

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 315/2019

Date of Institution ... 28.02.2019

Date of Decision ... 18.02.2020

Muhammad Qasim, Ex Director Local Fund Audit Khyber Pakhtunkhwa, Resident of House No.338 Street No. 10 Sector F/7 Phase-VI, Hayatabad Peshawar.

... (Appellant)

VERSUS

The Chief Secretary to Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and three others.

... (Respondents)

MR. MASOOD KHAN,
Advocate

For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

For respondents.

MIAN MUHAMMAD
MUHAMMAD HAMID MUGHAL

MEMBER(Executive)
MEMBER(Judicial)

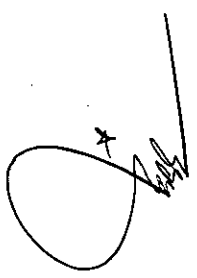
JUDGMENT:

MIAN MUHAMMAD, MEMBER:- Arguments of learned counsel for the parties heard and record perused.

02. Muhammad Qasim, hereinafter referred to as an appellant has preferred the instant service appeal under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act 1974 against the office order No. SO(ESTT/FD/5-14/018/complaint/LFA dated 08.10.2018, regarding order of recoveries of Leave Encashment/Special Allowance and non-deciding of his departmental appeal within statutory period of ninety (90) days.

FACTS:

03. Facts of the case are that the appellant was appointed as Audit Officer (BPS-16) in Local Fund Audit i.e an attached department of Finance Department, Khyber Pakhtunkhwa and who rose to the post of Director Local Fund Audit (BPS-19) by way of promotion in his cadre. The appellant was posted in Finance Department where he served and drew Special Allowance admissible to officers on Secretariat posts. Subsequently, he was posted as Director Finance Small Industries Development Board (SIDB), Khyber Pakhtunkhwa vide notification dated 10.08.2012 and the officer served there till 06.12.2017. The appellant was retired from service on attaining the age of superannuation on 05.06.2018 by his parent department.

ARGUMENTS:

04. Learned counsel for the appellant argued and contended that the appellant has rightly drawn special pay as he was serving in Finance Department against the post on which special pay is admissible. It was further argued that the appellant was entitled for the drawl of deputation allowance in SIDB as he was posted as Director Finance in SIDB on deputation basis. Learned counsel for the appellant further contended that leave encashment of 365 days is admissible to a civil servant. The impugned order of recovery is not a valid speaking order and issued in serious violation of Section 24-A of the General Clauses Act.

05. Learned Deputy District Attorney argued that special allowance is admissible in the Secretariat and not in the attached department i.e Small Industries Development Board (SIDB). Similarly, a specific transfer order on deputation basis is required for admissibility of deputation allowance. Moreover, Managing Director

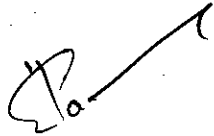
SIDB Peshawar in his report dated 27.07.2018 has admitted the drawl of Special Allowance by the appellant as irregularly drawn and being recoverable. The appellant has been treated according to law and rules. All codal formalities have been fulfilled by the respondent-department before passing the impugned order dated 08.10.2018.

CONCLUSION:

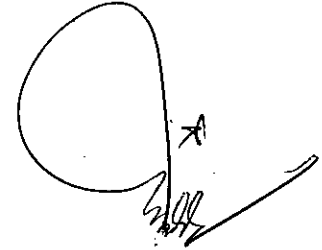
06. The arguments of learned counsel for the appellant that leave earned and deputation allowance had already been drawn by predecessors of the appellant, does not hold ground because a bad precedent cannot be quoted as evidence. Regarding the stance on drawl of Special Allowance in SIDB, the arguments is defeated on the ground that in SIDB (Being an autonomous body), he could not draw (Special Allowance) which is admissible against certain posts in the Secretariat. Moreover, Managing Director SIDB Peshawar in his report dated 27.07.2018 has admitted the drawl of Special Allowance by the appellant as irregularly drawn and being recoverable. Learned counsel for the appellant when confronted on the point that he had drawn Deputation Allowance as he was posted in SIDB on deputation basis, could not produce the order of his posting on deputation basis. Equally important is the point that terms and conditions of deputation between barrowing and lending department were not settled down as required under the deputation policy of the Provincial Government. The plea taken by the learned counsel for the appellant regarding admissibility of 365 days leave encashment, is not agreed on the ground that leave account of a civil servant is properly maintained and based on that account the appellant is entitled to the encashment of remaining 231 days duly calculated by the parent department. Based on the arguments and perusal of the record this Tribunal does not find a cogent reason to interfere with the directions

given by the Finance Department in its notification dated 08.10.2018 as the drawl of pension is subject to good conduct of a civil servant as provided in Rule-1.8 of the Pension Rules.

07. As a sequel to the above, the instant appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(MUHAMMAD HAMID MUGHAL)
Member



(MIAN MUHAMMAD)
Member

ANNOUNCED
18.02.2020

09.12.2019

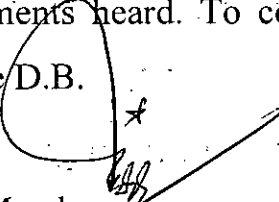
Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 11.02.2020 before D.B.


Member


Member

11.02.2020

Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney present. Arguments heard. To come up for order on 18.02.2020 before D.B.


Member


Member

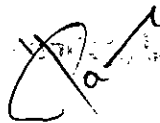
ORDER

18.02.2020

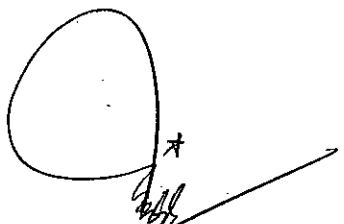
Appellant with counsel present. Mr. Muhammad Jan, DDA alongwith Mr. Sajid, Superintendant for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the instant appeal is dismissed. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
18.02.2020



(Muhammad Hamid Mughal)
Member


(Mian Muhammad)
Member

28.06.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG on behalf of respondents No. 1 to 3 and Mr. Waseem-Din Khattak, Advocate on behalf of respondent No. 4 present and submitted Vakalatnama. Written reply on behalf of respondents not submitted. Requested for further adjournment. Adjourned to 23.08.2019 for written reply/comments before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

23.08.2019

Junior to counsel for the appellant and Addl. AG alongwith Sajid Superintendent for respondents No. 1 to 3 and Muihammad Imtiaz, Legal, Assistant for respondent No. 4 present.

Joint parawise comments on behalf of respondents No. 1 to 3 have already been submitted. Representative of respondent No. 4 seeks further time. Last opportunity is granted to the said respondent for submission of written reply/comments on 23.09.2019 before S.B.


Chairman

23.09.2019

Appellant in person and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sajid, Superintendent on behalf of respondents No. 1 to 3 present.

Representative of the respondents No. 1 to 3 already submitted joint para-wise comments on behalf of respondents No. 1 to 3 while written reply on behalf of respondent No. 4 submitted today which is placed on record. The appeal is posted for arguments before D.B to 09.12.2019. The appellant may submit rejoinder within a fortnight, if so advised.

CHAIRMAN 

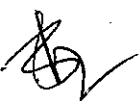
25.03.2019

Appellant present. Learned counsel for the appellant present.
Preliminary arguments heard.

The appellant (Ex-Director Local Fund Audit Khyber Pakhtunkhwa) has filed the present service appeal u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 against the office order dated 08.10.2018.

Learned counsel for the appellant argued inter-alia that the appellant is entitled for the grant of encashment of 365 days leave in lieu of Leave Preparatory to Retirement however vide the impugned order sanction was accorded to the grant of encashment of 231 days leave; that vide the impugned order the appellant was also unlawfully directed to deposit back Special Allowance amounting to Rs.382527/-.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 13.05.2019 before S.B


Appellant Deposited
Security & Process Fee


Member

13.05.2019

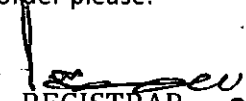

Learned counsel for the appellant present. Written reply not submitted. Muhammad Imtiaz Legal Assistant representative of respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 28.06.2019 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 315/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/2/2019	<p>The appeal of Mr. Muhammad Qasim presented today by Mr. Masood Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 28/2/19</p>
2-	11/03/19.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>25/03/19.</u></p> <p> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No 315 /2019

Muhammad Qasim Ex. Director Local Fund Audit Khyber Pakhtunkhwa, Resident of House No.338 Street No.10 Sector F/7 Phase-VI Hayatabad Peshawar.

(Appellant)

VERSUS

1. The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
4. The Managing Director, Small Industries Development Board, Khyber Pakhtunkhwa, Kohat Road, Peshawar.

(Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST OFFICE ORDER NO.SO(ESTT/FD/5-14/018/Complaint/LFA DATED 08-10-2018, REGARDING ILLEGAL RECOVERIES OF LEAVE ENCASHMENT/SPECIAL ALLOWANCE AND NON DECIDING THE DEPARTMENTAL APPEAL WITHIN 90 DAYS.

INDEX

S. No	Description	Annexures	Pages
1	Memo of Appeal		1-4
2	Copy of retirement order with effect from 05.06.2018	"A"	5
3	Copy of letter/notice of recovery dated 24.05.2018.	"B"	6-12
4	Copy of reply to notice of recovery dt 31.05.2018	"C"	13-18
5	Copy of Impugned order of recovery dated 08.10.2018	"D"	19
6	Copy of Departmental Appeal dated 07.11.2018	"E"	20-22
7	Copy of FD letter dated 06.02.2008 & Budget Estimate	"F&G"	23-26
8	Copies of MD SIDB letter dated 27.07.2018, minutes of BOD meeting dated 04.01.2017 and list of beneficiaries	"H,I&J"	27-34
9	Copy of LPC issued by SIDB	"K"	35
10	Copy of Deputation Policy of the Finance Deptt: KP	"L"	36-40
11	Wakalat Nama		

Appellant

Through



MASOOD KHAN

Advocate High Court

Room No. 4 Cooperative Building

Opposite Government College,

Peshawar Cell: 03005957675

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No 315 /2019

Muhammad Qasim Ex. Director Local Fund Audit Khyber Pakhtunkhwa, Resident of House No.338 Street No.10 Sector F/7 Phase-VI, Hayatabad Peshawar.

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 293 (Appellant)

Dated 28/2/2019

VERSUS

1. The Chief Secretary to Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
4. The Managing Director, Small Industries Development Board, Khyber Pakhtunkhwa, Kohat Road, Peshawar.

(Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE OFFICE ORDER NO.SO(ESTT/FD/5-14/018/Complaint/LFA DATED 08-10-2018, REGARDING ILLEGAL ORDER OF RECOVERIES TOWARDS LEAVE ENCASHMENT/SPECIAL ALLOWANCE AND NON DECIDING THE DEPARTMENTAL APPEAL WITHIN 90 DAYS.

PRAYER IN APPEAL.

1. ON ACCEPTANCE OF THIS SERVICE APPEAL THE OFFICE ORDER DATED 08/10/2018 MAY VERY GRACIOUSLY BE SET ASIDE AND THE APPELLANT MAY BE ALLOWED LEAVE ENCASHMENT IN LIEU OF LPR FOR 365 DAYS WITHOUT ANY RECOVERY.
2. GRANT OF MARKUP AT BANK RATES ON THE AMOUNT OF LEAVE ENCASHMENT FROM THE DATE OF RETIREMENT TILL ITS PAYMENT OR ANY OTHER RELIEF THIS HONOURABLE TRIBUNAL DEEM APPROPRIATE.

FACTS OF THE APPEAL:

RESPECTFULLY SHEWETH:

1. That during 1984 the appellant was appointed as Audit Officer (BPS-16) in the Local Fund Audit, which is an attached Department of the Finance Department Khyber Pakhtunkhwa.
2. That after serving on different positions/posts, in BPS-17 & 18 the appellant during 2010 was promoted to the post of Director Local Fund Audit Khyber Pakhtunkhwa (BPS-19) on merit basis.
3. That through an Order/Notification No.SO(E-1)/E&AD/9-93/2012 dated 10.08.2012, the appellant without his consent, was illegally transferred and posted as Director Finance SIDB, Khyber Pakhtunkhwa on deputation basis, which is a Semi Government Department, however the appellant in the best interest of state work complied with the orders, served there till 06.12.2017, who then repatriated to his original post of Director Local Fund Audit Khyber Pakhtunkhwa.

led to-day
Registrar
28/2/19

4. That after rendering about 34 years of qualifying service, the appellant retired from service, on attaining the age of superannuation on 05.06.2018 (Copy of the retirement order is at annex-A).
5. That during posting of the appellant as Director Finance SIDB, he was allowed/paid all the perks and facilities, including Special Allowance and Leave Encashment, attached with the post/admissible under the Laws, Rules and Regulations of the said body and on repatriation LPC was also granted with no any outstanding dues/recoveries.
6. That after repatriation of the appellant from SIDB, the Finance Department on a complaint about admissibility of special allowance, deputation allowance/leave encashment, illegally made an enquiry and accordingly issued a notice to the appellant for deposit of certain amounts vide Office Order No. SO(ESTT)FD/5-14/2018/Complaint dated 24.05.2018. Interestingly the said complaint was disowned by the complainant (Copy of the letter/notice dated 24.05.2018 is at annex-B).
7. That the said letter/notice of recovery was duly replied in detail with cogent reasons vide letter No.L.PVI/(3)/2.28/1162 dated 31.05.2018 and requested to withdraw the same being unauthorized, illegal and without any competency or powers delegated to the Finance Department in this behalf (Copy of the reply dated 31.05.2018 is at annex-C).
8. That the Finance Department without responding reply of the appellant, containing legal points towards admissibility of allowances and conducting enquiry by Finance Department in the matter related to a semi government department/self-entity, issued an order for recovery of Special Allowance for Rs.382527/- and payment of leave encashment for 231 days instead of 365 days vide Office Order No.SO(Estt)FD/5-14/018/Complaint/LFA dated 08.10.2018 however the order for recovery of deputation allowance was withdrawn (Copy of the impugned order dated 08.10.2018 is at annex-D).
9. That against the said order of illegal recoveries, a Departmental Appeal was filed/preferred on 07.11.2018 before the Respondent No.1 for issuance of orders/directions to Respondent No.3 for withdrawal of impugned order but not responded during the statutory period of 90 days (Copy of Departmental Appeal dated 07.11.2018 is at annex-E).
10. That the Departmental Appeal has not been decided/responded by the appellate authority during the period of 90 days, hence the instant service appeal inter alia on the following grounds:-

GROUNDS OF THE APPEAL.

- A. That the impugned office order No. SO(Estt)FD/5-14/018/Complaint/LFA dated 08.10.2018 has been issued in an illegal manner as the Finance Department has no powers, authority or competency to interfere/intervene in the domain of an autonomous body/self-finance entity, the business and financial matters of which are run and looked into by its Board of Directors (copy of the impugned Office Order dated 08.10.2018 is at annex- D).
- B. That the impugned order for recovery is not a valid speaking order and issued in serious violation of Section 24-A of the General Clauses Act. Interestingly the impugned order is silent as to how and under what

law/rules, powers or authority the Leave Encashment for 365 days have been reduced to 231 days and further links its payment with production of a clearance certificate from Respondent No.4.

