12.02.2016

Petitioner with counsel, M/S Saleem Shah, Supdt. and Kifayatullah, AO alongwith Addl: A.G for respondents present. Requested for adjournment. Last opportunity granted. To come up for implementation report on 1.4.2016 before S.B.

01.04.2016

Petitioner with counsel and Mr. Naveed Junior Clerk alongwith Addl. AG for the respondents present. Learned counsel for the petitioner informed the Tribunal that order of the Tribunal stood implemented. Requested for disposal of execution petition. Disposed of accordingly. File be consigned to the record room.

Chairman

Chairman

01.04.16

ANNOUNCED
01.04.2016

FORM OF ORDER SHEET

Court of _____

Execution Petition No. **140 /2015**

S.No.	Date of order proceedings.	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24.11.2015	The Execution Petition submitted by Syed Iftikhar Hussain through Mr. Khaled Rehman Advocate may be entered in the relevant Register and put up to the Court for proper order please. REGISTRAR
2-		This Execution Petition be put up before S. Bench on 26-11-15 CHAIRMAN
	26.11.2015	Counsel for the petitioner present. Notice to respondents be issued for 12.2.2016 before S.B. Chairman

through Regd

GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. No. SOE/C&WD/13-9/2012
Dated Peshawar, the March 10, 2016

TO

Syed Iftikhar Hussain
Ex- Sub Engineer
C&W Department
(Now compulsory retired)
Village & P.O. Kubat Shah Khel Zeran
Kurram Agency

Subject: **SERVICE APPEAL NO.604/2012 --- SYED IFTIKHAR HUSSIAN VS GOVT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY CIVIL SECTT: PESHAWAR & OTHERS.**

I am directed to refer your Appeal/petition dated 20.01.2012 for withdrawal of your major penalty of "Compulsory Retirement besides recovery of Rs.9,27,840/-" which was re-examined in light of Service Tribunal Judgment dated 11.09.2015 and submitted to the Competent Authority (Chief Minister). The Competent Authority has rejected your appeal on the reasons that the inquiry committee has clearly mentioned in the recommendations of the inquiry report that it seems irregularities have been made in the payment. The payment to the structure was not allowed at all. The accused could not present any proof of sanction to that effect. Moreover, payment on slips shows that every inch of it was full of slips, which is rather improbable to happen. Moreover the Sub Engineer (S.Iftikhar Hussain) and XEN (Muhammad Pervaiz) have passed the bills involved in the scheme and avoided authorization from Competent Authority by splitting the expenditure. Moreover the report of Engr. Muhammad Tassaduq the then XEN C&W FATA Highway Division Lower/Central Kurram Agency was also considered during the process of their appeals being rejected on the basis as the appellants have added no fresh grounds worth consideration.

2. You are hereby informed accordingly.

(USMAN JAN)
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to the:

1. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar
2. PS to Secretary C&W Department, Peshawar

SECTION OFFICER (Estb)

11-3-16

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 140 /2015
IN
Service Appeal No. 604 /2012

Syed Iftikhar Hussain,
Ex-Sub Engineer Highway Division
Kurram Agency, Parachinar
R/o Zairan qubadshah Khel,
Kurram Agency Parachinar..... ..... Petitioner

Versus

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar

2. The Secretary to Govt. of Khyber Pakhtunkhwa Communication & Works Department, Civil Secretariat, Peshawar.....Respondents

---

Execution Petition for directing the Respondents to implement the judgment of the Hon'ble Tribunal dated 11.09.2015 passed in Service Appeal No.604/2012.

Respectfully Sheweth,

1. That petitioner had filed Service Appeal No.604/2012 before this Hon'ble Tribunal which was disposed off vide Judgment dated 11.09.2015 (**Annex:-A**) in the following terms:

> ***"For the reasons stated above, the Tribunal is constrained to set aside order dated 11.05.2012 passed by the appellate authority and to remand the case to the appellate authority with direction to examine the case in its entirety and to decide the appeal strictly in accordance with Rule-5 ibid. The appeal be decided within sixty days of the receipt of this order. Parties are left to bear their own costs. File be consigned to the record."***

2. That after the Judgment ibid, the petitioner moved an application dated 17.09.2015 (**Annex:-B**) to Respondent No.2 for compliance of the Judgment of the Hon'ble Tribunal and moreover, the Judgment has also been transmitted to both Respondents by the Registrar of the Hon'ble Tribunal but so far they have not implemented the same without any justification muchless lawful.

