

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1850/2023

Ameer Muhammad Durrani.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa & Others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

INDEX

S. #	Description of Documents	Annex/Flag	Pages
1.	Parawise Comments		2-6
2.	Authority		7
3.	Affidavit		8
3.	Restoration Application	I	9-11
4.	De-Novo Inquiry Report by Inquiry Committee	II	12-27


Deponent

(2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No.1850/2023

Ameer Muhammad - Durrani, Ex-Section Officer (Transport), Administration Department.....(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 2. The Secretary, Establishment Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 3. The Secretary, Administration Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
-(Respondents)

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appeal is not maintainable being hit by the well-settled Principle of res judicata. The appellant had filed Service Appeal No.1381/2020 before the Hon'ble Tribunal which was dismissed for non-prosecution on **20.11.2018**. As admitted by the appellant, he filed Restoration Application **No.318/2022 (Annex-I)**, which was disposed of upon withdrawal vide order dated 03.05.2023.
2. That the matter/question of law has already gained finality/ adjudicated upon by the competent court (the Hon'ble Service Tribunal, Peshawar), therefore, the appellant by filing instant appeal cannot agitate the same question of law being barred by Section 23 of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974 which stipulates "**No entertainment of appeal in certain cases:-The Tribunal shall not entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction**".
3. That the appellant has got no cause of action/locus standi to file the instant appeal against the respondents.
4. That the appellant has presented the facts in manipulated form which disentitles him for any relief whatsoever.
5. That the appellant is estopped to file the instant appeal due to his own conduct.
6. That the appellant has suppressed material facts from the Tribunal.
7. That the appeal is bad for mis /non-joinder of necessary parties.
8. That the appeal is not maintainable
9. That the appeal is not within statutory period.
10. That the appeal is hit by laches

REPLY TO FACTS:

1. As admitted by the appellant, he was dismissed from service on 18.05.2010 for his involvement in embezzlement, corruption and corrupt practices.
2. As admitted by the appellant, he had filed a Service Appeal No.1381/2010 before the Hon'ble Tribunal which was dismissed for non-prosecution on **20.11.2018**. Thereafter, the appellant filed Restoration Application **No.318/2022 (Annex-I)** which was also dismissed as withdrawn vide order dated **03.05.2023**.
3. Correct to the extent that, apart from appellant's own service appeal No.1681/2010, two other Service Appeals No. 1606/2010 and 1379/2010 were filed by Mr. Balqias and Mr. Ijaz

(3)

Hussain which were properly pursued by them before the Hon'ble Tribunal. However, the appellant did not pursue his case before the Hon'ble Tribunal and consequently, dismissed on 20.11.2018. The Appellant, deliberately, held back from pursuing his case for years in the Tribunal, owing to the poor merit of the case and waited for the outcome of the appeals of Mr. Balqias Khan and Ijaz Hussain, and has now approached to the Tribunal for relief on the analogy of the afore-named appellants.

4. Correct to the extent that the honourable Tribunal partially allowed the appeal of Mr. Balqias Khan with direction to the respondents to conduct de-novo inquiry in the matter within a period of 60 sixty days. However, on the principle of parity, the appellant cannot claim the same relief as the appellant is not similarly placed with Mr. Balqias Khan as appeals of both the appellants have different facts and merits; worked in different capacities and penalties commensurate to their respective inefficiency, misconduct and negligence in conduct of official business were imposed upon them as per their involvement in their capacity and grade. Moreover, relief granted to Mr. Balqias Khan cannot be extended to the appellant in view of the facts explained in Para-3 above.
5. The Appellant's request for treatment at par with Mr. Balqias and Mr. Ijaz Hussain in view of case law reported as 1996 SCMR 1185 and 2009 SCMR page-1 runs counter to the very spirit of the 2009 SCMR page-1, wherein it has clearly been stated: **"If the Tribunal or the Supreme Court decided a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants who may not have taken any legal proceedings, in such a case the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation."** As admitted by the appellant vide Paras-2,3 & 6 of the appeal, he had filed a Service Appeal No.1381/2010 before the Hon'ble Tribunal which was dismissed for non-prosecution on 20.11.2018. His Restoration Application No.318/2022, which he filed after 4 years was also dismissed as withdrawn vide order dated 03.05.2023.
6. As admitted by the appellant, he had filed a Service Appeal No.1381/2010 before the Hon'ble Tribunal which was dismissed for non-prosecution on 20.11.2018. Thereafter, the appellant filed Restoration Application No.318/2022 which was dismissed as withdrawn vide order dated 03.05.2023. The applicant withdrew his Restoration Application for Service Appeal at his own sweet will before the same being argued on merit for restoration, and conceded before the Tribunal that instead of pressing his appeal before the Tribunal, he wants to prefer departmental representation and accordingly, appellant's Restoration Application was disposed of. However, the Hon'ble Tribunal in its short order has clearly stated: **"Needless to say that the applicant is at liberty to make any application/representation under any law seeking any remedy before any authority which if made has to be dealt with in accordance with law"** meaning thereby, the competent authority has to deal with his representation in accordance with law rather than in compliance with the judgment 29.03.2022, passed in the appeals of Mr. Balqias Khan and Mr. Ijaz Hussain by the Tribunal.

- (M)
7. Correct to the extent that Establishment Department conducted de novo inquiry (Annex-II) in compliance with judgment dated 29.03.2022, passed in the appeals of Mr. Balqias Khan and Mr. Ijaz Hussain by the Tribunal. The Inquiry Committee came up with the following recommendations:-
- i) The charges (i) & (ii) against the accused Mr. Balqiaz, Assistant/ Cashier & charge (i) against Mr. Ejaz Hussain, Assistant/ Caretaker are proved, hence both the accused have been found guilty of corruption as defined in Section 2(g) of the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011.
 - ii) The inquiry committee recommends a major penalty on both the accused from one of the major penalties given at Section 4(b) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and recovery of amount as fine already imposed by the Accountability Court i.e Rs. 1,306,518/- from Mr. Balqiaz Khan, Assistant/ Cashier & Rs. 3,979,034/- from Mr. Ejaz Hussain, Assistant/ Caretaker, E&A Department.
8. As clarified vide Para-7 above, the Inquiry Committee recommended imposition of major penalty alongwith recovery, however, contrary to the recommendations of the Committee, the Competent Authority awarded the following penalties:-
- i. Mr. Balqias Khan, Assistant (BS-16) retired from service alongwith recovery of Rs.1,306,518/-
 - ii. Mr. Ijaz Hussain, Assistant (BS-16) Compulsory Retirement from service alongwith recovery of Rs. 3,979,034/-
9. Correct that the appellant submitted Application/Appeal in light of the Tribunal short order dated 3.05.2023 which was filed/rejected in view of the following grounds:-
- i. The Hon'ble Tribunal in its said judgment, passed in the appeals of Mr. Balqias and Mr. Ijaz Hussain, directed the respondents to reinstate the said officials for the purpose of inquiry and conduct de novo inquiry in the matter within a period of 60. However, the same is not possible in case of the applicant (Mr. Ameer Muhammad Durrani) as he was dismissed from service just one day prior to his retirement;
 - ii. The applicant withdrew his Restoration Application for Service Appeal at his own sweet will before the same being argued on merit for restoration and conceded before the Tribunal that instead of pressing his appeal before the Tribunal he wants to prefer departmental representation;
 - iii. The Hon'ble Tribunal in its short order has clearly stated: "**Needless to say that the applicant is at liberty to make any application/representation under any law seeking any remedy before any authority which if made has to be dealt with in accordance with law.**" It transpires that the competent authority is required to deal with his representation in accordance with law rather than in compliance with the said judgment of the Tribunal;
 - iv. Appellant's service appeal remained technically dismissed as on the date, his Restoration Application came for hearing, the Tribunal did not restore his appeal,

rather the applicant conceded that he would prefer application/representation before the competent authority;

