

02.02.2017

As per directions of the Court in appeal of Maqbool Hussain vide order sheet dated 01.02.2017, this appeal may be clubbed with the above mentioned appeal on 27.02.2017. Parties be informed accordingly.

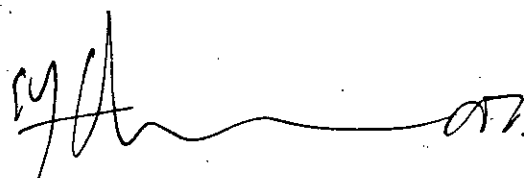

Reader

27.02.2017

Counsel for the appellant and Mr. Usman Ghani, Sr.GP alongwith Mr. Sultan Shah, Assistant for respondents present.

Vide our detailed judgment of to-day in the connected service appeal No. 515/2016 titled "Maqbool Hussain-vs- Govt. of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", this appeal is also decided as per detailed judgment referred above. File be consigned to the record room.


ANNOUNCED
27.02.2017


(MUHAMMAD AAMIR NAZIR)
MEMBER


(AHMAD HASSAN)
MEMBER


08.08.2016

Agent to counsel for the appellant and Mr. Sultan Shah, Assistant alongwith Additional AG for respondents present. Written reply by respondents not submitted and requested for further time to file written reply. Request accepted. To come up for written reply/comments on 08.09.2016 before S.B.


Member

08.09.2016

Counsel for the appellant and Muhammad Hayat, Assistant Alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 10.01.2017.


Member

10.01.2017

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 30.05.2017.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

11.05.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was aserving as Asstt. in the Administration Department when subject to enquiry on the allegations of corruption, embezzlement and mis-appropriation and removed from service vide impugned order dated 04.01.2016 where-against review petition was preferred by the appellant on 29.1.2016 which was rejected vide order dated 18.4.2016 and hence the instant service appeal on 26.04.2016.

03-10/

11.05.16

11.05.16

That mandatory provisions were violated by the enquiry officer and competent authority during enquiry as no regular enquiry was conducted nor evidence in the prescribed manner collected nor opportunity of personal hearing afforded and appellant was removed from service despite putting in 26 years unblemished service.

Appellant Deposited
Security & Process Fee

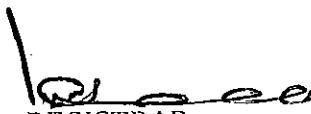

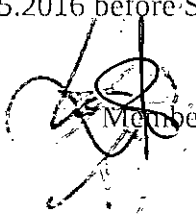
Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 08.08.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 443/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26.04.2016	<p>The appeal of Mr. Kifayatullah presented today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	28-4-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>5-5-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	5.5.2016	<p>Counsel for the appellant present. Requested for adjournment. Adjourned for preliminary hearing to 11.5.2016 before S.B.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 443/2016

Kifayatullah Appellant

Versus

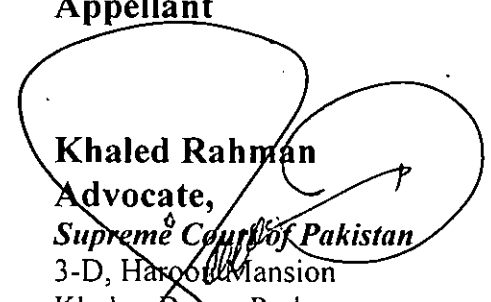
The Govt. of KPK and others..... Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-7
2.	Charge Sheet with Statement of allegations		A	8-9
3.	Reply to Charge Sheet		B	0-10
4.	Inquiry Report	24.03.2015	C	11-17
5.	Show Cause Notice	10.06.2015	D	18-19
6.	Reply to Show Cause Notice		E	0-20
7.	Impugned Notification	04.01.2016	F	0-21
8.	Review Petition	29.01.2016	G	22-31
9.	Impugned appellate order	18.04.2016	H	0-32
10.	Summary for approval of the C.M		I	33-47
11.	Bail granting Order	08.12.2014	J	48-53
12.	Wakalat Nama			


Appellant

Through


Khaled Rahman
Advocate,
Supreme Court of Pakistan
3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: 26/04/2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 443 /2016

Mr. Kifayatullah

Ex-Assistant,
Administration Department, Civil Secretariat, Peshawar.....Appellant

Versus

A.W.F. Province
Service Tribunal
Diary No. 419
Dated 26/4/2016

1. **The Govt. of Khyber Pakhtunkhwa**
through Chief Secretary,
Civil Secretariat, Peshawar.
2. **The Secretary to Govt. of Khyber Pakhtunkhwa**
Establishment Department,
Civil Secretariat, Peshawar.
3. **The Secretary to Govt. of Khyber Pakhtunkhwa**
Administration Department,
Civil Secretariat, Peshawar.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 04.01.2016 ISSUED BY RESPONDENT NO.1 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED UPON THE APPELLANT AGAINST WHICH A REVIEW PETITION WAS PREFERRED TO THE WORTHY CHIEF EXECUTIVE OF THE PROVINCE ON 29.01.2016 BUT THE SAME WAS REJECTED VIDE IMPUGNED APPELLATE ORDER COMMUNICATED THROUGH LETTER DATED 18.04.2016.

PRAYER:

On acceptance of the instant appeal, the impugned Notification dated 04.01.2016 and the impugned appellate order communicated through letter dated 18.04.2016 may graciously be set aside by reinstating the appellant into service with all back benefits.

Respectfully Sheweth,

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

Handwritten notes:
ofed to day
Registrar
26/4/16

1. **That** the appellant initially joined the service of the Establishment & Administration Department as Naib Qasid, way back on 26.07.1990 and subsequently on account of his up-to-the-mark performance he was promoted from time to time to the post of Daftari, Junior Clerk, Senior Clerk and lastly as Assistant. He has served in multiple capacities in the Establishment Department for the last 25 years and during this long period not even a single explanation has been called from him let alone the disciplinary action which is the undeniable evidence of the honest, upright and satisfactory performance of the appellant.
2. **That** appellant was issued a Charge Sheet with Statement of allegations (*Annex;-A*) containing the charge of corruption/embezzlement/misappropriation of the Govt. funds in collusion with the DDO. Since the charge against the appellant was completely baseless, without any substance, sweeping, uncertain, generalized and non-specific, therefore, the same was denied while explaining his position in his reply (*Annex;-B*) submitted in response thereof. The reply to the Charge Sheet with Statement of allegations may be considered as a part of this appeal.
3. **That** an inquiry was conducted in an irregular fashion in deviation of the mandatory provisions of law by the Inquiry Officer who then submitted his report (*Annex;-C*) on 24.03.2015 after the stipulated period of 30 days and made vague, ambiguous recommendations to the competent authority. The entire report is uncertain and confused with regard to the various roles and quantum of responsibilities of the Officers/officials under inquiry.
4. **That** after the inquiry, the appellant was issued Show Cause Notice on 10.06.2015 (*Annex;-D*) alleging inefficiency and misconduct. Appellant refuted the allegations by submitting a reply (*Annex;-E*) whereby he denied the charges and also requested for personal hearing. Reply to the Show Cause Notice may also be taken as an integral part of this appeal.
5. **That** vide impugned Notification dated 04.01.2016 (*Annex;-F*) appellant was imposed upon the major penalty of removal from service along with other Officers/officials, against which appellant then submitted a Review Petition (*Annex;-G*) before the competent authority on 29.01.2016 but the same was rejected vide impugned appellate order communicated vide letter dated 18.04.2016 (*Annex;-H*), hence this appeal inter-alia on the following grounds:-

Grounds:

- A. **That** Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned Notification/order, which are unjust, unfair and hence not sustainable in the eye of law.
- B. **That** as Assistant appellant was assigned the entertainment and other charges whereas the purchase of machinery, equipments, TA/DA and Stationary charges were not assigned to him but inspite of the same the same were included in the Charge Sheet with Statement of allegations against the appellant with which appellant had got no concern whatsoever.
- C. **That** the entertainment and other charges were incurred on items which were consumed in the offices of the Chief Secretary, other Secretaries in various officials meetings/ceremonies and therefore, approval for the same charges were directly obtained from the competent authorities i.e. Chief Secretary, Secretary (Admn) etc. and thus there are no chances of irregularities. Moreover these purchases were made after proper approval of the competent authorities through proper prescribed procedure and no objection whatsoever had ever been made over the same by the competent authority(s) which proves that the appellant has never been guilty of any irregularity in the purchase of items. Had there been any kind of irregularities in the purchase of items, the competent authority(s) could have objected to or refused the approval or ordered a timely inquiry into the matter at the relevant time but since there was no cause of objection whatsoever at the time of approval, therefore, subsequently disputing the same after a long period is inappropriate, unjust and unfair.
- D. **That** after submission of the Inquiry Report while keeping in view the discrepancies, grey areas and procedural irregularities in the Report, the Establishment Department proposed minor penalties for all the delinquent officers/officials but the same was returned by the Chief Secretary with observations to justify why minor penalty was even mentioned as an option leave alone its recommendations to the competent authority. In response thereof, the Establishment Department observed that while taking into account the final grant it was not found logical that the accused could have embezzled or misappropriated the entire budget under the heads of the account as the Department did function during that period. However, the worthy Chief Secretary inspite of the observation *ibid*, of his own proposed the major penalty of dismissal

from service which reflects that the Chief Secretary or competent authority had predetermined the imposition of major penalty at all costs without conforming to the legal formalities/requirements/establishment of the charge which is utterly violative of the law, fair dispensation of justice and fair trial as mandated by the Article 10A of the Constitution, 1973. (The detail Summary for the approval of Chief Minister, Khyber Pakhtunkhwa is *Annex;-I*).

E. **That** the appellant was given an opportunity of personal hearing by the Secretary Law Department, Government of Khyber Pakhtunkhwa (not the competent authority) and inspite of the written and verbal requests no one from the Department attended the personal hearing and provided the complete report of the fact finding inquiry. Thus the worthy Secretary Law Department, after detail discussion and hearing of the appellant and others, submitted his report with the following glaring facts:

- a) *Contradiction and inconsistencies in the fact finding inquiry (where last pages were/are missing), Audit report of the Anti-Corruption Establishment and formal inquiry were highlighted in the tabulated form with conclusion that it could not be determined as to which of the 3 reports are correct and which constituted the basis of penalty proposed for the petitioner as all these reports contradicted each other.*
- b) *Last pages of the fact finding inquiry are missing from which it cannot be determined who has conducted the inquiry and who has been held responsible which means that the case has been made without any base.*
- c) *Charge Sheet is given under Rule-3(c) and Show Cause has been given under Rule-3(a) & (b) of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 which are contradictory to each other.*
- d) *Either authority may pass orders for denovo inquiry by charge sheeting from top to bottom (sanctioning authorities and Committee members also).*

When the matter was returned, the Establishment Department did not agree and proposed the major penalty and consequently the same was imposed upon the appellant without any lawful justification which otherwise means that the appellant was deprived of the opportunity of personal hearing which is an essential requirement under the law and the recommendation of the Secretary Law Department could not be overturned by the Secretary Establishment and for that matter the Chief Secretary as they had nothing to do with the proceedings of

personal hearing which is a delegated power by the competent authority and is not controlled by these officers under the law. The report by the Secretary Law Department should have been directly placed before the competent authority i.e. The Chief Minister, Khyber Pakhtunkhwa but the same was frustrated before reaching to the competent authority for malafide reasons which has resulted in utter miscarriage of justice.