3. That the Respondents have also processed the case for filing CPLA before the Apex Court but it was declared as unfit for the same, therefore, now there is no other way out except to implement the Judgment in its letter and spirit but Respondents are delaying the process by dilly dally tactics.

4. That since the Respondents failed to honour the judgment within the prescribed timeline granted by the Hon'ble Tribunal, therefore, they have violated the lawful directions issued by the competent court of law and hence liable for the consequential effects prescribed by the law.

It is, therefore, humbly prayed that Execution proceedings may kindly be initiated against the Respondents for implementation of the judgment of the Hon'ble Tribunal.

Applicant

Through

Khaled Rahman,
Advocate, Peshawar

Dated: 23.11.2015

Affidavit

I, Syed Iftikhar Hussain, Ex-Sub Engineer Highway Division Kurram Agency, Parachinar. R/o Zairan qubadshah Khel, Kurram Agency Parachinar, do hereby affirm and declare on oath that the contents of this Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED
NOTARY PUBLIC

Deponent

(3)

ANNEX 'A'

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 604 /2012

No. 599
04-6-2012

Sayed Iftikhar Hussain Ex: Sub Engineer Highway Division, Kurram Agency, Parachinar R/O Zeran qubadshah khell Kurram Agency Parachinar.....Appellant.

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.

2. Secretary to government of Khyber Pakhtunkhwa, Communication & Works (C&W) Peshawar.

3. Additional Secretary FATA, Fata Secretariat Warsak Road Peshawar.....Respondents.

Filed to-day
4/6/12

APPEAL U/S SECTION 10 OF REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000 AGAINST ORDER DATED 17/01/2012 AND ORDER DATED 11/05/2012 WHEREBY THE COMPETENT AUTHORITY IN EXERCISE OF POWERS CONFERRED BY SECTION 3 OF KPK REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000 IMPOSED THE MAJOR PENALTY OF "COMPULSORY RETIREMENT FROM SERVICE BESIDES RECOVERY OF RS.9,27,840" AND THEREAFTER DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED VIDE ORDER DATED 11/05/2012.

(4)

11.09.2015 Appellant with counsel (Mr. Khalid Rahman, Advocate) and Senior Government Pleader (Mr. Usman Ghani) for the respondents present. Arguments heard and record perused. Vide our detailed judgment of to-day in connected appeal No. 585/2012, Muhammad Pervez Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Sectt. Peshawar etc.", this appeal is also disposed off as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record.

Certified

ANNOUNCED
11-9-2015

Member

Member

17-9-2015

17-9-2015

17-9-2015

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Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.		KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. Service Appeal No. 585/2012 Muhammad Pervez Versus the Government of Khyber Pakhtunkhwa through Chief Secretary Civil Sectt. Peshawar . JUDGMENT
	11.09.2015	PIR BAKHSH SHAH, MEMBER.- Appellant with counsel (Mr. Khalid Rahman, Advocate) and Senior Government Pleader (Mr. Usman Ghani Marwat) for the respondent-department present. 2. Besides recovery of a sum of Rs. 18,55,680/- from the appellant, he was also compulsorily retired from service vide impugned order of the competent authority dated 12.1.2012. The appellant Muhammad Pervez at the relevant time was posted as Executive Engineer Highway Division Kurram Agency, C&W Department. The following charges were leveled against him:- i. You have made fudge payment amounting to Rs. 23,86,863/- to the contractor on old structures i.e. retaining walls, toe walls etc. the above noted scheme constructed in 2006-07 as an ADP scheme and none of the fresh structures taken in MB were at site. ii. You have made fudge payment out of AOM&R funds during 2009-10 to the contractor but no visited these roads for verification/inspection and the measurements have been supplied by the Munshi of the contractor. iii. You have made fudge payment amounting to Rs. 27,83,520/- on removal of heavy slips but all the roads were found full of heavy slips.