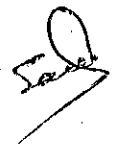
- v. NAB Khyber Pakhtunkhwa also had filed a Reference of corruption vide Reference No.02 of 2015 which was decided on 25.11.2017 and thereby the afore-named officer/officials were convicted for commission of offence of corruption. The applicant, Amir Muhammad Durrani was sentenced to 03 years rigorous imprisonment with fine of Rs.25,69,822/-.The Apex Court also upheld the said Judgment of the Accountability Court; and
- vi. The Appellant's request for treatment at par with Mr. Balqias and Mr. Ijaz Hussain, in view of case law reported as 1996 SCMR 1185 and 2009 SCMR page-1, runs counter to the very spirit of the 2009 SCMR page-1 wherein it has clearly been sated: "If the Tribunal or the Supreme Court decided a point of law relating to the terms and conditions of a civil servant who litigated, **and there were other civil servants who may not have taken any legal proceedings, in such a case the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation.**" As admitted by the appellant vide Paras-2, 3 & 6 of the appeal, he has already exhausted his right to appeal by filing the Service Appeal No.1381/2010 before the Hon'ble Tribunal which was dismissed for non-prosecution on 20.11.2018, followed by Restoration Application No.318/2022 after 4 years which was also dismissed as withdrawn vide order dated 03.05.2023.

REPLY TO GROUNDS:

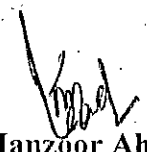
- a) **Incorrect, misperceived and misinterpreted.** The rest as explained vide Paar-9 of the "FACTS".
- b) **Incorrect as laid.** The rest as explained vide Para-3, 4, 5, 6 & 9 of the "FACTS".
- c) **Incorrect, misperceived as misinterpreted.** Article 25 of the Constitution of the Islamic Republic of Pakistan, ensures equality amongst equal, however, on the principle of parity, the appellant cannot claim the same relief. It is worth pointing that the appellant is not similarly placed with Mr. Balqias Khan as appeals of both the appellants have different facts and merits; worked in different capacities and penalties commensurate to their respective inefficiency, misconduct and negligence in conduct of official business were imposed upon them as per their involvement in their respective capacity and grade. **Thus relief granted to Mr. Balqias Khan cannot be extended to the appellant who deliberately held back from pursuing his case for years in the Tribunal owing to the poor merit of the case and waited for the outcome of the appeals of Mr. Balqias Khan and Ijaz Hussain and has now approached to the Tribunal for relief on the analogy of the afore-named appellants.** Moreover, the appellant has been treated in accordance with prevailing Policy/Rules, therefore, reference made to Article 25 of the Constitution is totally irrelevant.

- d) **Incorrect, misinterpreted and contrary to the facts.** The rest As explained vide Para-4, 5, 6 & 9 of the "FACTS".
- e) **Incorrect, misleading and contrary to the facts.** The rest As explained vide Para-4, 5, 6 & 9 of the "FACTS".
- f) **Incorrect, misleading and contrary to the facts.** The rest as explained vide Para-4, 5, 6 & 9 of the "FACTS". Moreover, the matter/question of law has already gained finality/ adjudicated upon by the competent court (the Hon'ble Service Tribunal, Peshawar), therefore, the appellant by filing instant appeal cannot agitate the same question of law being barred by Section 23 of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974 which stipulates *"No entertainment of appeal in certain cases:-The Tribunal shall not entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction"*.

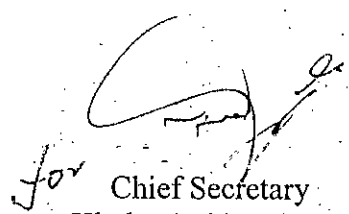
It is, therefore, most humbly prayed that on acceptance of the Preliminary Objections and Parawise Comments, the instant Appeal may very graciously be dismissed with costs.



(Akhtar Saeed Turk)
Secretary
Establishment Department
Khyber Pakhtunkhwa
(Respondent No. 1)



(Manzoor Ahmad)
Secretary
Administration Department
Khyber Pakhtunkhwa
(Respondent No. 3)




Chief Secretary
Khyber Pakhtunkhwa
(Respondent No.2)

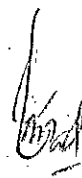
7


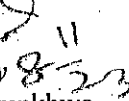
GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION DEPARTMENT

AUTHORITY LETTER

Mr. Sultan Shah, Superintendent Litigation Section-I, Establishment Department, Government of Khyber Pakhtunkhwa is hereby authorized to submit Parawise Comments before the Khyber Pakhtunkhwa Service Tribunal, Peshawar in connection with S.A No. 1850/2023 titled Amier Muhammad Durrani Versus Govt. of Khyber Pakhtunkhwa & others, on behalf of Respondents.


Secretary to Govt. of Khyber Pakhtunkhwa
Establishment Department
(Respondent No. 01)


Secretary to Govt. of Khyber Pakhtunkhwa
Administration Department
(Respondent No. 03)


Chief Secretary 
Govt. of Khyber Pakhtunkhwa
(Respondent No. 02)

Service Appeal No. 1850/2023

Ameer Muhammad Durrani.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa & Others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

AFFIDAVIT

I Akhtar Saeed Turk, Secretary Establishment Department do hereby solemnly declare that contents of the Reply/ Comments are correct to the best of my knowledge and record and nothing has been concealed from this Honourable Tribunal.

It is further stated on oath that in this Appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck-off.

Deponent



(Akhtar Saeed Turk)
Secretary Establishment
Department
CNIC: 1622-886262
Mobile No. 0332-9207314

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

C. M. NO. 318 /2022
In
Service Appeal No. 1381 / 2010

Ameer Muhammad Durrani **Versus** **Govt. of KP.**

INDEX

S.No	Particulars	Dated	Pages
1	Memo of Petition & Affidavit		1-2
2	Order	20-11-2018	3
3	Service Appeal No. 1381/2010		4-16
4	Order	02-06-2021	17-18
5	CM 126 / 2020		19-20
6	Judgment	29-03-2022	21-26
7	Wakalatnama		27

Peshawar, dated
1st June-2022

(Signature)
(Muhammad Zafar Tahirkhell)
ASC

14-6-22 Sultan Shah So Lit Peshawar
22-6-22 Establishment
9212763
03009697670

(Signature)

170

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

C. M. NO. _____ /2022
In
Service Appeal No. 1381 / 2010

Ameer Muhammad Durrani

Versus

Govt. of KP.

**APPLICATION FOR THE RESTORATION OF SUBJECT APPEAL
DISMISSED FOR NON-PROSECUTION VIDE ORDER DATED
20-11-2018**

RESPECTFULLY SHEWETH

1. That the above titled appeal was pending before the Hon'ble Tribunal along with two other connected appeals No. 1606 / 2010 titled Balqiaz Khan vs Govt. and 1379 / 2010 titled Ejaz Hussain Vs Govt.
2. That the present applicant along with two others Ejaz Hussain and Balqiaz Khan were arrested by NAB, ref. No. 02 / 15 on 10-12-2014 and remained in lockup up to 25-11-2014.
3. That the cases of the appellant ad Balqiaz were dismissed and default on 20-11-2018, whereas the case of Ejaz Hussain service appeal No. 1378 / 2010 remained pending before the Hon'ble Tribunal. Balqiaz Khan filed an application for restoration through CM No. 126 / 2020, which was accepted vide order dated 02-06-2021.

