

Appeal No. 454/2016
Initiaz vs Govt

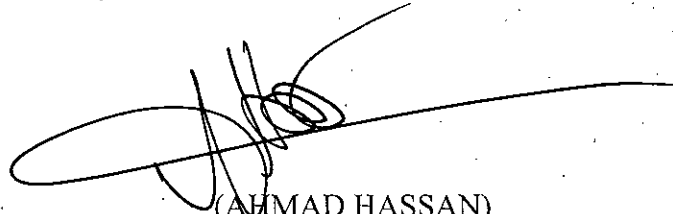
27.02.2017

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


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

ANNOUNCED

27.02.2017



(AHMAD HASSAN)
MEMBER




(MUHAMMAD AAMIR NAZIR)
MEMBER

10.01.2017

Counsel for the appellant and Mir. Ziaullah GE, for respondents present. rejoinder is submitted which is placed on file. To come up for arguments on 30.05.2017.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIR NAZIR)
MEMBER

02.02.2017

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


Reader

15.06.2016

Counsel for the appellant present.
Learned counsel for the appellant argued that identical appeal No. 443/2016 has already been admitted to regular hearing.

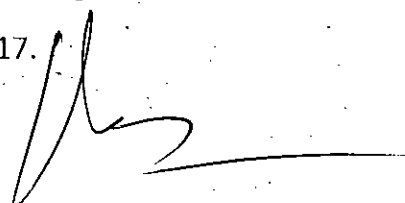
Appellant Deposited
Security & Process Fee

In view of the above, the instant appeal is also admitted for regular hearing. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 08.09.2016 before S.B.


Chairman

08.09.2016

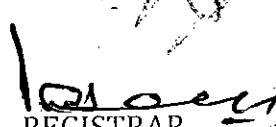

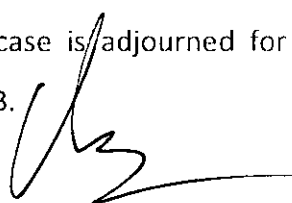
Counsel for the appellant and Muhammad Hayat, Assistant Alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 10.01.2017.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 454/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28.04.2016	<p>The appeal of Mr. Imtiaz Ali presented today by Mr. Khaled Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	29-4-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>19-5-2016</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	19.05.2016	<p>Clerk of counsel for the appellant present. Due to strike of the Bar learned counsel for the appellant is not available today before the Court, therefore, case is adjourned for preliminary hearing to 15.6.2016 before S.B.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 454 /2016

Imtiaz Ali Appellant

Versus

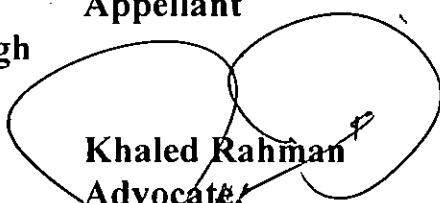
The Govt. of KPK and others.....Respondents

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S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-8
2.	Charge Sheet with Statement of allegations		A	9-10
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4.	Inquiry Report	24.03.2015	C	15-20
5.	Show Cause Notice	10.06.2015	D	21-22
6.	Reply to Show Cause Notice		E	23-26
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Appellant

Through


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

Dated: 27/04/2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 454 /2016

Mr. Imtiaz Ali Khan

Ex-Junior Clerk/Stationery Clerk,

Administration Department, Civil Secretariat, Peshawar.....Appellant

Versus

1. **The Govt. of Khyber Pakhtunkhwa**

through Chief Secretary,
Civil Secretariat, Peshawar.

2. **The Secretary to Govt. of Khyber Pakhtunkhwa**

Establishment Department,
Civil Secretariat, Peshawar.

3. **The Secretary to Govt. of Khyber Pakhtunkhwa**

Administration Department,
Civil Secretariat, Peshawar.....

Respondents

K.W.F. Province
Service Tribunal
Diary No. 427
Dated 28/4/2016

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

PRAYER:

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

Respectfully Sheweth,

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

28/4/16

1. **That** the appellant initially joined the service of the Administration Department as Class-IV employee, way back on 01.04.1995 and subsequently on account of his up-to-the-mark performance he was promoted to the post of Daftari and then Junior Clerk in the year 2008. He has served in multiple capacities in the Administration Department for the last 21 years and during this long period not even a single explanation has been called from him let alone the disciplinary action which is the undeniable evidence of the honest, upright and satisfactory performance of the appellant.
2. **That** appellant was posted as Stationery Clerk on 15.07.2013 and remained there as such till 11.11.2014 for a period of 16 months only. On 09.02.2015, appellant was issued a Charge Sheet with Statement of allegations (*Annex;-A*) containing the charge of corruption/embezzlement/misappropriation of the Govt. funds in collusion with the DDO. Since the charge against the appellant was completely baseless, without any substance, sweeping, uncertain, generalized and non-specific, therefore, the same was denied while explaining his position in his reply (*Annex;-B*) submitted in response thereof. The reply to the Charge Sheet with Statement of allegations may be considered as a part of this appeal.
3. **That** an inquiry was then conducted in an irregular fashion in deviation of the mandatory provisions of law by the Inquiry Officer who then submitted his report (*Annex;-C*) on 24.03.2015 after the stipulated period of 30 days and made vague, ambiguous recommendations to the competent authority. The entire report is uncertain and confused with regard to the various roles and quantum of responsibilities of the Officers/officials under inquiry.
4. **That** after the inquiry, the appellant was issued Show Cause Notice on 10.06.2015 (*Annex;-D*) alleging inefficiency and misconduct. Appellant refuted the allegations by submitting a reply (*Annex;-E*) whereby he denied the charges and also requested for personal hearing. Reply to the Show Cause Notice may also be taken as an integral part of this appeal.
5. **That** vide impugned Notification dated 04.01.2016 (*Annex;-F*) appellant was imposed upon the major penalty of removal from service along with other Officers/officials, against which appellant then submitted a Review Petition (*Annex;-G*) before the competent authority on 29.01.2016 but the same was rejected vide impugned appellate order communicated vide letter dated 18.04.2016 (*Annex;-H*), hence this appeal inter-alia on the following grounds:-