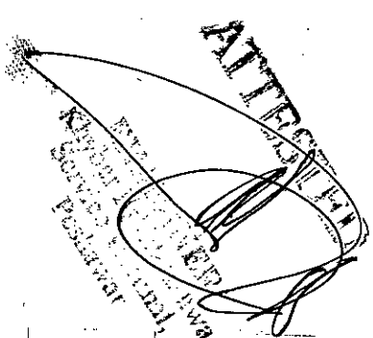
6

The enquiry committee comprising of Engineer Shahid Hussain, then Director (P&M), C&W Department, Peshawar and Mr. Zariful Mani(PCS SG)PPHI, FR, Peshawar conducted the enquiry and submitted their report available on record. Consequently, the competent authority issued final show cause notice to the appellant to which he submitted his reply. The competent authority in the light of material before him imposed the penalty of recovery and compulsory retirement on the appellant against which he submitted departmental appeal. It appears from record that in response to this departmental appeal, Executive Engineer Kurram was directed to personally visit the spot and submit the report. His report bearing No. 1565/PF, dated 07.3.2012 is also on record. The appellate authority, however, rejected departmental appeal of the appellant vide his order dated 11.5.2012, hence this appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Actg,1974.

3. The learned counsel for the appellant submitted that no regular enquiry was conducted against the appellant because no witness was examined nor physical inspection of the spot was made but the report was prepared by the committee in its office and which report is also not in accordance with the requirements of Section 5 of the Khyber Pakhtunkhwa Removal from Service (Special

7

Powers) Ordinance, 2000. It was further submitted that even the enquiry committee vide its letter No. D(P&M)/C&W/1-31/2011, dated 02.6.2011 recommended that the penalty of censure with respect to charge No.1 and reduction to a lower post/grade in time scale with respect of charge No. (iii) be imposed against the appellant whereas charge (ii) has been held not proved but the penalty imposed is contravention of this recommendation. It was further submitted that so far recommendation No. 5 for penalty in the enquiry report is concerned so this recommendation is beyond the scope of the charge sheet for the reason that this recommendation pertains to the alleged splitting of the bills which is none of charges in the charge sheet. In this regard it was also submitted that the enquiry committee also recommended action against the Divisional Accounts Officer with respect to allegation of splitting of the bills but no action has been taken against him and thus the appellant has been discriminated. That the mode of enquiry, through questionnaire is not appreciated by the august apex court of the country but in the instant case, the enquiry was made through questionnaire. That major penalty has been imposed on the appellants but the same is without any regular enquiry. That no opportunity of personal hearing has been provided to the appellant. The learned counsel finally submitted that the matter involved factual controversy which could not be resolved without



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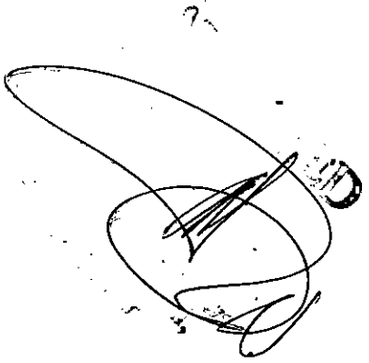
process of regular enquiry in accordance with Section 5 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 but it is evident that the same was not complied with and that no recommendation of the impugned penalty has been prescribed by the enquiry officer. In support of his contentions the learned counsel for the appellant relied on 2009-PLC (C.S)19, PLJ 2005-Supreme Court-113, 1993-SCMR-1440, 2008-PLC(C.S) 786 and 2007-SCMR-963. Finally he submitted that the appellant is innocent, therefore, the appeal may be accepted and the penalty removed.

4. The learned Sr.GP resisted the appeal by stating that the charges except charge No. 2 have been proved against the appellant. That the appellant was associated in the enquiry proceedings and he has been given full chance of defence. It was further stated that all codal formalities for proceedings against the appellant have been complied with and that enquiry through questionnaire is also a valid mode of enquiry. Reliance was placed on 2005-SCMR-1802.



5. We have considered the submissions of the learned counsel for the appellant & learned Sr.G.P for the respondent department and carefully gone through the record with their valuable assistance.