- HSB Govt. of KP / Govt. of Peshawar*
4. That the connected appeal No. 1606 / 2010 has been accepted vide judgment and order dated 29-03-2022 by this Hon'ble Tribunal, wherein the impugned order has been set aside and the case has been reminded to the department to conduct de-novo Inquiry within a period of 60 days.

The applicant being similarly placed and positioned is entitled to similar relief has allowed to Balqiaz Khan vide afore mentioned proceeding.

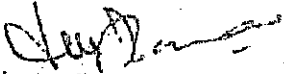
5. That in view of the dictum laid down by the august Supreme Court of Pakistan 1996 SCMR 1185, the applicant is also entitled to the same benefit, as allowed to the others in connected service appeals by this Hon'ble Tribunal.

S. M. S. Q.

That initially due to arrest and detention of applicant and later on due to his old age and ailment he was unable to approach this Hon'ble Tribunal within statutory period of limitation. The absence was not intentional as the applicant believed that his case is being pursued by his counsel along with other connected service appeals.

(9) (11)

In view of the above, it is therefore requested that by accepting this application, the service appeal No. 1381/2010 may kindly be restored for its disposal in view of judgment and order dated 29-03-2022 passed in service appeal No. 1806 / 2010.


Applicant,

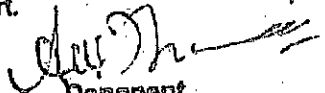
Through,

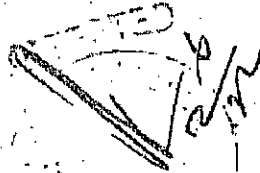
Peshawar, dated
01st June, 2022


(Muhammad Zafar Tahirkhail)
ASC

Affidavit

I, Ameer Muhammad Durrani s/o Khan Muhammad Durrani, the applicant, do hereby state on oath that the contents of the above application are true and correct and nothing has been withheld or concealed from this Hon'ble Court.


Deponent







GOVERNMENT OF
KHYBER PAKHTUNKHWA

DE-NOVO INQUIRY REPORT

IN RESPECT OF

- i. Mr. Balqiaz Khan, Assistant, E&A Department.
- ii. Mr. Ejaz Hussain, Assistant, E&A Department.

INQUIRY COMMITTEE

- i. Mr. Noor-ul-Amin, Additional Secretary (HRD), Establishment Department "Chairman"
- ii. Mr. Muhammad Yousaf Khan, Deputy Secretary (Budget-IV), Finance Department "Member-Cum-Secretary"
- iii. Mr. Laeeq Ahmad, Section Officer (Admn), Administration Department "Member"

TABLE OF CONTENTS

S.No	Description of Documents	Annexures	Pages
1.	De-Novo Inquiry Report	-	01-14
2.	Notification regarding constitution of De-novo Inquiry Committee	Annex-I	15
3.	Judgment (dated:29.03.2022) of K.P Service Tribunal, Peshawar regarding Ejaz Hussain, Ex-Assistant / Caretaker	Annex-II	16-21
4.	Judgment (dated:29.03.2022) of K.P Service Tribunal, Peshawar regarding Balqiaz Khan, Ex-Assistant	Annex-III	22-26
5.	Establishment Department's Notification (dated:26.08.2022) regarding conditional re-instatement in r/o Mr.Balqiaz Khan, Ex-Assistant	Annex-IV	27
6.	Establishment Department's Notification (dated:26.08.2022) regarding conditional re-instatement in r/o Mr.Ejaz Hussain, Ex-Assistant	Annex-V	28
7.	Charge Sheet & Statement of Allegations in r/o Mr.Balqiaz Khan, Ex-Assistant	Annex-VI	29-30
8.	Charge Sheet & Statement of Allegations in r/o Mr.Ejaz Hussain, Ex-Assistant / Caretaker	Annex-VII	31-32
9.	Dismissal from Service Order (dated:18.05.2010) issued by Establishment Department in r/o Mr.Ejaz Hussain, Ex-Assistant	Annex-VIII	33
10.	Dismissal from Service Order (dated:12.07.2010) issued by Establishment Department in r/o Mr.Balqiaz Khan, Ex-Assistant	Annex-IX	34
11.	Reply to Charge Sheet & Statement of Allegations in r/o Mr.Balqiaz Khan, Ex-Assistant	Annex-X	35-37
12.	Reply to Charge Sheet & Statement of Allegations in r/o Mr.Ejaz Hussain, Ex-Assistant	Annex-XI	38-50
13.	Inquiry Report by Mr.Mushtaq Ahmad, PCS SG, D.S (Finance Department) & Muhammad Humayun, PCS SG, Chairman (LWM), C.M Secretariat, Peshawar.	Annex-XII	51-83
14.	Inquiry Report by Mr.Khalid Ilyas, PCS SG, D.S (Estt), E&A Department & Adil Siddiq, PCS EG, Additional Secretary (BFC), Administration Department.	Annex-XIII	84-93
15.	Departmental Appeal (dated:31.05.2010) in r/o Ejaz Hussain, Ex-Assistant	Annex-XIV	94-105
16.	Departmental Appeal (dated:21.07.2010) in r/o Balqiaz Khan, Ex-Assistant	Annex-XV	106-109
17.	Judgment of Accountability Court-II, Peshawar (dated:25.11.2017)	Annex-XVI	110-165
18.	Questionnaire & Reply in r/o Balqiaz Khan, Ex-Assistant	Annex-XVII	166-168
19.	Questionnaire & Reply in r/o Ejaz Hussain, Ex-Assistant	Annex-XVIII	169-186
20.	Section 2(g) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011	Annex-XIX	187
21.	Section 4(b) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011	Annex-XX	189-195

[Handwritten Signature]

DE-NOVO INQUIRY

BACKGROUND

The Establishment Department vide Notification No.S.O(E-IV)E&AD/2(321)/199 dated:26.08.2022 (Annex-I) constituted an inquiry committee, comprising of the following to conduct a de-novo inquiry against Mr. Balqiaz Khan, Assistant and Mr. Ejaz Hussa Assistant of E&A Department in compliance to the Judgement of the Khyber Pakhtunkhwa Services Tribunal dated: 29.03.2022 passed in Service Appeals No.1379/2010 and 1606/2010:


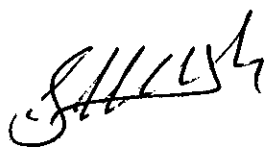
- i. Mr. Noor-ul-Amin, Chairman
Additional Secretary (HRD),
Establishment Department.
- ii. Muhammad Yousaf Khan, Member-Cum-Secretary
Deputy Secretary,
Finance Department.
- iii. Mr.Laeq Ahmad, Member
Section Officer (Admn),
Administration Department.

2. In pursuance of the Judgements of Services Tribunal dated: 29.03.2022 (Annex-II & III) , both the above officials were conditionally re-instated in service vide Establishment Department Notifications dated: 26.08.2022 (Annex-IV & V) for the purpose of de-novo inquiry. The operative part of the Judgments of Khyber Pakhtunkhwa Service Tribunal, Peshawar in both the service appeals is reproduced as under :

- a. Service Appeal No.1379/2010 Ejaz Hussain, Ex-Assistant / Caretaker-Transport Section, Administration Department, Government of Khyber Pakhtunkhwa vs Govt. of Khyber Pakhtunkhwa through Chief Secretary Peshawar & Others.
- b. Service Appeal No.1606/2010 Balqiaz Khan, Ex-Assistant, Administration Department, Civil Secretariat, Peshawar vs Secretary, Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar & Others.

"The appeal in hand is allowed by setting aside the impugned orders and the appellant is re-instated in service for the purpose of de-novo inquiry with the direction to the respondents to conduct de-novo inquiry strictly in accordance with the relevant law within a period of 60-days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to him to defend himself and to cross-examine the witnesses produced during the inquiry. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to hear their own costs. File be consigned to the record room."

