the committee members have signed the last page of the comparative statement, which means that they were satisfied / agreed with all entries of the statement. Moreover the undersigned has not <i>constituted</i> any technical committee of non-technical persons as per PC-I (Annex- V11) Population Welfare Program FATA, the Family Welfare Workers/LHV cadre is technical whereas Family Welfare Assistants are the skilled work force (with the knowledge of family planning). Both technical and skill workforce can prescribe and or dispense general medicines, food supplements and contraceptives for certain general health problems to the target population according to their job descriptions</p>

Attested
G.

Charge	Reply
	<p>mentioned in PC-1. Since the medicines purchased will be prescribed by this technical work and skilled workforce force therefore their inclusion in the technical committee is logical. However, it is pertinent to mention here that Assistant Director Medical/Technical who is a medical doctor chairs this technical committee. Thirdly there is no bar on second specialized committee for verifying supplies and determining the requirement of the directorate. They rather assisted the Purchase committee during the procurement process. <u>Constituting of Technical Committee</u> was approved by the Competent Authority i.e. Secretary (SSD) in the public interest (Annex-VIII), And All the members were technical and professional in the field of population welfare.</p>
<p>(c) You nominated Dr. Rooh-ul-Ala WMO Khyber vide letter No.F.No.(1)/2012-13 POP/7761-65 dated 17-05-2013 but obtained signature from Dr. Naila Wadood AD PWD on comparative statement of purchase committee without lawful</p>	<p>(c) The nominated member of the purchase committee was Dr. Rooh-ul-Ala, WMO Khyber Agency whereas she did not attend the meeting because she sent telephone message that she would not be able to attend due to illness therefore another technical officer of the same category but senior in rank (Assistant Director population welfare) who was</p>

Attested
Q.

Charge	Reply
authority.	already notified as member/ secretary of the Population Welfare Program FATA purchase committees up to 1.5m and above 1.5 m (Annex-1X), was asked to be part of this purchase committee Therefore the charge of obtaining signature from Asstt: Director (Med) PWD Dr. Naila Wadood without lawful authority is contrary to facts. It is further submitted that instead of decreasing the member of technical members, a more relevant officer was included in the process. In case, her participation was anyway against any law or exigency of services, the Purchase Committee, or the chairman would have raised objection on it, which was not done by any. The charge is therefore unfounded and may be dropped.
(d) Failed to maintain proper store record as per instructions contained at Para 148, 149, 151&152 of GFR.	(d) The stock of medicines was properly supplied by the lowest bidder except two minor items but despite the repeated verbal and written advice to the concerned storekeeper namely <u>Mr.</u> Fakhle-Alam to take the received items on Stock Register as the same were properly examined counted and evaluated by the technical committee constituted for the purpose (Annex-X). The Storekeeper failed in doing the needful due to which he was suspended by the

Attested
[Signature]

Charge	Reply
	<p>Competent Authority vide order No.SO(SSD)FS/5-1/2012-13/5253-60 dated 3/9/2012 (Annex- X1) for the same charge on the report of the undersigned. However, the responsibility was assigned to Mr. Muhammad Kamran, (Annex-X11) who consequently took the stock of medicine on stock register accordingly and as such no instructions contained in Rule-148 of GFR have been violated. As for Rule-149 is regarding issuance of stores which is not relevant in the case at this stage as no items of the procured medicines have so far been issued / distributed from the main stores and agency stores to the service delivery outlets. Rule-151&152 have also not been deviated from as the goods are safely stocked in the store and accounts thereof shall be properly maintained as and when the stage of issuance / distribution to the service delivery outlets comes.</p>
<p>(e) Received misbranded medicines in term of Drug Labeling packing Rule 1956 & Section 23(1) a iii Drug Act 1976.</p>	<p>(e) No misbranded or the unbranded medicines have been received in stock by the storekeeper.</p> <p>However, all the medicines received by the storekeeper were properly branded and contained proper branded name, proportionate ingredients and name/ address of the manufacturing pharmaceutical firms. However, some of</p>

Attested
G.

Charge	Reply
	<p>the items had not been labeled as "Not for Sale" as pointed out by the technical committee while scrutinizing the stock. The undersigned therefore asked the supplier concerned vide letter No.2(1)/2013-14/POP/8423 dated 4/7/2013 (Annex-X111) for the needful and he brought requisite stamp & pad and informed the department accordingly but by then the store was sealed and the needful could not be done. The supplier concerned had also recorded his statement before the committee and committed to do the needful but due to the instant enquiry proceedings, the same cannot be done so far. However, it may be pointed out that since no issue / distribution has so far been made from the said stock, so no harm or financial loss has been incurred to the department, hence the charge has no locus standii and the undersigned has committed no wrong in this regard.</p>
<p>(f) Violated TOR No.4 of Tender by not entering into an agreement with the suppliers and depositing 10% amount as security from the successful bidders.</p>	<p>(f) No doubt that proper 10% security was not deposited by the successful bidder before supply. however, a security despite of Rs. 0.100 (Million) was already made by the supplier and the supply was also made in time by him, hence no loss has been sustained by the Govt exchequer. Moreover, it was not the</p>

Attested
[Signature]

Charge	Reply
	<p>exclusive responsibility of the undersigned to check each & every minutest details of the procured items. Specific responsibility was also assigned to the properly technical committee and account section on whose recommendations the supply orders were issued.</p>
<p>(g) Received millions of rupess from State Bank in cash and made cash payment to the suppliers before completion of delivery. (Delivery not yet completed).</p>	<p>(g) It may be pointed out that all the bills of the procured items were prepared in the names of the concerned vendors and submitted to the sub office of AGPR, Pakistan (Annex-XIV). However, the AGPR issued the cheques in the name of the DDO concerned. It was not only made by the AGPR in case of PWD but all other Deptts were also dealt with in the same manner probably AGPR sub office itself. As such the cheques issued in the name of the DDO is not a wrong practice on the part of the Deptt but, if it may be considered an irregularity, it was committed by the sub office of AGPR, Peshawar and not by the DDO. As DDO the undersigned had submitted bills on 15th of June in the name of Vendors, however the bills were passed on 29th of June and cheques were issued in late afternoon. Since the following day was Sunday and Monday July 1st was a bank holiday, therefore the undersigned could</p>

Attested


Charge	Reply
	<p>not return cheques issued in the name of DDO because the budget would have lapsed for which the undersigned would have been held responsible. So the undersigned was in a tight situation and acted only in the best interest of the department.</p> <p>Since the supply was mostly completed except some minor items, which were promised by the suppliers to be made shortly, and the amount was ignorable keeping in view the quantum of supplied items, the account office therefore made payment to the supplier (Annex-XV), as the government money could not be retained beyond 3 days as per the procedural requirements.</p>
<p>(h) Violated Para 117 CPWD Code and para 6.51 a Hand Book for DDO 2003 and made payment before obtaining report from Drug Testing Laboratory of Khyber Pakhtunkhwa.</p>	<p>(h) It may be clarified to the best of my knowledge that in the context of both Para 117 CPWD Code and Para 6.51 a Handbook of DDO2003 it is not mentioned that payments shall only be made after receiving report from Drug Testing Laboratory of Khyber Pakhtunkhwa. However the reports of Drug Testing Laboratory were duly obtained on the medicines supplied in the instant case (Annex-XVI), However, all other aspects of the quality accuracy and good conditions of the supplied items also scrutinized by the concerned</p>