Grounds:

- A. **That** Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned Notification/order, which are unjust, unfair and hence not sustainable in the eye of law.
- B. **That** the appellant remained posted at the Stationery Store as Stationery Clerk only for a period of 16 months and his duties as such were to maintain the purchased stationery items and to issue the same on the direction of the competent authority. During the period none of the high-ups had ever raised any objection on the duties of the appellant as is evident from his personal file. A proper Stock Register was maintained both for the receipt as well as for issuance of the stock which fact has been admitted by the Inquiry Officer in his Inquiry Report and the same position is confirmed from the fact that during the tenure of the appellant all the Sections have received the stationery etc. as per their demands for running their smooth business. Thus the very charge against the appellant was ill-founded and thus not sustainable.
- C. **That** as per the Standing Order Procedure (SOP), the stationery is purchased by the Purchase Committee with which the appellant had got neither any concern nor was he a member of the such Committee, therefore, the charges of corruption, embezzlement and misappropriation of Government funds in the purchase of such items were irrelevant altogether against the appellant but due to the sweeping charge, the appellant was also framed therein without having any nexus therewith.
- D. **That** during the inquiry proceedings it has been confirmed that a proper Stock Register was maintained which was taken into possession by the Anti-Corruption Department and at the time of filing the Inquiry Report the said Register still remained in the custody of Anti-Corruption Department. This fact substantiates two aspects of the matter. Firstly that the Register was maintained properly leaving no room for any misappropriation of the Government property and secondly the finding of the Inquiry Officer against the appellant in absence of the Stock Register i.e. Proper maintenance of the Stock Register and Store Keeping was never carried out was altogether misplaced as he was unable to give such finding against the appellant. In such an eventuality the Inquiry Officer was bound to check the Stock Register lying in the custody of the Anti-Corruption Authorities and to verify the truth with regard to the proper maintenance of the Stock Register which he failed to do, hence the charge against the appellant could

not be proved.

- E. **That** the matter at the same time is subjudice before a criminal Court of law, therefore, before the conclusion of the Trial the imposition of major penalty on the so called inquiry was altogether premature and against the norms of fair-play and justice.
- F. **That** after submission of the Inquiry Report while keeping in view the discrepancies, grey areas and procedural irregularities in the Report, the Establishment Department proposed minor penalties for all the delinquent officers/officials but the same was returned by the Chief Secretary with observations to justify why minor penalty was even mentioned as an option leave alone its recommendations to the competent authority. In response thereof, the Establishment Department observed that while taking into account the final grant it was not found logical that the accused could have embezzled or misappropriated the entire budget under the heads of the account as the Department did function during that period. However, the worthy Chief Secretary inspite of the observation *ibid*, of his own proposed the major penalty of dismissal from service which reflects that the Chief Secretary or competent authority had predetermined the imposition of major penalty at all costs without conforming to the legal formalities/requirements/establishment of the charge which is utterly violative of the law, fair dispensation of justice and fair trial as mandated by the Article 10A of the Constitution, 1973. (The detail Summary for the approval of Chief Minister, Khyber Pakhtunkhwa is *Annex;-I*).
- G. **That** the appellant was given an opportunity of personal hearing by the Secretary Law Department, Government of Khyber Pakhtunkhwa (not the competent authority) and inspite of the written and verbal requests no one from the Department attended the personal hearing and provided the complete report of the fact finding inquiry. Thus the worthy Secretary Law Department, after detail discussion and hearing of the appellant and others, submitted his report with the following glaring facts:
- a) *Contradiction and inconsistencies in the fact finding inquiry (where last pages were/are missing), Audit report of the Anti-Corruption Establishment and formal inquiry were highlighted in the tabulated form with conclusion that it could not be determined as to which of the 3 reports are correct and which constituted the basis of*

penalty proposed for the petitioner as all these reports contradicted each other.

- b) Last pages of the fact finding inquiry are missing from which it cannot be determined who has conducted the inquiry and who has been held responsible which means that the case has been made without any base.*
- c) Charge Sheet is given under Rule-3(c) and Show Cause has been given under Rule-3(a) & (b) of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 which are contradictory to each other.*
- d) Either authority may pass orders for denovo inquiry by charge sheeting from top to bottom (sanctioning authorities and Committee members also).*

When the matter was returned, the Establishment Department did not agree and proposed the major penalty and consequently the same was imposed upon the appellant without any lawful justification which otherwise means that the appellant was deprived of the opportunity of personal hearing which is an essential requirement under the law and the recommendation of the Secretary Law Department could not be overturned by the Secretary Establishment and for that matter the Chief Secretary as they had nothing to do with the proceedings of personal hearing which is a delegated power by the competent authority and is not controlled by these officers under the law. The report by the Secretary Law Department should have been directly placed before the competent authority i.e. The Chief Minister, Khyber Pakhtunkhwa but the same was frustrated before reaching to the competent authority for malafide reasons which has resulted in utter miscarriage of justice.

H. **That** it is also noteworthy that the same Establishment Department is proposing minor penalty at one juncture and then justifying the same in a rational and judicious manner after evaluation of the entire record but at the last stage astoundingly is proposing major penalty in sheer contradiction of his earlier stance without any rhyme or reason which is against the ethics of good governance.