- F. **That** it is also noteworthy that the same Establishment Department is proposing minor penalty at one juncture and then justifying the same in a rational and judicious manner after evaluation of the entire record but at the last stage astoundingly is proposing major penalty in sheer contradiction of his earlier stance without any rhyme or reason which is against the ethics of good governance.
- G. **That** in the Charge Sheet with Statement of allegations, a rolled-up/non-specific charge of corruption/embezzlement/misappropriation of funds has been thrown on all the officers/officials under inquiry including the appellant, however, the Inquiry Officer has not given specific finding regarding the aforesaid charges against the appellant and for that reason in the Show Cause Notice appellant has been attributed inefficiency and misconduct instead of the charges incorporated in the Charge Sheet with Statement of allegations which establishes the fact that the charge could not be established/proved but inspite of the same major penalty was imposed in violation of the law.
- H. **That** an irregular, unlawful inquiry was conducted in utter disregard of the provisions of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 as neither any statement was recorded in presence of the appellant with opportunity of the cross-examining the witness to him nor any documentary evidence was collected in his presence by confronting the appellant therewith and thus the appellant has been prejudiced due to the so called inquiry which is no more than a fact finding inquiry and therefore cannot be based for any punishment muchless major.
- I. **That** the appellant was also deprived of adducing proper defence by the Inquiry Officer due to the defective procedure adopted in deviation of the law and thus appellant was proceeded against at his back through an ex-parte proceeding which is also against the norms of fair-play, justice and as such violative of Article-10A of the Constitution of the Islamic Republic of Pakistan, 1973 read with 24A of the

General Clauses Act-1897, procedural provisions in the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011.

- J. **That** the controversy admittedly was one of disputed questions of facts in which the only alternative was to hold a detailed regular inquiry to unearth the actual facts and to reach to a just, right conclusion but due to irrelevant inquiry not only the appellant was adversely and prejudicially affected but the real facts could not be brought into the notice of the competent authority which has resulted in serious miscarriage of justice.
- K. **That** by now it is a trite law enunciated by superior fora in the country that where a major penalty is to be imposed then only and only a regular inquiry is to be resorted to but in the case in hand only a fact finding inquiry was relied upon wherein too reliance has been placed upon the earlier fact finding inquiry which is not sustainable under the law.
- L. **That** the initial Charge Sheet and Statement of allegations were issued under Rule-3(c) of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 for the charge of corruption but after the inquiry the Show Cause Notice was issued to the appellant under Rule-3(a)&(b) of the Rules *ibid*, containing the charge of inefficiency & misconduct which reflect a clear contradiction as well as establishes the fact that the whole episode was concocted and false.
- M. **That** the appellant was also not provided a meaning opportunity of personal hearing by the competent authority and thus he was condemned unheard which is against the principle of natural justice, therefore, the impugned penalty is void *ab-initio* and nullity in the eye of law.
- N. **That** the external Audit was conducted in detail by the office of the D.G Audit some two months prior to the instant action and nothing adverse, irregular was pointed out and similarly audit was also done by the Audit Officer of the Anti-Corruption Establishment, Khyber Pakhtunkhwa in detail for about one month, strangely after the registration of the F.I.R. wherein too nothing incriminatory was established against the appellant and it was due to *inter-alia* these reasons that the appellant was allowed Bail by the court of competent jurisdiction *vide* order dated 08.12.2014 (*Annex;-J*).

- O. **That** last pages of the first Fact Finding Inquiry are missing and inspite of the efforts the same could not be located and it appeared that these pages were deliberately hushed up for malafide reasons by those against whom recommendations were made and thus the appellatant a low-rank official was singled out in order to safeguard the interest of the high officers who were directly involved or could be involved in the matter which is utter discrimination.
- P. **That** as per the order of the competent authority and mandate of Rule-11(7) of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011, the Inquiry Officer was duty bound to submit the Inquiry Report within a period of 30 days but he failed to abide by the order of the competent authority as well as the law.
- Q. **That** petitioner has rendered about 26 years service wherein not even a single explanation has ever been called from the appellatant during this long-drawn service what to speak of initiation of disciplinary proceedings or imposition of even minor penalty. Appellatant's entire long service record and his poor financial position after such long period of service are the undeniable evidence to the fact of honest, dedicated performance of his duties.
- R. **That** appellatant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

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

Through

Appellant

Khaled Rahman,
Advocate
Supreme Court of Pakistan

Dated: 26/04/2016



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Annex "A"

8

CHARGE SHEET

1. Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Mr. Kifatullah, the then Assistant (BS-16), Administration Department (now in Higher Education Deptt:) as follows:-

That you, while posted as Superintendent in Administration Department committed the following act of omission and commission/irregularities:-

"That in collusion with DDO you were involved in huge corruption, embezzlement and misappropriation of government funds under Heads, Purchase of Machinery & equipments, TA/DA, Stationary, entertainment charges and other charges".

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

3. You are, therefore, required to submit your written defence within fifteen (15) days of the receipt of this Charge Sheet to the inquiry officer/ Committee, as the case may be.

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

Intimate whether you desire to be heard in person?

The Statement of Allegations is enclosed.

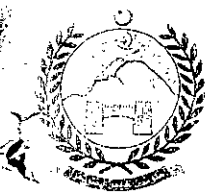
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True Copy

(PERVEZ KHATTAK)
CHIEF MINISTER
KHYBER PAKHTUNKHWA
(COMPETENT AUTHORITY)

29.01.2015

Mr. Kifayatullah (BS-16)
the then Assistant,
Administration Department
(now Higher Education Department)

A



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

9

DISCIPLINARY ACTION

1. Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Mr. Kifatullah, the then Assistant (BS-16), Administration Department (now in Higher Education Deptt:) has rendered himself liable to be proceeded against, as he 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 in collusion with DDO he was involved in huge corruption, embezzlement and misappropriation of government funds under Heads, Purchase of Machinery & equipments, TA/DA, Stationary, entertainment charges and other charges".

2. For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry officer/inquiry committee, consisting of the following, is constituted under rule 10 (1) (a) of the ibid rules:

- i. Mr. Kifayatullah Khan (BS-13)
- ii. _____
- iii. _____

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

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.

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(PERVEZ KHATTAK)
CHIEF MINISTER
KHYBER PAKHTUNKHWA
(COMPETENT AUTHORITY)

29.01.2015

Mr. Kifayatullah (BS-16),
the then Assistant,
Administration Department
(now Higher Education Department)

To

Deputy Secretary (Reg-II)
Finance Department/
Inquiry Officer.

Annex 'B',

10

Subject:- REPLY TO CHARGE SHEET AND STATEMENT OF ALLEGATION

Dear Sir,

Kindly refer to your letter bearing No.1-1/FD/DS(Reg-II)/2015, dated 09.02.2015 on the subject noted above.

2 Before ~~my~~ furnishing my reply to the allegations as contained in the charge sheet it is worth mentioning that in my entire government service encompassed by 24 years I have an unblemished record owing to which I have never been issued even a single explanation what to speak of major penalty. The charge as mentioned in the charge sheet is totally baseless and void of substance and facts as I have never colluded in corruption and embezzlement owing to the fact that every sort of expenditure with regard to entertainment which has to take effect was carried out after due approval by the competent authority for which the then Secretary Administration and Chief Secretary were the competent fora. As regards other charges the competent authorities have already accorded approval in such cases which (approvals) have been authenticated by the Anticorruption Establishment.

3. In view of the above it is requested that I may be absolved of the charge as every expenditure was made after proper processing of the cases and subsequently obtaining approval of the competent authority.

4. I wish to be heard in person also please.

Yours faithfully,


(KIFAYATULLAH)

Ex-Assistant Administration Department.

Attested to be
True Copy

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Annex C

11

INQUIRY REPORT UNDER KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY AND DISCIPLINE) RULES, 2011 AGAINST Mr. Maqbool Hussain (PMS BPS-17), the then Section Officer (Admn), Administration Department, Mr. Abid Hussain (BPS-17), the then Superintendent, Administration Department (Now Transport Department), Mr. Kifayatullah (BPS-16), the then Assistant Administration Department (now Higher Education Department), . Mr. Imtiaz Ali Khan (BPS-11), the then Junior Clerk, Administration Department (C/O E-IV Section, Establishment Department).

1. ORDER OF INQUIRY.

The Competent Authority (Chief Minister Khyber Pakhtunkhwa) has been pleased to Order Inquiry against the under noted Officers/Officials, vide Section Officer (E-II)(ED)4(133)2010 dated Peshawar the Feb 03/2015.

1. Mr. Maqbool Hussain (PMS BPS-17), the then Section Officer (Admn), Administration Department.
2. Mr. Abid Hussain (BS-17), the then Superintendent, Administration Department (now Transport Department).
3. Mr. Kifayatullah (BS-16), the then Assistant, Administration Department (now Higher Education Department).
4. Mr. Imtiaz Ali Khan (BS-11), the then Junior Clerk, Administration Department (C/O E-IV Section, Establishment Department).

The charge sheet and statement of allégations read as under:-

“That being DDO Mr. Maqbool Hussain was involved in huge corruption, embezzlement and misappropriation of government funds under Heads, Purchase of Machinery & equipments, TA/DA, Stationary, entertainment charges and other charges” and the charge sheet for the remaining three officials of Administration Department read as under:-

“ That in collusion with DDO you were involved in huge corruption, embezzlement and misappropriation of government funds under Heads, Purchase of Machinery & equipments, TA/DA , Stationary, entertainment charges and other charges”.

INTRODUCTION.

Recently the terms “Governance” and “Good Governance” are being increasingly used in development literature. Bad Governance is being increasingly regarded as one of the root causes of all evil with in our societies. It seems pertinent here that we may mention the characteristic features of Good Governance.

There are eight characteristic features of Good Governance. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that

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24-03-2015

12

...ortation is minimized, the views of minority are taken into account and that the voices of most vulnerable in society are heard in decision making. It is also responsive to the present and future needs of society.

The classical example of Good Governance in Islamic history is evident from the letter of Ali Ibne Talib, the forth pious caliph which he had written to Malik ibn Al Ashtar, the then appointed Governor of Egypt. Ali's letter to Malik ibn Al Ashtar is a treatise on Good Governance. One of the excerpts of his letter to Malik ibn Al Ashtar is reproduced down below.

..... thereafter, look into the affairs of your executives, give them appointment after tests and do not appoint them according to partiality or favoritism, because these two things constitute sources of injustice and unfairness. Select from amongst them those who are people of experience and modesty, hailing from virtuous houses, because such persons possess high manners and untarnished honor. They are the least inclined towards greed and always have their eyes on the end of matters. Give them an abundant livelihood (by way of salary) because this gives them the strength to maintain themselves in order and not to have an eye upon the funds in their custody, and it would be an argument against them if they disobeyed your orders or misappropriated your trust. You should also check their activities and have people who report on them who should be truthful and faithful, because your watching their actions secretly will urge them to preserve trust with and to be kind to the people. Be careful of assistants- if any one of them extends his hands to misappropriate and the report of your reporters reaching you confirm it, that should be regarded enough evidence for corporal punishment and recovery what has been misappropriated. Put them in a place of disgrace, black list them with the charge of misappropriation and make them wear the necklace of shame for their offences.

5/10/2014

3. MODUS OPERENDI

The undersigned was appointed by the competent authority i.e. Honorable Chief Minister, Khyber Pakhtunkhwa to investigate into and conduct a formal inquiry into the statement of allegations against the aforesaid mentioned accused officials.

In order to initiate a formal inquiry, the undersigned intimated in written, to all the accused officials of the Administration Department to submit their written defense under rule 14 of the Government of Khyber Pakhtunkhwa Efficiency and Discipline Rules 2011, and for personal hearing along with departmental representative under Rule 15 of the above mentioned Rules. Subsequently, both the accused officials and the departmental representative complied with the written directions. The departmental representative provided all the relevant record of the IA /DA, purchase of machinery and equipments, stationery, entertainment charges, other and miscellaneous charges and cash book for the year 2013-14. The stock register could not be produced by the departmental representative because that was pending with anti corruption establishment.