Attested
[Signature]


Charge		Reply	
			technical committee constituted for the purpose before sending bills to the Audit Office. As such, no irregularity / illegality were made in this case.
(i)	Ignoring MCC List and made purchase from unknown companies and violated the instruction /Notification of Govt of Khyber Pakhtunkhwa vide No.1676-1926/MCC dated 22-12-2011	(i)	The list of the firms notified by the Director General, Health Services Khyber Pakhtunkhwa is not mandatory under the law unless all other formalities for pre-qualification of the manufactures/suppliers are fulfilled as per the specific verdict of the judicial authorities. Moreover, the MCC list is initially meant for the Medical and Health Institutions under the administrative control of Director General Health Services Khyber Pakhtunkhwa and not automatically applicable to the FATA sectors unless properly adapted by the Competent Authority, whereas the same has not so far been adapted in FATA.
(j)	Violated office procedure as per para 35C and 38 of the Secretariat. Manual (KPK) by submitting file to higher authority (Secretary) directly.	(j)	The undersigned is of the opinion that all heads of the departments are supposed to address correspondence / submit cases direct to the Administrative Secretary concerned. The Secretary of the Department may at his discretions either accord sanction to the proposal submitted to him or mark the case / correspondence to his lower functionaries in the department for examination and

Attested

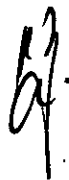

Charge	Reply
	<p>submission their opinion (if any) to the secretary concerned.</p> <p>However, about all the cases, it was the verbal directives of Secretary social sectors that all cases shall be submitted through Deputy Secretary and therefore the undersigned used to submit the files to Deputy Secretary and not to the Secretary directly (already at Annex-1). But in cases wherein the position of the Secretary is directly notified as Chairman, as in the instant case being Chairman of the Purchase Committee, the undersigned as Secretary of the said committee was required to submit the recommendations, minutes, comparative lists of bidders or similar other reports direct to the Chairman of the committee not his capacity as Administrative Secretary. As such no hierarchical channel has been by passed by the undersigned.</p>
<p>(k) That you purchased the following 10 No's medicines which have been declared sub-standard / spurious and manufacturer of some of which are unknown in which food supplements is in bulk.</p> <p>i. Capsules Active C, B No. Nil ii. Tablets Ascorbic Acid.</p>	<p>(k) In this connection it may be brought into your kind notice that the supplier concerned is committed under a written agreement with the department (Annex-xvii) to the effect that the drugs supplied by him, if found, not satisfactory at any stage, will be replaced. If the 10 items amongs the total 78 supplied were found sub standard / spurious by the</p>

Attested
Sp.

Charge	Reply
<p>B.No725.</p> <p>iii. Tablets Rumin 400mg. B.No.1111.</p> <p>iv. Infusion Azogyl, B.No.SL 04.</p> <p>v. Tablets Folic Acid 5mg. B.No41</p> <p>vi. Tablets Biprim-DS. B.No276.</p> <p>vii. Tablets Rumin-400 (ANKAZ Phramex Pvt Ltd.</p> <p>viii. Inj. Diazepam (S.J&G Fazal Elahi, Pvt. Karachi).</p> <p>ix. Inj. Dexone (Un-Tech Phrmaceutical Pvt. Ltd. Karachi, Pak).</p> <p>x. Food Supplement (Milko Max).</p>	<p>preliminary enquiry committee, these can be replaced without a slightest hindrance but since then the drugs in questions have been sealed by the committee. Though the supplier is not manufacturer of the supplied drugs, yet he is duty bound to replace any substandard or spurious items therein as per warranty given by him (Annex-XV111). Furthermore, the undersigned is aware of the following drug reports</p> <p>a) Submitted by Provincial Drug Inspector District Health Officer Peshawar dated 24/09/2014 declaring the following drugs as Substandard</p> <ol style="list-style-type: none">1. Folic Acid2. Pyodine Solution3. Oxytetracycline4. Adrenaline <p>and declaring Tablets Rumin 400mg as Spurious.</p> <p>b) Certificate of Test or Analysis by the Drugs Testing laboratory/Government Analyst dated 18/12/2013 TRA No 31426/DTL, declaring the following drugs as substandard</p> <ol style="list-style-type: none">1) Folic Acid2) Ascorbic Acid

Attested


Charge		Reply	
			<p>while declaring Tab Rumin 400 mg as Spurious. However contrary to Provincial Drug Inspector DHO Peshawar, this report has declared OXYTETRACYCLINE as Standard which clearly shows discrepancy among the two reports. Moreover, it has come to the knowledge of the undersigned that codal formalities were not fulfilled during sample collection.</p>
1.	<p>Made procurement of millions of rupees by giving tender to family members and extended undue favour and give benefit to nears and dears.</p>	1.	<p>The constitution of Islamic Republic 1973 guarantees fundamental right to every citizen. There is no bar in law that relative of an officer is prohibited to participate in lawful activities i.e. participating in bids etc being Pakistani citizen. It may be submitted that the tenders were floated in daily Newspapers and all eligible supplier were at their liberty to submit tenders / offers in response of the advertisements as. The undersigned has never recommended any of her relative for the supply of the items in questions M/S Wajid &Co. is a registered supplier having NTN number (Annex-XIX) and valid license holder to sell, stock and exhibit for sale and distribute drugs by way of whole sale (Annex-XX). As such he was entitled to participate in the bidding proceedings and</p>

Attested


Charge	Reply
	<p>he could not be ousted from the process on any ground. Besides, The undersigned has no relation with him. He was approved as the lowest rate bidder by the Purchase Committee and not by the undersigned. It is further clarified that the undersigned has neither extended any undue favour to any near nor given any benefit to any dear. The aforesaid charge is, therefore baseless and malicious and there, may be dropped.</p>

4. In view of the position explained above, it is crystal clear that all the charges/ allegations contained in the charge sheet and statement of allegations are incorrect, baseless and based on malafide intention. I therefore request your kind honour that :-

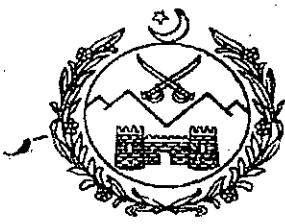
- a) Since all the medicines are time bounded, therefore the department may be allowed to
 - (i) Ask the supplier to replace the spurious drugs (if any) in time and;
 - (ii) Distribute/issue the medicines for the treatment of the patients by the concerned quarters in the best interest of the public as well as to avoid expiry of the drugs.
- b) The charges/ allegations leveled against me may kindly be set aside and the undersigned may be exonerated of these charges.
- c) The undersigned may be allowed to be heard in person to clarify the position further if required.

Your's obediently,

Dated-27/10/2014

Attested
[Signature]

(Dr. LAL ZARI)
Deputy Director, PWD
FATA Secretariat



FATA SECRETARIAT
(SOCIAL SECTORS DEPARTMENT)
WARSAK ROAD PESHAWAR

D (27)

NOTIFICATION:-

No.FS/SSDI/6699-708.

WHEREAS, Dr. Lal Zari (BS-18) Deputy Director Population Welfare (FATA) was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 in inquiry captioned, "Purchase of Misbranded and Spurious Medicines" for the Directorate.