- C. That the SIDB, being an autonomous body/self-finance entity work under its own Board of Directors and all the administrative and financial powers/authority rests with that body. The Finance Department Khyber Pakhtunkhwa (Respondent No.3) without any powers or authority conducted a facts finding enquiry in the matters related to SIDB and issued a notice of recovery dated 24.05.2018 which was duly replied on 31.05.2018. Neither the important legal points, including objection towards powers and authority of the Finance Department, raised in the appellant's reply were taken into consideration nor responded in the impugned order for recovery. (Copies of the notice for recoveries dated 24.05.2018 and its reply dated 31.05.2018 are at annex-B & C).
- D. That the Special Allowance was admissible and allowed under the Finance Department Circular letter No.FD(SOSR-II)8-7/2002/Vol-IV dated 06.02.2008 was properly budgeted, after its approval by the Finance and Planning Committee as well as Board of Directors. Finance Department Khyber Pakhtunkhwa, being member of both the committees also consented and approved the same (Copy of the FD letter dated 06.02.2008 and approved Budget Estimate are at annex-F&G).
- E. That the subject allowances, now ordered recovery, were properly budgeted, approved by the competent forum and allowed to the eligible officers, including the appellant, after due process of pre-audit in the Department and sanction of the competent authority. Its recovery cannot be affected as the honourable superior courts in certain cases have held that "unless beneficiary had been proved to have taken financial benefits from public exchequer by playing fraud or through concealment of facts, such person cannot be compelled or directed to return whatever benefit he had received".
- F. That the Managing Director SIDB in a letter dated 27.07.2018 has very clearly and categorically intimated to the Finance Department that all the SIDB employees including deputationists, have drawn the leave encashment which the Board of Directors in its meeting on 04.01.2017 has regularized/waived off and not recoverable. In spite of such a decision of the competent forum, the recovery was ordered and that also only from the appellant, which is an illegal act and clear discrimination (Copy of the Managing Director letter dated 27.07.2018 & minutes/decision of the 99th meeting dated 04.01.2017 along with list of other beneficiaries are at annex-H,I & J).
- G. That no such recoveries can be affected from pensionary benefits of a pensioner. The impugned order is also silent as to under which law/rules such recoveries have been ordered by the Finance Department, especially those relevant to some other autonomous body, which already issued clearance certificate in the Last Pay Certificate (Copy of the LPC issued by SIDB is at annex-K).
- H. That as per Para 2(vi) of the policy issued by the Finance Department regarding Terms and Conditions of Civil Servants deputed to Foreign Service "Compensatory Allowance" as admissible to a civil servant at the same place of posting will continue to be admissible during deputation.

Similarly Para 2(xii) of the said policy under the heading "Other Benefits" clearly speaks that all Fringe benefits attached to a deputation post will also be admissible to a deputationist. The allowances were in place before taking over charge by the appellant and accordingly allowed to the appellant (Copy of the deputation policy is at annex-L).

In view of the above it is therefore requested that the impugned order devoid of laws and rules may very graciously be set aside and the orders/directions may kindly be issued to allow leave encashment for 365 days without any conditions, along with markup as prayed for, or any other relief deem appropriate by the honourable Tribunal.


APPELLANT

Through


Masood Khan

Advocate High Court,
Peshawar


Muhammad Azam

Advocate High Court
Peshawar

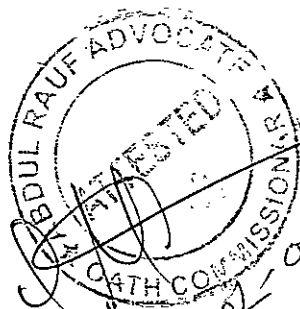

Javed Khan

Advocate Peshawar

AFFIDAVIT

I Mr. Muhammad Qasim, Ex. Director Local Fund Audit, Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that contents of the above noted appeal are true and correct to the best of my knowledge and belief and nothing has wrongly been stated or concealed from this honourable Tribunal.


Deponent





GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Dated Pesh: the 29-03-2018

OFFICE ORDER

No.SO(Estt)/FD/3-25/2015/LFA//Pen/Vol-I. On attaining the age of superannuation Mr.Muhammad Qasim, Director Local Fund Audit shall stand retired from Government Service on 05-06-2018 (A.N) in terms of Section 13 (b) of the Khyber Pakhtunkhwa Civil Servant Act, 1973.

SECRETARY TO GOVT: OF
KHYBER PAKHTUNKHWA;
FINANCE DEPARTMENT

Endst: No: & Date even

Copy forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar with reference to his letter No.L.P.VI/(3)2.28/602 dated 19-03-2018.
3. The officer concerned.

ATTESTED

[Signature]
Research Officer (FATA)
Civil Secretariat (FATA)

[Signature] 29/3/2018
Section Officer (Estt:)



6
"B"
GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

No:SO(ESTT)FD/5-14/2018/Complaint

Dated Pesh: the 24-05-2018

To

Mr. Muhammad Qasim,
Director,
Local Fund Audit,
Khyber Pakhtunkhwa.

Subject: OFFICE ORDER.

I am directed to refer to this Department office order No.SO(Estt):FD/5-14/2018/Complaint dated 11-04-2018 and to enclose copy of fact finding inquiry report, conducted by Mr. Abdul Malik, Deputy Secretary (Reg:) Finance Department into the allegations levelled by Sahibzada Nasim Khan, President, SIDB Employees Union Peshawar. As per findings / recommendations of inquiry report you have drawn following amounts irregularly and without any authority under various heads of accounts during your posting as Director Finance, SIDB:-

- | | |
|-----------------------------|--------------|
| 1. Special allowance @ 30% | Rs. 382527/- |
| 2. Deputation Allowance 20% | Rs. 480000/- |
| 3. Leave encashment | Rs. 284078/- |

2. You are therefore, directed to voluntarily return the above amounts to the SIDB within a week time positively under intimation to this Department, otherwise disciplinary action under the relevant laws / rules will be taken against you.

Encl. as above

M. B. Ha 24/5/18
Section Officer(Estt:)

Endst:No: & Date even.

Copy forwarded for information to the:-

1. Managing Director SIDB, Peshawar.
2. PS to Special Secretary,
3. P.A to Additional Secretary (Admn:), - Finance Department.
4. P.A to Deputy Coordinator (PIAC),

Section Officer(Estt:)

**Report
of
Facts Finding Enquiry into Allegations leveled against Mr
Muhammad Qasim, Director Local Fund Audit / former
Director Finance SIDB in the Complaint lodged by
Sahibzada Nasim, President, SIDB Employees Union.**

Background of the case

A complaint addressed to Secretary Finance Khyber-Pakhtunkhwa received from Sahibzada Nasim, President, SIDB Employees Union, leveling allegations against Mr Muhammad Qasim, Director Local Fund Audit / former Director Finance SIDB, for illegal drawl of Rs 54 Lac on account of Special Allowance, Deputation Allowance and Leave salary/encashment during his stay at SIDB (Annexure - I). Few other complaints and relevant documents had annexed to the aforesaid complaint.

2. Considering the nature of complaint being serious, the competent authority ordered for facts finding enquiry into the allegations by appointing the undersigned, Abdul Malik, Deputy Secretary (Regulation-II) Finance Department as Inquiry Officer vide Office Order No SO(Estt)GF/5-14/2018/Complaint/LFA, dated 11.04.2018 (Annexure - II).

3. The aforesaid Office Order was later substituted for endorsement to Managing Director SIDB and Director Finance SIDB on 15 April, 2017 in order to ensure their cooperation on official side from SIDB in the process of enquiry (Annexure - III).

Inquiry Proceedings

4. SIDB was visited on 18 April, 2017. Managing Director could not be contacted on that day due to his official engagements somewhere else. Director Finance SIDB extended full cooperation in procuring the required papers for ascertaining the truthfulness of the allegations.

ATTESTED
Reserve Officer
Planning & Development Deptt.
FATA Secretariat

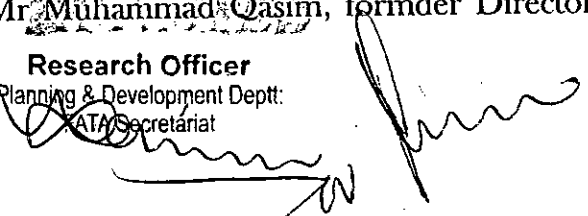
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5. Mr Muhammad Qasim, Director Local Fund Audit the then Director Finance SIDB, was questioned for the illegal drawl of Special Allowance, Deputation Allowance and leave salary / encashment of leave during his posting tenure there. A lengthy session of discussions was taken place with him on 24 April, 2018. He didn't record his statement on that day and requested for having some time to a proper written statement which he submitted with supporting papers on 26 April, 2018 (Annexure - IV). In his statement he states that the complainant is a blackmailer who has been in habit to malign the former Directors Finance and MDs of SIDB by lodging similar complaints against them. He has annexed copies of complaints against senior officers lodged by Mr Nasim Khan. By involvement in illegal activities, Mr Nasim Khan was once terminated from service by former MD, Mr Akhtar Hussain Shah and was reinstated into service illegally and without any valid authority by the then Secretary Industries, Mr Abdul Karim Khan. He has also produced supported documents such as extract from SIDB's budget books for the financial years 2013-14, 2014-15 and 2015-16 reflecting heads of deputation allowance and special allowance, etc. He states that accounts section inserted special allowance and deputation allowance in his pay bill for September 2012 on the basis of his LPC and the pre-audit section cleared it on the plea that his predecessors and former MDs had got those benefits. About leave encashment he has quoted the precedents of his predecessors who were availing the facility since 1972.

6. Though it was planned to meet the complainant, Sahibzada Nasim, President, SIDB Employees Union during SIDB's visit on April 18, 2018 but due to paucity of time meeting couldn't be held. Later on he was asked through a letter to come to Finance Department Civil Secretariat on 25 April, 2018 at 1000 hours (Annexure - V).

7. He came along his General Secretary, Haji Fazle-e-Khuda, on the appointed date and time. The complaint was put before him and he denied to own it rather he owned another complaint dated 5.3.2018 annexed to it (Annexure - VI). He narrated details of the irregular drawl of allowances and other financial benefits by Mr Muhammad Qasim, former Director Finance

Research Officer
Planning & Development Deptt:
ATA Secretariat



SIDB. When was asked as to why he didn't question the same irregularities committed by Mr Muhammad Qasim's predecessors and MDs, he replied that he was then ignorant of that. His behavior was unbecoming with the employees of SIDB. He was looking into the facilities available to SIDB employees for its legitimacy or otherwise and never thought over the facilities he was irregularly getting himself from SIDB.

8. Going through the documentary evidences, factual position of the allegations levelled against the accused officer, emerged as follow :-

a. Special Allowance

The officer belongs to Local Fund Audit and due to his stay in Finance Department as an OSD he got Special Allowance and carried it to SIDB in his LPC (**Annexure - VII**). There was no valid authorization for getting the said allowance in SIDB. The orders / instructions for grant of Special Allowance issued time to time have been disseminated to all Public Sector Departments / organization, Autonomous and Semi-Autonomous Organizations. The officer must have been in knowledge of the authorization as to whom of the said allowance was permissible. Being a Financial Manager and having said / claimed of setting / correcting the financial management of SIDB in his written statement, it is astonishing as to how he relied on the officials of Accounts / Pre-audit Sections for following bad precedents and shut his eyes for sake of self-interest on the glaring realities that there was no authorization either from Government side nor from SIDB. Salary Bill for September 2012 which includes Special Allowance is placed at **Annexure - VIII**. The said allowance could have been legalized if it was placed before the Board of Directors of SIDB for its approval. Salary Bills and Salary Slips showing Special Allowance and Deputation Allowance from November 2012 to November, 2017 are placed at **Annexure - IX**. Special Allowance from September 2012 to May 2015 have been drawn on the basis of precedent of their predecessors which approximately comes to Rs 3,82,527/-. The Special Allowance was once allowed @ 20% to employees of Secretariats on deputation to foreign

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Research Officer
Planning & Development Deptt.
FATA Secretariat

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service in Pakistan vide letter No FD(SOSR-II)8-7/2002/Vol IV dated 6.2.2008 (Annexure - X) but later on the facility was taken back with effect from 27.4.2011.

The Managing Director SIDB had rightly sensed the illegality of drawl of the said Allowance and passed orders for its discontinuation forthwith vide his note dated 30.4.2015 (Annexure - XI).

b. Deputation Allowance

The accused officer was posted to SIDB on transfer and not on deputation basis vide Government of Khyber-Pakhtunkhwa, Establishment Department's Notification No SO(E-I)/E&AD/9-93/2012, dated 10 August, 2012 (Annexure - XII) and Mr Muhammad Qasim had assumed the charge on 15 August 2012 (FN) vide Charge Assumption Report placed at Annexure - XIII. He stayed posted on transfer at Small Industrial Development Board from 15 August 2012 to 06 December,, 2017. During his stay there he had submitted applications to Secretary Finance and MD SIDB on completion of 03 years and 05 years at SIDB for repatriation to his parent department i.e Local Fund Audit (Annexure - XIV).

Both the posts of MD and Director Finance SIDB have been shown in the Appendix III to the Khyber Pakhtunkhwa Small Industries Development Board Service Rules, 2005 (Annexure - XV) and the incumbents of these posts had been drawing deputation allowance. In fact only the post of MD is a scheduled post whereas the post of Director Finance is not a schedule post. Posting against the post of Director Finance can be made on deputation basis.

Mr Muhammad Qasim being a financial manager should have realized of modifying his Notification from simple transfer orders to posting on deputation basis and got settled his terms and conditions of deputation being the very much essentials for getting benefits of deputation. Relying on wrong precedent and misguiding the MD SIDB for nor he had nor MD SIDB had any sanctioning power of deputation allowance and got tactfully sanctioned his arrears claim of deputation allowance from MD SIDB and

Research Officer
Planning & Development Deptt.
P&A Secretariat

11

continued the facility till end of his stay at SIDB (Annexure - XVI). He had considered himself on deputation on weak foundation of supporting documents e.g reflection of post of Director Finance in Appedix-III as on transfer on deputation basis and a brief for Senior Minister Finance by the former Secretary Finance indicating his transfer to SIDB on deputation basis (Annexure - XVII). Having revealed upon him at an early stage of his service in SIDB that he was not working on deputation then as to why he didn't file an application to Establishment Department for conversion of his transfer orders into deputation orders. This negligence on his part by not requesting for conversion of his simple transfer orders into deputation orders on the usual terms and conditions settled between the lending and borrowing departments, rendered the drawl of deputation allowance being irregular / illegal. Board of Director of SIDB is empowered to sanction salary, allowances and other benefits to the employees vide Rule-11 of Khyber Pakhtunkhwa Small Industries Development Board Service Rules, 2005 (Annexure - XVIII). The accused officer without any valid authority, had drawn deputation allowance for the period from 1.9.2012 to December, 2017 which approximately comes to Rs 4,80,000/-.

c. Leave Encashment

Leave encashment for leave earned in a calendar year was allowed to SIDB employees vide Rule-11 of SIDB Leave Rules 1978 (Annexure - XIX). Mr Muhammad Qasim the former Director Finance has unlawfully cashed his earned leave during his stay in SIDB, for Rs 2,84,078/-. Bills of encashment of leave are placed at Annexure - XX). The Board of Director in its decision taken on the agenda item No 7 of 99th meeting of SIDB Board of Directors held on 4.1.2017, has regularized the previous encashment of leave and stopped further disbursement in this regard and asked for following the Provincial Government rules in its letter and spirit (Annexure XXI). This facility Mr Muhammad Qasim has also availed on wrong precedents. He must have known that the leave encashment was not admissible in

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[Signature]
Responsible Officer
Planning & Development Deptt
FATA Secretariat

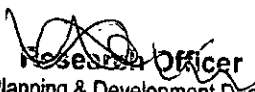
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Foreign Service in Pakistan under instructions issued on 07.09.2002 by the
Finance Department (Annexure -XXII)

Findings / Recommendations

- i. The Special Allowance has been drawn with effect from 1.9.2012 to May 2015 without any legal authority. It was neither allowed by the Provincial Government nor by SIDB.
- ii. By mere existence of a word "deputation" in a few documents doesn't qualify someone to be on deputation. Deputation policy is there and all are bound to strictly follow it. The Deputation allowance has been drawn during the entire period of his stay in SIDB illegally without any authentication from SIDB or Provincial Government.
- iii. Leave encashment was also drawn through five bills without any authorization. The SIDB Leave Rules, 1978 don't have any mention of authorizing the MD or Director Finance to avail the said facility.
- iv. MD SIDB should look into the unauthorized drawl of allowances and encashment of earned leave by Mr Muhammad Qasim, Director Local Fund Audit / former Director Finance SIDB during his stay at SIDB from 15 August, 2012 to 6 December, 2017.
- v. MD SIDB may place the loss occurred to SIDB through misappropriation of funds on account of irregular drawl of Special Allowance, Deputation Allowance and Encashment of earned leave by Mr Muhammad Qasim, former Director Finance SIDB, before the Board of Directors of SIDB having powers under serial No 3 of Schedule of Financial Powers, to write off the loss or otherwise.
- vi. Leave encashment availed may be deducted from his leave encashment in lieu of LPR of 365 days.
- vii. Recovery on account of illegal drawl of Special Allowance and Deputation Allowance may be effected through attaching of his pension under Pension Rules.