I. **That** in the Charge Sheet with Statement of allegations, a rolled-up/non-specific charge of corruption/embezzlement/misappropriation of funds has been thrown on all the officers/officials under inquiry including the appellant, however, the Inquiry Officer has not given specific finding regarding the aforesaid charges against the appellant and for that reason in the Show Cause Notice appellant has

been attributed inefficiency and misconduct instead of the charges incorporated in the Charge Sheet with Statement of allegations which establishes the fact that the charge could not be established/proved but inspite of the same major penalty was imposed in violation of the law.

- J. **That** an irregular, unlawful inquiry was conducted in utter disregard of the provisions of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 as neither any statement was recorded in presence of the appellant with opportunity of the cross-examining the witness to him nor any documentary evidence was collected in his presence by confronting the appellant therewith and thus the appellant has been prejudiced due to the so called inquiry which is no more than a fact finding inquiry and therefore cannot be based for any punishment muchless major.
- K. **That** the appellant was also deprived of adducing proper defence by the Inquiry Officer due to the defective procedure adopted in deviation of the law and thus appellant was proceeded against at his back through an ex-parte proceeding which is also against the norms of fair-play, justice and as such violative of Article-10A of the Constitution of the Islamic Republic of Pakistan, 1973 read with 24A of the General Clauses Act-1897, procedural provisions in the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011.
- L. **That** the controversy admittedly was one of disputed questions of facts in which the only alternative was to hold a detailed regular inquiry to unearth the actual facts and to reach to a just, right conclusion but due to irrelevant inquiry not only the appellant was adversely and prejudicially affected but the real facts could not be brought into the notice of the competent authority which has resulted in serious miscarriage of justice.
- M. **That** by now it is a trite law enunciated by superior fora in the country that where a major penalty is to be imposed then only and only a regular inquiry is to be resorted to but in the case in hand only a fact finding inquiry was relied upon wherein too reliance has been placed upon the earlier fact finding inquiry which is not sustainable under the law.
- N. **That** the initial Charge Sheet and Statement of allegations were issued under Rule-3(c) of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 for the charge of corruption but after the inquiry the Show Cause

Notice was issued to the appellant under Rule-3(a)&(b) of the Rules *ibid*, containing the charge of inefficiency & misconduct which reflect a clear contradiction as well as establishes the fact that the whole episode was concocted and false one.

- O. **That** the appellant was also not provided a meaningful opportunity of personal hearing by the competent authority and thus he was condemned unheard which is against the principle of natural justice, therefore, the impugned penalty is void ab-initio and nullity in the eye of law.
- P. **That** the external Audit was conducted in detail by the office of the D.G Audit some two months prior to the instant action and nothing adverse, irregular was pointed out and similarly audit was also done by the Audit Officer of the Anti-Corruption Establishment, Khyber Pakhtunkhwa in detail for about one month, strangely after the registration of the F.I.R. wherein too nothing incriminatory was established against the appellant and it was due to inter-alia these reasons that the appellant was allowed Bail by the court of competent jurisdiction.
- Q. **That** last pages of the first Fact Finding Inquiry are missing and inspite of the efforts the same could not be located and it appeared that these pages were deliberately hushed up for malafide reasons by those against whom recommendations were made and thus the appellant a low-rank official was singled out in order to safeguard the interest of the high officers who were directly involved or could be involved in the matter which is utter discrimination.
- R. **That** as per the order of the competent authority and mandate of Rule-11(7) of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011, the Inquiry Officer was duty bound to submit the Inquiry Report within a period of 30 days but he failed to abide by the order of the competent authority as well as the law.
- S. **That** petitioner has rendered about 21 years service wherein not even a single explanation has ever been called from the appellant during this long-drawn service what to speak of initiation of disciplinary proceedings or imposition of even minor penalty. Appellant's entire long service record and his poor financial position after such long period of service are the undeniable evidence to the fact of honest, dedicated performance of his duties.

T. **That** appellant would like to offer some other grounds during the course of arguments.

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

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

It is
Appellant

Through

Khaled Rahman,
Advocate,
Supreme Court of Pakistan

Dated: 27/04/2016



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

9

NO. 1-1/FD/DS (Reg-II)/2015

Dated Peshawar the February 9th, 2015

To

Annex A

Mr. Imtiaz Ali Khan (Junior Clerk BS-11),
Administration Department,
Peshawar.

Subject: - CHARGE SHEET & STATEMENT OF ALLEGATIONS IN RESPECT OF
Mr. IMTIAZ ALI KHAN (JUNIOR CLERK BS-11), Administration
Department, Peshawar.

Reference Establishment Department letter No SOE-II(ED)4(133)2010
Dated February 3, 2015 on the subject cited above:-

You are hereby directed to submit your written reply in response to the
allegations levelled against you within 07 days on the receipt of this letter.

2. You are further directed to appear before the Inquiry Officer for personal
hearing in the office of Deputy Secretary (Reg-II), Finance Department on **18th
February 2015 at 10:00 am.**


(IRFANULLAH KHAN)
Deputy Secretary (Reg-II)
Finance Department

Endrst: No. & Date even.

Copy of the above is forwarded to:-

1. The Secretary to Govt. Of Khyber Pakhtunkhwa Administration
Department with the request to depute a departmental representative well
conversant with the facts of the case alongwith relevant record to assist
the inquiry Officer during the enquiry proceedings.
2. Section Officer (E-II), Establishment Department.

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Deputy Secretary (R-II)
Finance Department

A



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

10

DISCIPLINARY ACTION

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Mr. Imtiaz Ali Khan, the then Junior Clerk (BS-11), Administration Department, has rendered himself liable to be proceeded against, as he committed the following acts/omissions within the meaning of rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

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

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

- i. Mr. Irfanullah Khan (PAS BS-18)
- ii. _____
- iii. _____

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

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

Pervez Khattak
(PERVEZ KHATTAK)
CHIEF MINISTER
KHYBER PAKHTUNKHWA
(COMPETENT AUTHORITY)
29. 01. 2015.

