

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service appeal No. 595/2019

E.P No. 692/2023

Muhammad Rahman.....Appellant

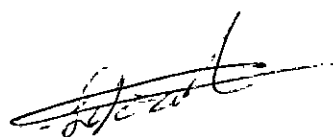
Versus

Govt. of Khyber Pakhtunkhwa through Secretary (H.E.D.) &
others.....Respondents

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Dated: 13-11-2023



Law officer (litigation)

HIGHER Education Department
KP Peshawar

DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA
RANO GHARI NEAR CHAMKANI MOR, PESHAWAR

3417 CA-Vii Estt Branch/A-167: GDC Agra (Malakand) M 154 V-1 Dated: 03-07-2023

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
 Higher Education, Archives & Libraries Department,
 Peshawar,

8982
 14-11-2023

SUBJECT: RE-INSTATEMENT INTO SERVICE OF MUHAMMAD REHMAN LAB ASSISTANT IN PURSUANCE OF JUDGEMENT OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.

Respected Sir, السلام عليكم

I am directed to refer to your letter No. SO(C-IV)/HED/11-1/Muhammad Rehman Lab Asst./2021/1915 dated 02.06.2023 on the subject noted above to state that this office has already conducted de-novo inquiry (Annex-A), proposed by the scrutiny committee meeting wherein major penalties of compulsory retirement alongwith recovery of embezzled amount of Rs. 995600/- were imposed upon the accused. Accordingly, this office shared the same inquiry with your good office to provide guidance as whether to implement the recommendations of the inquiry report or otherwise (Annex-B).

Secondly the Honorable Services Tribunal has already recommended for his reinstatement with all back benefits (Annex-C), proceedings of which are already pending in Finance Department (Annex-D) and this office has requested to provide guidance as whether he would be entitled for back benefits despite the fact that the de-novo inquiry has already recommended to recover the embezzled amount as already mentioned above.

Now the accused concerned is working as lab assistant at Government Degree College, Alpori Shangla waiting for his release of back benefits as well as implementation of the recommendations of the de-novo inquiry already shared with your good office, please.

Dated: 27-06-2023

(Gohar Khan)

DEPUTY DIRECTOR (ESTABLISHMENT)

672
134

**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA
RANO GHARI NEAR CHAMKANI NOR, PESHAWAR**

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2023 Branch Office GDC Agra (Peshawar) M-154 1-1 Dated Peshawar 3/7/2023

The Secretary to Govt. of Khyber Pakhtunkhwa,
Higher Education, Archives & Libraries Department,
Peshawar.

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Secondly, the Honorable Services Tribunal has already recommended for his re-instatement with all back benefits (Annex-C), proceedings of which are already pending in Finance Department (Annex-D) and this office has requested to provide guidance as whether he would be entitled for back benefits despite the fact that the de-novo inquiry has already recommended to recover the embezzled amount as already mentioned above.

Now the accused concerned is working as Lab assistant at Government Degree College, Attock Shangle, waiting for his release of back benefits as well as implementation of the recommendations of the de-novo inquiry already shared with your good office, please.


27/6/2023
DEPUTY DIRECTOR (ESTABLISHMENT)

INQUIRY REPORT

1. **Subject of Inquiry:** Disciplinary proceedings against Mr. Muhammad Rehman, Lab Assistant, GDC Khwaza Khela, Swat.
2. **Names and Designations of the Accused:** Mr. Muhammad Rehman, Lab Assistant, GDC Khwaza Khela, Swat.
3. **Reference of Inquiry:** No. 2295-96/CA-VII/Estt: Branch/A-167/GDC Agra, dated: 27th January 2022.
4. **Brief description of Allegations:** Financial embezzlement, unauthorized and illegal withdrawal of GP Funds of different teaching and non-teaching staff.
5. **Name, Designation of the Inquiry Officers:**
 - 1- Muhammad Iqbal, Associate Professor of Political Science, BPS-19, Government College Peshawar.
 - 2- Sajjad Ahmad Mohmand, Assistant Director (Audit) Directorate of Higher Education, Khyber Pakhtunkhwa, Peshawar.
6. **Appointing Authority:** Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
7. **Nature of Inquiry:** Formal inquiry
8. **Inquiry Report Submission Date:** 28th April, 2022.