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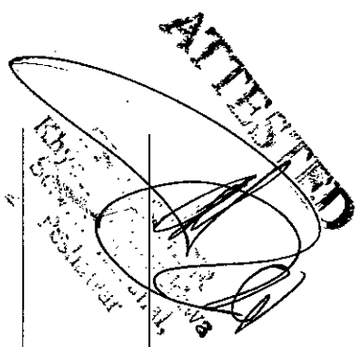
6. Report of the departmental enquiry committee shows that the committee has not physically inspected the spot. When in response to departmental appeal of the appellant then XEN Kurram was directed to report who reported vide his letter No. 1565/PF, dated 07.3.2012 (copy available on file as annexure-J) that all is well. The Tribunal does not find any reason in the order of the appellate authority as to why and for what reasons this report was ignored. Similarly, the record shows that then XEN Kurram vide his letter dated 14.1.2011, after inspection of the spot reported that all works was complete; the same also seems to have not been taken into account by the appellate authority. This being so, we have carefully gone through order of the appellate authority dated 11.5.2012 by way of which the appeal of the appellant has been rejected but we are unable to find it having any reason for such rejection in contemplation of Section 24-A of the General Clauses Act. Further this rejection order is also not in accordance with the requirements of rule-5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 which is here below reproduced for facilitation of reference:-



> "5. Action by the appellate authority.---(1) The appellate authority, after making such further inquiry or calling for such information or record or giving the appellant an opportunity of being heard, as it may consider necessary, shall determine-
>
> (a) Whether the facts on which the order appealed against was based have been established;

(10)

(b) Whether the facts established afford sufficient ground for taking action; and

(c) Whether the penalty is excessive, adequate or inadequate

and after such determination, shall confirm, set aside or pass such order as it thinks proper; provided that no order increasing the penalty shall be passed without giving the appellant an opportunity of showing cause as to why such penalty should not be increased.

(2) The competent authority against whose order an appeal is preferred under these rules shall give effect to any order made by the appellate authority and shall cause the order so passed to be communicated to the appellant without undue delay."

7. For the reasons stated above, the Tribunal is constrained to set aside order dated 11.5.2012 passed by the appellate authority and to remand the case to the appellate authority with direction to examine the case in its entirety and to decide the appeal strictly in accordance with rule 5 ibid. The appeal be decided within 60 days of the receipt of this order. Parties are left to bear their own costs. File be consigned to the record.

8. This judgment will also dispose of another connected appeal bearing No. 406/2012, titled "Sayed Iftikhar Hussain Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar etc.", involving common facts and question of law, in the same manner.

ANNOUNCED
11-9-2015

Sd/- Pir Bakhsh Shah Member

Sd/- Abdul Latif Member

To,

17/09/2015

The Secretary to Government of
Khyber Pakhtunkhwa C&W Department
Peshawar

Annex "B"

11

SUBJECT: REQUEST FOR RE-INSTATEMENT IN SERVICE WITH ALL BACK BENEFITS

Dear Sir,

It is submitted that the undersigned while working as Sub-Engineer in office of the Executive Engineer, Highway Division, Kuram at Parachinar was compulsorily retired from Govt: Service on 12-01-2012 on the basis of involvement in an inquiry case regarding miss-appropriation in public ex-chequer in the above Division, due to which I approached Service Tribunal with the prayer that the said impugned order may be set-aside and to be re-instated in Govt: service with all back benefits.

Now the Service Tribunal has decided the case on 11-09-2015 and set-aside the impugned order dated 12-01-2012 and further directed to remit the case to the competent authority for conducting Department-novo inquiry strictly in accordance with law and rules. Hence the court re-instated the undersigned in service for the purpose of inquiry proceedings (copy attached).

It is therefore, requested to implement the Service Tribunal judgment dated 11-09-2015 and re-instate the undersigned in service in C&W Department from the date of compulsory retirement from Govt: Service i.e 12-01-2012 with all service back benefits.

Your's faithfully

Dated: 17-09-2015

(Syed Iftikhar Hussain)
Sub-Engineer Highway Division,
Kurram Parachinar

Attested to be true copy

WAKALAT NAMA

IN THE COURT OF K.P.K Service Tribunal Peshawar.