Mr. Imtiaz Ali Khan (BS-11),
the then Junior Clerk,
Administration Department

Approved
True Copy

To,

The Reverend Inquiry Officer,
Dy; Secretary (Reg-II)
Finance Deptt:
Civil Secretariat, Khyber Pakhtunkhwa
Peshawar.

Annex "B"

11

Subject: REPLY TO CHARGE SHEET WITH
STATEMENT OF ALLEGATIONS
COMMUNICATED VIDE LETTER NO.1-
1/FD/DS(RG-II)/2015 DATED 09/02/2015.

Respected Sir,

- 1- That I, was serving as Junior Clerk and posted at Stationary Store and remained there for about 15 months. The duties assigned me were only to maintain the purchased stationary items and to issue the same on the directions of the competent authority. I performed the said duty with utmost zeal and efforts as per law and rules.
- 2- That as per standing order procedure the stationary is purchased by the purchase committee, to which the undersigned is neither member nor has any concern with the same. That after the stationary is purchased by the purchase committee the same is handed over to the stationary clerk on stock register after observing proper handing / taking over.
- 3- That the criminal case was registered, in which I has been arraigned as accused and has been admitted to bail by the Hon'ble High Court, Peshawar. The concerned official of the Anti Corruption department during the course of inquiry has not found any dearth of the

At: _____
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B

3
2

purchased items handed over to me, rather they have held that there are sufficient / excessive quantity of the stationary, so in this scenario how the corruption was held, when the entire purchase stationary items were found present in the store and no allegations in respect of its issue is there, hence the question of corruption, corrupt practices does not arise and the allegations are without merits.

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- 4- That even I was wrongly charged in the criminal case because the final report submitted by the inquiry officer of the Anti Corruption Department, it has been held that corruption was held in the purchase of stationary items, whereas I have got no concern with the purchase nor I am member of the purchase committee. So no question of corruption by me arises.
- 5- That similarly in the initial inquiry report, reference has been made to the stationary items but it is to my utter surprise that the amount has been mentioned which was expended for the purchase and no meticulous detail of the stationary items is mentioned in the initial inquiry, which suggest that I was accused and dragged on the bases of unfounded, unproved and un-established allegations. (Copy of the initial and final inquiry report is attached herewith for ready reference).
- 6- That the AGPR is annually conducting the audit by ~~attested to be~~ scrutinizing the record and the AGPR during my tenure **True Copy** has resorted to the same and has given its detail report,

the same is worth consideration and can be helpful in delivering justice by substantiating the allegations or negating the same.

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- 7- That the inquiry officer in his report has not associated me with the inquiry proceedings nor I was given access to the record which I maintained and hence the inquiry was not correctly and fairly conducted. The income taxes paid on the purchase, the stationary / items available and issued to the respective deptt: were not properly evaluated and appreciated during scrutiny, hence reached to an incorrect conclusion.
- 8- That the criminal case registered on the present subject is yet pending adjudication and the propriety demands that the result of the criminal case be waited for, as the result of the criminal case will be having material bearings on the fate of the allegations, and the chaff can be sifted from the grain. That in case the findings of your good self and the judgment of the Court which will be taking cognizance of the matter overlap each other it will create an embracing situation, hence wait for the result of the criminal case is inevitable.
- 9- That my job as per assignment was to receive the purchase stationary, maintain the store and to issue the same to the respective department as per requirement and law and there is no lexicity, perversity was found in the same, hence the allegations are baseless and unfounded.

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10- That various allegations against different persons and different offices have been amalgamated, therefore, the inquiry officer could not bifurcated the allegations and reached to an incorrect conclusion as the inquiry officer by himself was confused in summing up the inquiry.

14

It is, therefore, most humbly requested that in the light of the above stated facts and scenario I may kindly be exonerated of the allegations and be allowed to continue/resume my duty.

Dated 13/02/2015

Imtiaz

**Imtiaz Ali Khan
Junior Clerk BS-11
Administration Deptt:
Civil Secretariat,
Peshawar.**

**Attested to be
True Copy**

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

Annex C
15

1. ORDER OF INQUIRY.

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

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

Received
24-03-2015

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

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

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

INTRODUCTION.

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

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

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

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

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

3. MODUS OPERENDI.

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

In order to initiate a formal inquiry, the undersigned intimated in written, to all the accused officials of the Administration Department to submit their written defense under rule 11 of the Government of Khyber Pakhtunkhwa Efficiency and Discipline Rules 2011, and for personal hearing along with departmental representative under Rule 15 of the above mentioned Rules. Subsequently, both the accused officials and the departmental representative complied with the written directions. The departmental representative provided all the relevant record of the TA /DA, purchase of machinery and equipments, stationery, entertainment charges, other and miscellaneous charges and cash book for the year 2013-14. The stock register could not be produced by the departmental representative because that was pending with anti corruption establishment.

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

BACK GROUND.

The issue in hand first surfaced when on 30th October 2014 the then Deputy Secretary Administration Department moved a note for Chief Secretary Khyber Pakhtunkhwa bearing title "embezzlement in procurement of goods and negligence in delivery of services".

Attached to be
True Copy

How (How) was handled by K.O.

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

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

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

INQUIRY REPORT.

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

MAJOR FINDINGS.

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

I. STATIONARY.

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

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

[Signature]
3/11/14

quantity without any rationale and demand from the concerned quarters.

18

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

2. MACHINERY AND EQUIPMENTS.

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

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

3. TA/DA.

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

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

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

4. ENTERTAINMENT CHARGES.

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

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

5. OTHER MICSELLENOUS ITEMS.

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

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

CONCLUSION.