(Abdul Malik)
Deputy Secretary (Regulation-II)
Finance Department
(Enquiry Officer)


Research Officer
Planning & Development Deptt.
FATA Secretariat



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cc
C

GOVT: OF KHYBER PAKHTUNKHWA,
LOCAL FUND AUDIT DEPARTMENT,
PESHAWAR

NO. L.PVI(3)/2.28/ 1162
Dated Peshawar the 31 / 5 / 2018

To

The Section Officer (ESTT),
Government of Khyber Pakhtunkhwa,
Finance Department Peshawar.

Subject: **REQUEST FOR WITHDRAWAL OF OFFICE ORDER**

Kindly refer to your letter No.SO(Estt)FD/5-14/2018/Complaint dated 24/5/2018 on the subject noted above.

In this connection it is stated that above cited letter has been issued in clear violation of relevant provisions of Laws, Rules and Regulation of SIDB. Similarly the fact finding enquiry is also defective, partial, discriminative and against the relevant Laws, Rules and Regulations while conducting enquiry. The detailed is as under

1. The SIDB is self finance entity having its own Act and Rules & Regulation made their under, which regulates all its business and financial affairs through its Board of Directors, headed by the Minister concerned /Chief Minister Khyber Pakhtunkhwa and run its business and financial matter through its Board of Directors meetings headed by Minister concerned / Chief Minister Khyber Pakhtunkhwa.
2. All the expenditures , including the said allowances have properly been authorized in budget estimates duly examined/vetted by the Finance & Planning Committee as well as the by Board of Directors. The Finance Department is also member of both committees i.e the Planning & Finance Committee & Board of Directors represented through their senior level officer. At the time of approval no observation was raised by the representative of Finance Department regarding irregularity of such allowances ever during these meetings.
3. The subject allowances now termed as irregular, were budgeted approved by the Planning & Finance Committee as well as by the Board of Directors. Such allowances were paid since long to former Managing Directors and Director Finance, but said allowances are declared irregular in my case only which is based on malafide and is clear discrimination and violation of Article 25 of the Constitution of Islamic Republic of Pakistan 1973.
4. It is pertinent to mention here that Para 8(a) of the enquiry report clearly indicates, that the special allowance has been drawn on the basis of precedents meaning there by that the same was in existence before my

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Research Officer (PTD)
Civil Secretariat (FATA)

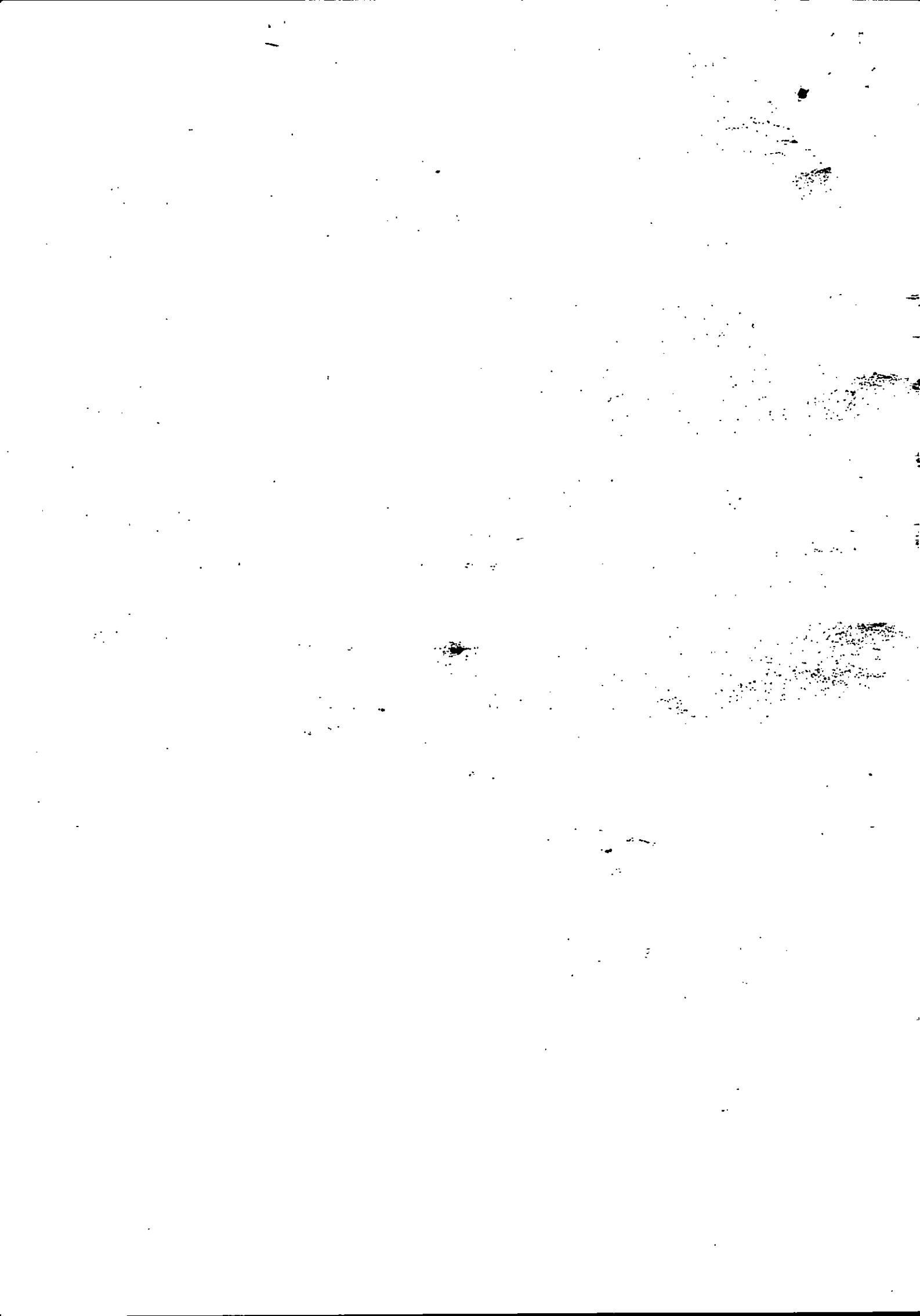
taking over charge of Director Finance but in spite of that the payments related to my tenure was made to be disputed one.

5. The recovery on account of encashment of earned leave is also against earlier decision of the Board of Directors contained against item 7.1 of 99th Meeting of Board of Directors dated 4-1-2017 held under the Chairmanship of Chief Minister Khyber Pakhtunkhwa where under the facility of encashment of earned leave was discontinued. However all cases of previous drawl were regularized. In spite of that recommendation of the enquiry officer and notice for its recovery is quite illegal and against the decision of Board of Directors. (Copy of BOD decision is enclosed vide F/A)
6. All the allowances drawn by me were paid by in accordance with/policy practice in vogue in SIDB being a self financed entity duly approved by the competent forum of Planning & Finance Committee and Board of Directors. Moreover any notice for its recovery is violation of judgments of the Superior Courts of Pakistan as per 2009 SCMR 663, 1996 SCMR 413 & 1350 & PLJ 2011 Tr.C (services) 162 in case of Hamida Aisha v/s Secretary Education Punjab & others, it has been held that " unless beneficiary had been proved fraudulently through concealment of facts such person cannot be ordered to return whatever benefit he had received". (copies enclosed as F/B)
7. The fact finding enquiry has been conducted by an officer who is a rank junior than the undersigned therefore it is clear violation of the relevant rules and such recommendation are not maintainable.
8. The fact finding enquiry has been conducted without recording the statements of complainant, official witnesses, concerned officers as well as all other beneficiaries who withdrew such allowances, which was an essential requirement of enquiry proceedings. (List of beneficiaries enclosed vide F/C) The Para 4 of the enquiry report clearly indicate failure of the enquiry officer to even contact or examined the Managing Director SIDB who being a head of SIDBoard and also beneficiaries of said Special allowance as well as leave encashment. Similarly all other former Managing Directors, Directors Finance and present Deputy Managing Directors, Joint Directors Deputy Directors and others Officers /officials of SIDBoard, who are the beneficiary of leave encashment also were not examined by the enquiry officer.
9. It is pertinent to mentioned here that the complaint duly marked by Special Secretary Finance on 6-4-2018 on the basis which fact finding enquiry was conducted has clearly been denied by the complainant as appears from Para

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ATTENDED

Research Officer (PTD)
Civil Secretariat (FATA)



(7) of the enquiry report vide F/D When the complainant disowned / denied the complaint/ charges made in his name, all the proceedings must gone to an end. In such a circumstances the enquiry report needed to be filed.

10. The case of undersigned is quite different from others, because when I was posted as OSD in the Finance Department I was getting special allowance which was included by accounts section and by admitted pre audit of as per Govt; policy dated 6-2-2008 duly adopted by SIDB. Moreover I have been the transferred to SIDB in violation of FR110 (a). Because the services of the civil servant cannot be transferred without his consent to autonomous body and if done it will be considered / treated as Deputation under Deputation policy as there is no such mechanism under which Civil Servant could be transferred otherwise. Appendix III (combined cadre) of the KP SIDB Service Rules 2005, very clearly indicates that without any shadow of doubts that posting of Managing Director and Director Finance would be " By transfer on Deputation from Provincial Govt; ' Treatment of such posting as simple transfer would be sheer violation of such Rules as the undersigned was transfer on deputation and was rightly granted Deputation Allowance (copies enclosed vide F/E

Avail with Sir

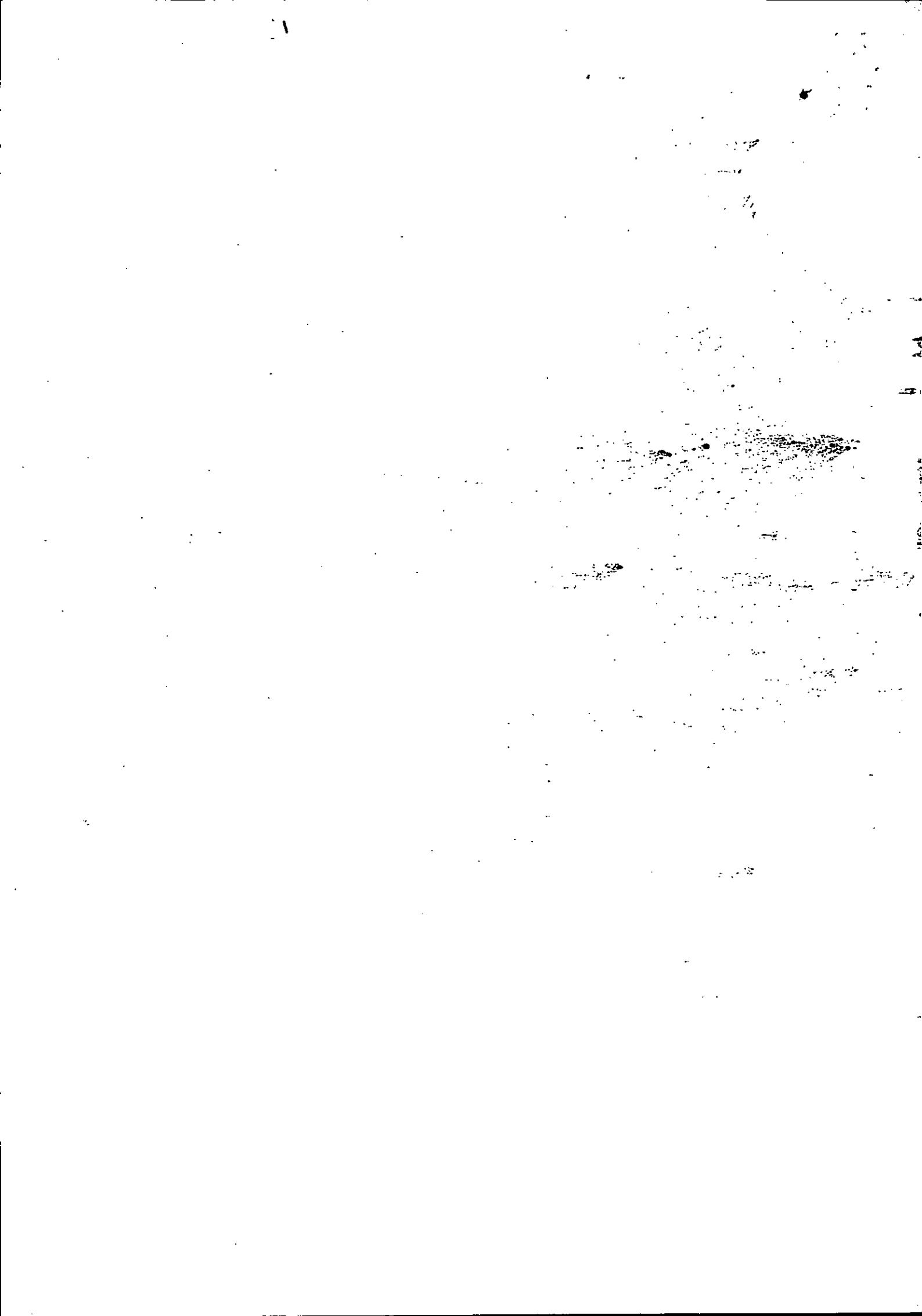
11. As per deputation policy of civil servant so posted in autonomous body is entitled for pay & allowances he drawn in his parent department and in addition to the allowances/incentives of the borrowing department.

12. It is pertinent to mention here that posting of the undersigned was not ordinary transfer from one department to another department but from Civil Service to Foreign Service under FR(7) which is only through deputation under Deputation Policy. Pension contribution of all the former Directors Finance, Managing Directors and undersigned were regularly deposited with Provincial Govt; which otherwise not required in ordinary transfer.(copy enclosed as F/E) This is substantiate my plea of posting on deputation. But the enquiry report is quite silent regarding this important fact.

Research Officer (PTD) Civil Secretariat (FATA)

13. It is stated that after completion of my initial three years period on deputation and again after completion of fifth years deputation period I requested to Secretary Finance with copies to Secretary Establishment Khyber Pakhtunkhwa for my repatriation to parent Department clearly mentioned therein my posting on deputation but no authority denied my posting on deputation but enquiry report silent about this fact.