2- She was placed under suspension vide Notification No.400-5 dated 18-02-2014 and served with Charge Sheet and Statement of Allegations vide letter bearing No.FS/E/100-98 (Inq-Medicines)/15910-12 dated 17-10-2014.

3- **AND WHEREAS**, an Inquiry was conducted by a Committee comprising Mr. Sikander Qayyum (PAS BS-20) Secretary Finance Department FATA Secretariat and Mr. Shakeel Qadir Khan (PAS BS-19) Secretary Law & Order Department FATA Secretariat vide Administration, Infrastructure & Coordination Department FATA Secretariat letter No.FS/E/100-98 (Inq-Medicines)/15913-15 dated 17-10-2014 to enquire into charges levelled against her. The charges as provided for in the Charge Sheet and Statement of Allegations are as under:-

S.No of Charge	Text of Charge
(a)	While procuring medicines of millions of rupees you violated the Procurement Policy of Government of Pakistan of PPRA Rule 12 Sub para 1 & 2, Rule 22 Para 1 & 2, Rule 28, Rule 31 & Rule 39.
(b)	She added an extra member in purchase committee without approval and did not obtain signature on each page of the comparative statement from the members of Purchase Committee. Constituted Technical Committees of non-technical persons.
(c)	You nominated Dr. Rooh-ul-Ala WMO Khyber vide letter No. F.No1(1)/2012-13 POP/7761-65 dated 17-05-2013 but obtained signature from Dr. Naila Wadood AD PWD on comparative statement of purchase committee without lawful authority.
(d)	Failed to maintain proper store record as per instructions contained at Para 148, 149, 151 & 152 of GFR.
(e)	Received misbranded medicines in term of Drug Labeling Packing Rule 1956 & Section 23(1) a iii Drug Act 1976.
(f)	Violated ToR No. 4 of Tender by not entering into an agreement with the suppliers and depositing 10% amount as security from the successful bidders.
(g)	Received millions of rupees from State Bank in cash and made cash payment to the suppliers before completion of delivery. (Delivery not yet completed).
(h)	Violated Para 117 CPWD Code and Para 6.51 a Hand Book for DDO 2003 and made payment before obtaining report from Drug Testing Laboratory of Khyber Pakhtunkhwa.
(i)	Ignoring MCC List and made purchase from unknown companies and violated the instruction / Notification of Government of Khyber Pakhtunkhwa vide No. 1676-1926/MCC dated 22-12-2011.
(j)	Violated office procedure as per para 35C and 38 of the Secretariat, Manual (Khyber Pakhtunkhwa) by submitting file to higher authority (Secretary) directly.

ATTESTED

S.No of Charge	Text of Charge
(k)	That you purchased the following 10 No's medicines which have been declared sub-standard / spurious and manufacturer of some of which are unknown in which food supplements is in bulk. i. Capsules Active C, B.No. Nil. ii. Tablets Ascorbic Acid, B. No. 725. iii. Tablets Rumin 400mg, B. No. 1111. iv. Infusion Azogyl, B. No. SL 04. v. Tablets Folic Acid 5mg, B. No. 41 vi. Tablets Biprim-DS, B. No. 276. vii. Tablets Rumin-400 (ANKAZ Pharmex Pvt. Ltd. viii. Inj. Diazepam (S,J&G Fazal Elahi, Pvt. Karachi). ix. Inj. Dexone (Uni-Tech Pharmaceutical Pvt. Ltd. Karachi, Pakistan). x. Food Supplement (Milko Max).
(l)	Made procurement of Millions of rupees by giving tender to family members and extended undue favour and give benefit to nears and dears.

4- The Inquiry Committee finalized its report and determined the following charges as proved:-

S.No of Charges	Text of Charges Proved
(b)	She added an extra member in purchase committee without approval. She did not obtain signature on each page of the comparative statement from the members of Purchase Committee and constituted technical committee of non-technical members.
(c)	She nominated Dr. Rooh-ul-Ala Woman Medical Officer Khyber Agency as member but obtained signature from Dr. Naila Wadood Assistant Director on comparative statement of purchase committee without lawful authority.
(e)	She received misbranded medicines in term of Drug Labeling Packing Rule 1956 & Section 23(1) a iii Drug Act 1976.
(f)	She violated TOR No.4 of Tender by not entering into an agreement with the suppliers and depositing 10% amount as security from the successful bidder.
(g)	She received millions of rupees from State Bank in cash and made cash payment to the supplier before completion of delivery of medicines.
(l)	Made procurement of Millions of rupees by giving tender to family members and extended undue favour and give benefit to near and dears.
(a) Partially Proved	Violation of Procurement Policy of Government of Pakistan of PPRA Rule.
(K) Partially proved	Declaration of 4/5 medicines being food supplements as sub-standard/spurious.

5- The Report was submitted to the Competent Authority (Governor Khyber Pakhtunkhwa) who after perusal and examination of the Inquiry Report as well as giving opportunity of Personal Hearing to the said Deputy Director on 14-05-2015 to defend herself/comment on the findings of the report (already communicated to her in writing). She failed to defend the allegations.

6- In exercise of powers as Appointing/Competent Authority vide Notification No.FS/C-II/52-1/4192-4202 dated 20-08-2010, the Governor Khyber Pakhtunkhwa in his capacity as the Competent Authority, on the basis of inquiry has imposed the major penalty of **Dismissal from Service** on the accused officer under Rule-4 (b)-(iv) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.

ATTESTED

7- Foregoing in view the above, Dr. Lal Zari (BS-18) Deputy Director Population Welfare Officer (FATA) is "Dismissed from Service" with immediate effect.

**By the Orders of Governor Khyber Pakhtunkhwa
(COMPETENT AUTHORITY)**

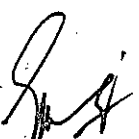
Dated 21 /5/2015

Copy to:-

1. Military Secretary to Governor Khyber Pakhtunkhwa
2. Principal Secretary to Governor Khyber Pakhtunkhwa
3. Secretary A,I&C Department FATA Secretariat
4. Director Health Services (FATA)
5. ✓ Additional Accountant General (PR) Sub Office Peshawar
6. Deputy Director Population Welfare (FATA)
7. Section Officer (Estab), A,I&C Department FATA Secretariat
8. All Agency Population Welfare Officers
9. PS to Additional Chief Secretary FATA Secretariat
10. Individual concerned

Secretary Social Sectors (FATA)

ATTESTED



To,

E - 30

The Honorable Governor Khyber Pakhtunkhwa,
Peshawar.