Syed Iftikhar Hussain *Appellant(s)/Petitioner(s)*

VERSUS

The Govt of K.P.K etc

Respondent(s)

I/We _____ 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

Signature of Executants

Khaled Rehman,
Advocate,
Supreme Court of Pakistan

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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 140 /2015
IN
Service Appeal No. 604 /2012

Syed Iftikhar Hussain,
Ex-Sub Engineer Highway Division
Kurram Agency, Parachinar
R/o Zairan qubadshah Khel,
Kurram Agency Parachinar..... ..... Petitioner

Versus

1. The Govt. of Khyber Pakhtunkhwa through
   Chief Secretary, Civil Secretariat, Peshawar

2. The Secretary to Govt. of Khyber Pakhtunkhwa
   Communication & Works Department,
   Civil Secretariat, Peshawar.....Respondents

Execution Petition for directing the Respondents to implement the judgment of the Hon'ble Tribunal dated 11.09.2015 passed in Service Appeal No.604/2012.

Respectfully Sheweth,

1. That petitioner had filed Service Appeal No.604/2012 before this Hon'ble Tribunal which was disposed off vide Judgment dated 11.09.2015 (**Annex:-A**) in the following terms:

> ***"For the reasons stated above, the Tribunal is constrained to set aside order dated 11.05.2012 passed by the appellate authority and to remand the case to the appellate authority with direction to examine the case in its entirety and to decide the appeal strictly in accordance with Rule-5 ibid. The appeal be decided within sixty days of the receipt of this order. Parties are left to bear their own costs. File be consigned to the record."***

2. That after the Judgment ibid, the petitioner moved an application dated 17.09.2015 (**Annex:-B**) to Respondent No.2 for compliance of the Judgment of the Hon'ble Tribunal and moreover, the Judgment has also been transmitted to both Respondents by the Registrar of the Hon'ble Tribunal but so far they have not implemented the same without any justification muchless lawful.

3. That the Respondents have also processed the case for filing CPLA before the Apex Court but it was declared as unfit for the same, therefore, now there is no other way out except to implement the Judgment in its letter and spirit but Respondents are delaying the process by dilly dally tactics.

4. That since the Respondents failed to honour the judgment within the prescribed timeline granted by the Hon'ble Tribunal, therefore, they have violated the lawful directions issued by the competent court of law and hence liable for the consequential effects prescribed by the law.

It is, therefore, humbly prayed that Execution proceedings may kindly be initiated against the Respondents for implementation of the judgment of the Hon'ble Tribunal.

Applicant

Through

Khaled Rahman,
Advocate, Peshawar

Dated: 23.11.2015

Affidavit

I, Syed Iftikhar Hussain, Ex-Sub Engineer Highway Division Kurram Agency, Parachinar. R/o Zairan qubadshah Khel, Kurram Agency Parachinar, do hereby affirm and declare on oath that the contents of this Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

ATTESTED NOTARY PUBLIC

Deponent

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ANNEX "A"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 604 /2012

Sayed Iftikhar Hussain Ex: Sub Engineer Highway Division, Kurram Agency, Parachinar R/O Zeran qubadshah khell Kurram Agency Parachinar.....Appellant.

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary to government of Khyber Pakhtunkhwa, Communication & Works (C&W) Peshawar.
3. Additional Secretary FATA, Fata Secretariat Warsak Road Peshawar.....Respondents.

APPEAL U/S SECTION 10 OF REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000 AGAINST ORDER DATED 17/01/2012 AND ORDER DATED 11/05/2012 WHEREBY THE COMPETENT AUTHORITY IN EXERCISE OF POWERS CONFERRED BY SECTION 3 OF KPK REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000 IMPOSED THE MAJOR PENALTY OF "COMPULSORY RETIREMENT FROM SERVICE BESIDES RECOVERY OF RS.9,27,840" AND THEREAFTER DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED VIDE ORDER DATED 11/05/2012.