14. A brief note for Senior Minister Finance towards my posting/transfer initiated by former Secretary Finance Shahibzada Saeed Ahmed dated 7-8-2013 clearly indicate my posting as on Deputation basis and working



on the post as such, but the enquiry report is also silent regarding this fact.

(copy enclosed as F/H)

Inward

15. The recovery towards the period 1-9- 2012 to 6-12-2017 amounts to a punishment/ penalty of its nature with retrospective effect which is against Article (12) of the Constitution of Islamic Republic of Pakistan 1973.

16. In my statement I clearly mentioned that the complainant had become provoked and enmity when I started the processing of refund of unutilized Govt; funds amounting to Rs. 80.00 Million to Provincial Govt; from redundant Small Industry Estates Scheme Hattar Huripur along with saving of Rs.49.560 Million from Small Industry Estates Havallia since June 2017. The said amounts are still lying in SIDB account. But enquiry report is quite silent about this important fact which is main dispute with complaint and loss to Provincial Govt; Ex-Chequer.

17. The Managing Director SIDB in Para 17(i) of note dated 30-4-2015 (copy enclosed F/H) clearly indicates that the said Allowance has been drawn/ allowed to holders of the posts of Managing Director and Director Finance till 30-4-2015 by the Finance & Accounts Directorate probably to the reason that the amendment in the policy dated 27-4-2011 had not been received by Directorate and for this reason the allowance sanctioned in the budgets for those years which were paid accordingly but the enquiry report is quite silent on this accounts too. Moreover the policy dated 27-04-2011 was not adopted by Management/ SIDBoard.

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Research Officer (RTO)
Civil Secretariat (FATA)

18. The statement of the Joint Director, Deputy Director (Audit) and Assistant Director (Audit) F&A Directorate were neither recorded nor examined by allowing such allowance to all former Directors Finance and Managing Directors SIDB by the enquiry officer who are main stake holders in this context. The enquiry officer in such away has defeated the very purpose of free & fair process of enquiry in transparent manner and enquiry report is hence contentious.

19. In Para 8(a) the enquiry officer viewed that said irregular payment would have been regularized with the approval Board. But the facts are that in budget estimates for the relevant financial years the said allowances were clearly reflected in the budget estimates duly discussed and vetted in Planning & Finance Committee having representation of Finance Department and approved by Board Directors of SID Board meetings till 2015 which is a legal process. The copies of draft budgets and approved budget have already been provided to Finance Department before and after Board meeting for ready reference every year. But the enquiry officer has contradiction in his own view indicated in his enquiry report by declaring

*Amended
2017*

the allowances irregular in violation of decision of the 97th and 98th Board of Directors budget meetings.(copies enclosed as F/H)

- 20. It is worth mentioning here that the enquiry proceedings are one sided. The enquiry officer have not conducted the enquiry in just and proper way, rather he based his report on presumption, surmise and conjuncture. A number of documentary evidences relevant to the issues were presented before the enquiry officer with necessary explanation to prove the payments as regular and duly approved by authority /forum, but it is astonishing to mention that no response to such documents were given by enquiry officer at all.
- 21. The issue relates to SIDB which is self independent entity whose administrative and financial affairs are dealt with under control of Board of Directors who have regularized the subject payments. It would be appropriate to refer the matter to management of SIDB in whose jurisdiction matter rests instead of conducting fact finding enquiry but enquiry report is quite silent about it.
- 22. As regard finding/recommendations of the enquiry officer the same are discussed as under.

Replies to finding /Recommendation

- (i) The enquiry officer has not examined the relevant document / budget estimates and other connected documents where under it is very clear that provision for payment of such special allowance, deputation allowance and leave encashment are first approved/vetted by Planning & Finance Committee and was made duly approved and authorized by the Board of Directors , having the representative from Finance Department Khyber Pakhtunkhwa. *(Copies enclosed as per F/I)*

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 Research Officer
 Civil Secretariat (FATA)

31.06.2011
 CIPB

The enquiry report is silent about drawl of these allowances by others.

- (ii) The detailed reply has been given in preceding pares, however it clearly appears that the deputation allowance was drawn in number documents indicating the posting is on deputation but instead of appreciating it he made a self styled interpretation and turned it in negative.

The enquiry report is silent about drawl of these allowances by others.

- (iii) The recommendation of enquiry officer is related about drawl of such leave encashment by all the officers /officials since 1978 but he only pointed out/objected the case of undersigned. He has also not mentioned in enquiry report the facts about proper budgeting for leave encashment which is approved by Planning & Finance and Board of Directors having representative by Finance Department. The enquiry report is quite silent

about drawl of leave encashment by all other Managing Directors ,Directors Finance and officials/officers of SIDB.

- (iv) Recommendation for recovery of amount only from one person is question mark as drawl of such leave encashment are related to all the officers /officials of the Board including all former Directors Finance, Managing Directors and present Managing Director.

The enquiry report is silent about drawl of these benefits by others which is a clear discrimination with the undersigned.

- (v) The recommendation of enquiry officer are unjust/illogical as he turned such budgeted and sanctioned expenditures as misappropriation of funds.
- (vi) Recommendation of enquiry officer are quiet illogical as no such deductions can be made from 365 days LPR encashment.
- (vii) The recommendation of the enquiry officer for recovery of amount of special allowance, deputation allowance and leave encashment by effecting through attaching the pension of the undersigned is a serious violation of the relevant Laws and Rules as even the court of law have restricted power in this behalf.

Keeping in view the above detailed facts, justification judgment of Supreme Court of Pakistan mentioned above it is therefore requested that the subject letter dated 25-5-2018 having no legal status and ineffective upon the rights of undersigned may kindly be withdrawn as no irregularities/illegality /loss have been caused to Provincial Govt; ex- chequer as all the allowances/leave encashment have been approved, authorized and sanctioned by competent authority/ forum please.

ATTENTION
 Research Officer (P.D)
 Civil Secretariat
 Peshawar

[Signature]
 (Muhammad Qasim)
 Director
 Local Fund Audit Department,
 Khyber Pakhtunkhwa,

Endst; No & date even.

Copy forwarded to the Managing Director Small Industries Development Board, Khyber Pakhtunkhwa for information please.

Personal copy

[Signature]
 08-6-2018

[Signature]
 (Muhammad Qasim)
 Director
 Local Fund Audit Department,
 Khyber Pakhtunkhwa,
 Peshawar



19
"D"
GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Dated Pesh: the 08-10-2018

OFFICE ORDER

No.SO(Estt)FD/5-14/018/Complaint/LFA In pursuance to Rule 20 of Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 sanction is hereby accorded to the grant of encashment of 231 days leave (remaining period), in lieu of Leave Preparatory to Retirement in respect of Mr. Muhammad Qasim, Ex-Director, Local Fund Audit (BS-19) who has been retired from Govt: Service w.e.f. 05.06.2018 (A.N), on attaining the age of superannuation, subject to production of a clearance certificate by Managing Director, SIDB, Industries Department regarding Special Allowance amounting to Rs. 382527/- drawn by the officer irregularly during his posting as Director Finance, SIDB.

2. The expenditure involved will be met out from within the sanctioned budget grant under the head 01-General Public Service-011-Executive & Legislative Organs, Financial-0112-Financial and Fiscal Affairs-011206-Accounting Services-object-A-04114-Encashment in lieu of LPR during the current financial year 2018-2019.

~~ATTESTED~~
Responsible Officer (PTD)
Civil Secretariat (FATA)

SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Endst: No: & Date even

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa.
2. The Director, Local Fund Audit, Khyber Pakhtunkhwa.
3. The Managing Director, SIDB, Industries Department.
4. The Budget Officer-XI, Govt:of Khyber Pakhtunkhwa, Finance Deptt:.
5. Mr. Muhammad Qasim, Ex-Director, Local Fund Audit, Khyber Pakhtunkhwa.
6. PS to Finance Secretary.
7. Office order file.

(Signature)
SECTION OFFICER(ESTT:)

20

"E"

The Honorable Chief Secretary,
Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST THE ILLEGAL OFFICE ORDER OF THE SECRETARY FINANCE KHYBER PAKHTUNKHWA TOWARDS RECOVERY OF LEAVE ENCASHMENT FOR 134 DAYS AND SPECIAL ALLOWANCE AMOUNTING TO RS.382527/-**

Respected Sir,

With due respect, I have to prefer the instant Departmental Appeal against the orders of the Secretary to Government of Khyber Pakhtunkhwa, Finance Department Office Order No.SO(Est)FD/5-14/018/Complaint/LFA dated 08.10.2018 received on 12-10-2018 (copy of the order is attached at annex-I, issued in sheer violation of all the laws and rules as well as without any authority or jurisdiction, as detailed below:-

1. That the appellant, while serving as Director Local Fund Audit Khyber Pakhtunkhwa (BPS-19) borne on the cadre of Local Fund Audit Department, as an attached Department of the Finance Department, was transferred to Finance Department as OSD and after that illegally transferred & posted as Director Finance, Khyber Pakhtunkhwa SIDB, being politically motivated.
2. That in spite of serious reservations about such illegal transfer/posting at SIDB, orders were obeyed and worked as Director Finance SIDB, for more than 5 years.
3. That during the posting as Director Finance SIDB, the appellant was paid all his salaries and allowances in accordance with the statute, rules and regulations of the SIDB, being a autonomous semi Government Department/self-independent entity.
4. That the SIDB is running business under its Board of Directors, headed by the Minister of Industry/ Chief Minister Khyber Pakhtunkhwa, in which Secretary Finance Department is a member of Board, has no any authority or powers delegated under Delegation Financial Powers 2001 of Provincial Government to interfere in the business/financial affairs of SIDB independently.
5. That in this connection a notice for recovery of certain amounts on account of Special Allowance, Deputation Allowance and Leave Encashment was served upon the appellant without any authority, however the same being illegal was contested and duly replied in detail, quoting the relevant laws/rules about all those illegalities but no response has been received till this date (Copy of the reply dated 31.05.2018 is as annex-II).
6. That instead of going through my detail reply or conveying decision on the same, if any, another office order was received to the appellant from the Finance Department vide No.SO(Est)FD/5-14/018/complaint/LFA dated 08.10.2018 in the same illegal and unauthorized manner, which was also responded with a detailed reply with particular request to withdraw the same, being illegal, without mandate

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[Signature]
Research Officer (PTD)
Civil Secretariat (FATA)

but no response has been received till this date and reply from appellant dated 19.10.2018 are enclosed as annex III .

7. That all the expenditures , including the said allowances have properly been authorized in budget estimates duly examined/vetted by the Finance & Planning Committee as well as approved by the by Board of Directors. The Finance Department is also member of both the committees' i.e the Planning & Finance Committee & Board of Directors represented through their senior level officer.
 8. That the such allowances and leave encashment were paid since long to all former Managing Directors and Director Finance, but said allowances are declared irregular in my case only which is based on malafidi and is clear discrimination and violation of Article 25 of the Constitution of Islamic Republic of Pakistan 1973.
 9. That the recovery on account of encashment of earned leave is also against earlier decision of the Board of Directors contained against item 7.1 of 99th Meeting of Board of Directors dated 4-1-2017 held under the Chairmanship of Chief Minister Khyber Pakhtunkhwa where under the facility of encashment of earned leave was discontinued. However all cases of previous drawl were regularized during the said Board of Directors meeting. (Copy annex at IV)
 10. That all the allowances drawn by me were paid by in accordance with policy /practice in vogue in SIDB being a self-financed entity duly approved by the competent forum of Planning & Finance Committee and Board of Directors.
 11. That any notice for its recovery is violation of judgments of the Superior Courts of Pakistan as per 2009 SCMR 663, 1996 SCMR 413 & 1350 & PLJ 2011 Tr.C (services) 162 in case of Hamida Aisha v/s Secretary Education Punjab & others, it has been held that " **unless beneficiary had been proved fraudulently through concealment of facts such person cannot be ordered to return whatever benefit he had received**" (copy annex at -V)
 12. That the recovery towards the previous period from 1-9-2012 to 30-6-2016 amounts to a punishment/ penalty of its nature with retrospective effect which is against Article 12 of the Constitution of Islamic Republic of Pakistan 1973.
- In view of the above it is requested that on acceptance of this departmental appeal. the Finance Department may kindly be directed to withdraw the impugned illegal orders of recoveries and to release full amount of leave encashment for 365 days at

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 Research Officer (PTD)
 Civil Secretariat (FATA)

22

the earliest as I have been retired from Government Service on 5-6-2018 but my LPR encashment is still under process which is part of pensionary benefits please.

With due regards & thanks.

Dated:7/11/2018

Yours Obediently,

(Muhammad Qasim) 7/11/2018

Ex-Director Local Fund Audit
Khyber Pakhtunkhwa
Peshawar

Address; House No 338 Street No10 F/7
Hayatabad Phase VI Peshawar.

ATTESTED


Research Officer (PTD)
Civil Secretariat (FATA)

23

F

GOVERNMENT OF NWFP
FINANCE DEPARTMENT
(REGULATION WING)
NO.FD(SOSR.II)8-53/2008
Dated Peshawar the.06/02/2008

To
All Administrative Secretaries
To Government of NWFP.

Subject:- GRANT OF UTILITY ALLOWANCE @ 10% OF BASIC PAY TO N.W.F.P
CIVIL SECRETARIAT EMPLOYEES(BPS-1-22).

Dear Sir,
I am directed to refer to the subject noted above and to state that the Competent Authority has been pleased to approve Utility Allowance @ 10% of Basic pay to the Officers and Officials (BPS-1-22) of the N.W.F.P Civil Secretariat, Chief Minister's Secretariat and **GOVERNMENT** House/Secretariat NWFP w.e.f. 1st February, 2008 subject **to** the following conditions/clarifications:-

- i) The said allowance will be admissible to those who are working in the offices of the above mentioned Secretariats and will also be admissible during the period of leave and L.P.R and to employees of Civil Secretariat, N.W.F.P who are on deputation outside these Secretariats.
- ii) The said allowance would not be admissible during Extra Ordinary Leave.
- iii) The said allowance would not be treated as part of emoluments for the purpose of calculation of Pension/gratuity and recovery of House Rent.

ATTN
[Signature]
Research Officer (PTD)
Civil Secretariat (FATA)

The Government servants working in Governor's Secretariat NWFP, already drawing the subsidy for Gas and Electricity will be required to exercise their option (within one month of the issue of this letter) either to draw the Utility Allowance @ 10% of Basic Pay or continue to draw the subsidy for Gas and Electricity sanctioned vide No.FD(SR-V)2-163/91 dated 24/2/1994. A Government servant who fails to exercise option within the stipulated period, shall be deemed to have opted for the Utility Allowance.

3. The Government servants working in Chief Minister's Secretariat NWFP and already drawing the subsidy for Gas and Electricity will be required to exercise their option either to draw the Utility Allowance at 10% of Basic Pay or continue to draw the subsidy for Gas and Electricity sanctioned vide Finance Department letter No.SOG(S&GAD)15(77)88-89 dated 14/6/1989. A Government servant who fails to exercise option within the stipulated period, shall be deemed to have opted for the Utility Allowance.

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4. The Government Servants deputed from other departments (including Judiciary) who do not belong to Secretarial Services but are working in the secretariat will be allowed to draw the Utility Allowance @ 10% of basic pay.

Yours faithfully,

Usman Gul
(USMAN GUL)
ADDITIONAL SECRETARY (REG)

Ends: No. & date even.