All the accused officials submitted their written defense to the allegations. In addition to this, each accused officials was personally heard.

BACKGROUND

The issue in hand was raised when on 30th October 2014, the then Deputy Secretary, Administration Department moved a note for Chief Secretary, Khyber Pakhtunkhwa bearing multiple allegations of embezzlement in procurement of goods and negligence in delivery of services.

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Subsequently the Chief Secretary, Khyber Pakhtunkhwa directed the then Additional Secretary Cabinet to "Please conduct an inquiry and propose clear line of action at the earliest possible". The then Additional Secretary cabinet submitted the inquiry report within three days to Chief Secretary (Report attached with inquiry report sans last two pages).

Based on that report, FIR No 14, dated 11-11-2014 U/S 409/419/420/468/471/ PPC/5(2)PC ACT PS, ACE, PESHAWAR was registered by Anti Corruption Establishment Peshawar against the above mentioned four accused officials of Establishment & Administration Department Khyber Pakhtunkhwa.

In order to get to the root of the issue further deeper, Anti Corruption Establishment conducted an internal audit of the record pertaining to stationary, machinery and equipments, TA/DA, entertainment charges and other miscellaneous charges for the year 2013-14 (A.C.E Peshawar audit report attached with the inquiry report for ready reference). It was just a brief background regarding the issue which was necessary so that the competent authority could have a clear picture and understanding of the inquiry.

INQUIRY REPORT.

The undersigned, after going through the written replies submitted by the accused officials and taking guidance from the two reports i.e the one preliminary report submitted by the then Additional Secretary, Cabinet and internal audit report generated by the anti corruption establishment Peshawar, directed the departmental representative Mr. Wisal Khan, Deputy Director Information Technology to provide all the relevant record under various heads pertaining to year 2013-14. All the record and piles of files were thoroughly checked and scrutinized. All the accused officials were personally heard and questions were put to them regarding the inquiry. After all these processes, certain major findings were deducted which are produced below.

MAJOR FINDINGS.

For the sake of ease and understanding, it's pertinent that each head of account along with findings are to be dilated upon individually.

1. STATIONARY.

A sum of Rs. 26738000/= under head of account A-09601 were earmarked for purchase of stationary for the year 2013-14. After going through the relevant record, vouchers, bills, contract agreement etc following findings were deducted.

- a. The stationary purchase seems to be superfluous for most part. Its was just a spending spree without taking into consideration the rationale behind the purchase of certain items e.g dusters large size were purchased 3000 in numbers, similarly gum sticks, and gum bottles have similar functions but the same were purchased for reasons best known to the management. Similarly different computer toners were purchased on exorbitant prices.
- b. The undersigned also agree with the very much valid findings of the then Additional Secretary, Cabinet when he wrote in one of his findings that steel rulers and USB's were purchased in huge

13
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quantity without any rationale and demand from the concerned quarters.

- (14)
- c. The undersigned agree with the anti corruption establishment report regarding missing vouchers amounting to Rs. 4101677/= (audit report is attached for ready reference).
 - d. Financial non propriety is evident as per GFR.
 - e. Anti Corruption Establishment audit report clearly states that no stock register was maintained for stock taking and proper issuance of goods. This casts a shadow of doubt on the whole process.

2. **MACHINERY AND EQUIPMENTS.**

Total budget for machinery and equipments under head No 09601 was Rs.6794000/=. During scrutiny of records for machinery and equipments the following findings were recorded.

- By [Signature] 24-03-15
- a. Financial irregularity to the tune of Rs. 1200000/= was observed on account of advance payment to the contractor for installation charges of split Air Conditioners. However SO (Admn) later on during personal hearing told the undersigned that the contractor had re deposited the said amount in Government Treasury. This had to be testified by the Administration Department. (the incumbent SO(Admn) during interview vouchsafed to the inquiry officer that an amount of Rs. 1200000/= was submitted by contractor on account of installation charges of split AC's. The same amount is to be deposited in a relevant head of account soon.
 - b. As per GFR, whenever a purchase is made by the Government Department, the same shall be made inclusive of sale tax and income tax at the prescribed rates at source. But during the purchase of AC's , laptops, fax machines, laser printers, heaters, refrigerators, curtains and carpets, the purchase committee ignored the rules and purchased all these items at exorbitant rates without sales and income tax deduction. One example can be quoted here i.e Dell desktops were purchased at Rs.81300/= (each unit) without deduction of sales tax and income tax. After deduction of the said taxes later on its price shot up to Rs. 95121/= (each unit) and total 20 units were purchased. So a loss of Rs.276420/= was made to Government Treasury. After calculating the total loss of other equipments , it stood at Rs. 3037141/=
 - c. The undersigned endorses the Anti Corruption Establishment audit report with respect to financial loss amounting to Rs. 3483206/= on account of purchase of curtains , carpets , refrigerators, AC's , that were found missing in the store and at the same time was not taken on the stock register.

3. **TADA.**

Total budget under TA head for the year 2013-14 was Rs. 67200000/=. Total utilization against the allocated budget was Rs. 67158330/= this budget was meant for main office, ministers, advisors and Estate office

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15

accumulatively. After scrutinizing the TA files the following observations were made.

- a. Almost all the TA draws were made without proper sanction of tour programme by competent authority. This made the whole transaction a dubious one.
- b. Log books entries were made the basis to draw TA/DA. It is again a financial irregularity on one hand and on other hand it legalized the POL consumption and heavy draws of TA bills.

4. ENTERTAINMENT CHARGES.

Total of Rs. 9200000 under head of account A-06301 were ear marked as entertainment charges during financial years 2013-14. A total of Rs. 9189789/= were utilized against the allocated amount during financial year 2013-14. After scrutinizing the entertainment vouchers, memos, and files the following observations were made.

- a. Almost 90 % of bills were passed in lump sum without menu rates and number of guests entertained. This makes the whole transaction irregular. We cannot ascertain the financial propriety without fulfilling the codal formalities.
- b. After going through the cash memos of various vendors the undersigned observed a particular phenomenon with respect to cash memos of Pak Bakers that a uniform amount is written on every cash memo without items details and the amazing thing was that almost all the cash memo of Pak bakers contained the amount of Rs. 4100, 4500 and 4800 etc. This makes the whole process dubious. It seems that the only motive is to spend the funds without fulfilling the codal formalities.

5. OTHER MISCLELENOUS ITEMS.

After scrutinizing the vouchers and the reconcile statement pertaining to the miscellaneous items, the undersigned observed that:-

- a. A sum of Rs.28997000/= was allocated under the subject head while an expenditure of Rs.33719902 has been shown on the reconciled statement of June 2014. This is again a procedural and financial flaw on the part of both Administration Department and Accountant General office, Peshawar.
- b. Maximum vouchers with supporting cash memos were found irregular on the ground that items purchased were neither recognizable nor readable. This makes the whole process a dubious one.
- c. The undersigned could not found indents/issue register of the items purchased.
- d. The undersigned support the Anti Corruption Establishment Peshawar audit report pertaining to the audit of other miscellaneous items.

CONCLUSION.

After narrating and analyzing the charges of embezzlement, corruption and misappropriation of Government funds under various heads the following conclusions can be deducted:-

1. The undersigned has reached the conclusion while checking

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responsibilities. Even on most occasions the purchase committee was not present which is evident from the attendance sheet of the minutes of the meeting held for various purchases.

2. Inefficiency and inaptitude is evident on the part of lower staff i.e cashier, caretaker, stationary incharge and Section Officer (Admn). Proper maintenance of stock register and store keeping was never carried out and at the same time the same was never inspected by the inspection committee. These lacunae led to the financial irregularities.
3. Methodical and procedural flaws were also present in various transactions and it was the duty of Drawing and Disbursing Officer concerned to fulfill codal formalities.
4. General Financial Rules in many cases were never adhered to, that's why the whole mess was created.

RECOMMENDATIONS.

After writing down the analysis of major findings and conclusion, the undersigned would fix partial responsibility on the purchase and inspection committee and partial responsibility on the four accused officials of Administration Department. Inquiry report is hereby submitted to the competent authority for appropriate action under rule 4 of the Khyber Pakhtunkhwa Efficiency and Discipline rules 2011.

J. Javed
21-03-2007

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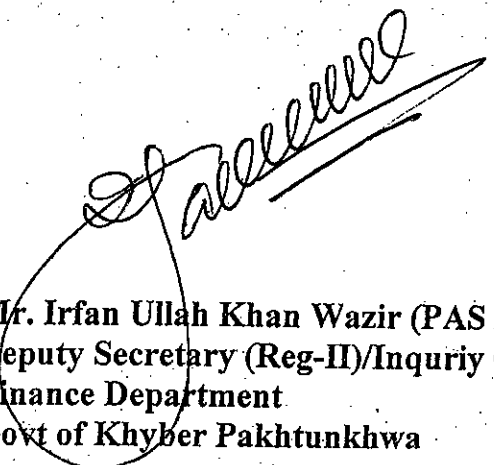
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CERTIFICATE

It is certified that the above mentioned Inquiry Report consists of 06 pages. Every page is written and signed by the inquiry officer. Additionally, various annexures are also attached with the inquiry report.

Dated 24-03-2015


Mr. Irfan Ullah Khan Wazir (PAS BS-18)
Deputy Secretary (Reg-II)/Inquiry Officer
Finance Department
Govt of Khyber Pakhtunkhwa

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IMMEDIATE



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

(18)

Annex D

NO.SOE-II(ED)4(133)/2010
Dated Peshawar the June 10, 2015

To

Mr. Kifayatullah,
Assistant (BS-16),
Higher Education Department.

SUBJECT: SHOW CAUSE NOTICE

I am directed to refer to the captioned subject and to enclose Show Cause Notice dated 27.05.2015 (in original) duly signed by the competent authority i.e. Chief Minister, Khyber Pakhtunkhwa with the direction to furnish your written reply within seven days or not more than 15 days of the receipt of this communication.

Wardah Latif
10/6/2015
(WARDAH LATIF)
SECTION OFFICER (E-II)

ENDST: NO. & DATE EVEN

Copy forwarded to:-

- i. P.S to Chief Secretary, Khyber Pakhtunkhwa.
- ii. P.S to Secretary Establishment, Khyber Pakhtunkhwa.

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SECTION OFFICER (E-II)

D



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

19

SHOW CAUSE NOTICE

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Kifayatullah (BS-16), the then Assistant, Administration Department (Now Higher Education & Archives Deptt:) as follows:-

1. (i) that consequent upon completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide communication No.1-1/FD/DS (Reg-II)/2015 dated 09.02.2015; and
- (iv) On going through the findings and recommendations of the inquiry officer, the material on record and other connected papers including your defence before the inquiry officer,-

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

- a) Inefficiency;
- b) Misconduct;

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Dismissal from Service under rule 4 of the said rules.

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

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

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

Pervez Khattak
(COMPETENT AUTHORITY)

27/5/15.

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Mr. Kifayatullah (BS-16),
the then Assistant, Administration Department
(Now Higher Education & Archives Deptt:)

Annex "E"

20

To

The worthy Chief Minister (Appellate Authority)
Khyber Pakhtunkhwa.