3. Charge Sheet & Statement of allegations were served upon both the officials (Annex-VI & VII). Allegations against each official as mentioned in the Charge Sheet & Statement of Allegations are provided as under :



15

a. Statement of Allegations against Ejaz Hussain, Ex-Assistant/ Car: Transport Section, Administration Department.

- i. Illegal retention of auction money amounting to Rs.72,02,743rd Phase of auction held on 11.07.2007.
- ii. Fictitious, un-authorized and doubtful expenditure Rs.1,41,27,928/- on account of hiring charges, POL and repair vehicles during the year 2008-09.
- iii. Where about / loss of vehicle No.A-1041 KT.
- iv. Un-authorized expenditure of Rs.97,474/- on account of PO vehicle No.A-1033 during July 2009 to October 2009.
- v. Non-provision of number plates of official vehicles.
- vi. Most of the proper handing / taking over proformas have not signed / countersigned by the Section Officer (Transport) and Deputy Secretary (Admn) and allotted Government vehicles to un-authorized persons.

b. Statement of Allegations against Balqiaz Khan, Ex-Assistant, Administration Department, Civil Secretariat, Peshawar vs Secretary, Government of Khy Pakhtunkhwa, Establishment Department, Peshawar & Others.

- i. Preparing and encashing false bills on fictitious vouchers for payment to Firms which didn't exist and for repairs of official vehicles, which were never carried out;
- ii. Drawing an amount of Rs.38,82,705/- as Cashier and embezzled the same by fabricating record of payments to fictitious Firms name Inayat Auto Workshop, New Toyota Auto Workshop, and Mercedes Auto Workshop, Peshawar.
- iii. Preparing and initiating for payment false repair bills amounting to Rs.33,65,299/- in favor of M/S Mercedes Auto Workshop, University Road, M/S Inayat Auto Workshop, Tehkal Road and M/S New Toyota Auto Workshop, Bara Road, Peshawar; and
- iv. Facilitating drawl and payment of Rs.16,95,172/- from public exchequer, in June 2009, for purported payment to M/S Sajid Enterprises, 3rd Floor, Aaly Plaza, Fazal-e-Haq Road, Blue-Area, Islamabad on account of providing twenty T-Prado for seven days in Shandur Festival, 2008 @9500/- per day and their POL charges of Rs.4,73,374/- despite the fact that he knew that the bill was inflated against the actual payment of Rs.531,000/-.

4. Pertinent to mention that earlier both the officials were dismissed from service on account of corruption (i.e., Ejaz Hussain, Ex-Assistant vide Establishment Department Order No.SOE-II/ED/3(719)/2007, dated:18.05.2010 (Annex-VIII) & Balqiaz Khan, Ex-Assistant vide Order No.SOE-IV(E&AD)2(321)98, dated:12.07.2010 (Annex-IX). While in context to the charge sheet & Statement of allegations, written reply of both Mr.Balqiaz Khan, Assistant & Mr.Ejaz Hussain, Assistant were received on 05.09.2022 (Annex-X & XI).

A meeting of the Inquiry committee with all the relevant officers/officials bearing the record regarding the inquiry was held in the office of Additional Secretary (HRD), Establishment Department. The concerned officers/officials were requested to provide photocopies of relevant record enabling the inquiry committee to study the origin and

[Handwritten signature]

[Handwritten initials]

[Handwritten signature]

background of the case and start initiating de-novo inquiry. The requisite record was produced by the concerned accordingly.

6. In the year 2010, an inquiry committee was appointed comprising (i) Mr. Mushtaq Ahmad (PCS SG) Deputy Secretary, Finance Department and (ii) Muhammad Hamayun (PCS SG) Chairman (SWM), Chief Minister's Secretariat, Peshawar against (i) Mr. Amir Muhammad Durrani, the then S.O (Transport) (ii) Mr. Ejaz Hussain, the then Assistant / Caretaker (iii) Mr. Aman Khan Hoti, Ex-Caretaker (iv) Syed Mustafa Kamal, Ex-Assistant / Cashier/Caretaker & (v) Mr. Khalid Pervez, Ex-Assistant/Caretaker (Driver) of Transport Section, Administration Department. Extracts of the requisite inquiry pertaining to Mr. Ejaz Hussain are provided as under (Annex-XII) :

Mr. Ejaz Hussain, Assistant (BPS-14) posted in Transport Section in October, 2006 till November, 2009. Served as Cashier upto 17.04.2008 and thereafter posted as Caretaker.	
i.	Illegal retention of auction money amounting to Rs.7,202,742/- of 32 nd Phase of auction held on 11.07.2007.
Findings:	Mr. Ejaz Hussain, Ex-Cashier, Transport Section utilized auction money amounting to Rs.7,202,742/- for payment of POL and repair charges. Plea taken by the official is not convincing for reasons that the Finance Department had released Rs.281 million on 02.07.2007. Moreover, matter was never brought to the notice of Secretary Administration for obtaining his formal approval. He was not competent to take such decisions at his own. At the time of his transfer as Cashier, he handed over pending bills to his successor Syed Mustafa Kamal, Cashier amounting to Rs.13,371,719/- out of which Rs.5,376,765/- are payable to various Firms / workshops / departments, whereas the remaining amount of Rs.7,994,554/- included auction money of Rs.7,207,750/- to be deposited in Govt. Treasury. It is difficult to confirm whether bills handed over by Mr. Ejaz Hussain have been en-cashed or otherwise. If drawn, why auction money has not been deposited in the Govt. Treasury so far. If not drawn what are the reasons. Mr. Ejaz Hussain was unable to identify pending bills handed over by him to his successor. Charge stands proved against Mr. Ejaz Hussain, Ex-Cashier Transport Section. However, involvement of his successor cannot be ruled out, as he has received the case along with pending bills, therefore, he becomes responsible for that.
ii.	Fictitious, un-authorized and doubtful expenditure of Rs.14,127,928/- on account of hiring charges, POL and repairs of vehicles during the year 2008-09.
Findings:	If he was not aware about anything then what were his duties. It seems he is concealing facts. Charge proved as co-accused.
iii.	Where about / loss of vehicle No.A-1041 KT.
Findings:	Vehicle bearing registration No.A-1041 KT was handed over to Mr. Afsar Khan (PCS EG) for official visit to D.I.Khan. Vehicle was handed over to him through Mr. Tariq Driver. Mr. Afsar Khan in his written reply dated:12.02.2010 confirmed that vehicle is still with him, hence, charge not proved.
iv.	Un-authorized expenditure of Rs.97,474/- on account of POL on vehicle No.A-1033 during July 2009 to October 2009.
Findings:	It was noticed that the log books bear signatures of Mr. Ejaz Hussain for the period from July, 2009 to September, 2009. For the month of October 2009 log book is blank. Thus he failed to prove that vehicle was used as pool vehicle. The inquiry committee is of the view that the vehicle was mis-used and as such charge is proved.
v.	Non-provision of number plates of official vehicles.
Findings:	Mr. Ejaz Hussain stated that Mr. Khalid Pervez, Caretaker was responsible to get registration number for newly purchased vehicles, hence, charge not proved.

[Handwritten signature]

[Handwritten signature]

vi.	Most of the proper handing / taking over proformas have not been signed countersigned by the Section Officer (Transport) and Deputy Secretary (Admn) an allotted Government vehicles to un-authorized persons.
Findings:	Mr.Ejaz Hussain claimed that Khalid Pervez and Aman Hoti were used to distribute vehicles. He has distributed some vehicles but on the verbal direction of the Section Officer (Transport). He submitted a self-contained Note on 25.06.2009 in which details were mentioned. Second Note was submitted on 22.07.2009, however, no action has been taken thereon, hence, charge not proved.
Note:	In the requisite inquiry (vide Para-8), the paid bills to firms (i) Inayat Auto Workshop Tehkal Road Peshawar (ii) New Toyota Auto Workshop Bara Road Peshawar & (iii) Mercedes Auto Workshop University Road Peshawar were proved fake and amount to the tune of Rs.3882705/- was quoted against Mr.Balqiaz Khan, the then Cashier since the firms did not exist as they were not traceable.