(through proper channel)

**SUBJECT: REVIEW/ DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED ORDER DATED 21.5.2015 WHEREBY
MAJOR PENALTY OF DISMISSAL FROM SERVICE
WAS IMPOSED ON THE APPELLANT**

R.SHEWETH:

Most humbly appellant begs to submit as under:

ON FACTS:

- 1- That the appellant was initially inducted/ appointed in the Department of Population Welfare FATA as Woman Medical Officer (BPS-17) vide Notification dated 27.7.2006 on the proper recommendation of Khyber Pakhtunkhwa Public Service Commission.
- 2- That after appointment the appellant submitted her charge report and started performing her duty as Woman Medical Officer (BPS-17) in the Department of population Welfare FATA quite efficiently and up to the entire satisfaction of her superiors.
- 3- That due to excellent record of service and being senior most employee of the population welfare Department FATA the appellant was promoted to the post of Deputy Director Population Welfare Department FATA on the recommendation of Departmental promotion committee vide Notification dated 12/7/2012.
- 4- That during service as Deputy Director in the Department of Population Welfare FATA the appellant performed her duty quite efficiently and up to the entire satisfaction of her superiors. That inspite of inexperience to her new job description the appellant performed her duty with all zeal and zest. That it is very pertinent to mention that the appellant was awarded best performance certificate by the then Prime Minister of Pakistan Mr. Yousaf Raza Gilani in the year 2007-08.
- 5- That appellant while serving as Deputy Director Population welfare FATA a charge sheet and statement of allegation

ATTECTED

g

2015.5.15
S. B. Khan

were issued to her on the basis of an anonymous/ pseudonymous compliant/ letter. That in the said charge sheet and statement of allegation a plethora of charges/ allegations were leveled against the appellant which are as under:

- (i)- While procuring medicines of millions of rupees you violated the procurement policy of Government of Pakistan PPRA.
- (ii)- You added an extra member in purchase committee without approval and did not obtain signature on each page of the comparative statement from the members of purchase committee. Constituted technical committee of non technical persons.
- (iii) You nominated Dr. Rooh Ullah WMO Khyber dated 17.5.2013 but obtained signature from dr. Naila Wadood AD PWD on comparative statement of purchase committee without lawful authority.
- (iv) Failed to maintained proper store record as per instruction contain at Para 148, 149, 151 & 152 GFR.
- (v) Received misbranded medicine in term of drug labeling packing Rule 1956 & Section 23 of Drug Act 1976.
- (vi) Violated TOR No.4 of tender by entering into an agreement with the suppliers and depositing 10% amount as security from the successful bidders.
- (vii) Received millions of Rupees from state Bank in cash and made cash payment to the suppliers before completion of delivery.
- (viii) Violated Para 117 CPWD code and Para 6.51 a Hand Book for DDO 2003 and made payment before obtain report from Drug testing laboratory of Khyber Pakhtunkhwa.
- (ix) Ignoring MMC List and made purchase from unknown companies and violated the instructions of Government of Khyber Pakhtunkhwa.
- (x) Violated office procedure as per Para 35 C and 38 of the secretariat manual by submitting file to higher authority.
- (xi) That you purchased the 10 numbers of medicines which have been declared sub standard/ spurious and manufacturer of some of which are unknown in which food supplements is in bulk.

ATTESTED(x)
[Signature]

(xii) Made procurement of millions of rupees by giving tender to family members and extended undue favor and give benefits to nears and dears.

6- That in response to the above mentioned plethora of baseless allegations/ charges the appellant submitted her reply in detail along with documentary evidence and denied the allegations which have been leveled against her.

7- That inspite of clarifying her position with documentary proofs Your good self issued the impugned Notification vide dated 21.5.2015 whereby major penalty of Dismissal from service was imposed on the appellant without conducting fact finding and regular Departmental inquiries in the matter.

8- That appellant feeling aggrieved from the impugned Notification dated 21.5.2015 issued by your good self against the appellant filed this Review/ Departmental appeal before your good self inter alia on the following grounds.

GROUND:

A- That the impugned Notification dated 21.5.2015 issued by your good self against the appellant by imposing major penalty of Dismissal from service on the appellant is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

B- That the appellant has not been treated in accordance with law and Rules on the subject noted above and as such Article 4 and 25 of the constitution of Pakistan 1973 has been violated while issuing the impugned Notification dated 21.5.2015.

C- That the procurement committee was constituted under the chairman ship of Secretary Social Sector Department FATA along with seven members including the appellant meaning thereby that all the members are equally responsible for the irregularities/ flaws if any in the proceedings but in this case the appellant have been made scape goat to save the skin of high ups who are actually responsible for the said irregularities/ flaws.

D- That before the separation of the population Welfare Department FATA from the Health Directorate of FATA the purchase of medicines for the population welfare Department were used to be made by the Health Department as this Department by the FATA secretariat was administratively attached to that Department but after

ATTESTED



separation it was for the first time that the procurement of medicines for population welfare set up was made by the population welfare Directorate meaning thereby that all the members of the procurement committee were inexperienced except the Secretary Social sector. That it was the sole responsibility of the high ups to nominate the well experienced members for the procurement committee.

- E- That in the whole case the authorities has been failed to prove/ establish any of the allegations against the appellant but inspite of that your good self issued the impugned Notification dated 21.5.2015 against the appellant in violation of the principle of natural justice.
- F- That the comparative list prepared by the purchase committee, the specification and quantification of the medicines as per requirement of the various agencies and recommendations for issuance of the supply order was the domain of technical committee and the appellant does not come within the picture of this entire process.
- G- That the action has been taken by the authorities against the appellant on the basis of an anonymous/ pseudonymous letter. That according to the Establishment Code an anonymous/ pseudonymous complaint/ letter if any received against the civil servant should straight away be thrown in to the dust bin and no action should be taken on such like complaints but in this case the appellant has been severely punished by imposing major penalty of Dismissal from service.
- H- That the appellant has been discriminated by the authorities because the high ups who are actually responsible for the irregularities have been exonerated but the appellant has been made scape goat without any fault on her part.
- I- That no fact finding inquiry has been conducted in the matter which is mandatory before the initiation of Departmental inquiry against the civil servant.
- J- That no opportunity of cross examination has been provided to the appellant and as such all the proceedings have been conducted and finalized at the back of appellant.
- K- That no regular inquiry has been conducted before issuing the impugned Notification dated 21.5.2015 against the appellant which is as per Supreme Court Judgments is necessary/ compulsory in punitive actions against the appellant.

ATTESTED



L- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly requested that on acceptance of this Review/ Departmental appeal the impugned Notification dated 21.5.2015 may very kindly be set aside and the appellant may very kindly be re-instated with all back benefits. Any other relief which your good self deems fit that may also be awarded in favour of the appellant.

Dated: 25th of May 2015

APPELLANT

al zari 25/05/2015

**LAL ZARI, EX: DEPUTY DIRECTOR PWD FATA,
R/O Sector N-1, House No.4, Street No.1,
Phase-IV, Hayat Abad Peshawar.**

ATTESTED

af



F-35
GOVERNOR'S SECRETARIAT,
Khyber Pakhtunkhwa, Peshawar

No. SO-I/11-5/GS/2015/973-76
Dated: 10-08-2015

To

The Additional Chief Secretary (FATA),
FATA Secretariat, Warsak Road,
Peshawar

Subject: INQUIRY INTO PURCHASE OF MISBRANDED MEDICINES
IN POPULATION WELFARE DEPARTMENT.

Dear Sir,

I am directed to refer to the subject noted above and to state that appeal for review against the impugned order dated 21.5.2015 by Dr. Lal Zari, Deputy Director Population Welfare Department FATA has been rejected by the Governor Khyber Pakhtunkhwa.

Yours faithfully,

(Shama Niamat)
Section Officer-I

Copy to:

1. PS to Governor Khyber Pakhtunkhwa.
2. PS to Principal Secretary to Governor Khyber Pakhtunkhwa.
3. Dr. Lalzari, Ex-Deputy Director Population Welfare Department, FATA, Sector-1, House No.4, Street No.1, Phase-IV, Hayatabad, Peshawar.