Subject:- **REPLY TO FINAL SHOW CAUSE NOTICE DATED 27.05.2015**
Vide letter No.SOE-II(ED)4 (133)/2010, dated 10.06.2015

Respected Sir,

I have the following few lines to submit in my defense:-

1. That I joined the service at Establishment and Administration Department as Naib Qasid on 26.07.1990 and later on account of the devoted services I was promoted to the post of Daftari, Junior Clerk, Senior Clerk and then as Assistant.
2. That I served in various capacities in the Establishment Department for the last 25 years during which period of time not even a single explanation has ever been called from me what to speak of the disciplinary action which is the proof that throughout my long service of 25 years I have served the Department honestly and to the entire satisfaction of my high-ups.
3. That as Assistant, I was only assigned the entertainment and other charges, while the purchase of machinery, equipments, TA/DA and stationery charges were not assigned to me although the same was also mentioned in the charge sheet and statement of allegations. Since these items are consumed in the Department in the offices of the Chief Secretary, Secretaries in various official meetings/ceremonies, therefore, the approval for these charges are directly obtained from the competent authorities (Chief Secretary, Secretary (Admn) and Deputy Secretary (Admn) and thus there are no chances of irregularities.
4. That the purchases of the items were made after proper approval of the competent authorities through proper prescribed procedure and never any objection whatsoever has ever been raised over the purchase of items by the competent authority which proved that I have never been guilty of any irregularity in the purchase of the items. Had there been any irregularity in the purchase of the items, the competent authority would have refused the approval or could have inquired into the matter at the relevant time but since there was no objection whatsoever at the time of approval by the competent authority therefore, subsequently, disputing the same after longtime, is not appropriate.
5. That as per the report of the inquiry officer there is no specific finding regarding any sort of embezzlement or corruption against me. I have carried out my responsibilities to the best of my capabilities hence I have not committed any acts/omission of inefficiency and misconduct.

SIR I WISH TO BE HEARD IN PERSON ALSO.

Yours obediently,


(KIFAYATULLAH)

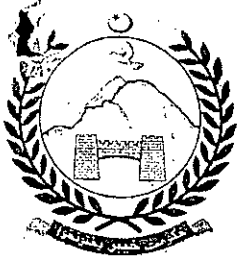
ASSISTANT

HIGHER EDUCATION DEPARTMENT

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27/6/2015



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

(21)
Annex "F"

Dated Peshawar the January 04, 2016

NOTIFICATION

NO.SOE-II(ED)4(133)/2010:- WHEREAS, the following officer/officials of Administration Department were proceeded against under rule 3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the Charge Sheet & Statement of Allegations dated 03.02.2015:

1. Mr. Maqbool Hussain, PMS BS-17, then Section Officer (Admn), E&A Department now under suspension
2. Mr. Abid Hussain, then Cashier, E&A Department now Superintendent Transport Department
3. Mr. Kifayatullah, then Caretaker, E&A Department now Assistant, Higher Education Department.
4. Mr. Imtiaz Ali Khan, then Stationery Clerk now Junior Clerk, E&A Department.

AND WHEREAS, Mr. Irfanullah Khan, PAS BS-18 Finance Department, Peshawar was appointed as Inquiry Officer to conduct enquiry against the said accused;

AND WHEREAS, the Inquiry Officer after having examined the charges, evidence on record and explanation of the accused, submitted his report, whereby the charges levelled against the accused stand proved;

NOW THEREFFORE, the competent authority (Chief Minister, Khyber Pakhtunkhwa) after having considered the charges, evidence on record, the explanation of the accused, findings of the Inquiry Officer and personal hearing, and exercising his powers under rule-3 read with rule-14 (5) of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 has been pleased to impose the major penalty of "REMOVAL FROM SERVICE" upon the above mentioned officer/officials.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN.

A copy is forwarded to:-

1. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Administration Department.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Transport Department.
4. Secretary to Govt. of Khyber Pakhtunkhwa, Higher Education Department.
5. Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. DD(IT)/SO(Admn)/SO (E-IV)/SO(Secret)/EO, E&A Department.
7. Officer/officials concerned.
8. PS to Chief Secretary, Khyber Pakhtunkhwa.
9. PS to Secretary Establishment.
10. PS to S.S(E)/S.S(Reg:), Establishment Department.
11. PAs to Addl: Secretary (Estt) / Dy. Secretary (Estt), Establishment Department.
12. Office order file.
13. Personal files.

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04.01.2016
SECTION OFFICER (E-II)

F

Annex "G"

22

Received by
The
29/1/16

To

The Honorable Chief Minister/
Review Authority,
Government of Khyber Pakhtunkhwa,
Chief Minister's House, Peshawar.

Office of the PSCM
Diary No. 237
Dated: 29/1/16

Subject:

REVIEW PETITION AGAINST ORDER NO.SOE-II(ED)4(133) /2010
DATED 04-01-2016, WHEREBY THE PETITIONER HAS BEEN
AWARDED MAJOR PENALTY OF "REMOVAL FROM SERVICE".

Prayer:

ON ACCEPTANCE OF THIS PETITION, THE IMPUGNED ORDER
NO.SOEII(ED)4(133)/2010 DATED 04-01-2016 MAY KINDLY BE
REVIEWED SET ASIDE AND THE PETITIONER MAY BE REINSTATED
IN SERVICE WITH ALL BACK/ CONSEQUENTIAL BENEFITS.

Respected Sir,

1. That the appellant was Assistant (BPS-16), working as Caretaker (General), Establishment & Administration Department and since his induction in service performed his duty with great zeal and devotion.
2. It was in 07/10/2014, that a fact finding enquiry was conducted when the then Deputy Secretary (Admn), Administration Department moved a note and the Chief Secretary marked it directly to the Additional Secretary (Cabinet) who submitted his report to the Chief Secretary directly within three days without examining the concerned authorities and record. Secretary Administration being the competent and controlling authority was by-passed in the process for reasons beyond comprehension. As result of this mysterious enquiry, Secretary Establishment addressed Director Anti-Corruption Establishment to initiate action as recommended in the fact finding enquiry. But as a matter of fact and record, the last pages of this enquiry are missing till-date and as such it is not yet established whether it recommended any further proceedings against the petitioner. On the basis of an incomplete report, a case was registered against the petitioner and other one. During the course of investigation detailed audit was conducted which reveal that there was no substandard with allegations. During hearing of the case at bail stage, the court directed Association of Purchase Committee with the probe but the direction was ignored for ulterior motives.
3. During first hearing of the case Peshawar High Court allowed the petitioner bail in view of the patent contradictions and short comings in the prosecution

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case. Non-availability of the concluding pages in the fact finding enquiry was major reason for this relief.

4. On 03-02-2015, the petitioner was suspended without any renewal after 3 months under the rules. The petitioner was served with charge sheet containing baseless and unfounded allegations which are general in nature and do not speak for any specific transaction(s). The charge sheet reads, "That in collusion with Drawing & Disbursing Officer you were involved in huge corruption, embezzlement and misappropriation of government funds under heads, purchase of machinery & equipments, TA/DA, Stationary, Entertainment & Other charges". The petitioner duly submitted his detail reply to the Inquiry Officer. During personal hearing on 18-02-2015, the petitioner denied the allegations being false, frivolous and baseless. The enquiry officer submitted his report on 24-03-2015, wherein it was again mentioned that last pages of fact finding inquiry were missing recommendation. In his recommendations, the enquiry officer fixed partial responsibility on the purchase committee, partial representing on inspection committee and partial responsibility on four accused officials including the petitioner. In a back reference the enquiry officer attributed specific responsibility to sanctioning authorities leading to the submission of summary recommending a minor penalty of withholding annual increment for two years.

5. This summary was returned back with observation to justify the recommendation of minor penalty of withholding increments. The Establishment Department responded that there were gray areas and while taking into account the Final Grant it was found not logical that entire could be embezzled or misappropriated under that above heads of account as the department did function during the period as well. Despite these gray areas the petitioner was indicating the imposition of major penalty of dismissal from service served with show cause.

6. The petitioner was once again subjected to discrimination when the recommendation of minor penalty were converted with major penalty and everyone else including the members of purchase committee, inspection committee and sanctioning authorities were not even asked despite explicit recommendation in the enquiry report.

7. That I submitted the detail reply to the show cause along-with annexes and once again denied all the allegations and cogent grounds including the following:-

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- a) That I joined the service at Establishment Department and Administration Department as Naib Qasid on 26.07.1990 and later on account of the devoted services I was promoted to the post of Daftari, Junior Clerk, Senior Clerk and then as Assistant.
- b) That I served in various capacities in the Establishment Department for the last 25 years during which period of time not even a single explanation has ever been called from me what to speak of the disciplinary action which is the proof that throughout my long service of 25 years I have served the Department honestly and to the entire satisfaction of my high-ups.
- c) That as Assistant, I was only assigned the entertainment and other charges, while the purchase of machinery, equipment, TA/DA and stationery charges were not assigned to me although the same was also mentioned in the charge sheet and statement of allegations. Since these items are consumed in the Department in the offices of the Chief Secretary, Secretariat in various official meeting/ceremonies, therefore the approval for these charges are directly obtained from the competent authorities (Chief Secretary, Secretary (Admn) and Deputy Secretary (Admn) and thus there are no chances of irregularities.
- d) That the purchase of the items were made after proper approval of the competent authorities through proper prescribed procedure and never any abjection whatsoever has ever been raised over the purchase of items by the competent authority which proved that I have never been guilty of any irregularity in the purchase of the items. Had there been any irregularity in the purchase of the items, the competent authority would have refused the approval or could have inquired into the matter at the relevant time but since there was no objection whatsoever at the time of approval by the competent authority therefore, subsequently, disputing the same after longtime, is not appropriate.
- e) That as per the report of the inquiry officer there is no specific finding regarding any sort of embezzlement or corruption against me. I have carried out my responsibilities to the best of my capabilities hence I have not committed any acts/omission of inefficiency and misconduct.

8. On 18/08/2015, the petitioner was given an opportunity of personal hearing by Secretary Law on behalf of the Competent Authority. An unfortunate aspect

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At this stage is the fact that after written and verbal requests no one from the department attended the personal hearing and could not provide complete report of the fact finding inquiry. After personal hearing, Secretary Law submitted his report and mentioned the following glaring facts:-

- a) Contradiction and inconsistencies in the Fact Finding Enquiry (where last pages were/ are missing), Audit report of the Anti-Corruption, Establishment and formal enquiry where highlighted in tabulated form with conclusion that it could not be determined as to which of three reports are correct and which constituted the basis of penalty proposed for the petitioner as all these reports contradicted each other.
- b) Last pages of the Fact Finding Inquiry are missing from which it cannot be determined who has conducted the inquiry and who has been held responsible which means that the case made without any base.
- c) Charge Sheet is given under Rule 3(c) and Show Cause given on Rule 3(a&b) of E & D Rules, 2011 which are contradictory to each other.
- d) Either Authority may pass orders for Denove Inquiry by Charge Sheetting from Top to Bottom (Sanctioning Authorities & Committee Members also)

9. After personal hearing the Establishment Department once again gave observations despite the fact that none of its representative attended the hearing when they were asked to do so during the process. These after thoughts were directed to dilate the effects of glaring contradictions and short coming in the whole process of enquiry.

10. The Competent Authority has given approval of the proposal of the Establishment Department on 26-11-2015, rather than of proposal of the Secretary Law who heard the petitioner an others on behalf of the competent authority but astonishingly notificacation of Removal from Service was issued on 04-01-2016 after more than a month of approval from the competent authority.