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

- 1. The undersigned has reached the conclusion while checking and scrutinizing all the relevant record pertaining to different heads, that the purchase committee and inspection committee duly constituted by the competent authority did not fulfill its

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

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

RECOMMENDATIONS.

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

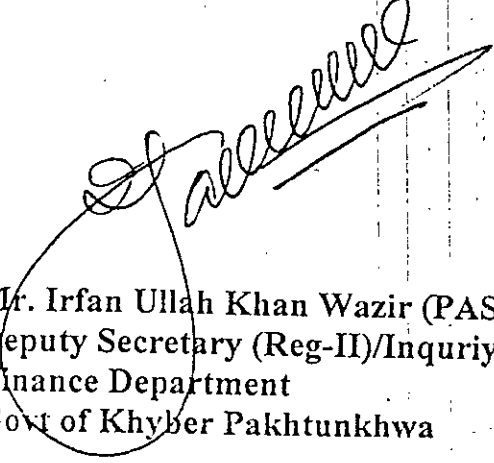
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10.03.2011

CERTIFICATE

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

Dated 24-03-2015


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

Attested to be

CONFIDENTIAL
IMMEDIATE



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

21

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

To

Mr. Imtiaz Ali Khan,
Junior Clerk (BS-11),
C/O Administration Department.

Annex "D"

SUBJECT: SHOW CAUSE NOTICE

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

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

ENDST: NO. & DATE EVEN

Copy forwarded to:-

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

SECTION OFFICER (E-II)

[Signature]
True Copy



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

SHOW CAUSE NOTICE

22

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Imtiaz Ali Khan (BS-11), the then Junior Clerk, Administration Department as follows:-

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

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

- a) Inefficiency;
- b) Misconduct;

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

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

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

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

Mr. Imtiaz Ali Khan (BS-11),
the then Junior Clerk, Administration Department
(c/o E-IV Section Establishment Department).

Pervez Khattak
(COMPETENT AUTHORITY)
27/5/15.

Attested to be
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D

Annex 'E'

To,

The Revered /worthy Chief Minister,
Khyber Pakhtunkhwa
Peshawar.

23

REPLY TO THE SHOW CAUSE NOTICE
VIDE NO. SOE-II (ED)4 (133)/2010 DATED
PESHAWAR THE JUNE 10TH 2015

With great respect;

The reply of Show Cause Notice for your kind
consideration and perusal is submitted as under;

1- That I the undersigned is employee in BPS-11
as Junior Clerk and due to the nature of my
duty I have got no concerned with purchase of
stationary, cash, vouchers and demand as my
duty is only to receive the stationary item and
maintain the stationary store and issue the
same on the direction of competent authority,
which I have performed as per law therefore,
the question of corruption and corrupt
practices do not arises on my part.

2- That admittedly as per the show cause notice
that the Noticee / employee has maintained a
proper register in which the entry of receipt
and issue have been properly maintained
which was taken into possession by the anti
corruption department during the raid on the
Stationary Store and is still lying with them,
and this fact has been admitted by the Inquiry

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Officer who conducted the departmental inquiry. And the same has been mentioned in para three of heading (Modes appendi) in paragraph No.2 the last 2 line of the inquiry report which are reproduced for ready reference "the stock register could not be produced by the departmental representative because that was pending with Anti Corruption establishment" thus it is clear that proper register was maintained for the purpose of receipt and issue of stationary items. In the absence of examination of the said register or counting the stationary items in the store viz-a-viz the register how the inquiry officer reached to the conclusion by fixing liability and how a firm opinion can be formed and the same require a careful examination and consideration by your good self.

(24)

- 3- That composite allegations were levelled in the charge sheet and the same were treated by the inquiry officer in the same manner without specification and bifurcation of the role of all the employees and hence due to this mishaps the present noticee is being made sandwich in the present case
- 4- That keeping in view the nature of duty, responsibility and status the inquiry officer

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should have been inquired into the allegations with segregation approach and meticulously.

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- 5- That the present noticee has nothing to do with the cash, if any dearth has been found nor with the vouchers or the purchase of stationary items and if any loss or deficiency has been picked by the inquiry officer, I cannot be held responsible for the same as mentioned above as my duty is only to maintain the stationary store to receive and issue the stationary through a stock register and which admittedly have been done by me.
- 6- That I can be held responsible for deficiency of any stationary items received by me but no such like allegation is there against me as I am totally innocent and have falsely been dragged in the present case for no fault on my part.
- 7- That the matter is also res-subjudice before the competent Court of law and the trial of the case the persons found guilty shall be taken to task and the law will take its own course.

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It is, therefore, most humbly prayed that on acceptance of this reply the show cause notice may graciously be discharged and withdrawn and also give me the personal hearing chance pl.

Dated 13/02/2015

Yours Obediently

Intiaz Ali Khan
Intiaz Ali Khan
Unior Clerk BS-11
Administration Deptt:
Civil Secretariat
Peshawar.

AAK
22/6/2015

Attested to be
True Copy



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Annex "F"

27

Dated Peshawar the January 04, 2016

NOTIFICATION

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

WHEREAS, the following officer/officials of Administration Department were proceeded against under rule 3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the Charge Sheet & Statement of Allegations dated 03.02.2015:

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

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

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

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

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN.

A copy is forwarded to:-

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

Attested to be
True Copy

04.01.2016

SECTION OFFICER (E-II)

F

Office of the PSCM

Diary No. 238
Date 29/11/14

The Honorable Chief Minister,
Khyber Pakhtunkhwa Peshawar

Received
Amjad Ali
29/11/14

28

Subject: REVIEW PETITION AGAINST THE NOTIFICATION ISSUED
VIDE NO SOE-II(ED)4(133)/2010 DATED JANUARY 04, 2016
BY THE ESTABLISHMENT DEPARTMENT REGARDING
"REMOVAL FROM SERVICE" OF THE UNDERSIGNED;

Respected Sir,

Annex G

With due respect it is submitted that I have been removed from service vide the above subject notification on the charges of "a) Inefficiency; & b) Misconduct;", When I was working as Stationery In-charge in the Establishment & Administration Department Government of Khyber Pakhtunkhwa.