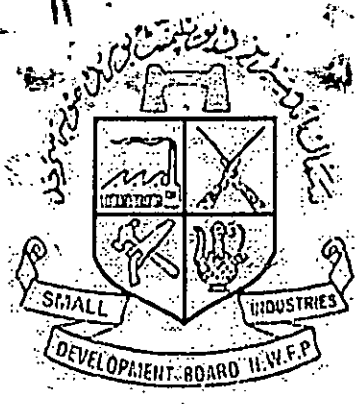
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Sajad Ahmad
(SAJAD AHMAD)
DEPUTY SECRETARY (R.I)

Ends: No. & date even.

Copy is forwarded for information to all Additional Secretaries/Deputy Secretaries/Section Officers/Budget Officers in Finance Department.

Munawar Khan
(MUNAWAR KHAN)
SECTION OFFICER (SR. II)



BUDGET ESTIMATES
FOR THE FINANCIAL YEAR
2014-2015

**PROPOSED
BY**

ABDUL HAMEED KHATTAK
JOINT DIRECTOR (E&A)

MUHAMMAD QASIM
DIRECTOR FINANCE SIDB

**APPROVED
BY**

ATTESTED
[Signature]
Research Officer (PTD)
Civil Secretariat (FAIA)

RASHID KHAN PAINDAKHEL
MANAGING DIRECTOR SIDB

KHYBER PAKHTUNKHWA SMALL INDUSTRIES DEVELOPMENT BOARD

CONSOLIDATED ESTIMATES OF EXPENDITURES

TOTAL EMPLOYEES RELATED EXPENSES

SUMMARY

HEAD OF ACCOUNTS	(Rs in Million)				
	Budget Estimate	2013-2014			2014-2015
		Actual (9 month)	Estimated (3 month)	Revised Estimate	Budget Estimate
Basic Pay	28.679	22.191	7.511	29.702	32.284
House ren/subsidy	5.022	3.613	1.224	4.837	5.281
Medical Allowance	4.190	3.090	1.018	4.108	4.453
Conveyance Allowance	3.135	2.446	0.869	3.315	3.611
Adhoc Relief 50% (2010)	7.612	5.355	1.776	7.131	7.301
Adhoc Relief 15% (2011)	2.324	1.607	0.545	2.152	2.337
Adhoc 20% Increases (2012)	5.602	4.071	1.357	5.428	5.360
Deputation Allowance ✓	0.001	0.054	0.018	0.072	0.072
Special Allowances ✓	0.828	0.479	0.160	0.639	0.712
Leave Encashment	3.698	1.018	0.374	1.392	3.801
Increase 15% 2013	5.219	3.102	1.048	4.150	4.398
10% Increase 2014	0.000	0.000	0.000	0.000	3.220
Total	66.310	47.026	15.900	62.926	72.830

Pension contribution	31.000	24.000	7.050	31.050	34.000
CP fund contribution	0.850	0.620	0.180	0.800	1.000
Total	31.850	24.620	7.230	31.850	35.000
Sub Total	98.160	71.646	23.130	94.776	107.830

OPERATING EXPENSES

COMMUNICATION

Postage & telegram	0.180	0.085	0.028	0.113	0.165
Telephone & Trunk Call	0.632	0.518	0.173	0.691	0.729
Total	0.812	0.603	0.201	0.804	0.893

UTILITIES

Electricity, Gas & Water charges	2.214	1.992	0.649	2.641	2.919
Hot & Cold Weather Charges	0.050	0.008	0.003	0.011	0.042
Total	2.264	2.000	0.652	2.652	2.961

OCCUPANCY COST

Rent rate & Taxes	0.253	0.198	0.066	0.264	0.333
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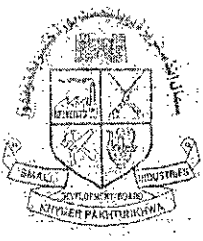
MOTOR VEHICLE

Registration	0.100	0.000	0.000	0.000	0.100
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TRAVEL & TRANSPORTATION

Travelling & Conveyance	2.100	1.057	0.608	1.665	2.169
POUCNG	3.500	2.049	0.709	2.758	3.305
Total	5.600	3.106	1.318	4.424	5.474

Research Officer (PTD)
Civil Secretariat (FATA)

	<p>PH. 091-9212224 FAX:091-9211860</p> <p>GOVT. OF KHYBER PAKHTUNKHWA SIDB KOHAT ROAD PESHAWAR</p> <p><u>NO.SIDB/MD/523</u> DATED:<u>27/07/2018</u></p>
---	---

To, The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department,
Peshawar.

Attention: Section Officer(Estt),Finance Department.

SUBJECT: COMPLAINT AGAINST MR. MUHAMMAD QASIM EX-DIRECTOR LOCAL FUND AUDIT KHYBER PAKHTUNKHWA.

Dear Sir,

I have the honour to refer to your letter No.SO(ESTT/FD/5-14/2018 dated 28-06-2018 on the subject noted above and to say that Mr. Muhammad Qasim remained as Director Finance in SIDB w.e.f.15-08-2012 to 06-12-2017. Comments on the fact finding enquiry report in his case are as under:

i. Special Allowance.

Before posting to SIDB as Director Finance, the officer was OSD in Finance Department. Special Allowance had, therefore, been reflected in the LPC issued to him by Finance Department on his transfer to SIDB. He had got prepared his pay on the basis of that LPC and drawn the allowance amounting to Rs.382,527/- till its discontinuation by the Management w.e.f. 01-05-2015. Since, under the rules, the allowance was admissible only on posting in the Secretariat, therefore drawl of the same by the officer is irregular and recoverable.

RECEIVED
[Signature]
Research Officer (PTD)
Civil Secretariat (FATA)

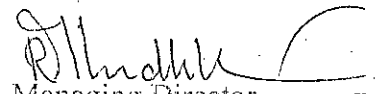
ii. Deputation Allowance.

The post of Director Finance in SIDB is a deputation post under the Rules. The post of Managing Director SIDB has also been reflected in the rules as deputation post. According to the record available since 1999, all the DMG, PCS and other Cadre officers posted as Managing Directors till 2012 have drawn deputation allowance. Similarly all the officers posted as Director Finance upto 2017 have also drawn the said allowance. Therefore the same cannot be termed as irregular as it is covered under the rules governing deputation to foreign service.

[Signature]

iii. Leave Encashment

So far as leave encashment is concerned, the same had been drawn by all the employees working in the SIDB including deputationists from Government Service under SIDB Rules 1978 (copy enclosed). However under the SIDB Rules 2005, government Rules had to be followed in this regard according to which only maximum of 365 days leave encashment is admissible at the time of retirement. Therefore the irregular encashment of leave was brought into the notice of SIDBoard of Directors in its meeting held on 4th January 2017. The Board regularized the earlier leave encashment to all employees and stopped the same forthwith (copy enclosed). Therefore the leave encashment by the officer has already been regularized by the Board and is not recoverable.


Managing Director
SIDB, Peshawar

Copy to:

- 1. Circulation File.

~~ATTACHED FILE~~
~~Research Officer (PTD)~~
~~Civil Secretariat (FATA)~~

3. Short title, Commencement & Application of Rules:

1. These rules may be called the N.W.F.P. Small Industries Development Board Rules.
2. These rules shall come into force with immediate effect and shall be deemed to have been enforced for each employee as may have been enrolled to the establishment of the Board prior to this date and after the 1st of July, 1972. These rules shall also cover the employees recruited before 1-7-1972 by the former West Pakistan Small Industries Corporation.
3. These rules shall apply to all persons employed in the Headquarters of the Board on monthly rated basis, (including persons directly recruited, or on deputation from Government service) and its regional offices and non-commercial projects sponsored by the Board.
4. These rules shall be subject to statutory Acts or Ordinances of the Central or Provincial Governments applicable to Semi-Autonomous Bodies.
5. DEFINITION OF TERMS:

In these rules, unless otherwise specifically stated, the following meanings are hereby assigned to the terms stated below:-

- (a) "Board" means the NWFP Small Industries Development Board constituted under Act II of 1971 & its Branch Offices & Projects.
- (b) "Employee" means any monthly rated employee of the Board
- (c) "Family" means and includes employee's wife/wives or husband as the case may be and legitimate children and step-children dependent upon him/her. Legitimate children will not include adopted children.

In this sub-section female dependents includes all the unmarried daughters, step daughters wholly dependent upon the employee. In the male dependents all the sons and step sons are included who are less than 21 years of age and wholly dependent upon the employee.

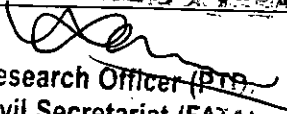
Responsible Officer
Civil Secretariat

Cont'd.....P/2-

**MINUTES OF 99TH MEETING OF SID BOARD OF DIRECTORS
HELD ON 4TH JAN, 2017**

TABLE OF CONTENTS

Agenda Item No.	Contents	Page No.
	Overview of SIDB & Board Directives	04-06
1.	Confirmation of minutes of 98 th meeting of SID Board held on 24 th February, 2016	06-07
2.	Progress on decisions of 98 th meeting of SIDBoard of Directors held on 24 th February, 2016.	07-09
3.	Revised Estimates for the year 2015-16 and budget estimates for the year 2016-17	09-10
4.	Fixation of initial & extended period of lease for commercial lands of SIDB.	11
5.	Grant of Bonus/Honoraria to the employees of SIDB Wood Working Centres	12
6.	Ratification of Promotion recommended by D.P.C & implemented by the Management of SIDB	12-13
7.	Encashment of earned leave	13-14
8.	Service Structure for employees of SIDB Wood Working Centres	14
9.	Decision on the Fate of SIDB closed centres.	15
10.	Delegation of powers of Appointing Authority in respect of BS-17 and above officers to Chairman SIDB	15-16
11.	Transfer of Mr. Malik Tahir Khattak from Worker Welfare Board to SIDB on Deputation	16
12.	Merit criteria for recruitment of officers and officials in SIDB against initial quota	17-19
13.	Fixation of rates of plots in Small Industrial Estate at Dargai Malakand	19-20

ATTESTED

Research Officer (P.D.)
Civil Secretariat (FATA)

Sr. No	Name of Officer	From	To	With effect from
1.	Muhammad Rashid	Assistant Director BS-16	Deputy Director BS-17 on regular basis	08.03.2016
2.	Mr. Tariq Nadeem	-do-	-do-	-do-
3.	Mr. Jehanzeb Khan	-do-	-do-	-do-
4.	Mr. Gulzar Khan	-do-	-do-	-do-
5.	Mr. Farman Ali	-do-	Deputy Director BS-17 on Acting Charge Basis	08.03.2016
6.	Mr. Naseer-ud-Din	-do-	-do-	

6.2 The Board of Directors was requested to ratify the promotion cases of the above officers with effect from the due dates.

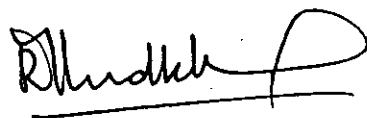
6.3 Secretary Finance objected to the notification of promotion without prior approval of the Board. Managing Director SIDB responded that this practice was in vogue since long and the Board had never raised any question on it.

Decision: The Board directed that the notification of promotion may be withdrawn and the case be re-submitted to competent authority for approval.

Item-7: Encashment of Earned Leave

7.1 The Board was informed that under the Draft Service Rules, SIDB employees were allowed encashment of total earned leave in their leave account. As per practice they cashed their earned leave after every six months period in the months of January and July. This practice was going on till July 2016 inspite of decision taken in the Service Rules notified in 2005 to the effect that where these rules were silent on a point, Provincial Govt. rules applicable to civil servants will apply to SIDB employees.

~~Responsible Officer (PTD)
Civil Secretariat (FATA)~~



7.2

SIDB Management proposed to ratify/ confirm either the present practice of encashment of the total earned leave OR regularize the previous encashment of earned leave already paid to the employees and to stop the practice forthwith.

Decision:

The Board expressed serious concern on payment of encashment of total earned leave after each six months. However the Board regularized the previous encashment already paid and directed that further encashment of earned leave may be stopped and the Provincial Government Rules may be followed in letter and spirit.

JDLF (AM)
DD (Audit)

1/2/2017

Item-8:

SERVICE STRUCTURE FOR EMPLOYEES OF SIDB WOOD WORKING CENTERS

8.1

The Board was informed that workmen / employees working in the SIDB Wood Working Centers had no service structure. In order to provide them chances of promotion to higher positions and streamline terms and conditions of their service, the SIDB management constituted a committee consisting of Dy. Managing Director (Admin/P&M), Joint Director (P&M) and Project Manager, Pak-German WWC, Peshawar to draft a proper service structure for them. The committee finalized its work and submitted the draft Service Structure:

8.2

The Board of Directors was requested to consider and approve the service structure drafted by the committee for employees / workers / workmen of SIDB Wood Working Centers in the province.

Decision:-

The Board directed to vet the service structure from Establishment Department and to place the same again in the coming BOD meeting.

ATTESTED

Research Officer (PTD)
Civil Secretariat (FATA)

Managing Director SIDB

<u>S.No</u>	<u>Name</u>	<u>Designation</u>	<u>Cadre</u>	<u>Period</u>	<u>L/Enc Days</u>	<u>L/E Payment</u>	<u>Deputation</u>	<u>Special Allowance</u>	<u>Utility Allowance</u>	<u>Total</u>
01	Zahoor Ahmad	Managing Director	DMG	02-1999 to 10-2000	84 Days	38,098/-	31,422/-	----	----	65,514/-
02	Muhammad Sultan	MD	PCS SG	11-2000 to 06-2001	28 days	11,705/-	9,714/-	----	----	21,419/-
03	Inamullah Khan	MD	Federal SG	07-2001 to 05-2003	92 days	65,170/-	28,894/-	----	----	94,064/-
04	Nimatullah Khan	MD	DMG	06-2003 to 10-2003	----	----	6,810	----	----	6,810/-
05	Tarik Jamil	MD	DMG	07-2004 to 07-2006	100 days	73,340/-	71,125/-	----	----	144,465/-
06	Muhammad Akbar Khan	MD	PCS EG	10-2006 to 04-2008	64 days	51,120/-	77,248/-	----	----	128,368/-
07	Hassan Mehmood	MD	DMG	05-2008 to 10-2009	56 days	50,480/-	87,810/-	----	----	138,290/-
08	Syed Akhtar Hussain Shah	MD	PCS SG	11-2009 to 06-2012	----	----	122,610/-	57,138/-	89,560/-	269,308/-
09	Asmatullah Khan	MD	PCS SG	07-2012 to 09-2014	40 days	75,158/-	---	136,575/-	---	211,733/-
10	Rashid Khan	MD	PCS SG	10-2013 to 06-2016	96 days	210,865/-	----	----	----	210,865/-

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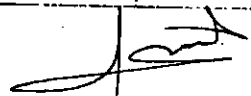
[Signature]
Research Officer (F&A)
Civil Secretariat (FATA)

[Signature]
Research Officer (F&A)
Civil Secretariat (FATA)

[Signature]
Joint Director (F&A)
K.P.K SIDB, Peshawar.