Section Officer-I

ATTESTED



VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar

_____ OF 2015

Lal Zari

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

A.C.S. FATA

(RESPONDENT)
(DEFENDANT)

I/We Lal Zari

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, 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 cost. 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.

Dated. ____/____/2015

Lal Zari

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE SERVICES TRIBUNAL

KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No. 976/2015

Dr. Lal Zari, Ex-Deputy Director Appellant

Versus

Additional Chief Secretary (FATA) & Others Respondents

Para wise Reply/Comments on behalf of respondent No. 1, 3, 4 & 5.

Respectfully Sheweth;

Preliminary objections

1. That the appellant has no cause of action/locus standi to file the present appeal.
2. That the appellant is estopped by his own conduct to file the instant appeal.
3. That this Honorable Service Tribunal has got no jurisdiction to entertain the instant appeal.
4. That the instant appeal is bad for Mis-Joinder & Non-Joinder of necessary parties.
5. That the present appeal is barred by law.
6. That the present appeal is bad in its present form, hence not maintainable and liable to be dismissed.
7. That, the appellant had concealed the material facts from this Honourable Tribunal.

ON FACTS

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Incorrect, needs proof.
5. Correct, as per rules proper charge sheet was issued to the appellant and all the allegation in the charge were proved after proper inquiry hence the appellant was found guilty. (Copy of Inquiry report is attached as **Annex-A**)
6. Correct to the extent of reply but the reply submitted was found unsatisfactory as all the charges were proved against the appellant.
7. Incorrect, after thorough investigating the charges and the reply submitted by the appellant through a proper inquiry committee, the appellant was found guilty and was dismissed from service by the competent authority.

8. Correct.
9. No comments

ON GROUNDS

- A. Incorrect, the impugned notification is according to law norms of justice and material on record hence tenable and is not liable to be set aside.
- B. Incorrect, all the codal formalities were adopted while issuing the impugned notifications hence no violation of Article-4 & 25 of the Constitution of Pakistan 1973 was made.
- C. Incorrect, appellant has been proved responsible for the same.
- D. Correct, that Health Directorate FATA was making all the purchases for the Population Welfare Department FATA but not such like incident arose. The appellant admitted that all the members of purchase committee are inexperienced in this field, the appellant found a chance to take benefit from inexperience-ship of the members. Moreover, the appellant admitted in the facts that on excellent record of service the appellant was promoted to the post of Deputy Director Population Welfare Department FATA, which does not show that the appellant was inexperienced.
- E. Incorrect, as stated above all the allegation leveled on the appellant were properly been proved and after fulfilling all the codal formalities the impugned notification was issue by the competent authority which does fall within the violation of natural justice.
- F. Incorrect, the appellant intentionally removed herself from the picture of technical committee for to receive a clean chit in the end which show malafide on the part of the appellant.
- G. Incorrect, major penalty of dismissal from service has been issued, after proper inquiry in which the charges were proved against the appellant.
- H. Incorrect, no discrimination has been made as stated above the appellant itself admitted that the member were inexperienced for which the appellant took proper benefit of their inexperience-ship.

(3)

- I. Incorrect, all the codal formalities were properly adopted after that major penalty was imposed on the appellant.
- J. Incorrect, hence denied as the appellant has attached the reply of the show cause with the appeal which clarifies that nothing was finalized at the back of the appellant.
- K. Incorrect, as properly explained in the above paras.
- L. That the respondents also seeks permission to advance other grounds and proofs at the time of arguments.

It is therefore most humbly prayed that the appeal devoid of merits/legal footing, may be dismissed with cost.

272
13/4/16
Director Population Welfare (FATA),
FATA Secretariat, Peshawar
Respondent No. 05

Sik...
25/04/2016
Secretary (Finance),
FATA Secretariat, Peshawar
Respondent No. 04

[Signature]
SECRETARY
Social Sectors Department (FATA)
FATA Secretariat, Peshawar
Respondent No. 03

For [Signature]
Additional Chief Secretary (FATA)
FATA Secretariat, Peshawar
Respondent No. 01

CONTENTS

Sl No.	Contents	Page No.
1.	Order of Inquiry	1
2.	Charges	1-3
3.	Correspondence	3-4
4.	Background	4-5
5.	Enquiry Proceedings / Findings	5-8
6.	Charge Specific Analysis	8-13
7.	General Analysis	13-14
8.	Conclusion	14
9.	Recommendations	15-16
10.	List of Annexures	17

ENQUIRY REPORT

Subject: INQUIRY INTO SUPPLY OF MISBRANDED MEDICINES

ORDER OF INQUIRY

On approval of the competent authority a two members enquiry committee comprising of Mr. Sikander Qayyum, Secretary Finance, FATA and Mr. Shakeel Qadir, Secretary Law & Order, FATA Secretariat was constituted for conducting "Inquiry into supply of Misbranded Medicines" under the Government Servants (Efficiency and Discipline) Rules, 2011. Administration, Infrastructure and Coordination Department, FATA Secretariat through letter No. FS/E/100-98(Inq-Medicines)/15913-15 dated 17/10/2014 (Annexure-1) notified the committee. Charge sheet and statement of allegations to the accused officer was also served by the Administration, Infrastructure and Coordination Department on the same day.

2. The subject inquiry is against Dr. Lal Zari, the then Deputy Director, Population Welfare Directorate (PWD) (Under Suspension) FATA Secretariat, Peshawar.

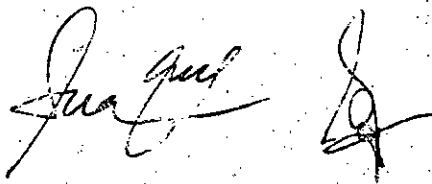
CHARGES

3. As per contents of the charge sheet and statement of allegations (Annexure 2 & 3) the accused officer Dr. Lalzari while posted as Deputy Director Population Welfare Directorate FATA committed following irregularities in procurement of medicines during Financial Year 2012-13:-

- a. While procuring medicines of millions of rupees, she violated the Procurement Policy of Government of Pakistan of PPRA Rule 12 Sub Para 1 & 2, Rule 22 Para 1 & 2, Rule 31 & Rule 39.
- b. Increased member of purchase committee without approval and did not obtain signature on each page of the Comparative Statement from



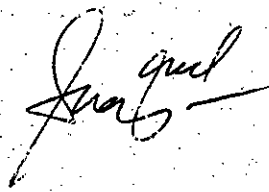

- the members of Purchase Committee and constituted Technical Committee of non-technical persons.
- c. She nominated Dr. Rooh Ullah WMO Khyber vide letter No. F.No1(1)/2012-13/POP/7761-65 dated 17-05-2013 but obtained signature from Dr. Naila Wadood AD PWD on comparative statement of purchase committee without lawful authority.
 - d. Failed to maintain proper store record as per instructions contained at Para 148, 149, 151 & 152 of GFR.
 - e. Received misbranded medicines in term of Drug Labeling Packing Rule 1956 & Section 23(1) a iii Drug Act 1976.
 - f. Violated ToR No. 4 of Tender by not entering into an agreement with the suppliers and depositing 10% amount as security from the successful bidders.
 - g. Received millions of rupees from State Bank in cash and made cash payment to the suppliers before completion of delivery. (Delivery not yet completed).
 - h. Violated Para 117 CPWD Code and Para 6.51 a Hand Book for DDO 2003 and made payment before obtaining report from Drug Testing Laboratory of Khyber Pakhtunkhwa.
 - i. Ignoring MCC List and made purchase from unknown companies and violated the instruction / Notification of Government of Khyber Pakhtunkhwa void No. 1576-1926/MCC dated 22-12-2011.
 - j. Violated office procedure as per para 35C and 38 of the Secretariat, Manual (KPK) by submitting file to higher authority (Secretary) directly.
 - k. That you purchased the following 10 No's medicines which have been declared sub-standard / spurious and manufacturer of some of which unknown in which food supplements is in bulk.
 - i. Capsules Active C, B. No. Nil.
 - ii. Tablets Ascorbic Acid, B. No. 725.