11. That the penalty so imposed upon the petitioner is illegal, unlawful and against the facts hence liable to be set aside inter alia on the following grounds:-

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GROUNDS OF REVIEW PETITION:

26

- A) That the petitioner has not been treated in accordance with law hence his rights secured and guaranteed with the law are badly violated. For practical purposes it is a case of double jeopardy as the petitioner is not only discriminated but also punished for same thing which he never committed.
- B) That no proper procedure has been followed before awarding the penalty. Last pages of the fact finding inquiry constituting the basis of proceedings are missing till date, which places a visible question mark on the veracity and impartiality of the succeeding actions. The petitioner was not been properly associated with the inquiry proceedings, statements of witnesses if any were never recorded nor he was given an opportunity to cross examine those witnesses who may have deposed against him thus the whole proceedings are defective in the eye of law.
- C) That the charges leveled were never proved during the inquiry proceedings but the Inquiry Officer gave him findings on surmises and conjectures.
- D) That the inquiry has not been conducted in accordance with law and rules. The procedure prescribed in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has not been followed during the inquiry thus the inquiry is inherently defective and cannot be made the basis of punishment and penalty. It lacks the support of law and facts as no evidence has been brought on record to fix responsibility upon the petitioner for the alleged charges.
- E) That the petitioner has been single out and none of the sanctioning authorities, members of the Purchase Committee were associated with the enquiry proceedings despite a conclusion recommendation of the inquiry officer. As a matter of fact all purchases and procurements were done after completion of legal and regulatory requirements and all payments were made after sanction of competent authorities. The petitioner neither over stepped his authority nor abdicated his responsibility as Stationary Incharge in processing payments which were sanctioned for procurements, which were completed by Purchases Committee and verified by Inspection Committee.
- F) That All the processes have been done after observing all the codal formalities and as per standard set by the government and nothing done against the law during any process of purchases and procurements.

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- G) That the petitioner being officer of lowest rank had no power to manipulate any process.
- H) That the petitioner has never committed any act or omission which could be termed as misconduct, the petitioner have performed his duties with full devotion, zeal and loyalty.
- I) **External Audit** of the expenditure was conducted by the office of DG Audit, Khyber Pakhtunkhwa. There is nothing adverse and it proves that everything was done in accordance with law & procedure in vogue. 1?
- J) Pages of the fact finding inquiry are missing from day first which have been properly mentioned by the Directorate of Anti-Corruption, High Court, Inquiry Officer and Secretary Law. This fact proves that the whole procedure has been without any base and shows only malafide intentions.
- K) That on 10/11/2014, Secretary Establishment had written a letter to Director ACE for action on the basis of recommendation in the fact finding enquiry. On the same day Circle Officer, ACE observed that last pages of the inquiry were missing and Director Anti-Corruption allowed open inquiry on the same day. Rules on the subject require preliminary proceedings and detailed investigations before drawing any adverse conclusion. But the Directorate of Anti-Corruption registered FIR against the petitioner on 11-11-2014 i.e. on the next day, which clearly indicates that FIR was registered on incomplete ordinance which is against the law and shows malafide intentions against the petitioner.
- L) That ACE has done an audit in detail for about one month and it has cleared fall allegations leveled against the petitioner.
- M) That on 08-12-2014 Peshawar High Court allowed bail to the petitioner on following grounds:-
 - "i) ACE did audit and has not fixed responsibility.
 - ii) Last pages of fact finding inquiry are missing and the said inquiry is incomplete from which it cannot be determined that who conducted this inquiry, what to speak of fixation of responsibility.
 - iii) The ACE has shown haste in registration of the FIR without first fixing the responsibility or providing them opportunity of confrontation with the material collected."

But the judgment of PHC has not been followed in letter & Spirit. Despite the availability of these observations, the petitioner was made to suffer and that also with proof.

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28

- N) The suppliers charged with petitioner in the FIR were allowed Pre Arrest Bail on the purchase could not establish a prime facie charge against them. Despite they being accused, the Administration Department has given supply orders to the same suppliers for supply of Charcoal, Stationary & Equipments in the next financial year and also did payments. This shows that the case was concocted against the petitioner only.
- O) Charge Sheet & Statement of Allegations were issued to the petitioner on basis of Rule 3(c) (Corruption Charges) of E & D Rules, 2011 and he received show cause notice on the basis of Rule 3(a & b) (Inefficiency & Misconduct) of E& D Rules, 2011 which are contradictory to each other as show cause directly says that there is nothing proved on basis of charge sheet.
- P) That the contents of Charge Sheet & Statement of Allegations are vague. Evasive and general in nature, which do not speak for any specific transaction(s) and bill(s).
- Q) Recommendation of the Inquiry Officer was to the extent of partial responsibility on the sanctioning authorities, purchase committees (for purchase of ACs etc, Stationary, Computers etc), inspection committees & four accused not on basis of corruption but on basis of procedural flaws but the petitioner received show cause notice of major penalty which is later on imposed as Removal from Service which is violation of the basic principles of equality before law.
- R) The Establishment Department gave proposal to the competent authority that **"Due to procedural requirements/irregularities the department proposes minor penalty of withholding of annual increments for two years,** which has been returned by the Chief Secretary with observation that "why a minor penalty should even be mentioned as an option leave alone be recommended to the Chief Minister Establishment Department replied with observation raised that **"while taking into the account the Final Grant it was found not logical that the accused could have embezzled or misappropriated the entire budget under the heads of account as the department did function during the period"**. Establishment Department proposed minor penalty as there was nothing proved against the petitioner after sending the summary, Chief Secretary directly proposed that **"Massive irregularities have been confirmed by the inquiry officer so all the accused may be dismissed from service"** which is approved. The main point to mention here that first Chief Secretary is observing

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that option may be left for the recommendation of the competent authority and then he himself gave a proposal which is in total violation of the Establishment Department's instructions that penalty will be given by the competent authority, which also shows malafide intentions & against the principle of justice.

- S) After giving detail reply to the show cause personal hearing is handed over to the Secretary Law to hear the undersigned on behalf of the competent authority. Secretary Law has made written and verbal requests to the department to provide complete fact finding inquiry whose last pages are missing till date but the department failed to provide and no departmental representative attended the personal hearing meaning by which that there was nothing with department to say in defense. During personal hearing facts were shown to the secretary law and after which he prepare a detailed report as explained before that either denove inquiry may be conducted to charge sheet from top to bottom and then see the fact as nothing proved against the undersigned . after sending the report Establishment Department did rebutted on it and proposed major penalty of removal from service which is against the rules as personal hearing is last stage and role of Establishment Department has already been finished but due to personal interest proposal of the Establishment Department has been approved and personal hearing is over ruled and is not given any weight-age which is against rules.
- T) It is astonish that same Establishment Department was first proposing "**Minor Penalty**" after proper examination and in last proposes "**Major Penalty**" which shows malafide intentions and is against the rule of law.
- U) That my hearing done on 18-08-2015 while file is sent to the competent authority on 18-09-2015, but due to malafide intensions and personal grudges/interest of the Department, the competent authority approved the proposal of the Establishment Department on 26-11-2015 where personal hearing (Report/Proposal of the Secretary Law) and reply of show cause are over ruled and not considered which is totally against the rules as under the rules neither Establishment Department nor anyone else cannot do rebuttal on personal hearing.
- V) That the competent authority approved file and confirmed the major penalty of Removal from Service on 26-11-2015 while the Establishment Department issued notification on 04-01-2016 after lapse of one month. As a matter of fact

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the Regulation Wing had advised that there was error in notification and the Department will submit again summary to the competent authority but the Department hasn't followed the advice and delayed the notification as well due to which the petitioner suffered immense tension and anxiety.

W) That the whole process of my inquiry has taken about one year where as per rules inquiry must be completed within 30 days and report will be submitted to the competent authority after submitting the report by the inquiry officer.

TIME TAKEN BY THE INQUIRY PROCESS:

Charge Sheet	3 rd Feb, 2015	Inquiry completed in 50 days where as per rules inquiry must be completed in 30 days as mentioned before.
Personal Hearing with Inquiry Officer	18 th Feb, 2015	
Inquiry completed by the Inquiry Officer	23 rd Mar, 2015	
Show Cause	10 th Jun, 2015	After submitting the Inquiry file remained in the Establishment Deptt for 76 days.
Reply to the Show Cause	22 nd Jun, 2015	
Personal Hearing with Secretary Law on behalf of the Competent Authority	18 th Aug, 2015	About 100 days file remained in the Establishment Department & Chief Minister's Secretariat.
File sent to the Competent Authority	18 th Sep, 2015	
Approval of file by the Competent Authority	26 th Nov, 2015	
Notification	4 th Jan, 2016	More than one month after approval of the Competent Authority.
256 days have been taken to complete the inquiry process which is totally against the rule of law and shows only mala fide intentions.		

X) That after doing all the processes of inquiry unlawfully and illegally the Establishment Department now appointed DG PSA to conduct the fact finding inquiry regarding "Missing pages of inquiry conducted by the Aziz Khan Khattak the then AS (Cabinet), Admn Deptt" and report be submitted in 30 days as about 4 months passed but there is nothing which shows that it is only a formality and cover-up. If the inquiry is to be conducted on missing pages which has been mentioned from day first that pages are missing then how the whole process has been done. How the petitioner has been penalized and how he has been recommended for action and how FIR has been registered as Circle Officer ACE mentioned the same on 10-11-2014 and FIR registered on 11-11-2014. The important point to mention here that doing fact finding inquiry on missing pages now is not that must important, where main thing is to dig out is what was in that

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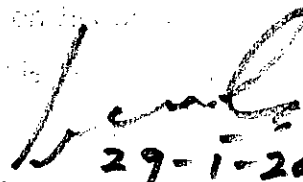
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pages and why these are missing. This shows that the whole process is irregular, against the rules and on malafide intentions.

Y) That the petitioner have a long and spotless service career to his credit during which he performed his duties with zeal, devotion and loyalty and have never given any chance of complaint regarding performance. The petitioner always preferred the public interest over his personal interest. The penalty imposed upon him is too harsh and is a stigma on his spotless career. It is, therefore, humbly prayed that on acceptance of this review petition the impugned order No.SOEII(ED)4(133)/2010 Dated 04-01-2016 may kindly be set aside and he may be exonerated of all the charges, restored to his original position with all back/consequential benefits.

The petitioner solicits an opportunity of personal hearing in the presence of the then Secretary Administration, Deputy Secretary Administration and members of Purchase Committees with the record.

Yours faithfully



29-1-2016
KIFAYATULLAH, ASSISTANT
Ex- Caretaker (General)
Administration Department, Civil Secretariat,
Peshawar.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Registered

32

Annex "H"

NO.SOE-II(ED)4(133)/2010

Dated Peshawar the April 18, 2016

To

1. Mr. Maqbool Hussain.
(Ex-PMS BS-17).
2. Mr. Abid Hussain.
(Ex-Superintendent/Cashier)
- ✓ 3. Mr. Kifayatullah
(Ex-Assistant/Caretaker)
- ✗ 4. Mr. Imtiaz Ali Khan.
(Ex-Junior Clerk/Stationery Clerk)

E&A Department

Subject:- REVIEW PETITION

I am directed to refer to your Review Petitions on the subject noted above and to inform you that after perusal of the relevant record, the Competent Authority has been pleased to uphold the order of penalty and reject the review petitions.

(NAZAR ALI)
SECTION OFFICER(E-II)

ENDST: NO. & DATE EVEN.

Copy forwarded to:

1. Principal Secretary to Chief Minister, Chief Minister's Secretariat, Peshawar.
2. Section Officer (E-IV), Establishment Department.

SECTION OFFICER(E-II)

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GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(HRD WING)

Annex "I"

No. SO (HRD-II)/ED/1-10/2014 (RTI)/Maqbool Hussain & Others
Dated: Peshawar the 19th January, 2016.


To

Mr. Maqbool Hussain,
Ex-Section Officer (Admn), Administration Department & others

SUBJECT: - PROVISION OF DOCUMENTS RELATED TO OUR CASE UNDER RTI ACT, 2013.

Kindly refer to your application dated 15th January, 2016 on the subject and to forward herewith some of the requisite information as requested under **Right to Information Act, 2013.**

Encls: As above.


Additional Secretary (HRD) /
Public Information Officer (P.I.O)

Endst: No & date even.