(4)

11.09.2015

Appellant with counsel (Mr. Khalid Rahman, Advocate) and Senior Government Pleader (Mr. Usman Ghani) for the respondents present. Arguments heard and record perused. Vide our detailed judgment of to-day in connected appeal No. 585/2012, Muhammad Pervez Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Sectt. Peshawar etc.", this appeal is also disposed off as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
11-9-2015

Certified to be true copy

17-9-2015

17-9-2015

17-9-2015

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Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
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	11.09.2015	PIR BAKHSH SHAH, MEMBER.- Appellant with counsel (Mr. Khalid Rahman, Advocate) and Senior Government Pleader (Mr. Usman Ghani Marwat) for the respondent-department present. 2. Besides recovery of a sum of Rs. 18,55,680/- from the appellant, he was also compulsorily retired from service vide impugned order of the competent authority dated 12.1.2012. The appellant Muhammad Pervez at the relevant time was posted as Executive Engineer Highway Division Kurram Agency, C&W Department. The following charges were leveled against him:- i. You have made fudge payment amounting to Rs. 23,86,863/- to the contractor on old structures i.e. retaining walls, toe walls etc. the above noted scheme constructed in 2006-07 as an ADP scheme and none of the fresh structures taken in MB were at site. ii. You have made fudge payment out of AOM&R funds during 2009-10 to the contractor but no visited these roads for verification/inspection and the measurements have been supplied by the Munshi of the contractor. iii. You have made fudge payment amounting to Rs. 27,83,520/- on removal of heavy slips but all the roads were found full of heavy slips.

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The enquiry committee comprising of Engineer Shahid Hussain, then Director (P&M), C&W Department, Peshawar and Mr. Zariful Mani(PCS SG)PPHI, FR, Peshawar conducted the enquiry and submitted their report available on record. Consequently, the competent authority issued final show cause notice to the appellant to which he submitted his reply. The competent authority in the light of material before him imposed the penalty of recovery and compulsory retirement on the appellant against which he submitted departmental appeal. It appears from record that in response to this departmental appeal, Executive Engineer Kurram was directed to personally visit the spot and submit the report. His report bearing No. 1565/PF, dated 07.3.2012 is also on record. The appellate authority, however, rejected departmental appeal of the appellant vide his order dated 11.5.2012, hence this appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Actg,1974.

3. The learned counsel for the appellant submitted that no regular enquiry was conducted against the appellant because no witness was examined nor physical inspection of the spot was made but the report was prepared by the committee in its office and which report is also not in accordance with the requirements of Section 5 of the Khyber Pakhtunkhwa Removal from Service (Special

7

Powers) Ordinance, 2000. It was further submitted that even the enquiry committee vide its letter No. D(P&M)/C&W/1-31/2011, dated 02.6.2011 recommended that the penalty of censure with respect to charge No.1 and reduction to a lower post/grade in time scale with respect of charge No. (iii) be imposed against the appellant whereas charge (ii) has been held not proved but the penalty imposed is contravention of this recommendation. It was further submitted that so far recommendation No. 5 for penalty in the enquiry report is concerned so this recommendation is beyond the scope of the charge sheet for the reason that this recommendation pertains to the alleged splitting of the bills which is none of charges in the charge sheet. In this regard it was also submitted that the enquiry committee also recommended action against the Divisional Accounts Officer with respect to allegation of splitting of the bills but no action has been taken against him and thus the appellant has been discriminated. That the mode of enquiry, through questionnaire is not appreciated by the august apex court of the country but in the instant case, the enquiry was made through questionnaire. That major penalty has been imposed on the appellants but the same is without any regular enquiry. That no opportunity of personal hearing has been provided to the appellant. The learned counsel finally submitted that the matter involved factual controversy which could not be resolved without

8

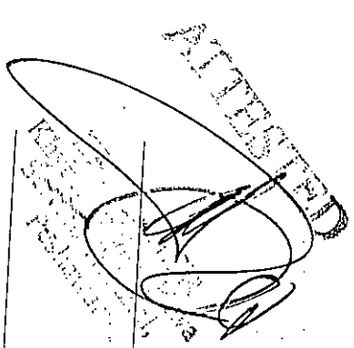
process of regular enquiry in accordance with Section 5 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 but it is evident that the same was not complied with and that no recommendation of the impugned penalty has been prescribed by the enquiry officer. In support of his contentions the learned counsel for the appellant relied on 2009-PLC (C.S)19, PLJ 2005-Supreme Court-113, 1993-SCMR-1440, 2008-PLC(C.S) 786 and 2007-SCMR-963. Finally he submitted that the appellant is innocent, therefore, the appeal may be accepted and the penalty removed.