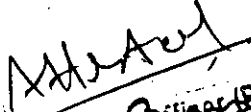
Director Finance SIDB

S.No	Name	Designation	Cadre	Period	L/Enc Days	L/E Payment	Deputation	Special Allowance	Utility Allowance	Total
01	Muhammad. Asif	Director Finance	PCS SG	09-1998 to 01-2005	744 Days	605295/-	113200/-	----	----	718495/-
02	Muhammad. Rafiq	DF	PCS EG	03-2005 to 11-2005	34 days	25,330/-	27,570/-	----	----	52,900/-
03	Muhammad. Ayaz	DF	Postal Group	12-2005 to 05-2008	123 days	115,230/-	180,280/-	----	----	295,510/-
04	Aziz Khan	DF	PCS SG	06-2008 to 09-2009	60 days	54,128/-	80,280/-	80,280/-	41160/-	255,848/-
05	Dildar Khan Khattak	DF	PCS SG	09-2009 to 05-2011	280 days	383,523/-	19,2000/-	164,148/-	97,530/-	837,201/-
06	Muhammad Qasim	DF	LFA Finance (Deptt)	15-08-2012 to 06-12-2017	134 days	284,078/-	+80,000/-	382,527/-	----	1146,605/-

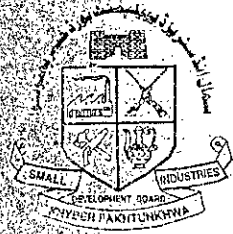

 Joint Director (F&A)
 K.P.K SIDB, Peshawar.

ATTENDED

 Research Officer (PTD)
 Civil Secretariat (FATA)


 Research Officer (PTD)
 Civil Secretariat (FATA)

35 "K"



Phone No.091-9211859

GOVERNMENT OF KHYBER PAKHTUNKHWA
SMALL INDUSTRIES DEVELOPMENT BOARD
KOHAT ROAD PESHAWAR

No.SIDB/JD(F&A)/1637

Dated: 8/ 12 /2017

LAST PAY CERTIFICATE

Last pay Certificate of Mr.Mohammad Qasim Ex-Director Finance SIDB is under.

Allowances	Monthly pay	Deduction	
Basic pay	117,160	Income Tax	15876
House Rent / Subsidy	16,055	G.p.Fund	4872
Medical Allowance	5,690	Group Ins	1600
Deputation Allowance	12,000	B.Fund	250
Adhoc Allowance 2013 5%	2,830		
Adhoc Allowance 2015 2.5%	1,856		
Adhoc Allowance 2016 10%	9,545		
Adhoc Allowance 2017 10%	11,716		
Total	176,852/-	Deduction	22598/-

He has been paid salary upto 06/12/2017 and no deduction has been made from his salary.

Research Officer (F&A)
Civil Secretariat (FATA)

Deputy Director,
Local Fund Audit Department,
Khyber Pakhtunkhwa,
Peshawar.

Joint Director (F&A)
8/12/17

Joint Director (F&A)
K.P.K SIDB, Peshawar.

1.12.2017 6.12.2

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**GOVERNMENT OF NWFP
FINANCE DEPARTMENT.**

NO. SOSR-III/FD/I-20/2006
Dated Peshawar the, 24th January, 2007

From:-

Zia-ur-Rehman,
Secretary to Government of NWFP,
Finance Department, Peshawar.

To

1. All the Administrative Secretaries to Government of NWFP, Peshawar.
2. The Senior Member Board of Revenue, NWFP, Peshawar.
3. The Secretary to Governor NWFP, Peshawar.
4. All Heads of Attached Departments in NWFP, Peshawar.
5. All District Coordination Officers NWFP.
6. The Registrar, Peshawar High Court, Peshawar.
7. The Chairman, Public Service Commission, NWFP, Peshawar.
8. The Chairman, Service Tribunal, NWFP, Peshawar.

Subject: - TERMS & CONDITIONS OF CIVIL SERVENTS DEPUTED TO FOREIGN SERVICE.

Dear Sir,


I am directed to refer to the above-captioned subject and to state that in order to obviate inordinate delays in the settlement of terms and conditions of deputationists and in furtherance of the principles of good governance and decentralization of powers, the competent authority has decided that in supersession of all previous instructions on the subject, the terms & conditions of civil servants, who are deputed to foreign service, may hence-forth be determined by the Administrative Departments concerned.

2. *The following* terms and conditions of deputation are *delegated to* the administrative authorities/departments which shall invariably be followed accordingly:-

i)

Pay:-

A civil servant on deputation shall be entitled to the graded pay as is admissible to him in his parent department from time to time.

ATTESTED

**Research Officer (PTD)
Civil Secretariat (FATA)**

Autonomous Body or Local Body whichever are more beneficial to him.

v) Conveyance Allowance:-

~~This allowance will be restricted to the scale as admissible~~
under the Government Rules subject to the relevant conditions.


vi) Compensatory Allowance:-

Compensatory Allowance as admissible to a civil servant at the same place of posting will continue to be admissible during deputation as per scale laid down by the Government; hence, it will not be inter-changeable with the compensatory allowances sanctioned by the Autonomous, Semi-autonomous or Local Body concerned. However, the foreign employer will bear the whole expenditure in respect of any compensatory allowance for periods of leave granted to the civil servant in or at the end of Foreign Service.

vii) Residential Accommodation/Housing Subsidy:-

Accommodation will be provided to the deputationist by the Autonomous, Semi autonomous or Local Body concerned of the same standard as is normally provided to a civil servant in his parent department subject to the recovery of rent @ 5% of his emoluments as defined in F.R. 45(c). Where such accommodation is not available and the Autonomous, Semi-Autonomous or Local Body concerned pays the house rent requisition or housing subsidy to its employees, the subsidy will be paid to the deputationist either at the rate admissible to such civil servant in his parent department from time to time or at the rate admissible to the employees of the foreign employer whichever is more beneficial to the deputationist. If the deputationist continues to reside in Government allotted accommodation under special permission of Government for certain specified periods, the difference between the standard rent recoverable by Government under F.R-45 (B) and that admissible to the deputationist in the deputation post, will be payable by the deputationist concerned to the Government over and above the 5% rent recovery or as may be agreed upon mutually between the Departments concerned.

Note: Housing subsidy and two rooms accommodation are exempted from 5% deduction.

47

Research Officer (PTD)
Civil Secretariat (FATA)

viii) Medical Facilities:-

Medical facilities will be allowed in accordance with the relevant rules of the Autonomous, Semi-Autonomous or Local Body concerned, provided these facilities are not inferior to those admissible to the deputationist under Government.

ix) Leave Salary and Pension Contributions:-

These will be payable by the foreign employer on the scale laid down by the Government from time to time.

x) Joining Time Pay and T.A. on Transfer:-

This will also be payable by the foreign employer on transfer to and reversion from Foreign Service.

xi) Contributions:-

The Civil Servants shall continue to subscribe to the G.P. Fund, C.P. Fund, Benevolent Fund and the Group Insurance Fund as under Government Rules and will also repay all the advances from G.P. Fund or for house building etc. by cash deposit into Government treasury.

xii) Other Benefits:-

All Fringe benefits attached to a deputation post other than the benefits specifically mentioned above will also be admissible to a deputationist. However, as a rule, no promotion or improved prospects of service shall be allowed to the deputationist without the prior consent of the Government.

xiii) Deputation Period:-

The period of deputation shall ordinarily not exceed three years. Its extension beyond the period of three years shall be decided by the Finance Department in advance on the merit of each case. Cases involving deputation period of more than five years, where special circumstances exist and the extension in deputation period of a civil servant is considered to be absolutely essential and in the public interest shall be referred to Establishment Department at least three months in advance of the expiry of the maximum period of deputation.

3. More-over while determining the Terms and Conditions of deputationist by the Administrative Departments the provision of Chapter XII (FR 109 to 127) of the Compilation of the Fundamental Rules and Supplementary Rules (Volumes I & II) read with FR-9 (7) and the Appendix No.11 of the FR (as reproduced at Annexure-A) shall be kept in

view in-so-far as they are not in conflict with the above-stated standard Terms & Conditions. A specimen proforma to be signed by lending department as well as borrowing organization is also enclosed at Annexure-B for guidance.

4. The receipt of this Communication may please be acknowledged.

Yours faithfully,


(ZAFAR IQBAL)
ADDITIONAL SECRETARY
(REGULATION)
FINANCE DEPARTMENT

Endorsement No. SOSR-III/FD/1-20/2006

Dated 24th January, 2007

Copy is forwarded to the:

1. Accountant General NWFP. He may ensure that the cases of the Terms & Conditions of deputationist, settled by administrative Departments/ authorities concerned are strictly in accordance with and fully conforming to the instructions of Finance Department, Government of NWFP as contained in this circular letter.
2. All Heads of Autonomous/Semi Autonomous Bodies in NWFP.

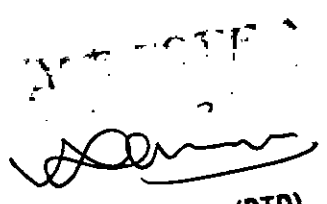

DEPUTY SECRETARY
(REGULATION-I)

Endorsement No. SOSR-III/FD/1-20/2006


Dated 24th January, 2007

Copy is forwarded to the:-

1. PS to Finance Secretary, Government of NWFP.
2. PAs to All Additional Secretaries/Deputy Secretaries in Finance Depatt.
3. All Section Officers/Budget Officers in Finance Department.



Research Officer (PTD)
Civil Secretariat (FATA)


(RAEES KHAN AFRIDI)
SECTION OFFICER (SOSR:III)

قیمت
50 روپے

5357



ایڈوکیٹ: مسعود ضامن، محمد اعظم، جاوید رحمان

بار کونسل ایسوسی ایشن نمبر: Be-14-5247/Be-18-1660

رابطہ نمبر: 03005957675/03005962910

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعد االت جناب: سروس ٹریڈنگ خیبر پختونخواہ لٹیاور

مخانب: محمد فاسم Ex Director PBA	دعویٰ: سروس اینیل
محمد فاسم	علت نمبر:
بنام	مورخہ:
چیف سیکریٹری خیبر پختونخواہ	جرم:
	تھانہ:

بابت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
آن مقام لیتاورد کیلئے مسعود ضامن، محمد اعظم، جاوید رحمان ایڈووکیٹس کو وکیل مقرر
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 28-02-2019
PESHAWAR BAR ASSOCIATION
KHYBER PAKHTUNKHWA

مقام لیتاورد

تاریخ منظور ہے۔

نوٹ: اس وکالت نامہ کی جو کاپی نام قابل قبول ہوگی۔

POWER OF ATTORNEY/VAKALATANAMA
BEFORE THE KYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

Muhammad Qasim
 Accused
 Appellant
 Petitioner

VERSUS

Chief Secretary KPK & others
 Complainant
 Respondents
 Judgment Debtor

Appeal no
 315/19

I/ We the **Respondent No. 4** above named hereby appoint **Mr. Waseem Ud Din Khattak, Ibrahim Noor Mughal & Ali Raza** Advocates in the above-mentioned case, to do all or any of the following acts, deeds things:

1. To appear, act, sign, record Statement and plead for me/us in the above-mentioned case in this court/Tribunal or any other Court/Tribunal in which the same may be tried or heard, and other proceedings arising out of or connected therewith.
2. To sign, verify compromise and file or withdraw all proceedings, petitions, appeals, affidavits, and any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defense of the said case at its stages.
3. To receive payments of, and issue receipts for, all money that may be or become due and payable to us during the course or on the conclusion of the proceedings.
4. To do all other acts and things which may be deemed necessary or advisable during the course of the proceedings.

AND HEREBY AGREE:

- a. To ratify whatever the said advocate may do in the proceedings.
- b. Not to hold the Advocate responsible if the said case be proceed ex-parte or dismissed in default in consequence of absence from the Court/Tribunal when it is called for hearing.
- c. That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fees remains unpaid.

In witness whereof I/We have signed this power of Attorney/ Vakalatnama hereunder, the contents of which have been read/ explained to me us and fully understood by me/ us this day of _____ at _____

Terms Accepted
 Signatures

Managing Director
Khyber Pakhtunkhwa
Small Ind. Dev. Board,
Peshawar

Accepted.

Waseem Ud Din Khattak
 Advocate Supreme Court of Pakistan
 GC No. 10-7253 (Mobile: 0333-9400366)

Ibrahim Noor Mughal
 Advocate High Court Peshawar
 GC No. 11-1881 (Mobile: 0321-9060091)

Ali Raza
 Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 315 /2019

Mr. Muhammad Qasim, Ex-Director Local Fund Audit, Khyber Pakhtunkhwa,
Resident of House No.336, Street No.10 Sector F/7 Phase VI, Hayat Abad
Peshawar**APPELLANT**

VERSUS

1. The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil secretariat, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat,-Peshawar
4. The Managing, Director, Small Industries Development Board Khyber Pakhtunkhwa, Kohat Road, Peshawar **RESPONDENTS**

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 3

RESPECTFULLY SHEWETH

PRILIMINARY OBJECTIONS

1. That the appellant neither has any locus standi nor a cause of action to approach this honorable tribunal.
2. That without prejudice to the foregoing, the appeal is bad, both in form as well as in substance.
3. That the appeal is not at all maintainable in its present form.
4. That the appellant concealed the material facts and kept this Hon'ble Tribunal in dark.
5. That the appeal is bad for misjoinder and non-joinder of necessary parties.
6. That the appellant has not compiled with mandatory provisions of relevant rules.
7. That the appellant has not come to this Hon'ble Tribunal with lean hands.

ON FACTS:

1. No comments. Pertains to record.
2. Incorrect. The appellant was promoted to the post of Director Local Fund Audit under the relevant service rules on the basis of seniority-cum-fitness (Annex-I) and not on merit basis.
3. Incorrect. Under the provision of section 10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973 "Every civil servant shall liable to serve any where within or outside the Province, in any post under Federal Government, or any Provincial Government or Local authority, or body set up or established by any such Government (Annex-II).
4. No comments. Pertains to record.

5. Incorrect. The appellant being the head of Finance and accounts wing of the Small Industries Development Board (SIDB), and senior most officer of the audit department by misusing his position has drawn irregular amounts under the various heads of accounts during his posting in SIDB. For example special allowance @30% of the basic pay allowed only to the employees working in the Civil Secretariate, Governor Secretariate and Chief Minister Secretariate (Annex-III). But the appellant has drawn the said allowance irregularly during his posting in SIDB.
6. Incorrect. At the time of receipt of complaint from the employees of SIDB against the appellant, he was working as Director Local Fund Audit, therefore, Finance Department being the Administrative Department of the Appellant conducted a facts finding inquiry of serious nature charges levelled against the appellant under the provision of relevant law/rules (Annex-IV). During the inquiry proceedings all the charges has been proved against the appellant (Annex-V).
7. Incorrect. Every civil servant is liable to be proceeded under the rules for his each and every illegal action by the competent authority.
8. Incorrect. No valid legal point was referred by the appellant in his reply except drawl of said irregular allowances by the other officers of SIDB. In this regard it is mentioned here that Director Finance SIDB (Appellant) being the head of Finance & accounts wing is also responsible for any irregular drawl from the SIDB funds by other employees. Moreover, the appellant was employee of the LFA establishment, therefore, being the administrative department of the appellant Finance Department was competent to conduct facts finding inquiry against the appellant.
9. Incorrect. The appeal was properly considered and regretted being not covered under the rules and the appellant was informed accordingly (Annex-VI).
10. As per para 9 above.