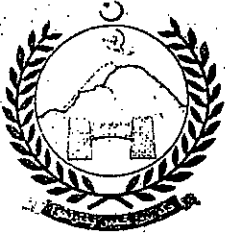
Copy forwarded to:

1. The Chief Information Commissioner, Government of Khyber Pakhtunkhwa, Right to Information Commission, 7th Floor, Tasneem Plaza, Near Benevolent Fund Building, 6th Saddar Road, Peshawar for information please.
2. PA to Additional Secretary (HRD) / Public Information Officer (P.I.O), Establishment Department.

SECTION OFFICER (HRD-II)


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MOST IMMEDIATE



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

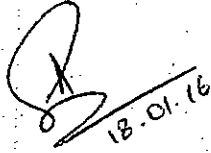
NO.SOE-II(ED)4(133)/2010
Dated Peshawar the **January 18, 2016**

To

The Section Officer (HRD-II),
Establishment Department.

**SUBJECT: PROVISION OF DOCUMENTS RELATED TO OUR CASE
UNDER RTI ACT, 2013.**

I am directed to refer to your letter No.SO(HRD-II)/ED/1-10/2014 (RTI)/Maqbool Hussain & others, dated 14.01.2016 on the subject and to enclose herewith the requisite information (duly attested) for further necessary action as desired, please.


SECTION OFFICER (E-II)

Encl: As above.

ENDST: NO. & DATE EVEN.

Copy forwarded to:

1. Additional Secretary (HRD), Establishment Department.

SECTION OFFICER (E-II)

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

35 b8

SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA

SUBJECT: CASE FIR NO. 14, DATED 11.11.2014 U/S 409/419/420/468/471 PPC/5(2) PC ACT PS, ACE, PESHAWAR

Directorate of Anti-Corruption Establishment, Khyber Pakhtunkhwa has informed that in the subject FIR for allegations of Corruption and embezzlement of Government funds in the purchase of Machinery & Equipments, TA/DA, Stationery, Entertainment Charges and other Charges, the following officer/officials of Administration Department, Government of Khyber Pakhtunkhwa were arrested on 11.11.2014 and sent to judicial lockup on 14.11.2014 (**Annex:I**). However, they have been granted bail by the Peshawar High Court on 08.12.2014 (**Annex:II**).

- i). Mr. Maqbool Hussain, PMS BS-17.
- ii). Mr. Abid Hussain, Supdt: (BS-17).
- iii). Mr. Kifayatullah, Assistant (BS-16).
- iv). Mr. Imtiaz Ali Khan, Junior Clerk (BS-11).

2. 194 of Civil Service Regulations (CSR) provides that a Government Servant who has been charged for a criminal offence or debt and is committed to prison shall be considered as under suspension from the date of his arrest. In case such a Government Servant is not arrested or is released on bail, the competent authority may suspend him, by specific order, if the charge against him is connected with his position as Government Servant or is likely to embarrass him in the discharge of his duties or involve moral turpitude. During Suspension period the Government Servant shall be entitled to the subsistence grant as admissible under FR-53 (**Annex:III**).

3. It may be pointed out that co-accused of the officer i.e. M/S. Abid Hussain, Supdt: (BS-17), Kifayatullah, Assistant (BS-16) and Imtiaz Ali Khan Junior Clerk (BS-11) of Administration Department have already been placed under suspension by the competent authority (**Annex:IV**).

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18/1/16

Sector Officer (E-II)
Establishment &
Administration Dept.

SECRETARY ESTAB

Chief Secretary

CHIEF MINISTER
KHYBER PAKHTUNKHWA

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4. Although issuance of suspension orders are not required in such cases, yet to avoid complications at a later stage, it is proposed that Mr. Maqbool Hussain (PMS BS-17), the then Section Officer (Admn.), Administration Department may be placed formally under suspension w.e.f. 11.11.2014.

5. While judicial proceedings are under process till logical conclusion there is no bar to proceed against the accused departmentally. **(Annex-V)**.

6. The Chief Minister, Khyber Pakhtunkhwa (competent authority) is requested to approve initiation of disciplinary proceedings in terms of proviso of Rule-2(f)(ii) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule-4(1)(a) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules-1989 **(Annex-VI)** against the officer/officials and sign the Charge Sheets and Statements of Allegations placed at **(Annex:VII)** and insert name(s) in statement of allegations for appointing as Enquiry Officer/Committee from the panel given below:-

- i. Mr. Irfanullah Khan (PAS BS-18),
Deputy Secretary, Finance Department.
- ii. Mr. Azam Jan Khalil (PCS-EG BS-18),
Additional Commissioner, Peshawar.
- iii. Mr. Khalid Ilyas (PMS BS-18),
Addl. Secretary, P&D FATA Secretariat.

7. The proposals contained in Para-4 and 6 ante are submitted for approval of Chief Minister, Khyber Pakhtunkhwa, being the competent authority.

Chief Secretary,
Khyber Pakhtunkhwa

Chief Minister,
Khyber Pakhtunkhwa

DR. AKHTAR NAZIR
(DR. AKHTAR NAZIR)
Secretary Establishment
23rd January, 2015

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26/1/2015
Chief Secretary
Govt. of Khyber Pakhtunkhwa

SECRETARY ESTAB

Chief Secretary

21/1/16
Section Officer (E-II)
CHIEF MINISTER'S ESTABLISHMENT &
KHYBER PAKHTUNKHWA
Administration Dept

**SUBJECT: CASE FIR NO. 14, DATED 11.11.2014 U/S 409/419/420/ 468/471
PPC/5(2) PC ACT PS, ACE, PESHAWAR**

9. As per approval contained in Para-08 ante, Mr. Irfanullah Khan (PAS BS-18), Deputy Secretary, Finance Department was appointed as Inquiry Officer under the Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011 and was required to submit his findings/report within 30 days (Annex-VIII). The Inquiry Officer has submitted the report/findings and concluded as under (Annex-IX):-

- i). While checking and scrutinizing all the relevant record pertaining to different heads, that the purchase committee and inspection committee duly constituted by the competent authority did not fulfill its responsibilities. Even on most occasions the chairman of the purchase committee was not present which is evident from the attendance sheet of the minutes of the meeting held for various purchases.
- ii). Inefficiency and inaptitude is evident on the part of lower staff i.e. cashier, caretaker, stationary in charge and Section Officer. Proper maintenance of stock register and store keeping was never carried out and at the same time the same was never inspected by the inspection committee. These lacunae led to the financial irregularities.
- iii). Methodical and procedural flaws were also present in various transactions and it was the duty of Drawing and Disbursing Officer concerned to fulfill codal formalities.
- iv). General Financial Rules in many cases were never adhered to, that's why the whole mess was created.

10. Establishment department has examined the enquiry report and found the following discrepancies therein:

- (a). Specific findings on quantum of embezzled amount is not known and the Enquiry Officer did not elaborate this aspect in the report except to discuss the allocation of funds under the relevant Heads of Account.
- (b). Specific role of Purchase Committee and Inspection Committee could not be highlighted by the Enquiry Officer so as to draw conclusion and fix responsibility precisely either on the accused officer(s)/officials or the Committees in question.

[Handwritten Signature]
12/1/16

**Section Officer (E-
Establishment &
Administration D)**

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- (c). Precise role of the co-accused officials and individual quantum of amount embezzled has not been probed and elaborated by the Enquiry Officer.
- (d). Conclusion of Enquiry Officer reproduced at Para-9(iv) above is generic and does not indicate specifically which rule(s) of GFR violated.

11. Keeping in view the above, either the inquiry report may be remanded back to Enquiry Officer to address the observations raised in Para-10 of the summary OR if the recommendations/findings of the inquiry officer are agreed then the competent authority (Chief Minister) may indicate a penalty from the list of penalties (minor and major) at Annex-X by incorporating one or more penalties in the space left blank in Para-2 of the Show Cause Notices placed at Annex-XI.

12. Para-11/ante is submitted for perusal and orders of the Chief Minister, Khyber Pakhtunkhwa.

[Signature]
 (Dr. Akhtar Nazir)
 Secretary Establishment
 21st April, 2015

Chief Secretary,
 Khyber Pakhtunkhwa

13. Enquiry report be sent back to enquiry officer with specific directions to address observations raised in para 10 of the summary within 10 days without fail.

[Signature]
 Secy Establishment

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M. P. P

[Signature]
 22/4/2015

Chief Secretary
 Govt. of Khyber Pakhtunkhwa

[Signature]
 Secty. Officer
 Establishment &
 Administration Deptt.

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14. The observations of Establishment & Administration Department raised in Para-10 of the summary and reply/clarification of the Enquiry Officer contained in Annex-XII, are juxtaposed at Annex-XIII.

15. Keeping in view the procedural requirements/irregularities committed by the Drawing and Disbursing Officer (DDO) and other officials, the competent authority (Chief Minister) may either like to impose a minor penalty of withholding of annual increment for two years commensurate with the charges or indicate a penalty from the list of penalties (minor and major) at Annex-X by incorporating one or more penalties in the space left blank in Para-2 of the Show Cause Notices placed at Annex-XI.

16. Para-15/ante is submitted for perusal and orders of the Chief Minister, Khyber Pakhtunkhwa.

(Signature)
(Dr. Akhtar-Nazir)
Secretary Establishment
May 14, 2015

Chief Secretary,
Khyber Pakhtunkhwa.

17. In view of Annex - XIII,

kindly justify why a minor penalty should even be mentioned as an option leave alone be recommended to the Chief Minister.

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(Signature)

19/5/2015

Chief Secretary
Govt. of Khyber Pakhtunkhwa

Secy Establishment

P.T.O

(Signature)
Secretary (E-1)
Establishment &
Administration Dept.

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Reference Para-17.

18. The inquiry officer couldn't conclude the enquiry with specific findings so far quantum of irregularities is concerned. The department after examination therefore, referred the report back with observations.

19. Now the department re-examined the report with Final Grant for financial year 2013-14 and the following position emerged: -

Sl. No.	Head of Account	Budget	Expenditure	Quantum of irregularity pointed out by Enquiry Officer
1.	Stationery	Rs.26743800/-	Rs.26965987/-	Rs.4101677/-
2.	Machinery & Equipment	Rs.4329200/-	Rs.5148670/-	Rs.3483206/-
3.	T.A/D.A	Rs.67200000/-	Rs.67167555/-	Rs.67158330/-
4.	Entertainment	Rs.9200000/-	Rs.9189789/-	Rs.9189789/-
5.	Other miscellaneous items	Rs.28997000/-	Rs.33719902/-	Rs.33719902/-

- 1) Supporting vouchers are missing which was the responsibility of DDO to have maintained the record properly.
- 2) Rs.3483206 have been misappropriated as a result of double deduction on account of Sales Tax and Income Tax.
- 3) It is not possible that the entire budget/expenditure has been embezzled particularly when crossed cheques on account of TA/DA are issued by name to the claimants - Ministers, Advisors and other officers.
- 4) The entire expenditure of Rs.9189789 under "Entertainment Charges" has been declared as irregular and the responsibility fixed on Sanctioning Authority and DDO.
- 1) The expenditure of Rs.33719902 under "other miscellaneous items" is found to have been irregular and sanctioning Authority & DDO held responsible.

20. Keeping in view the grey areas left by the Enquiry Officer, while taking into account the "Final grant", it was found not logical that the accused could have embezzled or misappropriated the entire budget under these Heads of account as the department did function during the period as well.

[Signature]
12/11/16
Sector Officer (B)
Establishment &
Administration I

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21. In order to meet the ends of justice, the Competent Authority may like to order imposition of penalty (list of penalties Annex-X) as defined in rule 4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

Allee
(Dr. Akhtar Nazir)
Secretary Establishment
May, 2015

Chief Secretary, Khyber Pakhtunkhwa.