7. As a result of the inquiry report the competent authority imposed penalty of Dismissa. from Service and recovery of Rs.10,837,548/- upon Mr.Ejaz Hussain, Ex-Assistant, Administration Department vide Order No.SOE-II(ED)3(719)2007, dated:18.05.2010 (Annex-VIII).

8. In the same year (i.e.,2010), another inquiry was assigned to (i) Mr.Khalid Ilyas (PCS EG) BS-18, Deputy Secretary (Estt), E&A Department & (ii) Mr.Adil Siddiq (PCS EG) BS-19, Additional Secretary (BFC), Administration Department. The Inquiry Officers associated / questioned (i) Mr.Amir Muhammad Durrani, Ex-S.O Transport (ii) Mr.KiramatUllah, Assistant (iii) Muhammad Irshad, Head Mechanic (iv) Mr.Sher Muhammad, Supervisor (v) Mr.Balqiaz Khan, Cashier (vi) Syed Irfan Shah, Ex-P.A to A.S (Admn) (vii) Mr.Rahim Khan, Ex-Additional Secretary (Admn) & (viii) Mr.Saeed Ullah, incumbent S.O (Transport), Administration Department who assisted the inquiry committee. Extract of the findings of requisite inquiry are provided as under (Annex-XIII):

Findings:

Mr. Balqiaz (Cashier) along with Mr.Amir Muhammad Durrani (DDO) have been found guilty of processing fake / fictitious repair bills and processing and drawing excessive amounts in hiring charges. The above mentioned officers/officials have been found responsible for drawing and misappropriating an amount of approximately Rs.5 Million on fictitious repair bills and hiring charges. Mr.Balqiaz, has put in a pronounced additional effort into encashing fictitious repair bills to the tune of Rs.3,882,705/-. Mr.Balqiaz, is also guilty of negligence of duty in making payment to fictitious Firms without showing due vigilance in expenditure from the government exchequer; he has also allowed rather facilitated Mr.Mustafa Kamal in drawing excessive amount of money for payment to M/S Sajid Enterprises Islamabad in connection with hiring vehicles for which the later was not competent. Mr.Balqiaz, should have dealt the whole issue himself. Mr.Balqiaz, can also not hide behind the competent authority's approval or compulsion emanating from higher authority for misappropriation, as the primary loyalty of the Civil Servant is to the government and the government exchequer. No consideration of continuation on a particular post or displacement from the existing assignments / post should persuade a civil servant to commit excesses / embezzlement / misappropriation. Civil servant is also required to disobey any illegal orders verbal or

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

written of higher authorities and may bring the matter in notice of the next higher authority and refuse to be a part of any shady / suspicious practices. Mr. Balqiaz in failing to perform his duties has rendered himself liable to be strictest possible disciplinary action envisaged under the rules.

Recommendations:

The accused Mr. Balqiaz, has been found guilty of misconduct and corruption in terms of Section 3 (b) & (c) of the Removal from Service Special Ordinance, 2000. The inquiry committee recommends major penalty of dismissal from service along with recovery of an embezzled amount of Rs.1,895,000/- in terms of Rule-4 of Efficiency and Discipline (E&D) Rules, 1973 which is approximately one third of the amount embezzled. The inquiry committee can safely fix the proportionate quantum of guilt of Mr. Balqiaz viz a viz other accomplices / co - delinquents as one third and hence the recovery proposed.

9. As a result of inquiry report, the competent authority imposed penalty of Dimissa from Service and recovery of Rs.1.895 Million upon Mr. Balqiaz, Ex-Assistant Administration Department vide Order No. SOE-IV(E&AD)2(321)/98, dated: 12.07.2010 (Annex-IX).

10. Departmental appeals were lodged by Mr. Ejaz Hussain, Ex-Assistant (dated: 31.05.2010 Annex-XIV) and Mr. Balqiaz Khan, Ex-Assistant (dated: 21.07.2010 Annex-XV) respectively which were turned down by the Department. Resultantly, Mr. Ejaz Hussain, Ex-Assistant / Caretaker (Transport) & Mr. Balqiaz, Ex-Assistant / Cashier (Transport) filed Service Appeals bearing No. 1379/2010 & No. 1606/2010 respectively before the Khyber Pakhtunkhwa Services Tribunal, Peshawar.

11. The Services Tribunal in its decisions in both the above mentioned Service Appeals held that a De-novo Inquiry may be conducted strictly in accordance with relevant law within a period of 60-days on receipt of copies of the instant judgments, provided as under: -

"The appeal in hand is allowed by setting aside the impugned orders and the appellant is re-instated in service for the purpose of De-novo Inquiry strictly in accordance with the relevant law within a period of 60-days of receipt of copy of this Judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings and fair opportunity be provided to him to defend himself and to cross examine the witnesses produced during the inquiry. The issue of back benefits shall be subject to outcome of De-novo inquiry".

12. The National Accountability Bureau Khyber Pakhtunkhwa filed a Reference of corruption against officers/officials of Administration Department vide Ref.No.02 of 2015 in the Accountability Court-II on 06.01.2015 which was decided on 25.11.2017 (Annex-XVI). The Reference was instituted against Amir Muhammad Durrani, Ex-S.O (Transport), Ejaz Hussain, Ex-Cashier, Balqiaz, Ex-Cashier/ Caretaker Transport. The Court held in its judgment "I, hereby convict all the three accused namely Amir Muhammad Durrani S/O Khan Muhammad Durrani, Ex-Section Officer Transport, Administration Department Civil Secretariat, Peshawar, Ejaz Hussain S/O Mian Muhammad, Ex-Casher/Caretaker

Transport Section Administration Department, Civil Secretariat, Peshawar and Balqiaz Khan S/O Falak Sher Khan, Ex-Cashier Transport Section Administration Department, Civil Secretariat, Peshawar for commission of offence of corruption and corrupt practice as defined under sub-clause (iii) and (vi), of section 9 (a) punishable under section 10 of the National Accountability Ordinance, 1999 and sentence accused Amir Muhammad Durrani to rigorous imprisonment of 03 years with fine of Rs.25,69,822/-, sentence accused Ejaz Hussain to rigorous imprisonment of 04 years with fine of Rs.39,79,033/- and sentence accused Balqiaz Khan to rigorous imprisonment of 02 years with fine of Rs.13,06,518/-. The amount of fine of each accused facing trial is severally recoverable from them as arrears of land revenue under section 33-E and the amount after recovery of the NAB shall be transferred to the Provincial Government of Khyber Pakhtunkhwa. Benefit of 382-B Cr.P.C is given to each accused and the period of detention of each accused is to be counted towards his substantial punishment. Accused are informed to file appeal against this judgment within 10 days if so advised. Copy of the judgment is given to them free of costs and their signature and thumb impression are obtained from margin of the order sheet. All the three accused are in custody and sent to Central Jail Peshawar to serve jail warrants to serve upon their sentences. Copy of the judgment is also provided to the prosecution w/s 373 of Cr.P.C. File of this court be consigned to record room after completion".