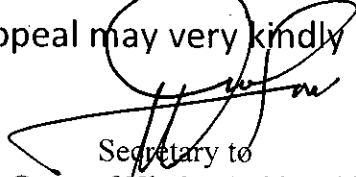
ON THE GROUNDS

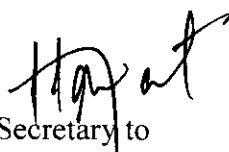
- A. In correct. As stated above at S.No. 06 and 08 of the facts that the appellant was the employee of Directorate of Local Fund Audit, therefore, being the administrative department of the appellant, Finance Department was competent to conduct facts finding enquiry against the appellant for the charges of serious financial irregularities/corruption. Furthermore, on proven of charges the matter was referred to the Managing Director SIDB for views/comments. In response the Managing Director SIDB has confirmed the said drawl and stated that the post of Director Finance in SIDB is a deputation post therefore, the drawl of deputation allowance was regularized by the BOD of SIDB. However, the special allowance was drawn irregularly by the appellant which is recoverable. While the encashment of leave salary drawn by the appellant during his stay at SIDB was according to the policy of SIDB. Accordingly his leave encashment order dated 08.10.2018 was issued.
- B. Incorrect. No order for recovery was issued by the respondent department. All the Provincial civil servant of the Govt: of Khyber Pakhtunkhwa are entitle to draw maximum 365 days leave encashment in lieu of LPR, on retirement (Annex-VII). As the appellant was already drawn 134 days leave encashment during his posting period at SIDB, therefore, sanction for remaining period of 231 days of leave encashment in lieu of LPR, was issued in his favour. The maximum entitlement of leave


encashment to a civil servant is only 365 days. In case of any relaxation in grant of leave encashment beyond 365 days to a civil servant, other civil servants would also claim the same. So far as, recovery of special allowance is concerned a condition for production of clearance certificate from the SIDB authorities was added in the leave encashment order dated 08.10.2018. The appellant has liberty to approach the BOD/ MD SIDB for clearance of irregular drawn amount either to get write off the drawl of special allowance from the BOD or deposite the irregular amount into SIDB accounts / funds and furnish clearance certificate.

- C. Incorrect. As stated in para-6 & 8 of the facts and para-A of the grounds Finance Department being the administrative department of the appellant is competent to conduct facts finding enquiry against their employees.
- D. Incorrect. Special allowance is admissible only to the officers/officials working in the civil secretariat, Governor secretariat and Chief Minister Secretariat. The appellant was neither a secretariat employee, nor he was posted in secretariat during the period w.e.f. 10.08.2012 to 06.12.2017. Furthermore, the Managing Director SIDB has also declared drawl of said special allowance as irregular and recoverable (Annex-VIII).
- E. Incorrect. No order for recovery of said special allowance was issued. There is only a condition was added for provision of clearance certificate from the SIDB authorities in the light of MD SIDB letter at Annex-VIII. The appellant is unable to provide any solid law/rules regarding non-recovery of irregular drawl of public money. The respondent departments has the view that any irregular drawl from public exchequer is recoverable.
- F. Incorrect. The managing Director SIDB vide Para-1 (i) of his refered letter dated 27.07.2018 (Annex-VIII) has clearly mentioned that drawl of special allowance by the officer (appellant) is irregular and recoverable.
- G. Incorrect. No order of recoveries has been ordered. However, a condition has been added in the sanction for encashment of leave that appellant may furnish a clearance certificate from the concerned authority of the said autonomous body / SIDB. Therefore, it will be appropriate that the appellant may approach the SIDB authorities for grant of clearance certificate.
- H. Incorrect. The appellant was posted as Director Finance, SIDB by transfer, not on deputation basis (Annex-IX).

In view of above stated position it is earnestly prayed that the instant appeal may very kindly be dismissed with cost.


Secretary to
Govt: of Khyber Pakhtunkhwa
Finance Department (Respondent No.3)
SECRETARY
Govt: of Khyber Pakhtunkhwa
Finance Deptt:


Secretary to
Govt: of Khyber Pakhtunkhwa
Establishment Department (Respondent No.2)


CHIEF SECRETARY
GOVT: OF KHYBER PAKHTUNKHWA
(Respondents No.1)



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GOVERNMENT OF N.W.F.P.
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT

Dated Peshawar, the 11th April, 2008

NOTIFICATION

E/A

NO.SO(E-I)E&AD/9-75/2004/Vol-II The Competent Authority on the recommendations of the Provincial Selection Board is pleased to promote Mr. Muhammad Qasim, Assistant Director (BS-17) Local Fund Audit to Director (BS-18) Local Fund Audit, NWFP on regular basis with immediate effect.

2. The officer on promotion will remain on probation for a period of one year in terms of Section 6(2) of NWFP Civil Servants Act, 1973 read with Rule-15(1) of NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. Consequent upon above, Mr. Muhammad Qasim (BS-18) will remain posted as Director, Local Fund Audit, NWFP.

**CHIEF SECRETARY,
GOVERNMENT OF N.W.F.P.**

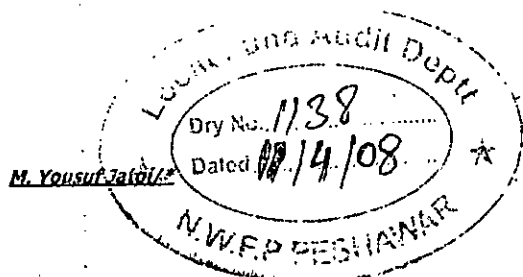
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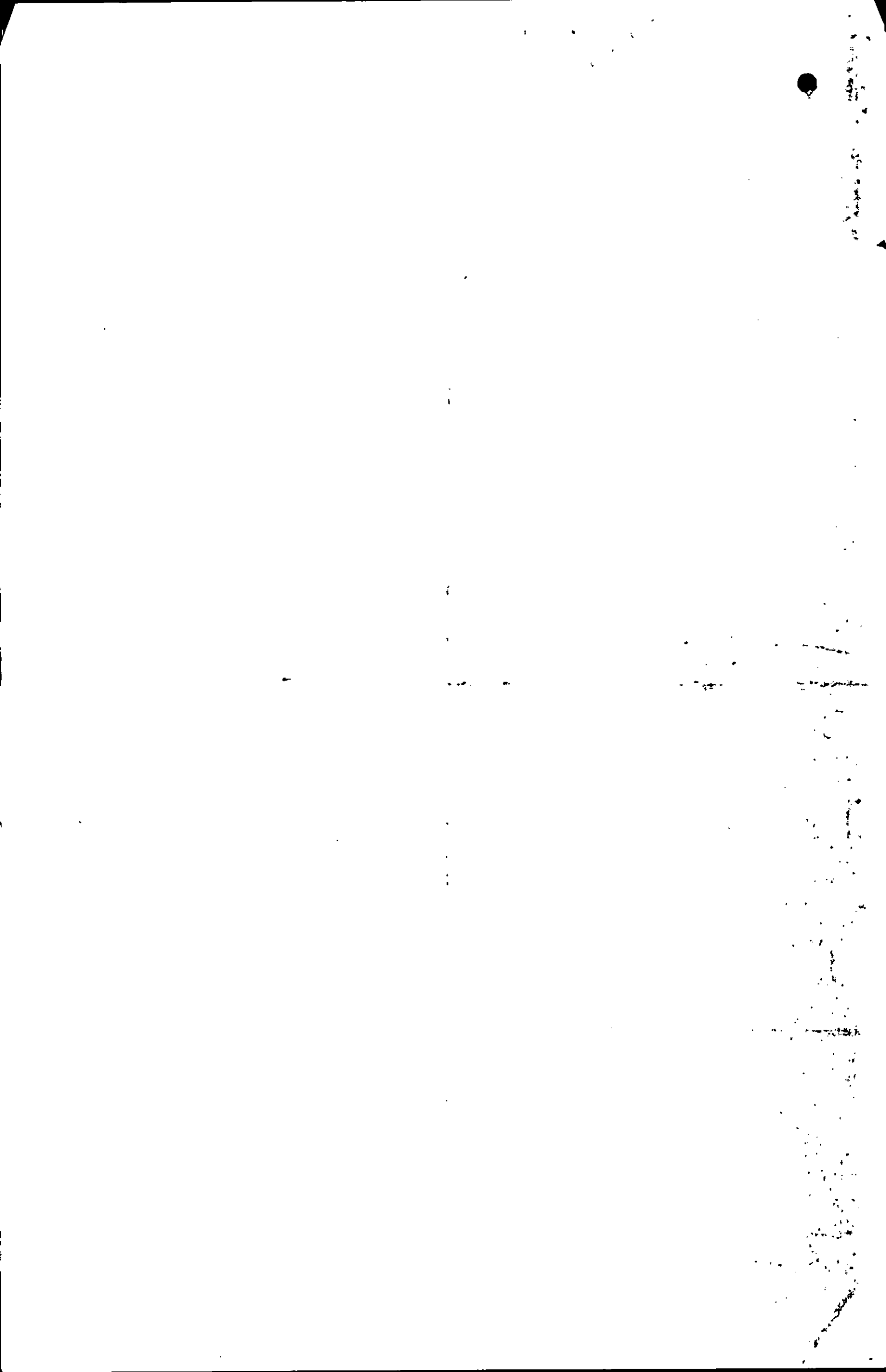
Copy forwarded to the:-

1. Secretary to Governor, NWFP.
2. Principal Secretary to Chief Minister, NWFP.
3. Secretary to Govt of NWFP, Finance Department.
4. Accountant General, NWFP.
5. Director, Local Fund Audit, Finance Department, NWFP.
6. PS to Chief Secretary, NWFP.
7. PS to Secretary Establishment, E&A Department.
8. Officer concerned.
9. Manager, Govt Printing Press, Peshawar.

11.4.08

(ABDUL JALIL)
SECTION OFFICER(E-I)
PHONE & FAX # 091-9210529





48

GOVERNMENT OF NWFP
FINANCE DEPARTMENT

Dated Peshawar, the 10/11/2009

NOTIFICATION

NO.SO(E.II)FD/3-19/LFA/06/


The competent authority is pleased to enhance the pay scale and upgrade the post of Director, Local Fund Audit Department, NWFP from (BS-18) to (BS-19) with immediate effect, in the interest of public service.

SECRETARY TO GOVT; OF NWFP
FINANCE DEPARTMENT

Encls. No. & date even.

Copy forwarded for information to the:-

1. All the Administrative Secretaries, Govt; of NWFP, Peshawar.
2. Secretary to Governor, NWFP, Peshawar.
3. Accountant General, NWFP, Peshawar.
4. Principal Secretary to Chief Minister NWFP, Peshawar.
5. Secretaries Finance Department, Governments of the Punjab, Sindh & Baluchistan.
6. All Vice Chancellors in NWFP.
7. The Chief Executive, LRH, HMC, KMC, KTH & Ayub Medical College, Abbottabad.
8. The Secretary, NWFP Public Service Commission, Peshawar.
9. The Registrar, Services Tribunal NWFP, Peshawar.
10. The Director Treasuries & Accounts, NWFP, Peshawar.
11. Budget Officer-IV Finance Department.
12. Treasury Officer, Peshawar.
13. PS to Minister for Finance, NWFP.
14. PS to Chief Secretary, NWFP.
15. PS to Secretary to Govt; of NWFP, Finance Department.


10/11/09
(USMAN SHAH)
SECTION OFFICER(E.II)

III

confirmed shall not, merely by reason of such retirement, be refused confirmation in such service or post or any benefits accruing there from.

(5) Confirmation of a civil servant in a service or post shall take effect from the date of occurrence of permanent vacancy in that service or post or from the date of continuous officiation, in such service or post, whichever is later. *

8. **Seniority:-** (1) For proper administration of a service, cadre or post, the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or post as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or cadre whether serving in the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, cadre or post shall be determined as may be prescribed.

(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post;

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post."].

"(5) The seniority lists prepared under sub-section (1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January".

9. **Promotion:-**(1) A civil servant possessing such minimum qualifications as may be prescribed shall be eligible for promotion to a higher post for time being reserved under rule for departmental promotion in service or cadre to which he belongs.

(2) A post referred to in sub-section (1) may either be a selection post or a non selection post to which promotion shall be made as may be prescribed-

(a) in the case of a selection post, on the basis of selection on merit; and

(b) in the case of non-selection post, on the basis of seniority-cum- fitness.

10. **Posting and Transfer:-** Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation or body set up or established by any such Government:-

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region;
Provided further that, where a civil servant is required to serve in a post

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Annex-III
51



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(Regulation Wing)

Dated Peshawar, April 27, 2011

NOTIFICATION

No.FD(SOSR-II)8-7/2011. Governor, Khyber Pakhtunkhwa Province has been pleased to approve, with effect from 07-04-2011 and until further orders, *Increase* in the rate of *Special Allowance*, sanctioned vide this Department letter No.FD(SOSR-II)8-7/2002/Vol.IV dated 06-02-2008, and subsequently amended vide letter of even number dated 03-03-2008, from the existing 20% of the Basic Pay to *30% of the Basic Pay*.

2- Special Allowance shall cease to be admissible to the civil servant with effect from the date when, consequent upon his transfer to a post outside Civil Secretariat, Chief Minister's Secretariat or Governor's House Secretariat, he relinquishes the charge of the post held by him in any of these Secretariats.

3- The admissibility of Special Allowance shall continue to be subject to the conditions prescribed in Finance Department letters referred to in Para-1 above, or conditions which may be prescribed by the Government from time to time.

Secretary to Government of
Khyber Pakhtunkhwa
Finance Department

Endst: No. & date even.

Copy is forwarded for information and necessary action to the:-

1. All Administrative Secretaries of Khyber Pakhtunkhwa Province.
2. Accountant General Khyber Pakhtunkhwa, Province.
3. Secretary to Governor, Khyber Pakhtunkhwa Province.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa Province.
5. Director FMIU, Finance Department, Khyber Pakhtunkhwa Province.


(WAZIR MUHAMMAD AFGAR)
Section Officer (SR.II)

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 16TH SEPTEMBER, 2011.

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMINISTRATION DEPARTMENT.

NOTIFICATION

[Peshawar, dated the 16th September, 2011.]

No.SO(REG-VI)E&AD/2-6/2010.-In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

1. **Short title, application and commencement.**---(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

(3) These shall come into force at once.

2. **Definitions.**---(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "accused" means a person in Government service against whom action is initiated under these rules;
- (b) "appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;
- (c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made thereunder or an authority as notified under the specific laws/rules of Government;
- (d) "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;

- (e) "Chief Minister" means the Chief Minister of the Khyber Pakhtunkhwa;
- (f) "competent authority" means-
- (i) the respective appointing authority;
 - (ii) in relation to a Government servant of a tribunal or court functioning under Government, the appointing authority or the Chairman or presiding officer of such tribunal or court, as the case may be, authorized by the appointing authority to exercise the powers of the competent authority under these rules:

Provided that where two or more Government servants are to be proceeded against jointly, the competent authority in relation to the accused Government servant senior most shall be the competent authority in respect of all the accused.