(A) In this connection it is submitted as:

- I. That I was posted as Stationary Clerk vide Notification of Dated 15/07/2013 and remained till 11/11/2014, i.e. for Sixteen (16) Months only.
- II. That my Job description was to receive & entered the same stationery in the stock register and to issue to the concerned on the approval of the competent authority.
- III. That in the above mentioned period neither my immediate boss nor the controlling officer have made any complaint regarding my inefficiency or misconduct, this can be seen from my personal file.
- IV. That proper stock register was maintained both for receipt as well as for issue. This is on the face of record and also mentioned in the Inquiry Report by the Inquiry Officer.
- V. That this fact can further be verified from the records that all the sections have got the stationary and allied items as per their demands and the sections are run in smoothly and efficiently in the above mentioned period.
- VI. That the above facts transpires that I have not done any such act, which comes in the meaning of Inefficiency and misconduct under Rule 2 sub Rules (i) and (l) and Rule 3 sub Rules (a) and (b) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 20 under which I was proceeded.

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(B) FACTS ABOUT INQUIRY REPORT:

- I. That your good self has also ordered an Inquiry in the matter Vide Notification No. SOE-II(ED) 4(133)/2010 dated Feb. 03, 2015 for to probe the irregularities in the purchases, and entertainments.
- II. That the Inquiry Officer in his report on one side only this much has mentioned that "Inefficiency and Inaptitude is evident on the part of lower staff i.e. cashier, care taker and stationary in charge", while on the other side has categorically mentioned that stock register was with the Anti-Corruption Establishment, and he has not checked that stock register. While he was duty bound to check the stock register and then conclude as he has judicial powers under Rule 12 of the rule ibid and sections 193 and 228 of the PPC: 1860.
- III. That it is to further clarify that the Inquiry Officer has not explained this inefficiency and inaptitude in his inquiry report.
- IV. That though the Inquiry Officer in his detail inquiry report has mentioned that procedural lapses have been noticed in the purchase of stationary, but even then has not given any specific findings or recommendations against me regarding my inefficiency or misconduct.
- V. That I am to further clarify that purchase is/was not included in my job description.

C. IN ADDITION TO ABOVE FACTS THE FOLLOWING LEGAL REQUIREMENTS UNDER THE E&D RULES 2011 HAVE ALSO BEEN NOT FULFILLED:

- i) That no proper personal hearing opportunity has been provided to me before imposition of major penalty of "REMOVAL FROM SERVICE", neither by the inquiry officer nor by the Secretary Law nominated by your honor for the purpose.
- ii) That neither the inquiry officer nor the Secretary Law has recommended imposition of any penalty on me i.e. major or minor. Hence in such circumstance imposition of major penalty of "REMOVAL FROM SERVICE", is not only against the prevailing law, but also against the very principles of natural justice and social norms.

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- iii) That all what has been based for the imposition of major penalty upon me is based on malafide intentions, as is evident from the record.
- iv) That not a single complaint has been received against me neither from superior nor from any section during my tenure.
- v) That no financial loss has been caused to the Public Exchequers, as I was not associated with the purchase of stationery items.
- vi) That I have 17 years unblemished service record on my credit.
- vii) That even the one-sided inquiry committee has not recommended the imposed major penalty for me.

2. Keeping In view the foregoing mentioned facts it is humbly prayed that the imposition of major penalty of "REMOVAL FROM SERVICE" may kindly be reviewed and I may kindly be reinstated into service by set-asideing the Notification issued by Establishment Department vide No.SOE-II(ED)4(133)/2010 dated January 04, 2016 with all back benefits as the said penalty has badly disturbed my poor family including my 80 years old mother and small kids on one side and on the other side it is against the very norm of fair play, natural justice and equity.

3. Thanking you in anticipation.

Yours sincerely,



(Imtiaz Ali Khan)
Ex-Junior Clerk

Administration Department

Dated 29/01/2016

Attested to be
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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Registered

31

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

To

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

Annex "H"

E&A Department

Subject: REVIEW PETITION

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


(NASAR ALI)
SECTION OFFICER(E-II)

ENDS: NO. & DATE EVEN.

Copy forwarded to:

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

SECTION OFFICER(E-I)

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H

ANNEX I

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Annex I



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(HRD WING)

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


To

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

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

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

Encls: As above.


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

Endst: No & date even.

Copy forwarded to:

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

SECTION OFFICER (HRD-II)



**Attested to be
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33

MOST IMMEDIATE



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

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

To

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

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

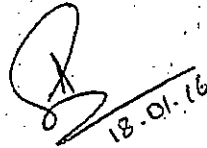
I am directed to refer to your letter No.SO(HRD-II)/ED/1-10/2014
(RTI)/Maqbool Hussain & others, dated 14.01.2016 on the subject and to enclose
herewith the requisite information (duly attested) for further necessary action as desired,
please.

Encl: As above.

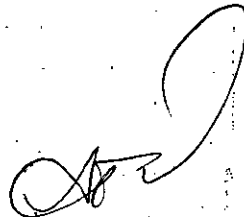
ENDST: NO. & DATE EVEN.