PROCEEDINGS

1. A series of meetings of the Inquiry Committee were held in the office of Additional Secretary (HRD), Establishment Department under his chairmanship. All the above inquiries Service Tribunal Appeals and NAB Court Judgments were discussed in detail in the light of allegations served upon both the accused and their replies to the Show Cause Notices.
2. Questionnaires were developed in light of available record and the replies of accused to the Show Cause Notices. Questions alongwith answers are reproduced as under (Annex-XVII & XVIII) :-

(MR. BALQIAZ KHAN, EX-ASSISTANT/CASHIER,
TRANSPORT SECTION, ADMINISTRATION DEPARTMENT)

- i. It may be clarified as to whether the pending bills relating to the financial year 2008-09 were processed and cleared in the F.Y 2009-10 during your posting as Cashier Transport (in additional charge).
 Ans: - Correct to the extent that bills for financial year 2008-09 were processed and cleared in the FY 2009-10 prior to my posting not during my posting as Cashier (Transport) (in additional charge). I have only collected Cheques from the State Bank of Pakistan.
- ii. Whether it was not your responsibility to check the genuineness of pending bills relating to previous financial year and also confirm from the A.G Office its non-drawl.
 Ans: - As explained above that I had not processed or prepared any bill, therefore, responsibility with regard to confirmation of genuineness of the bills under discussion, hence no such responsibility lies on my part.

[Handwritten signature]

[Handwritten signature]

20

iii. As a Cashier you encashed the cheques against these bills. Was it not your responsibility to handover the cash to the beneficiaries after ascertaining that they are genuine firms.

Ans: - Correct to the extent that I have encashed cheques as per my assigned duties in the directions of the then DDO and disbursed the said to the firms accordingly as all the bills were processed prior to my posting. Since DDO was involved in the process of clearance of the bills himself prior to my then as per his direction, I was bound to disburse the amount.

iv. It may be clarified as to whether the bills amounting to Rs.3,882,705/- were cashed / cleared from the A.G office in a single go or in piece meal.

Ans: - Not in One go.

v. Was the payment made in lump sum / as a whole or otherwise.

Ans: - The payment was made accordingly to the bills cleared by AG.

vi. In your written statement it has been recorded that payments were made in presence of the then Additional Secretary (Admn) to the firms. What record in black & white do you possess to prove your stance regarding payment amounting to Rs.3,882,705/-.

Ans: - I stand with my earlier written statement. I have receipts of the amount paid to the owners of firm in the presence of the then Additional Secretary (Admn).

vii. Whether you were convicted by the Accountability Court-II Peshawar for commission of offence of corruption and corrupt practices as defined under Sub Clause (iii) & (vi) of Section 9 (a) punishable under 10 (a) of the National Accountability Ordinance, 1999 to rigorous imprisonment of 02 years with fine of Rs.1,306,518/-.

Ans: - Yes.

viii. Have you undergone 02 years imprisonment and deposited the fine amounting to Rs.1,306,518/-.

Ans: - I have undergone only 02 years imprisonment and have not deposited any amount.

(MR. EJAZ HUSSAIN, EX-ASSISTANT/CASHIER/CARETAKER, TRANSPORT SECTION, ADMINISTRATION DEPARTMENT)

i. What was the collection of auction money on 1st day of auction.

Ans: - The said auction was held on 11.07.2007 (15 years ago). Since a considerable time has passed and I have no official record, so I don't remember the exact figures of the auction money of the 1st day. However, as per SOPs 1/4 of the auction money was required to be deposited by the bidders on the day of the auction and rest of the amount matured / deposited within 01 month, as per the terms and condition of the auction committee KPK vide (page-2). The bidders were powerful mafia and the political influence was on boom at that time that was why they delayed the deposit of 1/4 of the auction money on 1st day of the auction. Furthermore the deduction of General Sales Tax was yet to be decided with Federal Government for the auction money. The communication was in process in that matter with Federal Government.

The amount whatever so accrued was not deposited in the government treasury on the same day up till closing of office hours, for which the bidders were bound to deposit. Due to this mess I could not deposit the said money on 1st day.

ii. Whether it was not binding on you to deposit the auction money within the specific days in the treasury under the financial rules.

Ans: - Correct. But I was directed by the then Section Officer Transport to utilize the said money for clearance of outstanding dues of POL, and repair, he again directed me that once the amount is released by the Finance Department, the same will be recouped, therefore, I could not deposit the said money in treasury in time. Note dated 07.10.2009 signed by the then Secretary Administration (Arbab Shahrukh Khan), para-5 is sufficient to justify the previous practice in vogue, since Administration Department is dealing with Protocol Duties, VVIP, VIP movement and visits of Foreign delegations, therefore, one on the helm of affairs are bound to make arrangements for smooth functioning of department on the direction of superiors. Furthermore approval of Chairman auction committee is required after the collection of the whole auction money and deduction of GST etc and 5% collection charges which takes time to follow the procedure to deposit the money.

iii. Whether any formal approval for utilization of auction money was obtained from the Principal Accounting Officer.

Ans: - No such approval in writing was obtained from the Principal Accounting Officer. But all the officers in the hierarchy knew, the facts as it was done on their directions.

iv. After release of budget by the Finance Department and drawing bills accordingly, how much amount / auction money was deposited in the govt. treasury. Quote the amount & dates.

Ans: - Since the auction money was not collected in one go / lump sum but rather it took several months i.e., 11.07.2007 to 15.01.2008 under the signature of Mr. Amir Muhammad Durrani the then SO Transport. On the taking over of charge of Mr. Amir Muhammad Durrani at that time the budget released on July 2007 and was exhausted in December 2007 and the Revised budget was not released so far. The auction money was utilized after the exhaustion of the budget i.e. December 2007, till the transfer of the undersigned i.e. 18th April 2008, So the auction money was used for major repairs of the vehicles of the Provincial Ministers of the then Caretaker Government plus expenditure of POL i.e. payment made to B.F Petrol Pump were met out from this auction money. Again on the arrival of new ANP, Government the expenditure (POL/Repair) of Mercedes and Vehicles of other Cabinet Ministers plus Pool Vehicles were met out from the same amount of the auction money under the supervision and orders of Mr. Amir Muhammad Durrani, Ex-SO (T) which is evident from the fact that all these vouchers (from December 2007 and onwards) against which advance payments were made, bears signatures of Mr. Amir Muhammad Durrani, Ex-SO (T). Afterwards, on collection of the approved vouchers of POL, Repair and CNG etc the same were required to be encashed from AG Office and auction money deposited in the government treasury, the undersigned had been transferred from the post of Cashier Transport on 18.04.2008, so when the Finance Department released the Revised budget in April 2008, then the undersigned was not holding the post of Cashier, hence I have no knowledge of the amount of subsequent

deposit, and all the bills/vouchers were encashed both by Mr.Amir Muhammad Durrani, Ex-SO (T) and Mr.Mustafa Kamal the new Cashier Transport and hushed up the auction money. It is further submitted that after the transfer of undersigned I had no power to deposit the auction money in government treasury.

v. Whether you were convicted by the Accountability Court-II Peshawar for commission of offence of corruption and corrupt practices as defined under Sub Clause (iii) & (vi) of Section 9 (a) punishable under Section 10 (a) of the National Accountability Ordinance, 1999 to rigorous imprisonment of 04 years with fine of Rs.3,979,033/- (auction process).

Ans: - I was falsely implicated in NAB reference, in the same charge. Similarly during the trial I had no excess to record which could establish my innocence. I was charged on technical ground and my version was not recorded during trial as I was behind the bars and unable to present my case properly. It is worth mentioning that during the trial on the time of cross examination Mr.Tariq Babar, A.D / Investigation Officer, NAB KPK on oath before the Accountability Court had confessed my innocence which is self-explanatory vide pages (10-11).

vi. Have you undergone 04 years imprisonment and deposited the fine amounting to Rs.3,979,033/-.