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BRIEF HISTORY OF THE CASE:

Muhammad Rehman Lab Assistant was transferred and posted at GDC, Agra in 2003. He was assigned college accounts matters on dated 16-06-2005. Allegations of misappropriation, embezzlement and corruption were leveled against the accused Muhammad Rehman, Lab Assistant GDC Agra in 2011. A numbers of facts findings inquiries were conducted against the accused Muhammad Rehman, Lab Assistant GDC Agra Malakand and other co-accused. On the basis of these facts finding inquiries formal inquiry was conducted against the accused Muhammad Rehman, Lab Assistant GDC Agra and others. The accused Muhammad Rehman, Lab Assistant GDC Agra was held guilty and a major penalty (removal from service) was imposed on him along with recovery of an amount of Rs. 41,68,335/-. Muhammad Rehman filed service appeal in the Khyber Pakhtunkhwa Service Tribunal Peshawar. The Service Tribunal ordered the department to re-instate Muhammad Rehman in 2018 and also directed Higher Education department to conduct de-nova proceedings within prescribed period of time. The department failed to complete the de-nova proceedings within the time frame, and hence Muhammad Rehman filed Execution Petition. Later on as a result of de-nova proceedings, the earlier penalty i.e. removal from service and recovery of Rupees 41,68,355/- was imposed again on the accused Muhammad Rehman, Lab Assistant. After getting no response from the department for his departmental appeal, the accused Muhammad Rehman, Lab Assistant GDC Agra filed Service Appeal again in the Khyber Pakhtunkhwa Service Tribunal and that appeal was accepted and Tribunal directed the department to re-instate Muhammad Rehman along with all back benefits. The Honourable Service Tribunal, however stated in its decision that the department would be at liberty to conduct de-nova inquiry into the matter regarding alleged embezzlement if they so desire.

FACTS OF THE CASE:

Facts of the case are follows.

1. That the accused Muhammad Rehman, Lab Assistant was transferred to GDC Agra Malakand in 2003.
2. That the accused Muhammad Rehman, Lab Assistant was given charge of accounts matters of the college in 2005 and he performed that duty till 30-06-2011.
3. That the charge sheet, statement of allegations has to show that mega financial corruption and stealth case happened at GDC Agra and the accused took away the college record of the tenure of Prof. Fazli Ghafoor, the then Principal (03-08-2005 to 23-04-2007).
4. That the accused Muhammad Rehman, Lab Assistant worked with different Principals (total 07 in numbers) from 2004 to June, 2011.
5. That the inquiry comprising Prof. Munsif Khan, Principal GPGC No. 1 Abbottabad along with two other Principals was conducted and report submitted to the competent authority on dated 01-02-2014. Wherein the accused Muhammad Rehman, Lab Assistant along with six others were held responsible for misappropriation of funds, corruption and financial embezzlement.
6. That the Prof. Munsif Khan's inquiry mentioned an amount of Rs. 44,89,535/- that was misappropriated by the accused Muhammad Rehman, Lab Assistant.
7. That the Munsif Khan's inquiry declared that the accused Muhammad Rehman, Lab Assistant was mega culprit and recommended that he may be arrested for recovery of the office record.
8. That the nature of inquiry of Munsif Khan's was "fact findings".

9. That Ex-Principals, GDC Agra, Fazli Ghafoor, Zia ul Haq, Hidayat Ullah, Fazli Wahid as well as a dealing clerk of GP funds matters in Directorate of Higher Education Peshawar deposited their amount against them. (F-A)

10. As per Principal GDC Agra (Malak and Agency) letter No.430 dated 07-09-2011, GP fund amount of 9 (Nine) College staff members including four teaching staff named

1)Fazal Wahid Ex-Principal	Rs.204000/-
2)Shahab Ud Din Assistant Professor	Rs.60000/-
3)Hidayat Ullah Assistant Professor	Rs.300000/-
4)Bahram Khan Assistant Professor	Rs.213000/-
And five (05) no teaching staff named	
5)Perviz Khan Senior clerk	Rs.88600/-
6)Hakim Zada Mali	Rs.20000/-
7)Faqir Shahzada Chowkidar	Rs.40000/-
8)Zair Nabi Naib Qasid	Rs.40000/-
9)Sher Muhammad Chowkidar	Rs.30000/-
Total	Rs.995600/-

Was unlawfully and illegally drawn by the accused Muhammad Rehman.