22- Massive irregularities have been confirmed by the enquiry officer. Therefore, it is proposed that all the four accused may be dismissed from service with immediate effect.

Chief Minister

Allee
26/5/2015
Chief Secretary
Govt. of Khyber Pakhtunkhwa

Para 22 is approved.

Attested to be
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Allee
27/5/2015

SA
Sany/EET

Allee
31/5/2015
Chief Secretary
Govt. of Khyber Pakhtunkhwa

SS/EJ

P.T.O

Allee
10.6.2015

B
18/6/15
Secretary, Establishment & Administration

42

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24. As per approval of the Chief Minister, Khyber Pakhtunkhwa accorded in Para-23 of the summary, the show cause notices duly signed by the Chief Minister were served upon the following accused officer/officials with the direction to furnish the written reply (Annex-XIV).

- i). Mr. Maqbool Hussain, PMS BS-17.
- ii). Mr. Abid Hussain, Supdt: (BS-17).
- iii). Mr. Kifayatullah, Assistant (BS-16).
- iv). Mr. Imtiaz Ali Khan, Junior Clerk (BS-11).

25. All the accused officer/officials have submitted their written replies (Annex-XV, XVI, XVII & XVIII), wherein they have denied all the charges and have requested for personal hearing as well as exoneration.

26. The explanations of all the accused officer/officials are mere repetition of their earlier replies to statement of allegations and charge sheets which have already been examined by the Inquiry Officer and the charges were established against them.

27. In view of the above the following proposals are submitted:

- i. The Competent Authority (Chief Minister Khyber Pakhtunkhwa) may like to give an opportunity of personal hearing to the accused officer/officials and pass orders, deemed appropriate.
- OR
- ii. Chief Minister, Khyber Pakhtunkhwa may treat replies of the accused officer/officials to the show cause notices as sufficient and confirm the penalty of "Dismissal from Service" imposed upon them.

28. The Competent Authority (Chief Minister Khyber Pakhtunkhwa) may like to pass orders on Para-27 ante.

Chief Secretary,
Khyber Pakhtunkhwa

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[Signature]
(Dr. Akhtar Nazir)
Secretary Establishment
8th July, 2015

Chief Minister,
Khyber Pakhtunkhwa

*Can lead to give personal hearing
as per my behalf.*

[Signature]
9/7/2015
Chief Secretary
Govt. of Khyber Pakhtunkhwa
Sector Officer
Establishment &
Administration
CHIEF MINISTER
KHYBER PAKHTUNKHWA

P. T. O



43

70

GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT

30. Pursuant to orders of the competent authority contained in para-29 of the summary the undersigned gave personal hearing to the following Officer/Officials of Establishment and Administration Department on 18.8.2015:-

1. Mr. Maqbool Hussain, PMS
2. Mr. Abid Hussain, Superintendent
3. Mr. Kifayatullah, Assistant
4. Mr. Imtiaz Ali Khan, Junior Clerk

31. All the accused denied charges leveled against them and departmental representative could not attend proceedings of personal hearing despite written and verbal requests for cross examining the accused. Moreover the benefit of doubt goes to the accused as there is contradiction in all the enquiry reports as shown below:

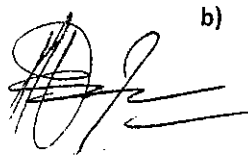
S.NO	HEAD OF ACCOUNT	PRELIMINARY ENQUIRY REPORT	ANTICORRUPTION ENQUIRY REPORT	FORMAL/ DEPARTMENTAL REPORT
1	Stationery	Amount not shown but only bogus business involving millions of rupees written in E.R	Rs.4101677/-	Rs.4101677(figures of ACE agreed)
2	Machinery & Equipment	Wasteful expenditure on items purchased not needed and 15 to 20% higher than market	Rs.3322561+Rs.1200000/-	Rs.3483206/
3	TA/DA	Rs. 25,000,000/-	In most of the cases the tour program were found missing. Proper TA register was not found maintained.	TA drawls were made without proper sanction of tour program
4	Entertainment	Mis-appropriation not mentioned however discrepancies create solid doubt in mind regarding genuineness of the purchase and expenditure	Mis appropriation not calculated however ample chances of misappropriation exist as the list of invitees was not found.	Rs.4100, 4500 dubious expenditure.
5	Other Miscellaneous items	Rs.31,657,880/- No proper record of the files was found/ maintained.	Rs.3483206+1249600/-	The ACE report supported.

Secty. Officer (B-II)
Establishment &
Administration Dept

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*Note: a) In preliminary Enquiry report conducted by Mr. Aziz Khattak the then Additional Secretary (Cabinet) and now Inspector General Prisons, certain pages are missing which have not been provided by Establishment and Administration department till date of personal hearing i.e 18.8.2015.




b) Even Establishment Department's examination in para-19 of the summary shows different quantum of irregularities as pointed out by Enquiry Officer as compared to above table.

32. The missing pages of preliminary Enquiry report conducted by the then Additional Secretary (Cabinet) has been noted by the Directorate of Anti-Corruption Establishment and Peshawar High Court in its judgment which should be made available to know the guilt or mis-conduct of all concerned across the board.

33. The formal/ departmental enquiry report shows the responsibility of Principal Accounting Officer (PAO) i.e Secretary Administration who is sanctioning authority in most of the cases but Enquiry Officer has not fixed responsibility on the accused with specific sanctions granted by sanctioning authority and violation committed by the Drawing and Disbursing Officer (DDO). The enquiry report is generic and in most of head of accounts the enquiry Officer has relied only on the internal audit report/ Enquiry report conducted by Anti Corruption Establishment (ACE) which should not be the case. He should have probed thoroughly each item and thereafter fixed responsibility on all concerned across the board.

34. Even the summary for Chief Minister submitted by Establishment department shows discrepancy e.g Enquiry report as mentioned in para-9 of summary at Annex-IX do not contain replies of the accused to the Charge sheet and statement of allegations but it has been mentioned at para 26 of the summary that explanations of all the accused officer/officials are mere repetition of their earlier replies to the statement of allegations and charge sheets.

35. Under the circumstances justice and fair play demand that devoted enquiry may be conducted in order to fix responsibility on all those who are responsible for this mess. An Enquiry Committee may be ordered so that


Secretary (Public) (I)
Establishment &
Administration De

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78

embezzlement in the procurement of goods in Administration Department could be minutely brought to book on the analogy of Mr. Rahim Khan the then Additional Secretary of Administration Department.

36. On this incomplete enquiry during personal hearing I remained unable to determine the extent of misconduct of the accused (s) and could not recommend minor/major penalty upon accused (s).

37. Establishment Department may add views en-route, *if required.*

[Signature] 06/8/15

(MUHAMMAD ARIFEEN)
Secretary to Govt. of Khyber Pakhtunkhwa
Law, Parliamentary Affairs &
Human Rights Department

Chief Secretary

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[Signature]
18/1/16

Section Officer (E-II)
Establishment &
Administration De

Next Page

46

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38. Views of Establishment Department are as under.

39. The Chief Minister Khyber Pakhtunkhwa nominated Secretary Law to hear the accused officer/ officials on his behalf. The authorized officer was, therefore, required to restrict his recommendation to any new evidence presented by the accused, which were not presented earlier. The authorized officer only stated that all the accused denied the charges. The authorized officer concentrated upon the deficiencies of inquiry report and has suggested a de-novo inquiry, which will cause further delay & will not bring any fruitful result.

40. As far as missing pages of inquiry are concerned, these missing pages have been mysteriously stolen within the department and have directly benefitted the accused officer/ officials. The Chief Secretary has already initiated a fact finding inquiry in this regard.

41. The Chief Minister Khyber Pakhtunkhwa may like to confirm penalty of "Removal from Service" imposed upon the accused officer/ officials or impose any other penalty from the list of penalties is at (Annex-III).

[Signature]
SECRETARY ESTABLISHMENT
16 September, 2015

CHIEF SECRETARY,
KHYBER PAKHTUNKHWA

Chief Minister

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[Signature]

18/9/2015

[Signature]
13/1/16
Chief Secretary, Officer (E-II)
Govt. of Khyber Pakhtunkhwa
Establishment &
Administration Dep

42.

Para. III is appended.

SECRETARY ESTAB

[Signature]
Chief Secretary

[Signature]
26/11/15
Chief Minister
Khyber Pakhtunkhwa

Chief Secretary KHYBER PAKHTUNKHWA

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT.

47

Reference Para-23 of the Summary:

The Competent Authority has approved to impose major penalty of "**DISMISSAL FROM SERVICE**" upon the following officer/officials:-

- i. Mr. Maqbool Hussain, PMS BS-17, Section Officer
- ii. Mr. Abid Hussain, Superintendent (BS-17)
- iii. Mr. Kifayatullah, Assistant (BS-16)
- iv. Mr. Imtiaz Ali Khan, Junior Clerk (BS-11)

As desired a draft notification in this regard is placed below duly flagged for approval please.

Wardahlatif
10/6/2015
Section Officer E-II

Secretary (E):

*Discussed with SE in presence of SE this afternoon. He agreed to issue the Show Cause notice as per requirement of Rule 14(4) of EPD Rules 2011, duly signed by the Competent Authority (CA).
SO(E): issue it today fortnightly: 10/6/15*

Attested to be True Copy

The requisite reply to show cause notice by all the concerned have been received.
Submitted please.

DSE:-
Examine and process pl.
SO(E-IV)

Wardahlatif
25/6/2015
18/7/16
Section Officer (B-1)
Establishment & Administration D

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26/6/2015

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(H) 48

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Cr. Misc. (BA) No. 1961-P/2014 Annex "A"

Kifayat Ullah S/O Abdul Samad

R/O Mewra, Daudazai, District Peshawar



Versus

The state

Respondent

Case FIR No. 14, Dated: 11-11-2014

Registered U/Ss: 409/419/420/468/471 PPC r/w 5(2) PC Act

Police Station: ACE, Peshawar

**PETITION FOR RELEASE OF THE PETITIONER
ON BAIL TILL THE DECISION OF THE CASE**

Respectfully Sheweth:

- A) That the petitioner has been shown as, co-accused in the captioned case registered U/Ss. 409/419/420/468/471, PPC r/w 5(2) PC Act on 11-11-2014 at PS ACE, Peshawar vide FIR No. 14. Attested copy of FIR is annexed-"A".
- B) That the petitioner applied to the Court of learned Special Judge Anti-Corruption (Provincial), KPK, Peshawar for his release on bail vide application, attested copy of which is annexed-"B". The Learned Judge while seized with the matter dismissed the same on 28-11-2014 vide his order, attested copy of which is annexed-"C".

ATTESTED
EXAMINER
Peshawar High Court
08 JAN 2015

Now the petitioner begs leave to seek bail from this august Court, inter-alia, on the following grounds;

GROUND:

1. That the petitioner is quite innocent and has falsely been implicated in the present case. There is absolutely no evidence ocular, circumstantial or documentary regarding his complicity in the alleged transaction.

Attest
True Copy

FILED TODAY
Duty Registrar
9 DEC 2014

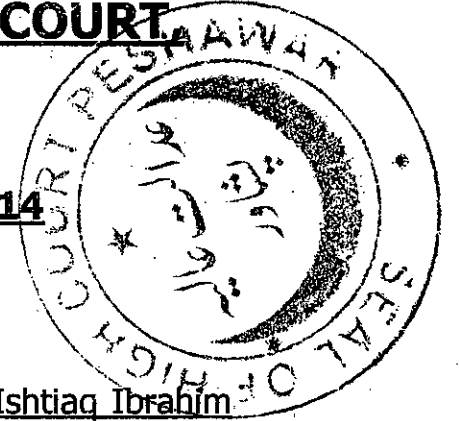
J

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18

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
 (Judicial Department)

Cr.Misc.BA No.1952-P/2014



Date of hearing: 08.12.2014

Petitioners (s) : Maqbool Hussain by Mr. Ishtiaq Ibrahim Khan, Advocate.