Ans: - Yes, I have undergone 04 years rigorous imprisonment but have not deposited the fine, because I was suffering from the financial crunch due to the loss of job as well as I did not embezzle even a single penny.

vii. What were your responsibilities as Caretaker during the financial year 2008-09.

Ans: - It is submitted that Mr.Amir Muhammad Durrani, Ex-SO Transport had assigned the undersigned the following responsibility verbally as Caretaker during the Financial Year 2008-09.

- (a). To deal with matters of Drivers i.e. posting/transfer. Complaints against the drivers emergency duties of drivers of transport wing.
- (b). To collect vehicles from the various departments on the orders of Ex-Section Officer Transport.
- (c). To distribute the vehicles to the various departments on the orders of the Section Officer Transport.

viii. Have you processed any financial bill / invoice during the financial year 2008-09 being Caretaker. If yes, under which head of account.

Ans: - No.

ix. Whether the vehicle under your possession was a designated pool vehicle.

Ans: - Yes, it was a Pool Vehicle, but I have never used the same for my personal activities. The vehicle was used only for official purpose on the direction of superior.

x. Whether the log book of the vehicle was duly maintained. If yes, till which entries were made.

Ans: - Log book was maintained by the POL Assistant. In this regard it is submitted that the vehicle was not misused it was a pool vehicle meant for local duties due to its condition. The said vehicle was used by all the staff of transport wing for local/emergency duties. Being a Caretaker of transport wing the undersigned used the vehicle occasionally for official duties such as collection of vehicles from various departments and to-chain purposes etc. besides the vehicle was also used to move the other vehicles during the protocol duties.

FINDINGS

The Inquiry Committee in light of all the quoted record critically examined each aspect of each charge leveled against both the accused i.e., Mr. Balqiaz Khan Ex-Assistant / Cashier and Mr. Ejaz Hussain Ex-Assistant / Caretaker E&A Department, and the Findings are given as under:

A. (MR. BALQIAZ KHAN, EX-ASSISTANT/CASHIER, TRANSPORT SECTION, ADMINISTRATION DEPARTMENT)

Charges:

- i. Preparing and encashing false bills on fictitious vouchers for payment to firms which did not exist and for repairs, of official vehicles, which were never carried out;
- ii. Drawing an amount of Rs.3,882,705/- as Cashier and embezzled same by fabricating record of payments to fictitious firms namely Inayat Auto Workshop, New Toyota Auto Workshop, and Mercedes Auto Workshop, Peshawar.

The Inquiry Committee comprising of Mr. Adil Siddiq (PCS EG BS-1 Additional Secretary BFC, Administration Department and Mr. Khalid Ilyas (PCS SG BS-18) Deputy Secretary, E&A Department had held that Mr. Balqiaz Khan was responsible for encashing fictitious repair bills to the tune of Rs.38,82,705/- and they recommended Mr. Balqiaz Khan for dismissal from service along with recovery of Rs.1,895,000/-. It is pertinent to mention here that the NAB Court-II Asad Hameed Khan, Judge Accountability Court Peshawar after examining all the witnesses and the record also held that Mr. Amir Muhammad Durrani in active connivance with Co-accused Mr. Balqiaz Khan, Mustafa Kamal and Muhammad Rahim Khan prepared fake applications for repair and maintenance of official vehicles under fake signature of the Drivers, prepared fake quotation comparative statements and processed the same under his signature, obtained work orders (drawn signed by him), verified fake vouchers of the workshops and got approval/sanction of all the amounts from Muhammad Rahim Khan. Those bills were forwarded to AG Office Peshawar and cheques were drawn from the said office with active involvement of accused Balqiaz Khan and Syed Mustafa Kamal. The NAB Court further held that it has been established by prosecution that none of the vehicle got repaired from any of the workshop. The liability fixed by NAB is summarized as follows:

- i. Total amount embezzled in repair and maintenance of official vehicles Rs.6,052,715/-
- ii. Liability of Muhammad Rahim Khan, Ex-DS entered in P.B) Rs.2,017,572/-

- iii. Liability of Mr. Amir Muhammad Durrani, Ex-SO (Transport) Rs. 2,017,572/-
- iv. Liability of Mr. Balqiaz Khan, Ex-Assistant / Cashier Transport Rs. 1,306,518/-
- v. Liability of Mustafa Kamal, Ex-Cashier/Caretaker) Transport entered into Plea Bargain) Rs. 711,053/-

Conclusion

Considering the reply of Mr. Balqiaz Khan to the Show Cause Notice and answer to the questionnaire served upon him (specially question No.03) it has been established that Mr. Balqiaz Khan in connivance with the then Additional Secretary (Admn), Section Officer (Transport) and Mustafa Kamal has processed fake repair bills, encashed the amount from AG Office and disbursed it to fake firms, hence charge (i) & (ii) stand proved.

Charge:

- iii. Preparing and initiating for payment false repair bills amounting to Rs. 3,365,299/- in favor of M/S Mercedes Auto Workshop, University Road, M/S Inayat Auto Workshop, Tehkal Road and M/S New Toyota Auto Workshop, Bara Road, Peshawar; and

Mr. Saeed Ullah the then Section Officer (Transport) in his statement to the Inquiry Officer (Mr. Muhammad Afsar Khan, the then Secretary Agriculture) has stated that no person / workshop owner has turned up to claim the amount for which bills amounting to Rs. 3,399,265/-, which proves that there were no genuine claimants to these bills which were duly processed and were found in possession of Mr. Balqiaz Khan, Cashier who could not take the same to the AG Office due to shortage of funds. As the bills were related to the firm i.e., M/S Mercedes Auto Workshop (ii) M/S Inayat Auto Workshop and (iii) M/S New Toyota Auto Workshop which have already been declared fake by NAB in its judgment so prime fake the bills seems fake, however, as the bill have never been encashed as such no loss to the Government exchequer.

Conclusion

- As the transaction has never been completed, so the charge cannot be proved.

Charge:

- iv. Facilitating drawl and payment of Rs. 1,695,172/- from public exchequer, in June 2009, for purported payment to M/S Sajid Enterprises, 3rd Floor, Aaly Plaza, Fazal-e-Haq Road, Blue-Area, Islamabad on account of providing twenty T-Prado for seven days in Shandur Festival, 2008 @9500/- per day and their POL charges of Rs. 473,374/- despite the fact that he knew that the bill was inflated against the actual payment of Rs. 531,000/-.

The accused in his reply has stated that the head of account from which the amount was drawn belonged to the Admin Section, as such, being Cashier Admin, his role was only limited to the withdrawal of the amount from Bank and handing over the same to the then Cashier Transport (Mr. Mustafa Kamal), while the whole process of preparation of bills and getting approval and further disbursement of the same was done by the Cashier Transport. Moreover, Accountability Court in its

(25)

judgment has also convicted Mr. Mustafa Kamal and Amir Muhammad Durrani in this charge and fined them @ Rs.419,500/- each.

Conclusion

In light of the above, it is crystal clear that the accused had no role in the above, as such, charge not proved.

B. (MR.EJAZ HUSSAIN, EX-ASSISTANT/ CARETAKER-I, TRANSPORT SECTION, ADMINISTRATION DEPARTMENT)

Charge:

- i. Illegal retention of auction money amounting to Rs.72,02,742/- of 32nd Phase of auction held on 11.07.2007.