Lab: Assistant. (F-B)

11. The above mentioned G.P Fund amount illegally drawn by the accused Muhammad Rehman, Lab: Assistant, was mentioned by the fact finding Inquiry committee headed by Prof: Munsif Khan, Principal GPGC Abbottabad.

12. That the Munsif Khan's Committee also mentioned fraud and illegal drawn and misappropriation of Govt: Budget and special grant allocation to the College.

13. That the office order. Endst. No. 20612 -- 14, dated 03-08-2016 imposed major penalty of "Removal from Service" upon Muhammad Rehman, Lab Assistant GDC Agra (Malakand).
14. That the accused Muhammad Rehman, Lab Assistant filed an appeal in the service Tribunal against the removal from service order.
15. That the Service Tribunal admitted the appeal of the accused Muhammad Rehman, Lab Assistant and ordered the competent authority to re-instate him. The Tribunal also directed the competent authority to go for de-novo proceeding against the accused.
16. That a committee consisted of two members named Prof. Muhammad Nawaz, Principal GDC, Khanpur and Prof. Irfan Ullah, Degree College Daggar was constituted to conduct formal inquiry.
17. That the two members committee recommended a major penalty and recommended that for financial loss and recovery the recommendation of Munsif Khan's inquiry be implemented.
18. That the accused Mr. Muhammad Rehman, Lab Assistant was directed by the inquiry committee consisted of Prof. Muhammad Nawaz, Principal GDC Khan Pur, and Prof. Irfan Ullah, GDC Daggar to appear on 6th June 2018 before the committee but he (Muhammad Rehman) refused to appear.
19. That the accused Muhammad Rehman was reminded many times by the above mentioned committee to appear for the purpose of inquiry but he did not cooperate with inquiry committee.
20. That after non-cooperative behavior of the accused Muhammad Rehman with the inquiry committee mentioned above, ex-parte decision was taken against the accused Muhammad Rehman Lab Assistant.
21. That on the basis of recommendations of that two members formal inquiry committee, the competent authority imposed a major penalty upon the

accused along with a recovery of Rs. 41,68,335/- vide office order No. CA. VII / Estt. Branch / A - 167 / Mr. Muhammad Rehman / GDC Agra dated 09-12-2018.

22. That the above mentioned office order was challenged again by the accused Muhammad Rehman, Lab Assistant in the Service Tribunal.
23. That the financial embezzlement of the accused Muhammad Rehman is also at the highest level of Public Accounts Committee (PAC) under Para No. 5.4.5 (2015-17).
24. That the honorable Service Tribunal gave order / decision on technical ground in favour of the accused, Mr. Muhammad Rehman and directed the competent authority to re-instate him.
25. That the honorable Service Tribunal in its decision No. 1447/ST dated 29-07-2021 also allowed the competent authority to start de-novo proceeding / inquiry against the accused, Mr. Muhammad Rehman.
26. That the competent authority as per service tribunal decision re-instated the accused, Mr. Muhammad Rehman, Lab Assistant Endst. No. 31357-63/CA-VII / Estt: Branch/A-167/GDC Agra dated 30-12-2021 and consisted a formal inquiry committee of the undersigned for the purpose of de-novo proceedings.
27. That our committee sent a letter to the accused Mr. Muhammad Rehman to appear before the committee on 24th Feb, 2022 (F-C). Mr. Muhammad Rehman appeared before the committee on the prescribed date. He was personally inquired and he denied all the allegations. During investigation, the accused, Mr. Muhammad Rehman went into technicalities of the issue. His main point was that de-novo proceedings means fresh fact findings.
28. That the accused, Mr. Muhammad Rehman was asked to submit written personal statement but he refused on the ground that he was tired at that

moment as he travelled from Pindi after attending 3-days family marriage function there and due to tiredness his mind was not working. He told to the inquiry committee that he would submit the personal written statement along with some documentary proofs in his support to the inquiry committee in the next hearing.