- iii. Tablets Rumin 400mg, B. No. 1111.
 - iv. Infusion Azogyl, B. No. SL 04.
 - v. Tablets Folic Acid 5mg, B. No. 41.
 - vi. Tablets Biprim-DS, B. No. 276.
 - vii. Tablets Rumin-400 (ANKAZ Pharmex Pvt, Ltd).
 - viii. Inj. Diazepam (S,J&G Fazal Elahi, Pvt. Karachi).
 - ix. Inj. Dexone (Uni-Tech Pharmaceutical Pvt. Ltd, Karachi, Pakistan).
 - x. Food Supplement (Milko Max).
- ✓ 1. Made procurement of Millions of rupees by giving tender to family members and extended undue favour and gave benefit to nears and dears.

CORRESPONDENCE

4. Administration, Infrastructure and Coordination Department, FATA Secretariat served the charge sheet and statement of allegations on the accused officer vide letter No. FS/E/100-98(Inq-Medicines)/15910-12 dated 17-10-2014 (**Annexure-4**). The charge sheet and statement of allegations was served again by the Enquiry Committee vide letter No. PS/FS/FATA/1-7/Inq: File/2014 dated 21/10/2014 (**Annexure-5**) with the direction to the accused officer to submit her written reply by 28th October, 2014 and also asked if she desired to be heard in person. Vide same letter, Administration, Infrastructure and Coordination Department was also asked to depute departmental representative, who shall assist the committee and produce the record. Accordingly vide letter No. FS/E/100-98(Inq-Medicines)/16939-40 dated 29/10/2014, Administration, Infrastructure and Coordination Department (**Annexure-5**) deputed Mr. Ahmed Khan (BS-18), Deputy Secretary (Services) as departmental representative. Accused officer vide letter No. PS/FS/FATA/1-7/Inq: File/2014 dated 29/10/2014 (**Annexure-7**) was asked to appear before the inquiry committee on 05th November, 2014.

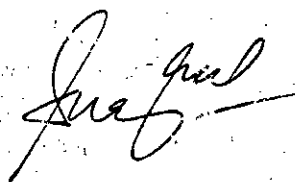
 

Departmental representative submitted the comments of the department on 06th November 2014 along-with certain additional documents. Enquiry committee vide letter No. PS/FS/FATA/1-7/Inq. File/2014 dated 26th November, 2014 (Annexure-8) requested Administration, Infrastructure and Coordination Department to extend submission of inquiry report by two weeks.

BACK GROUND

5. The District Administration Peshawar on 28-08-2013 along-with Drug Inspector and Media Team raided the warehouse of Population Directorate FATA situated at Abshar Colony Warsak Road, Peshawar and seized some drugs. The District Administration Peshawar also requested FATA Secretariat to probe into the matter. A fact finding inquiry committee was constituted by the Social Sector Department FATA on 30/10/2013. On the recommendation of the fact finding inquiry committee, Secretary Social Sector Department submitted case to the Governor's Khyber Pakhtunkhwa in his capacity as competent authority for initiating disciplinary proceeding against the accused. The competent authority was pleased to order suspension of the accused officer and was served with charge sheet and statement of allegation. The competent authority ordered constituting of an inquiry committee under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 to probe into the allegations leveled against the officer and submit report within 30 days.

6. An inquiry committee under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 vide Social Sector Department FATA Secretariat Notification No.FS/SO(FI)/SSD/1-9/2014/739-46 dated 19/03/2014 to probe into the charges leveled in the charge sheet and statement of allegation, against Dr. Lalzari Deputy Director Population Welfare Directorate FATA. The inquiry committee submitted its report and recommendation on 15th



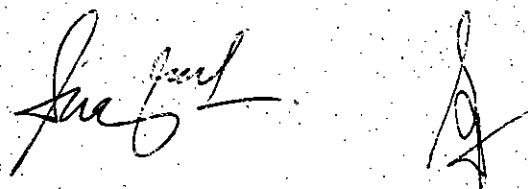
May, 2014. However, competent authority ordered denovo inquiry under E & D Rules. Hence instant inquiry committee constituted.

ENQUIRY PROCEEDINGS / FINDINGS.

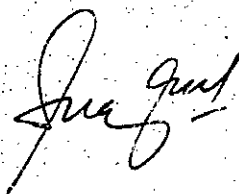
7. During the inquiry proceedings (Annexure-9) detailed reply of the accused officer to the charge sheet (Annexure-10), comments of the departmental representative to the reply of the accused officer (Annexure-11), examination/cross examination of the accused officer (Annexure-12), departmental representative and two other witnesses i.e. Mr. Fakhre Alam Store Keeper (Annexure-13), Mr. Rashid Account Assistant (Annexure-14) on 06.11.2014, 13.11.2014, 17.11.2014 and 19.11.2014 respectively, were carefully considered. Relevant documents and all other available record, information gathered from other sources through discussion / explanations were carefully examined.

The above deliberations lead us to establish the following facts:-

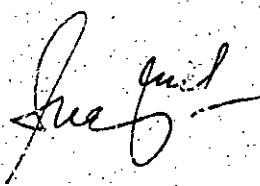
- Advertisement for the purchase of medicines was given without availability of the funds,
- After separation of Population Welfare Directorate from the Health Directorate, this was the first purchase of the medicines by the directorate (refer to Annex-10);
- Department had very limited professional capacity.
- PPRA rules have not been extended to FATA yet through administrative notification of the AI&C Department FATA it is followed in FATA (Annexure-15);
- In violation of PPRA rules, date of tendering opening and last date of submission are different (refer to Annex-12);



- Wajid & Company and Nasir & Sons bids were initially rejected as call deposit was not submitted;
- Wajid & Company and Nasir & Sons were later recalled on direction of the accused officer and their bids were accepted;
- By virtue of being the head of the Directorate, accused officer was the Secretary of the Purchase Committee (*refer to Annex-12*);
- Co-opted additional members were added on the verbal orders without taking formal approval or any notification (*refer to Annex-12*);
- Only last page of the comparative statement was signed by the members (**Annexure-16**);
- The Chairman of the Committee did ask the accused officer to get each page of comparative statement signed from each member but was not done (*refer to Annex-12*);
- LHVs and Female Welfare Workers are skilled persons but are not competent to determine the quality of the medicines (*refer to Annex-12*);
- The accused officer on her own asked Dr. Naila Wadood, Assistant Directress Population Welfare Directorate to sign the comparative statement of the Purchase Committee instead of Dr. Roohullah without any approval or proper notification (*refer to Annex-12*);
- The Store Keeper was directed by accused officer to take all the medicines on stock;
- 1/6th of the medicines were not supplied;
- Supplied medicines were of different brands and names as against the brands and names in the supply order (**Annexure-17**);
- Local medicines were delivered against the approved multi-national brands/medicines;
- There were shortcomings / mistakes in the comparative statement (*refer to Annex-12*);
- Many medicines were not labeled;