The accused has admitted in his reply to the Show Cause Notice that he had retained the auction money of 32nd Phase and utilized the same for repair and maintenance of vehicles as the funds were not available at that time for the purpose. However, the Accountability Court in its judgment has established that the amount of Rs.7,207,747/- of the 32nd auction coupled with amount of Rs.422,000/- of auction proceeds of the trucks chassis bodies were never deposited and the Court further held that the accused Mr.Ejaz Hussain and Mr.Amir Muhammad Durrani have been connected with commission of offence through consistent evidence of the prosecution witnesses. The liability determined and fixed by Accountability Court is given below: -

Total amount embezzled in auction process Rs.7,958,067/-

Liability of Mr. Shahid Sohail, (Section Officer-Transport entered VR) Rs.3,846,284/- (auction process)

Liability of Mr.Ejaz Hussain, Ex-Cashier/Assistant, Transport Rs.3,846,284/- (auction process) and Rs.132,750/- for amount of vehicle 1071-KT) Rs.3,979,034/-

Liability of Mr.Amir Muhammad Durrani, Ex-SO Transport Rs.132,750/- (issuance of NOC / amount of vehicle 1071-KT)

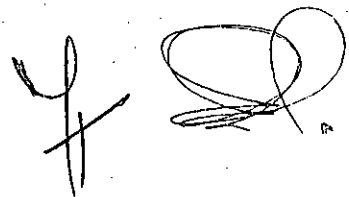
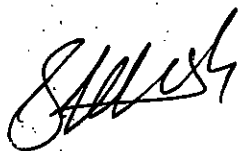
The Accountability Court has sentenced the accused Mr.Ejaz Hussain in this charge to rigorous imprisonment of 04-years with fine of Rs.3,979,033/-

Conclusion

In light of the above and the reply of the accused to the questionnaire, it is established that the charge against the accused is proved.

Charge:

- ii. Fictitious, un-authorized and doubtful expenditure of Rs.14,127,928/- on account of hiring charges, POL and repairs of vehicles during the year 2008-09.



The accused has denied that charge on the ground that in the period of FY 2008-09, he was not posted as Cashier Transport and as such not involved in the whole process. The Accountability Court in its judgment has fixed the responsibility in repair and maintenance of vehicles on Muhammad Rahim Khan, Ex-DS, Mr. Amir Muhammad Durrani, Ex S.O (Transport), Mr. Balqiaz Khan, Ex-Cashier Transport and Mr. Mustafa Kamal, Ex-Cashier / Caretaker Transport. Moreover, the Accountability Court has fixed responsibility in hiring of vehicles on Amir Muhammad Durrani, Ex-S.O (Transport) & Mustafa Kamal, Ex-Cashier/Caretaker Transport, Administration Department.

Conclusion

In the light of above, the above charge is not proved against the accused Mr. Ejaz Hussain.

Charge:

iii. Where about / loss of vehicle No.A-1041 KT.

The accused in his statement to the show cause notice has stated that vehicle No.A-1041 KT was handed over to Mr. Afsar Khan PCS (EG) BS-20 for official duties through Mr. Tariq Driver. Stance of the accused was also endorsed / accepted by the previous inquiry committee headed by Mr. Mushtaq Ahmad (PCS SG) Deputy Secretary, Finance Department and Muhammad Hamayun (PCS SG) Chairman (SWM), Chief Minister's Secretariat, Peshawar.

Conclusion

In the light of above, the charge is not proved against the accused Mr. Ejaz Hussain.

Charge:

iv. Un-authorized expenditure of Rs.97,474/- on account of POL on vehicle No.A-1033 during July 2009 to October 2009.

The accused in his statement to the show cause notice has stated that vehicle was not misused as it was a pool vehicle meant for local duties due to its poor condition. The vehicle was used by all the staff for local / emergency duties such as collection of vehicles from various departments.

Conclusion

Keeping in view the statement of accused & the relevant record, charge is not proved.

Charge:

v. Non-provision of number plates of official vehicles.

The previous inquiry conducted by Mr. Mushtaq Ahmad (PCS SG) Deputy Secretary, Finance Department and Muhammad Hamayun (PCS SG) Chairman (SWM), Chief Minister's Secretariat, Peshawar, has exonerated Mr. Ejaz Hussain of the charge in light of his statement that it was the responsibility of Mr. Khalid Pervez, Caretaker to get registration numbers for the newly purchased vehicles.

Conclusion

The charge is not proved.

Charge:

- vi. Most of the proper handing / taking over proformas have not been signed / countersigned by the Section Officer (Transport) and Deputy Secretary (Admn) and allotted Government vehicles to un-authorized persons.

The previous inquiry conducted by by Mr.Mushtaq Ahmad (PCS SG) Deputy Secretary, Finance Department and Muhammad Hamayun (PCS SG) Chairman (SWM), Chief Minister's Secretariat, Peshawar, has exonerated Mr.Ejaz Hussain of the charge in light of his statement that Mr.Khalid Pervez & Aman Hoti, Caretakers used to distribute vehicles.

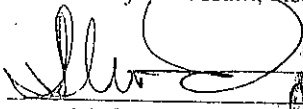
Conclusion


The charge is not proved.

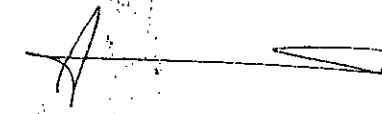
RECOMMENDATIONS

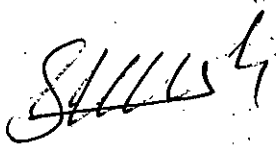
The Charges (i) & (ii) against the accused Mr.Balqiaz, Assistant/Cashier & charge (i) against Mr.Ejaz Hussain, Assistant/Caretaker are proved, hence, both the accused have been found guilty of corruption as defined in Section 2(g) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 (Annex-XIX).

The inquiry committee recommends a major penalty on both the accused from one of the major penalties given at Section 4(b) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 (Annex-XX) and recovery of amount as fine already imposed by the Accountability Court i.e., Rs.1,306,518/- from Mr.Balqiaz Khan, Assistant / Cashier & Rs.3,979,034/- from Mr.Ejaz Hussain, Assistant / Caretaker, E&A Department.


 Mr.Laeeq Ahmad
 Section Officer (Admn)
 Administration Department
 Member
 Inquiry Committee


 Muhammad Yousaf Khan
 Deputy Secretary (B-IV)
 Finance Department /
 Member-Cum-Secretary
 Inquiry Committee


 Mr.Noor-ul-Amin
 Additional Secretary (HRD)
 Establishment Department /
 Chairman
 Inquiry Committee





GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

No. SO(Policy)/E&AD/Misc/2020

Dated Peshawar, the December 24, 2020

To

1. The Director STI, E&A Department.
2. All Additional Secretaries in E&AD.
3. All Deputy Secretaries in E&AD.
4. All Section Officers in E&AD.
5. The Estate Officer/Programme Officer (Computer Cell) in E&AD.

Subject: SIGNING OF PARAWISE COMMENTS ETC IN SERVICE APPEALS.

Dear Sir,

I am directed to refer to this Department letter No.SOR-VI/E&AD/I-23/2005 dated 12-01-2008 (copy enclosed) on the subject, the Competent Authority has been pleased to authorize the Special Secretary (Establishment) Establishment Department to sign the para-wise comments in cases of service appeals filed by the Civil Servants before the Khyber Pakhtunkhwa Service Tribunal on behalf of Chief Secretary, Khyber Pakhtunkhwa and Secretary, Establishment-Khyber Pakhtunkhwa.

Yours faithfully,

SECTION OFFICER (POLICY)

ENDST: NO. & DATE EVEN

Copy forwarded to:

1. Secretary to Govt. of Khyber Pakhtunkhwa, Law Department
2. Registrar Peshawar High Court Peshawar.
3. Advocate General Khyber Pakhtunkhwa, Peshawar.
4. Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
5. PS to Chief Secretary, Khyber Pakhtunkhwa
6. PS to Secretary Establishment, Khyber Pakhtunkhwa
7. PS to Special Secretary (Establishment) Establishment Department
8. PS to Special Secretary (Reg), Establishment Department.

SECTION OFFICER (POLICY)