29. That on the request of the accused, Mr. Muhammad Rehman, he was given another opportunity to appear before the inquiry committee along with written personal statement and documentary proof if any.
30. That accordingly a letter was sent to the accused both through postal service as well as through WhatsApp to appear before the inquiry committee along with written statement on dated 31-03-2022 (S - D). When the letter was received by the accused, Mr. Muhammad Rehman, he did call to a member of inquiry committee - Prof. Muhammad Iqbal that due to Local Bodies' Elections in his native district Shanghl he (the accused) would be unable to reach to Peshawar due to non-availability of inter-districts transport and requested that the date may be changed. Accordingly, his request was honoured and he was told to appear before the inquiry committee on dated 04-04-2022. He accepted the date.
31. That on dated 04-04-2022, the inquiry committee along with the departmental representative was waiting for the arrival of the accused. At about 9.00 AM, he was contacted on his Cell No. 0345-5633385 again and the accused told the inquiry committee that he was unable to appear before the inquiry committee due to his typhoid fever. He again requested to postpone it for 3 to 4 days and again his request was honored.
32. That letter on at 10:52 AM, the same day the accused, Mr. Muhammad Rehman sent Whatsapp messages by saying that he had no trust on the inquiry committee and in that connection he had sent an application to

Secretary and Director (F – E). In his next text messages, he said that the application was sent on dated 04-03-2022 at 07:42 PM and after that the inquiry committee had no legal status (F – F).

33. That for justice and fairness, the accused Mr. Muhammad Rehman was given another opportunity to appear before the inquiry committee by sending reminder on dated 09-04-2022 to appear before the committee on 14-04-2022 (F – G) but he did not respond. The same was sent through WhatsApp too.
34. That as per Government of Khyber Pakhtunkhwa E & D Rules, 2011, Section 11 (5), a final warning letter was issued to the accused on dated 18-04-2022, wherein the accused was directed to appear before the inquiry committee, on 26-04-2022 (F-H), but again he did not comply with the directions.
35. The accused Muhammad Rehman, appeared before the Inquiry Committee. He was not ready to defend himself against the charges leveled against him in the charge sheet and statement of allegations. He as usual challenged the status of the De-novo Inquiry by stating that it was illegal and against the decision of the Honorable Service Tribunal.
36. He was told to submit his written statement but he requested the Inquiry Committee to give him one day to prepare written statement accordingly he was granted that opportunity.
37. That on the next day i.e. 27/04/2022, the accused Muhammad Rehman did not come to submit his written statement.

FINDINGS:

Keeping in view the above mentioned facts, the inquiry committee has drawn the following findings.

- 1- That the accused, Mr. Muhammad Rehman, Lab Assistant was found guilty of corruption and misconduct under different facts findings as well as formal inquiries.
- 2- That major penalty – removal from service was inflicted upon the accused twice along with the recovery of embezzlement amount.
- 3- That the accused, Mr. Muhammad Rehman, Lab Assistant after removal from service was re-instated by the honourable Service Tribunal mainly on the grounds of procedural defects in the formal inquiries conducted.
- 4- That the accused, Mr. Muhammad Rehman, Lab Assistant has the habit of non-cooperation with the inquiry committees. The accused did not appear before the inquiry committee of Prof. Muhammad Nawaz, Principal GDC Khanpur and Prof. Irfan Ullah, GDC Daggar.
- 5- That more than two months were given to the accused, Mr. Muhammad Rehman, Lab Assistant to appear before the inquiry committee to deny the charges of corruption, misappropriation and misconduct leveled against him by different inquiries. But the accused refused to appear before the inquiry committee to record his statement. He also refused to submit his written statement to the inquiry committee. Rather the accused sent different

Whatsapp texts as well as a written letter received on dated 19-04-2022 (F - I) and raised objection over the legality of the inquiry committee

6- That by not appearing before the inquiry committee to defend oneself, apparently it means that he has nothing to defend.