Copy forwarded to:

1. Additional Secretary (HRD), Establishment Department.


SECTION OFFICER (E-II)

SECTION OFFICER (E-II)


Attested to be
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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA

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

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

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

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

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

Attested to be
True Copy

18/1/16
Secretary, Officer (E-II)
Establishment &
Administration Dept

SECRETARY ESTAB

Chief Secretary CHIEF MINISTER
KHYBER PAKHTUNKHWA

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

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

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

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

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

Chief Secretary,
Khyber Pakhtunkhwa

Chief Minister,
Khyber Pakhtunkhwa

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

Attested to be
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26/1/2015

Chief Secretary
Govt. of Khyber Pakhtunkhwa

SECRETARY ESTAB

Chief Secretary

Section Officer (E-1)
Establishment &
Administration Dept
CHIEF MINISTER
KHYBER PAKHTUNKHWA

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GOVERNMENT OF KHYBER PAKHTUNKHWA

3/7

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

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

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

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

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

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12/1/16

Section Officer (E. Establishment & Administration D)

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

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

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

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

Chief Secretary,
 Khyber Pakhtunkhwa

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

Secy Establishment
(Signature)

Attested to be True Copy

M. P. P

Ades
 22/4/2015

Chief Secretary
 Govt. of Khyber Pakhtunkhwa

Secretary, Office
 Establishment &
 Administration Deptt

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

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

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

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

Chief Secretary,
Khyber Pakhtunkhwa.

17. In view of Annex - XIII,

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

Attested to be
True Copy

Secy Establishment

(Signature)

P.T.O

(Signature)
19/5/2015
Chief Secretary
Govt. of Khyber Pakhtunkhwa

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

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Reference Para-17.

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

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

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

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

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

18/1/16
Section Officer (F
Establishment &
Administration

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

Dr. Akhtar Nazir
Secretary Establishment
May, 2015

Chief Secretary, Khyber Pakhtunkhwa

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

Chief Minister

Ali
26/5/2015

Chief Secretary
Govt. of Khyber Pakhtunkhwa

Para 22 is approved.

Attested to be
True Copy

27/5/2015

Say/Est [Signature]

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

55(E)

P.T.O

10.6.2015

[Signature]
18/6/15
Secretary, Office
Establishment &
Administration

E
P

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

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

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

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

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

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

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

Chief Secretary,
Khyber Pakhtunkhwa

Chief Minister,
Khyber Pakhtunkhwa

Attested to be
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(Dr. Akhtar Nazir)
Secretary Establishment
8th July, 2015

9/7/2015
Chief Secretary
Govt. of Khyber Pakhtunkhwa
Secty. Office
Establishment &
Administration
CHIEF MINISTER
KHYBER PAKHTUNKHWA

P. T. O

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GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT

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

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

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

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

[Signature]
Sector Officer (B-I)
Establishment &
Administration Dep

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

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

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

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

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

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

Section Officer (I)
Establishment &
Administration De

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

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

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

[Signature] 06/8/15

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

Chief Secretary

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True Copy

[Signature]
18/1/16

Section Officer (E-I)
Establishment &
Administration D

Next Page

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38. Views of Establishment Department are as under:

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

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

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

[Signature]
SECRETARY ESTABLISHMENT
16 September, 2015

CHIEF SECRETARY,
KHYBER PAKHTUNKHWA

Chief Minister

Attested to be
True Copy

[Signature]
18/9/2015
Chief Secretary, Officer (E-II)
Govt. of Khyber Pakhtunkhwa
Establishment & Administration Dep

42. Para 41 is approved.

[Signature]
SECRETARY ESTAB

[Signature]
Chief Secretary

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

Chief Secretary KHYBER PAKHTUNKHWA

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT.

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Reference Para-23 of the Summary:

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

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

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

Wardahlatif
10/6/2015

Section Officer E-II

Secretary (E):

Discussed with SE in presence of SE this afternoon. He agreed to issue the Show Cause notice as per requirement of Rule 14(4) of EYS Rules 2011, duly signed by the Competent Authority (CA).
Issue it today positively.

Attested to be True Copy

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

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

Wardahlatif
25/6/2015
Section Officer (E-I)
Establishment & Administration D.

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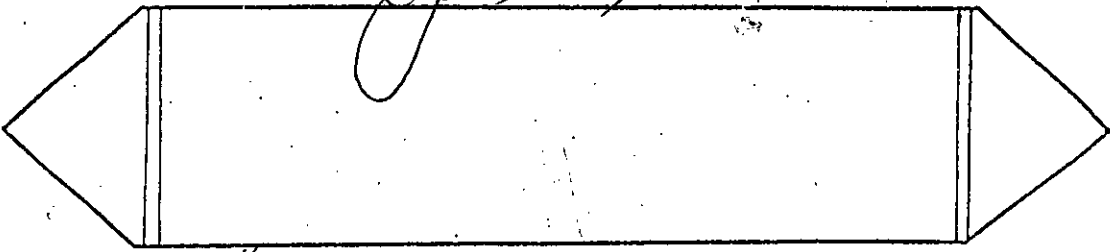
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بعدالت سرون لٹریچر



2014ء منجانب اللہ محمد
اعلیٰ بنام حقوق

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی مکمل کارروائی متعلقہ
آن مقام کیلئے صاحب مکمل کارروائی متعلقہ
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی مکمل کارروائی کا کامل اختیار ہوگا۔ نیز
دکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے مکمل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ
پر داختم منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائے التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا ادکالت نامہ لکھ دیا کہ سند ہے۔

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المرقوم

واہ العبد

کے لئے منظور ہے۔

Signature

Signature

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 454/2016

Mr. Imtiaz Ali Khan.....

Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa & Others

Respondents

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

Respectfully Sheweth,

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

ON FACTS

1. Pertains to record.
2. **Incorrect:** The irregularities made in the Govt. funds for the years 2013-14 and during that period, the appellant was posted as stationery clerk.
3. **Incorrect:** The inquiry was conducted in true spirit of (E&D) Rules, 2011 after fulfillment of all codal formalities as was required under the rules ibid.
4. No comments.
5. No comments.