- 10% amount as security was not obtained from the successful supplier;
- Cheques were prepared by the Population Welfare Directorate on the vendor's number of the supplier. Additional Accountant General (PR), Sub Office, Peshawar issued cheques in the name of the Drawing & Disbursing Officer;
- The accused officer directed the Accountant to draw and keep the cash in his custody. The accused officer personally made full payment to the supplier despite the fact that two items were not supplied (*refer to Annex-14*);
- Bills submitted to the AGPR (PR), Sub Office Peshawar carried the approved names / nomenclature of all the medicines, but payment has been received for local medicines;
- The CPWD code is not applicable on the purchase of medicines;
- No written instructions are available to make it mandatory that the payment for the medicines shall be made after obtaining report from the Drug Testing Laboratory;
- No separate list of MCC is maintained for FATA;
- Province has also discontinued practice of purchasing medicines through MCC list;
- Most of the supply is of the local companies instead of international reputed companies (*refer to Annex-17*);
- The files were directly submitted to the Secretary in his capacity as Chairman to ensure secrecy;
- 4/5 medicines were declared sub-standard / spurious (*Annexure-18*);
- Food supplement has been declared as substandard by PCSIR Laboratory (*Annexure-19*);
- The principal supplier is accused officer's brother and his brother-in-law;




- The financial statement of the supplier is not very encouraging (Annexure-20);
- Stores are still sealed and many medicines life would be expired and rest would be expiring soon;
- Major irregularities in opening of tenders haven been committed;

CHARGE SPECIFIC ANALYSIS

8. Having established above facts, charge specific analysis is as under:-

Charge (a).

Though legally speaking PPRA rules have not been adopted yet these have been made applicable in FATA through Administrative Notification issued by the AI&C Department. This fact was in the knowledge of the accused officer but she did not bother to consult these rules before going for the purchases etc. It was the accused officer's, being the head of the directorate, responsibility to upload the advertisement on the FATA web site with the technical assistance of the Directorate of Information FATA which she did not. Dates of tender opening and last date of submission are different which is against the spirit of the rules. Shrugging away the responsibility on the other senior members of the purchase committee does not absolve the accused officer of her responsibility, being the head of the Directorate and Secretary of the purchase committee.

Hence this charge is partially proved.

Charge (b).

The accused officer co-opted additional members on the verbal orders. She neither got the formal approval nor notified the same. She substituted officers/officials on her own accord. All Members signed only the last page of the comparative statement and despite being asked by the Chairman of the purchase committee that each paper of the comparative statement shall be signed by all the

Members she did not, because she herself admitted that there were many deficiencies in the comparative statement and more so she forgot due to load of official work. She being the head of the Directorate had the responsibilities to ensure that whatever is put up to the Chairman of the Committee or Members, all codal formalities are completed. Lady Health Visitors (LHVs) and Female Welfare Workers (FWWs) are considered to be trained /skilled persons only to prescribe certain very basic medicines but are certainly not qualified to determine the quality of the medicines; one of the major TOR of the technical committee was to determine of the quality of the medicines. Thus, these officials were not competent to be members of the Technical Committee.

Hence charge is proved.

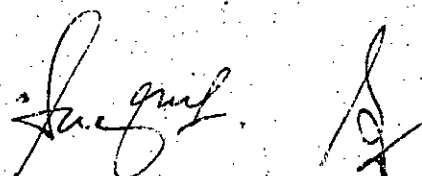
Charge (c).

The reply of the accused officer to ask Dr. Naila Wadood, Assistant Director, Population Welfare Department to be part of the Purchase Committee is not maintainable because any such change would require due approval of the competent authority followed by a proper Notification. The adopted method is unwarranted.

Hence charge is proved.

Charge (d).

The accused officer did ask the Store Keeper to take all the medicines on stock. However, admittedly 1/6th of the medicines were not supplied. More so medicines supplied by the supplier were of the brands / names of the medicines which were different from the supply orders sheet 1, 2 & 3. Mr. Fakhre Alam, Store Keeper denied any blackmailing, however, the accused officer did admit that since she had committed follies / mistakes of which Mr.Fakhre Alam, Store Keeper was taking advantage. She played two audio clips of the conversation



between Mr. Fakhre Alam, Store Keeper and the supplier (would require forensic examination which is beyond the scope of this Inquiry Committee). Before the Inquiry Committee she admitted that the medicines being supplied by the supplier are of not the nomenclature approved, but the formula is the same and manufactured by the local companies instead of multi-nationals which certainly raises the question on the quality of the medicines.

Hence charge is not proved.

Charge (e).

Accused Officer contested that few items were certainly not labeled but this does not mean that these were sub-standard. Argument admitted but it was only once the whole issue came into light that it was observed and supplier readily agreed to bring the stamp and label such medicines (couldn't be done as store was sealed). Had this not happened then medicine would have been supplied as such.

Hence charge is proved.

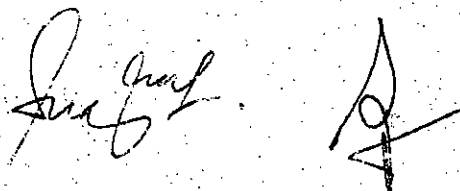
Charge (f).

In her written reply though she admits that she had not entered in an agreement with the supplier for depositing 10% amount as security, and states that this was not exclusively her responsibility, which is not maintainable as she being the head of the Directorate, was to ensure that all minute details are checked and rectified. Other Members being from different departments cannot be expected to have access to all the information which is readily available to the directorate; hence, the accused officer cannot absolve herself from this responsibility.

Hence charge is proved.

Charge (g)

No argument can justify the handling of cash for one or the other reason. Drawing the money in cash and making payments to the supplier, raises



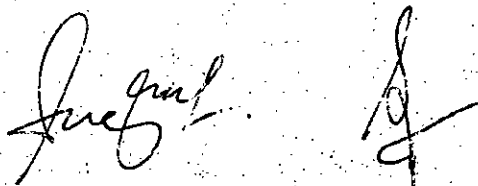
question of transparency and fairness, common practice does not necessarily mean that it is a correct practice. The AGPR (Sub Office) Peshawar may be involved in issuance of the cheque on the name of Drawing & Disbursing Officer (DDO) instead of supplier vendor number. But DDO cannot be exonerated from accepting this cheque which she knew were supposed to be issued on to supplier vendor number. She not only accepted those cheques but asked the Accountant to draw and keep the cash in his illegal custody and further making the cash payment herself to the supplier with total disregard to financial discipline and prudence. Mr. Rashid, Account Assistant was simply acting on the directions of his superiors. It is admitted that full payment was made to the supplier despite the fact that two minor items (1/6th of the supply) were not supplied. This raises the apprehension as if some favour has been extended to the supplier. The argument of the accused officer that she did all this in good faith because had she not accepted the cash, the money would have lapsed, runs contrary to all canons of financial principles. It is also proved and admitted that the nomenclature of the approved medicines were also submitted with the bills to AGPR office, however, prices claimed are of the local medicines.