7- That the accused was found guilty of hampering the proceedings of the inquiry committee by raising unnecessary objections over the construction of the inquiry committee as well as over the personality of the two members of the inquiry committee.

8- That the record provided by the departmental representative has to show that the accused is in the habits of attacking all those officers and officials who were directly or indirectly involved with the inquiries.

9- That the Audit report regarding embezzlement of Govt: funds, Private fund (Pupil's fund) by the accused was not provided by the departmental representative.

10- That the De-novo Inquiry/proceeding conducted by a two members committee comprised Prof: Muhammad Nawaz, Principal GDC Khan Pur (Haripur) and Prof: Irfan Ullah, GDC Daggar (Buner) pointed out the non-availability of the original record of embezzlement period.

11- That the fact finding Inquiry of prof: Munsif Khan decided the recovery of embezzled amount of Govt: Funds, Special Grants and pupils fund from the accused and the co-accused official record revealed that the co-accused

deposited the amounts against them but the accused *Muhammad Rehman* did not deposit the outstanding amount against him.

12- That no official record was available/provided by the departmental representative that could prove that the main accused *Muhammad Rehman*, lab: Assistant was involved in the embezzlement of Govt: Funds/ Budget, special grants and pupil's funds.

13- That the accused *Muhammad Rehman*, was found guilty in illegally and unlawfully drawn the G.P funds amounts of Nine (09) teaching and non-teaching staff of GDC Agra (Malakand). The details of the amounts have been mentioned in the para-10 of the above mentioned facts.

CONCLUSION:

Keeping in view the above factual position the inquiry committee has reached to the conclusion that the accused has nothing to defend himself. He was rather involved on attacking the persons of the inquiry committee. He tried his level best to unduly hamper the proceedings of the inquiry committee.

Moreover, the inquiry committee brings it to the record that the accused appeared twice before the inquiry committee on dated 24-02-2022 and 26-04-2022, but on both the occasions refused to record his statement on the various irrelevant grounds. He was given several opportunities to appear before the inquiry committee and to record his personal statement but he refused to record his statement and to defend himself against the charges.

Under section 11 (5) of the Khyber Pakhtunkhwa Govt. Servant (E&D) Rules, 2011 as amended 2021, a warning was issued to the accused and was sent

through postal services as well as on his WhatsApp. After the warning letter he appeared before the Inquiry Committee on dated 26-04-2022 but again refused to defend himself against the charges and also refused to submit his personal statement. It means that several opportunities were provided which were turn down by him.

RECOMMENDATIONS:

Keeping in view the above conclusion, the committee recommends the following penalties under section 4 (b) of the Khyber Pakhtunkhwa Govt. Servant (E&D) Rules, 2011.

- 1- Major penalty under Khyber Pakhtunkhwa Govt. Servant (E&D) Rules, 2011, section 4 (1), (b), (ii) – compulsory retirement may be imposed against the accused Muhammad Rehman, Lab Assistant, GDC Khawaza Khel (Swat).
- 2- An amount of Rs. 995600/- in connection with GP fund amount along with interest if so applied may be recovered from the accused Muhammad Rehman, Lab Assistant GDC Khwaza Khel Swat under minor penalty Section 4 (1), (a), (iii) Khyber Pakhtunkhwa Govt. Servant (E&D) Rules, 2011.
- 3- The Principal GDC Agra (Malakand) may be directed to take up the case of embezzled amount of GP fund of Nine victims of the College with the concerned Account Office to calculate the actual amount plus interest of each individual of the college whose GP funds were illegally drawn by the accused Muhammad Rehman, Lab: Assistant.

4- The amount so calculated and decided may be provided to the individual concerned. In case of death of any victim employee the amount may be provided to his legal heir.

INQUIRY COMMITTEE:

Member 1

Muhammad Iqbal,
Associate Professor of Political Science,
Government College Peshawar

Member 2

Sajjad Ahmad Mohmand,
Associate Director (Audit) DHE,
Khyber Pakhtunkhwa, Peshawar

Dated: 28th April, 2022