4. The learned Sr.GP resisted the appeal by stating that the charges except charge No. 2 have been proved against the appellant. That the appellant was associated in the enquiry proceedings and he has been given full chance of defence. It was further stated that all codal formalities for proceedings against the appellant have been complied with and that enquiry through questionnaire is also a valid mode of enquiry. Reliance was placed on 2005-SCMR-1802.

5. We have considered the submissions of the learned counsel for the appellant & learned Sr.G.P for the respondent department and carefully gone through the record with their valuable assistance.

9

6. Report of the departmental enquiry committee shows that the committee has not physically inspected the spot. When in response to departmental appeal of the appellant then XEN Kurram was directed to report who reported vide his letter No. 1565/PF, dated 07.3.2012 (copy available on file as annexure-J) that all is well. The Tribunal does not find any reason in the order of the appellate authority as to why and for what reasons this report was ignored. Similarly, the record shows that then XEN Kurram vide his letter dated 14.1.2011, after inspection of the spot reported that all works was complete; the same also seems to have not been taken into account by the appellate authority. This being so, we have carefully gone through order of the appellate authority dated 11.5.2012 by way of which the appeal of the appellant has been rejected but we are unable to find it having any reason for such rejection in contemplation of Section 24-A of the General Clauses Act. Further this rejection order is also not in accordance with the requirements of rule-5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 which is here below reproduced for facilitation of reference:-



"5. Action by the appellate authority.---(1) The appellate authority, after making such further inquiry or calling for such information or record or giving the appellant an opportunity of being heard, as it may consider necessary, shall determine-

(a) Whether the facts on which the order appealed against was based have been established;

(10)

(b) Whether the facts established afford sufficient ground for taking action; and

(c) Whether the penalty is excessive, adequate or inadequate

and after such determination, shall confirm, set aside or pass such order as it thinks proper; provided that no order increasing the penalty shall be passed without giving the appellant an opportunity of showing cause as to why such penalty should not be increased.

(2) The competent authority against whose order an appeal is preferred under these rules shall give effect to any order made by the appellate authority and shall cause the order so passed to be communicated to the appellant without undue delay."

7. For the reasons stated above, the Tribunal is constrained to set aside order dated 11.5.2012 passed by the appellate authority and to remand the case to the appellate authority with direction to examine the case in its entirety and to decide the appeal strictly in accordance with rule 5 ibid. The appeal be decided within 60 days of the receipt of this order. Parties are left to bear their own costs. File be consigned to the record.

8. This judgment will also dispose of another connected appeal bearing No. 406/2012, titled "Sayed Iftikhar Hussain Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar etc.", involving common facts and question of law, in the same manner.

ANNOUNCED
11-9-2015

Sdl- Sdl- Abdul Latif
Member

To,

17/09/2015 The Secretary to Government of
Khyber Pakhtunkhwa C&W Department
Peshawar

Annex "B" 11

SUBJECT: **REQUEST FOR RE-INSTATEMENT IN SERVICE WITH ALL BACK BENEFITS**

Dear Sir,

It is submitted that the undersigned while working as Sub-Engineer in office of the Executive Engineer, Highway Division, Kuram at Parachinar was compulsorily retired from Govt: Service on 12-01-2012 on the basis of involvement in an inquiry case regarding miss-appropriation in public ex-chequer in the above Division, due to which I approached Service Tribunal with the prayer that the said impugned order may be set-aside and to be re-instated in Govt: service with all back benefits.

Now the Service Tribunal has decided the case on 11-09-2015 and set-aside the impugned order dated 12-01-2012 and further directed to remit the case to the competent authority for conducting Department-novo inquiry strictly in accordance with law and rules. Hence the court re-instated the undersigned in service for the purpose of inquiry proceedings (copy attached).

It is therefore, requested to implement the Service Tribunal judgment dated 11-09-2015 and re-instate the undersigned in service in C&W Department from the date of compulsory retirement from Govt: Service i.e 12-01-2012 with all service back benefits.

Dated: 17-09-2015

Your's faithfully

(Syed Iftikhar Hussain)
Sub-Engineer Highway Division,
Kurram Parachinar

Attested to be true copy