Hence charge is proved.

Charge (h).

The CPWD Code has been examined. Generally it is applicable to the construction material. Hence it would not be appropriate to refer to it while purchasing medicines. We could not find anything in writing; neither the department could produce anything in writing which makes it mandatory to make the payments for medicines after obtaining report from the Drug Testing Laboratory.

Hence charge is not proved.



Charge (i).

There is no separate MCC list for FATA. In the past when Population Welfare Department was part of the Health Directorate, it used to follow the MCC list of the Province for purchase of medicines, however, purchase of medicines through MCC list has been discontinued in the Province. The medicines supplied by the supplier and the companies mentioned in erstwhile MCC list have been compared and it has been found that mostly local companies instead of reputed companies have been selected. However, we cannot charge the officer on this account i.e. not purchasing medicines from the companies mentioned in MCC list.

Hence charge is not proved.

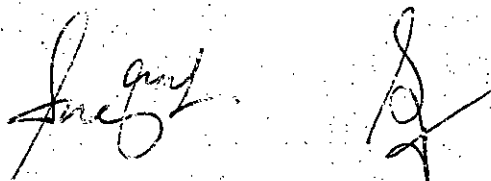
Charge (j).

Submitting file to the Secretary directly does not constitute an offence as procedure could always be customized for ensuring quick disposal and prompt action. Her argument that she was submitting files directly to the Secretary in his capacity of the Chairman of the Purchase Committee for ensuring secrecy which is valid.

Hence charge is not proved.

Charge (k).

The record shows that 4/5 medicines were declared substandard / spurious. Notwithstanding the objections raised by the accused officer on the mode of the collection of samples. It is on record that the food supplements, which constitutes major bulk of the supply was not up to the standard. Her arguments that the supplier concerned has committed in-written agreement that the drugs supplied by him, if found not satisfactory at any stage will be replaced. This argument



cannot be accepted because it leads to an apprehension that if not pointed out under this enquiry, in the ordinary course of time, these sub-standard medicines would have been supplied.

Hence charge is partially proved.

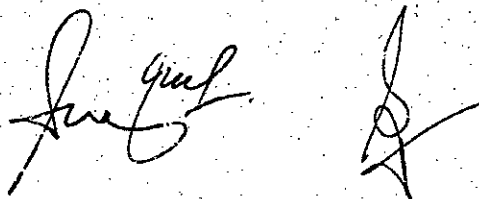
Charge (I).

She has admitted that the principal supplier is her brother and his brother-in-law. She has very validly referred to the constitutional provision as well as to the procedure adopted for awarding the contract. Yet she ignored the fact that favoritism and nepotism once established, whole process becomes questionable. All early charges such as rejecting bids due to non-provision of the call deposit and then recalling and accepting the bids, changing supply orders twice and thrice, changing composition of the Purchase Committee, accepting misbranded and unbranded medicines and not obtaining 10% security from the successful bidders, making cash payments despite the fact that the full supply was not being made; all if seen individually could be ignored as innocent inadvertent irregularities but once these are seen through the prism of this charge it clearly leads to the fact that undue favour has been extended in this case. We have also examined the financial statements of the supplier which clearly indicates, that they never had the capacity or past experience to undertake a contract of this magnitude.

Hence charge is proved.

GENERAL ANALYSIS.

9. Notwithstanding the justification and clarification given by the accused officer, the established facts lead us to the conclusion that all this activity was conducted without adhering to the existing financial rules and regulations. Accused officer absolving herself on the pretext that it was a collective responsibility of all the members, is an effort to vitiate the enquiry. Factually she



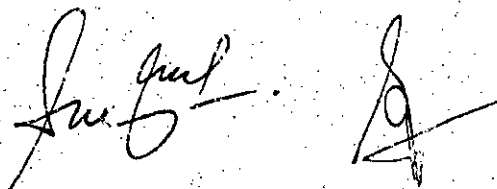
cannot parallel herself with other members, being head of the sponsoring Directorate and acting thereby, as Secretary of the Purchase Committee. The Chairman of the Committee and other senior members do have the responsibility and they exercised the same while pointing her to rectify anomalies. Above all, undue / favourable actions such as accepting the bids of the supplier without call deposit, not obtaining 10% security from the successful bidder, drawing and disbursing money personally to the supplier; all this benefitted the supplier who happens to be the very close relative; her brother and her brothers-in-law. All these actions are certainly unwarranted and constitute grave misconduct.

10. It has also been observed that the department had little capacity because of inexperience officer as head of Directorate. She or her staff were not well versed with the very basic rules and regulations. Inexperience coupled with vested interest has lead to this situation.

CONCLUSIONS

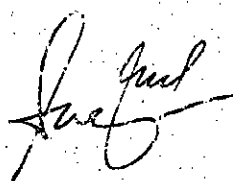
11. In view of above discussion and deliberations, we have come to the conclusion that “

- | | | |
|---|---|-------------------|
| (i) Charge “a” and “k” | - | Partially proved. |
| (ii) Charge “b”, “c”, “e”, “f”, “g” & “i” | - | Proved. |
| (iii) Charge “d”, “h”, “j”, & “l” | - | Not proved. |

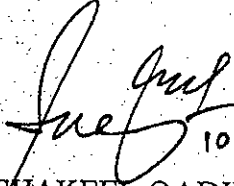
Two handwritten signatures in black ink are present at the bottom of the page. The signature on the left is more elaborate and cursive, while the one on the right is simpler and more direct.

RECOMMENDATIONS

12. Inquiry committee unanimously recommend:
- (i) The accused officer Dr. Lalzari (BPS-18), Deputy Director PWD FATA Secretariat may be exonerated from the charges "d", "h", "i", & "j";
 - (ii) Charges "b", "c", "e", "f", "g" & "l" have been proved, whereas charges "a" & "k" have been partially proved, hence major penalty may be imposed on her. List of minor / major penalties are specified in Rule 4(a) of Government Servants (Efficiency and Discipline) Rules, 2011 (Annexure 21);
 - (iii) Department to constitute a technical committee of doctors/ technical officials, who may de-seal the stores and take a stock and ask the supplier i.e. Wajid & Company to replace all misbranded / spurious/ substandard drugs with approved drugs having extended date of expiry on his own risk and cost;
 - (iv) The supplier i.e. Wajid & Company may also be blacklisted and be proceeded criminally under the relevant Drug Act;
 - (v) Department may initiate disciplinary proceedings against Mr. Fakhre Alam, Store Keeper and Mr. Rashid, Account Assistant under the Government Servants (Efficiency & Discipline) Rules, 2011;



- (vi) Accountant General Pakistan Revenue may also be intimated of the irregularities at their end and ask them to take necessary legal / administrative action against AGPR officials, who replaced supplier vender number with DDO vender number and issued cheques in the name of DDO.


10.12.14

[SHAKEEL QADIR]
Secretary, Law & Order
Department, FATA Secretariat,
Peshawar/Inquiry Officer.


10/12/2014

[SIKANDER QAYYUM]
Secretary, Finance Department,
FATA Secretariat, Peshawar/
Inquiry Officer.