Respondent(s) : The State by Mian Arshad Jan, A.A.G.

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- My this

common judgment, shall dispose of the instant bail petition as well as connected Cr.Misc.BA Nos.1960-P, 1961-P and 1978-P of 2014, as all are stemming out of one and the same FIR No.14 dated 11.11.2014, registered under sections 409/419/420/468/471 PPC readwith Section 5 (2) Prevention of Corruption Act, at Police Station ACE, Peshawar.

2. Petitioners Maqbool Hussain, Imtiaz Ali alias Imtiaz Ali Khan, Kifayat Ullah and Abid Hussain through the above-mentioned bail petitions, seek their release on bail in the above mentioned case.

*M.Siraj Afridi, P.S. &

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ATTESTED
 EXAMINER
 Peshawar High Court
 08 JAN 2015

SO

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3. The Secretary Establishment Government of Khyber Pukhtunkhwa Peshawar vide letter K.C. No.SOE-V (E&AD)12-24/2014 dated 10.11.2014, sought legal action against the petitioners under the ACE Laws for embezzlement, forgery, excessive purchase of stationary, machinery and equipment, TA/DA, entertainment and other charges, by virtue of departmental inquiry wherein the aforesaid charges had allegedly been proved against the petitioners. On receipt of complainant of the Secretary Establishment, an inquiry was conducted by ACE Peshawar, and on the basis of NAB report about causing huge loss to the Public Exchequer by the petitioners; instant case was registered against them.

4. Arguments heard and record perused.

5. It appears from record that on deducting discrepancies/irregularities/misappropriation of stores articles and improper maintenance of officials record, the matter was referred by the Chief Secretary vide letter dated 10.11.2014 to the Anti-Corruption Establishment for

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detail audit and also fixing responsibility against the defaulters, in compliance whereof, audit report has been furnished by Muhammad Yaqoob Shah Senior Auditor ACE, Peshawar, who worked out the total loss caused to the government exchequer by virtue of embezzlement of funds under different heads of accounts for the financial year 23013-14, but has not fixed the responsibility of said loss against the petitioners and it is yet to be determined during trial, as to who is responsible for said embezzlement, which makes the case of the petitioners that of further inquiry into their guilt. Besides, there is another inquiry report, last pages of which are missing. The said inquiry report is also incomplete from which it cannot be determined as to who has conducted this inquiry what to speak of fixation of responsibility. The Anti-corruption Establishment has shown haste in registration of the instant case without first fixing the responsibility against the petitioners or providing them an opportunity of confrontation with the material collected

Also see page 106

*M. Siraj Afridi, B.S. D.

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BY
EXAMINER
Peshawar High Court
09 JAN 2015

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27

against them. Guidance in this regard may be derived from case titled, "Mirza Muhammad Zulfiqar and others Vs the State and others" (2000 SCMR 1072). Even in the FIR, the name of complainant has not been mentioned rather as a designation Secretary Establishment Government of Khyber Pukhtunkhwa is mentioned therein, which would cause inconvenience during trial of the case on account of his transfer, retirement etc and the newly incumbent would not be well acquainted with the facts and circumstances of the case and would not be in a position to give true account of the incident. The complainant should have been mentioned by name in the FIR, in which cases, his attendance could be procured even on his retirement and transfer etc on his personal address and he would be in a better position to depose against the accused. The denial of the petitioners that they were not directly concerned with the account matters also needs consideration.

S.S. Raza

Affected to be
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*M. Siraj Aziz/LL.P.S.D

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EXAMINER
Peshawar High Court
08 JAN 2015

58

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6. Above all, sections 420 and 471 PPC are bailable and in such like offences, bail is a right. Albeit, sections 419 and 468 PPC as well as 5 (2) PC, Act, are not bailable, but punishments provided for said offences, do not fall within the Prohibitory Clause of Section 497 Cr.P.C. and in such like cases, the rule is bail and refusal thereof an exception. While on the record, I see no such exceptional circumstance which may obstruct the way of bail of the petitioners. Resultantly, all the petitions are allowed and accused/petitioners named above are admitted to bail provided each one of them furnishes bail bonds in the sum of Rs.3,00,000/- with two sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD concerned.



These are reasons of my short order of even

date. *got Assadullah Khan Chohan* J

Announced.
08.12.2014

No. 10987
 Date of Presentation of Application 08-01-15
 No of Pages 2P
 Copying fee
 Urgent Fee
 Total 1200
 Date of Preparation of Copy 08-01-15
 Date Given For Delivery 08-01-15
 Date of Delivery of Copy 08-01-15

Attested to JUDGE
True Copy

CERTIFIED TO BE TRUE COPY
 Examiner
 Peshawar High Court, Peshawar
 Authorized Under Article 8,
 The Qanun-e-Shahadat Order 1988
 08 JAN 2015

WAKALAT NAMA

IN THE COURT OF

K.P.K Service Tribunal

Shirazatullah

Appellant(s)/Petitioner(s)

VERSUS

the Govt of KPK etc

Respondent(s)

I/We Appellant do hereby appoint
Mr. Khaled Rehman, Advocate Supreme Court of Pakistan in the above
mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

Khaled Rehman,
Advocate
Supreme Court of Pakistan

3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458

[Signature]
Signature of Executants

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 443/2016

Mr. Kifayatullah Appellant

Versus

Govt. of Khyber Pakhtunkhwa & Others Respondents

PARAWISE COMMENTS FOR/ON BEHALF OF THE RESPONDENTS NO. 1 TO 3.

Respectfully Sheweth,

1. The appellant has got no cause of action and appeal is also time barred.
2. The appellant is estopped by his own conduct.
3. The appeal is bad for mis-joinder and non-joinder of necessary parties.
4. The appellant has not come to this Hon'ble Tribunal with clean hands.
5. The appellant has suppressed and twisted the facts with malafide intention for his own benefit.
6. The appeal is badly time barred.

ON FACTS

1. Pertains to record.
2. **Incorrect:** Sufficient proof were available against the appellant which shows his involvement in the corruption/ embezzlement/ misappropriation of Govt. funds.
3. **Incorrect:** No rule was violated as the Inquiry was conducted in accordance with E&D Rules, 2011 after fulfillment of all codal formalities.
4. No Comments.
5. No Comments.

GROUND

- A. **Incorrect:** The appellant was treated in accordance with rules/ law, thus no rule has been violated.
- B. No Comments.
- C. **Incorrect:** Though the items were consumed in the offices/ meetings/ ceremonies but without fulfillment of all codal formalities. As the bills were passed in lump-sum without menu rates and number of guests entertained making the whole transaction irregular.
- D. **Incorrect:** If the charges are proved against an official than it is the discretion of the competent authority to impose a minor or major penalty, after examining the report of the inquiry Officer, relevant materials related to the case and other codal formalities under E&D Rules.
- E. **Incorrect:** The appellant was given full opportunity of self defence as was required under E&D Rules, 2011 including personal hearing and the competent authority after observing all codal formalities imposed the major penalty of removal from service.

- F. **Incorrect:** If the charges against an official are proved than Inquiry Report alongwith other relevant record is to be placed before the competent authority, who after examining it imposed a penalty either minor or major.
- G. **Incorrect:** The charges of corruption misappropriation/ embezzlement of funds against the appellant were proved in the Inquiry Report, thus non has been violated.
- H. **Incorrect:** The Inquiry against the appellant was conducted in accordance with (E&D) Rules, 2011 after observing all codal formalities as was required under the rules ibid.
- I. **Incorrect:** As evident from his reply to the Charge Sheet/ Statement of Allegation addressed to the Inquiry Officer, which means that the appellant was given full opportunity of self defence and the appellant was failed to prove his innocence.
- J. **Incorrect:** As evident from his reply to Charge Sheet/ Statement of Allegation addressed to the Inquiry Officer, which means that the appellant was given full opportunity of self defence including personal hearing and the appellant was failed to prove himself innocent.
- K. **Incorrect:** The appellant was given full opportunity of self defence as was required under the rules after fulfillment of all codal formalities.
- L. **Incorrect:** Formal Inquiry was conducted against the appellant after fulfillment of all codal formalities under (E&D) Rules, 2011.
- M. **Incorrect:** As explained above.
- N. **Incorrect:** The appellant was provided full opportunity of personal hearing by the Inquiry Officer as well as competent authority.
- O. **Incorrect:** The impugned order is rightly passed against the Appellant.
- P. Pertains to record.
- Q. No Comments.
- R. The Respondents be allowed to offer the other grounds/record during the course of arguments.
- S. No comments.

It is, therefore, respectfully prayed that the appeal of the appellant may be dismissed with costs based on presumption and being illegal and malafide.



(Respondents No. 1 to 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 443 /2016

KifayatullahAppellant

Versus

The Govt. and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. The appellant has got cause of action to file the instant appeal. Estoppel does not operate against the law. All the necessary parties are added as Respondents. The appeal of the appellant is based on bonafide intention.

Facts:

1. Being not replied hence admitted.
2. Incorrect. There was/is no proof to evidence the allegation against the appellant. The charge of corruption/embezzlement/misappropriation of Government fund is mere a false accusation having nothing to do with reality.
3. Incorrect. The Rules were violated. The enquiry was not conducted according to the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 inas much as the codal formalities were not conformed.
- 4&5. Being not replied hence admitted.

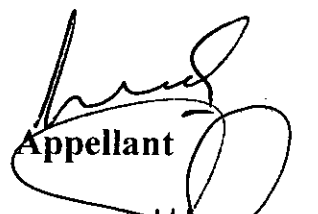
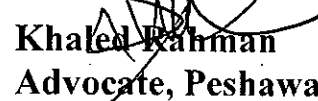
Grounds:

- A. Incorrect. The appellant was not treated according to law and Rules which were violated with impunity.
- B. Being not replied hence admitted.
- C. Misconceived. The items were consumed on various occasions under the orders of the competent authorities and the expenditures were incurred after fulfillment of all the codal formalities. On each occasion proper permission was obtained and the event accomplished with full satisfaction of the competent authority without any ifs and buts. The passing of bills in lump sum etc. have never been objected to by anyone and therefore the transaction on this ground cannot be termed as irregular inasmuch as the same took place under the orders of the competent authority.
- D. Misconceived. In the first instance the charge has not been established. Secondly, the discretion cannot be exercised arbitrarily but in accordance with the principles of justice and fair-play.
- E. Incorrect hence denied. The appellant was denied the opportunity of proper defence as required under the law and similarly he was not offered a meaningful opportunity of personal hearing.
- F. Misconceived. Moreover, the ground has already been explained hereinabove.
- G. Incorrect hence vehemently denied. The charge of corruption etc. has never been established and for that reason the Show Cause Notice was not issued in the charge of corruption and embezzlement.
- H. Incorrect. The enquiry was not conducted according to law, hence the punishment imposed upon the appellant is illegal.

- I. Misconceived. Just reply to the Charge Sheet and Statement of allegations by no means can be counted as proper defence unless opportunity of defence is provided to the delinquent official.
- J-L. Incorrect hence denied.
- M. Being not replied hence admitted.
- N. Incorrect. Opportunity of personal hearing under the law is provided by the competent authority and not by anyone else.
- O. Incorrect. The impugned order is not according to law and therefore, not legally sustainable.
- P-R. Being not replied hence admitted.
- S. Needs no reply.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through


Appellant

Khaled Rahman
Advocate, Peshawar

Dated: 10/01/2017

Verification

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Appellant