GROUNDS

- A. **Incorrect:** No Law/ rule was violated as all the procedure was done in accordance with (E&D) Rules, 2011.
- B. **Incorrect:** The Inquiry Officer in its Inquiry report held that no Stock Register was maintained for Stock taking and proper issuance of goods, which shows his malafide intention.
- C. **Incorrect:** Though stationery is purchased by the purchase Committee, however it is the Stationery Clerk, who maintained Stock Register, which was done properly and thus irregularities were found, which leads to malafide intention of the appellant.
- D. **Incorrect:** The Inquiry Officer has held that no proper Stock Register was maintained, which casts a shadow of doubts on the whole process.
- E. **Incorrect:** As evident from circular letter of Establishment Department dated 08.01.1990 that Court and departmental proceedings may start from an identical charges and can run parallel to each other against an accused on the same set of facts and yet may end differently without effecting their validity. Even departmental inquiry can be held subsequently on the same charges of which Govt. servants has been acquitted by a court.

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- F. **Incorrect:** If the charges against an official are proved then Inquiry Report alongwith other relevant record is to be placed before the competent authority, who after examining it imposed a penalty either minor or major.
- G. **Incorrect:** Before imposing major penalty "removal from service" the appellant was provided full opportunity of self defence, as was required under (E&D) Rules, 2011.
- H. **Incorrect:** The impugned order has highly been passed in accordance with Law/Rules on the subject.
- I. **Incorrect:** The inquiry against the appellant was conducted in accordance with (E&D) Rules, 2011 observing therein all codal formalities as was required under the rules ibid.
- J. **Incorrect:** As evident from his reply to Charge Sheet/ Statement of Allegation addressed to the Inquiry Officer, which means that the appellant was given full opportunity of self defence including personal hearing and the appellant was failed to prove himself innocent.
- K. **Incorrect:** As explained above.
- L. **Incorrect:** Formal Inquiry was conducted against the appellant after fulfillment of all codal formalities, as was required under (E&D) Rules, 2011.
- M. Denied being incorrect. All the codal formalities are fulfilled during the course of inquiry.
- N. **Incorrect:** The appellant was provided full opportunity of personal hearing and was heard in person.
- O. **Incorrect:** As explained above.
- P. **Incorrect:** Subject to proof.
- Q. **Incorrect:** The impugned order is rightly passed against the Appellant.
- R. Pertains to record.
- S. No Comments.
- T. The Respondents be allowed to offer the other grounds/record during the course of arguments.

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

(Respondents No. 1 to 3)

"B"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

Appeal No. 454 of 29/6.

Mr. Munir Ali Khan Appellant/Petitioner

Versus

Govt of KPK through Chief Secretary Respondent

Respondent No. 1

Notice to:

Govt of KPK through Chief Secretary, Civil Secretariat Peshawar.

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 8-9-2016 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this~~

office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 22nd

Day of June, 2016,

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 454/2016

Imtiaz Ali.....Appellant

Versus

The Govt. and others.....Respondents

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

Respectfully Sheweth,

Preliminary Objections:

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

Facts:

1. Being not replied hence admitted.
2. Incorrect. There was/is no proof to evidence the allegation against the appellant. The charge of corruption/embezzlement/misappropriation of Government fund is mere a false accusation having nothing to do with reality. The appellant was serving as Stationary Clerk and has issued the concerned stationary as per the Stock Register which is properly maintained and has nothing to do with other matters, therefore, the charge against the appellant is misconceived.
3. Incorrect. The Rules were violated. The enquiry was not conducted according to the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules-2011 inas much as the codal formalities were not conformed.

4&5. Being not replied hence admitted.

Grounds:

- A. Incorrect. The appellant was not treated according to law and Rules which were violated with impunity. Similarly the procedure mandated by the KP Civil Servants (Efficiency & Discipline) Rules-2011 was not followed rendering the whole proceedings as null and void.
- B. Incorrect. The finding of the Enquiry Officer is based on misconception. The appellant performed his duties as Stationary Clerk in accordance with the prescribed procedure. All the documents have been properly maintained.
- C. Misconceived. The stationary has been purchased by the Purchase Committee and appellant was not the member of such Committee. The Stationary was distributed as per the procedure and past practice which has never been objected to by any quarter.
- D. Incorrect hence denied. Proper Stock Register has been maintained. The purchase of the stationary was not the job of the appellant and therefore he cannot be held responsible for that.
- E. Misconceived. If the allegation of the misconduct is solely based upon the criminal charge then the dictates of justice demand that the decision of the competent Court should be awaited because mere allegation does not prove a crime under the law.
- F. Incorrect hence vehemently denied.
- G. Incorrect hence denied. The appellant was not provided a proper opportunity of defence before awarding the major penalty which is against the law.

- H. Incorrect. Impugned order is not according to law and rules on the subject.
- I. Incorrect hence denied. The enquiry was not conducted according to law, hence the punishment imposed upon the appellant is illegal.
- J. Misconceived. Just reply to the Charge Sheet and Statement of allegations by no means can be counted as proper defence unless opportunity of defence is provided to the delinquent official.
- K. Being not replied hence admitted.
- L. Incorrect. No regular enquiry was conducted against the appellant which is the requirement of law.
- M. Incorrect hence denied.
- N. Incorrect. No opportunity of personal hearing was provided to the appellant by the competent authority which is an essential legal requirement.
- O-S. Being not replied hence admitted.
- T. Needs no reply.

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

Through

intiaq
Appellant

Khaled Rahman
Khaled Rahman
Advocate, Peshawar

Dated: 10/01/2017

Verification

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

intiaq
Appellant