- (g) "corruption" means-
- (i) accepting or obtaining or offering any gratification or valuable thing, directly or indirectly, other than legal remuneration, as a reward for doing or for bearing to do any official act; or
 - (ii) dishonestly or fraudulently misappropriating, or indulging in embezzlement or misusing Government property or resources; or
 - (iii) entering into plea bargain under any law for the time being in force and returning the assets or gains acquired through corruption or corrupt practices voluntarily; or
 - (iv) possession of pecuniary sources or property by a Government servant or any of his dependents or any other person, through his or on his behalf, which cannot be accounted for, and which are disproportionate to his known sources of income; or
 - (v) maintaining a standard of living beyond known sources of income; or
 - (vi) having a reputation of being corrupt;
- (h) "Governor" means the Governor of the Khyber Pakhtunkhwa;
- (i) "inefficiency" means failure to efficiently perform functions assigned to a Government servant in the discharge of his duties;
- (j) "inquiry committee" means a committee of two or more officers, headed by a convener, as may be appointed by the competent authority under these rules;

- (k) "inquiry officer" means an officer appointed by the competent authority under these rules;
- (l) "*misconduct*" includes-
- (i) conduct prejudicial to good order or service discipline; or
 - (ii) conduct contrary to the Khyber Pakhtunkhwa Province Government Servants (Conduct) Rules, 1987, for the time being in force; or
 - (iii) conduct unbecoming of Government servant and a gentleman; or
 - (iv) involvement or participation for gains, directly or indirectly, in industry, trade, or speculative transactions by abuse or misuse of official position to gain undue advantage or assumption of such financial or other obligations in relation to private institutions or persons as may compromise the performance of official duties or functions; or
 - (v) any act to bring or attempt to bring outside influence, directly or indirectly, to bear on the Governor, the Chief Minister, a Minister or any other Government officer in respect of any matter relating to the appointment, promotion, transfer or other conditions of service; or
 - (vi) making appointment or promotion or having been appointed or promoted on extraneous grounds in violation of any law or rules; or
 - (vii) conviction for a moral offence by a court of law.

(2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Khyber Pakhtunkhwa Province Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

3. Grounds for proceedings.---A Government servant shall be liable to be proceeded against under these rules, if he is-

- (a) inefficient or has ceased to be efficient for any reason; or
- (b) guilty of misconduct; or
- (c) guilty of corruption; or
- (d) guilty of habitually absenting himself from duty without prior approval of leave; or
- (e) engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with others engaged in subversive activities, or is guilty of disclosure of official secrets to any un-authorized person, and his retention in service is prejudicial to national security; or

Amended - IV

- (f) entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily.

4. Penalties.---(1) The following are the minor and the major penalties, namely:

(a) Minor penalties:

- (i) censure;
- (ii) withholding, for a specific period, promotion or increment subject to a maximum of three years, otherwise than for unfitness for promotion or financial advancement, in accordance with the rules or orders pertaining to the service or post:

Provided that the penalty of withholding increments shall not be imposed on a Government servant who has reached the maximum of his pay scale:

- (iii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order;

(b) Major penalties:

- (i) reduction to a lower post or pay scale or to a lower stage in a time scale, for a maximum period of five years. Provided that on restoration to original pay scale or post, the penalized
- (ii) compulsory retirement; Govt. Servant will be placed below his rank while juniors promoted
- (iii) removal from service; and to higher post during subsistence of the period of penalty.
- (iv) dismissal from service.

(2) Dismissal from service under these rules shall disqualify a Government servant from future employment under Government.

(3) Any penalty under these rules shall not absolve a Government servant from liability to any other punishment to which he may be liable for an offence, under any other law, committed by him while in service.

5. Initiation of proceedings.---(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-

- (a) proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry:

Provided that no opportunity of showing cause or personal hearing shall be given where-

18-7-2012

- 156
- (i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or
 - (ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment; or
 - (iii) a Government servant is involved in subversive activities; or
 - (iv) it is not reasonably practicable to give such an opportunity to the accused; or
- (b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

Provided that the competent authority shall dispense with the inquiry where-

- (i) a Government servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or
- (ii) a Government servant is or has been absent from duty without prior approval of leave:

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry.

(2) The charge sheet or statement of allegations or the show cause notice, as the case may be, shall be signed by the competent authority.

6. **Suspension.**---A Government servant against whom action is proposed to be initiated under rule 5 may be placed under suspension for a period of ninety days, if in the opinion of the competent authority, suspension is necessary or expedient, and if the period of suspension is not extended for a further period of ninety days within thirty days of the expiry of initial period of suspension, the Government servant shall be deemed to be reinstated:

Provided that the competent authority may, in appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave as may be admissible to him, from such date as may be specified by the competent authority.

7. **Procedure where inquiry is dispensed with.**---If the competent authority decides that it is not necessary to hold an inquiry against the accused under rule 5, it shall-

- (a) inform the accused by an order in writing, of the grounds for proceeding against him, clearly specifying the charges therein, alongwith apportionment of responsibility and penalty or penalties proposed to be imposed upon him;

- (b) give him a reasonable opportunity of showing cause against the proposed action, within seven days of receipt of the order or within such extended period, as the competent authority may determine;
- (c) on receipt of reply of the accused within the stipulated period or after the expiry thereof, if no reply is received, determine whether the charge or charges have been proved against the accused or not:

Provided that after receipt of reply to the show cause notice from the accused, the competent authority, except where the Chief Minister himself is the competent authority, shall decide the case within a period of ninety days, excluding the time during which the post held by the competent authority remained vacant due to certain reasons:

Provided further that if the case is not decided by the competent authority within the prescribed period of ninety days, the accused may file an application before the appellate authority for early decision of his case, which may direct the competent authority to decide the case within a specified period;

- (d) afford an opportunity of personal hearing before passing any order of penalty under clause (f), if it is determined that the charge or charges have been proved against him;
- (e) exonerate the accused, by an order in writing, if it is determined that the charge or charges have not been proved against him; and
- (f) impose any one or more penalties mentioned in rule 4, by an order in writing, if the charge or charges are proved against the accused:

Provided that where charge or charges of grave corruption are proved against an accused, the penalty of dismissal from service shall be imposed, in addition to the penalty of recovery, if any.

8. Action in case of conviction or plea bargain under any law.---Where a Government servant is convicted by a court of law on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices, or has been acquitted by a court of law as a result of compounding of an offence involving moral turpitude under any law for the time being in force, the competent authority, after examining facts of the case, shall-

- (a) dismiss the Government servant where he has been convicted on charges of corruption or moral turpitude or has entered into plea bargain and has returned the assets or gains acquired through corruption or corrupt practices voluntarily:

18. Provided that dismissal in these cases shall be with immediate effect from the date of conviction by a court of law; and

- (b) proceed against the Government servant under rule 5, where he has been convicted of charges other than corruption or moral turpitude.

Report
of

**Facts Finding Enquiry into Allegations leveled against Mr
Muhammad Qasim, Director Local Fund Audit / former
Director Finance SIDB in the Complaint lodged by
Sahibzada Nasim, President, SIDB Employees Union.**

Annexure I
864
58

Background of the case

A complaint addressed to Secretary Finance Khyber-Pakhtunkhwa received from Sahibzada Nasim, President, SIDB Employees Union, leveling allegations against Mr Muhammad Qasim, Director Local Fund Audit / former Director Finance SIDB, for illegal drawl of Rs 54 Lac on account of Special Allowance, Deputation Allowance and Leave salary/encashment during his stay at SIDB (Annexure - I). Few other complaints and relevant documents had annexed to the aforesaid complaint.

2. Considering the nature of complaint being serious, the competent authority ordered for facts finding enquiry into the allegations by appointing the undersigned, Abdul Malik, Deputy Secretary (Regulation-II) Finance Department as Inquiry Officer vide Office Order No SO(Estt)GF/5-14/2018/Complaint/LFA, dated 11.04.2018 (Annexure - II).

3. The aforesaid Office Order was later substituted for endorsement to Managing Director SIDB and Director Finance SIDB on 15 April, 2017 in order to ensure their cooperation on official side from SIDB in the process of enquiry (Annexure - III).

Inquiry Proceedings

4. SIDB was visited on 18 April, 2017. Managing Director could not be contacted on that day due to his official engagements somewhere else. Director Finance SIDB extended full cooperation in procuring the required papers for ascertaining the truthfulness of the allegations.

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265

5. Mr Muhammad Qasim, Director Local Fund Audit the then Director Finance SIDB, was questioned for the illegal drawl of Special Allowance, Deputation Allowance and leave salary / encashment of leave during his posting tenure there. A lengthy session of discussions was taken place with him on 24 April, 2018. He didn't record his statement on that day and requested for having some time to a proper written statement which he submitted with supporting papers on 26 April, 2018 (**Annexure - IV**). In his statement he states that the complainant is a blackmailer who has been in habit to malign the former Directors Finance and MDs of SIDB by lodging similar complaints against them. He has annexed copies of complaints against senior officers lodged by Mr Nasim Khan. By involvement in illegal activities, Mr Nasim Khan was once terminated from service by former MD, Mr Akhtar Hussain Shah and was reinstated into service illegally and without any valid authority by the then Secretary Industries, Mr Abdul Karim Khan. He has also produced supported documents such as extract from SIDB's budget books for the financial years 2013-14, 2014-15 and 2015-16 reflecting heads of deputation allowance and special allowance, etc. He states that accounts section inserted special allowance and deputation allowance in his pay bill for September 2012 on the basis of his LPC and the pre-audit section cleared it on the plea that his predecessors and former MDs had got those benefits. About leave encashment he has quoted the precedents of his predecessors who were availing the facility since 1972.

6. Though it was planned to meet the complainant, Sahibzada Nasim, President, SIDB Employees Union during SIDB's visit on April 18, 2018 but due to paucity of time meeting couldn't be held. Later on he was asked through a letter to come to Finance Department Civil Secretariat on 25 April, 2018 at 1000 hours (**Annexure - V**).

7. He came along his General Secretary, Haji Fazle-e-Khuda, on the appointed date and time. The complaint was put before him and he denied to own it rather he owned another complaint dated 5.3.2018 annexed to it (**Annexure - VI**). He narrated details of the irregular drawl of allowances and other financial benefits by Mr Muhammad Qasim, former Director Finance

28
266
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SIDB. When was asked as to why he didn't question the same irregularities committed by Mr Muhammad Qasim's predecessors and MDs, he replied that he was then ignorant of that. His behavior was unbecoming with the employees of SIDB. He was looking into the facilities available to SIDB employees for its legitimacy or otherwise and never thought over the facilities he was irregularly getting himself from SIDB.

8. Going through the documentary evidences, factual position of the allegations levelled against the accused officer, emerged as follow :-

a. Special Allowance

The officer belongs to Local Fund Audit and due to his stay in Finance Department as an OSD he got Special Allowance and carried it to SIDB in his LPC (Annexure - VII). There was no valid authorization for getting the said allowance in SIDB. The orders / instructions for grant of Special Allowance issued time to time have been disseminated to all Public Sector Departments / organization, Autonomous and Semi-Autonomous Organizations. The officer must have been in knowledge of the authorization as to whom of the said allowance was permissible. Being a Financial Manager and having said / claimed of setting / correcting the financial management of SIDB in his written statement, it is astonishing as to how he relied on the officials of Accounts / Pre-audit Sections for following bad precedents and shut his eyes for sake of self-interest on the glaring realities that there was no authorization either from Government side nor from SIDB. Salary Bill for September 2012 which includes Special Allowance is placed at Annexure - VIII. The said allowance could have been legalized if it was placed before the Board of Directors of SIDB for its approval. Salary Bills and Salary Slips showing Special Allowance and Deputation Allowance from November 2012 to November, 2017 are placed at Annexure - IX. Special Allowance from September 2012 to May 2015 have been drawn on the basis of precedent of their predecessors which approximately comes to Rs 3,82,527/-. The Special Allowance was once allowed @ 20% to employees of Secretariats on deputation to foreign

267

service in Pakistan vide letter No FD(SOSR-II)8-7/2002/Vol IV dated 6.2.2008 (**Annexure - X**) but later on the facility was taken back with effect from 27.4.2011.

The Managing Director SIDB had rightly sensed the illegality of drawl of the said Allowance and passed orders for its discontinuation forthwith vide his note dated 30.4.2015 (**Annexure - XI**).

b. Deputation Allowance

The accused officer was posted to SIDB on transfer and not on deputation basis vide Government of Khyber-Pakhtunkhwa, Establishment Department's Notification No SO(E-I)/E&AD/9-93/2012, dated 10 August, 2012 (**Annexure - XII**) and Mr Muhammad Qasim had assumed the charge on 15 August 2012 (FN) vide Charge Assumption Report placed at **Annexure - XIII**. He stayed posted on transfer at Small Industrial Development Board from 15 August 2012 to 06 December, 2017. During his stay there he had submitted applications to Secretary Finance and MD SIDB on completion of 03 years and 05 years at SIDB for repatriation to his parent department i.e Local Fund Audit (**Annexure - XIV**).

Both the posts of MD and Director Finance SIDB have been shown in the Appendix III to the Khyber Pakhtunkhwa Small Industries Development Board Service Rules, 2005 (**Annexure - XV**) and the incumbents of these posts had been drawing deputation allowance. In fact only the post of MD is a scheduled post whereas the post of Director Finance is not a schedule post. Posting against the post of Director Finance can be made on deputation basis.

Mr Muhammad Qasim being a financial manager should have realized of modifying his Notification from simple transfer orders to posting on deputation basis and got settled his terms and conditions of deputation being the very much essentials for getting benefits of deputation. Relying on wrong precedent and misguiding the MD SIDB for nor he had nor MD SIDB had any sanctioning power of deputation allowance and got tactfully sanctioned his arrears claim of deputation allowance from MD SIDB and

(268)
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continued the facility till end of his stay at SIDB (Annexure - XVI). He had considered himself on deputation on weak foundation of supporting documents e.g reflection of post of Director Finance in Appedix-III as on transfer on deputation basis and a brief for Senior Minister Finance by the former Secretary Finance indicating his transfer to SIDB on deputation basis (Annexure - XVII). Having revealed upon him at an early stage of his service in SIDB that he was not working on deputation then as to why he didn't file an application to Establishment Department for conversion of his transfer orders into deputation orders. This negligence on his part by not requesting for conversion of his simple transfer orders into deputation orders on the usual terms and conditions settled between the lending and borrowing departments, rendered the drawl of deputation allowance being irregular / illegal. Board of Director of SIDB is empowered to sanction salary, allowances and other benefits to the employees vide Rule-11 of Khyber Pakhtunkhwa Small Industries Development Board Service Rules, 2005 (Annexure - XVIII). The accused officer without any valid authority, had drawn deputation allowance for the period from 1.9.2012 to December, 2017 which approximately comes to Rs 4,80,000/-.

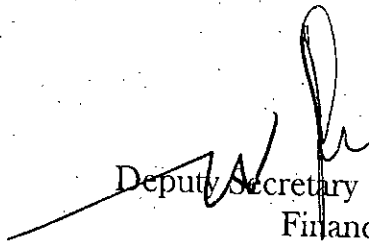
c. Leave Encashment

Leave encashment for leave earned in a calendar year was allowed to SIDB employees vide Rule-11 of SIDB Leave Rules 1978 (Annexure - XIX). Mr Muhammad Qasim the former Director Finance has unlawfully cashed his earned leave during his stay in SIDB, for Rs 2,84,078/-. Bills of encashment of leave are placed at Annexure - XX). The Board of Director in its decision taken on the agenda item No 7 of 99th meeting of SIDB Board of Directors held on 4.1.2017, has regularized the previous encashment of leave and stopped further disbursement in this regard and asked for following the Provincial Government rules in its letter and spirit (Annexure XXI). This facility Mr Muhammad Qasim has also availed on wrong precedents. He must have known that the leave encashment was not admissible in

(8/57) 63

Findings / Recommendations

- i. The Special Allowance has been drawn with effect from 1.9.2012 to May 2015 without any legal authority. It was neither allowed by the Provincial Government nor by SIDB.
- ii. By mere existence of a word "deputation" in a few documents doesn't qualify someone to be on deputation. Deputation policy is there and all are bound to strictly follow it. The Deputation allowance has been drawn during the entire period of his stay in SIDB illegally without any authentication from SIDB or Provincial Government.
- iii. Leave encashment was also drawn through five bills without any authorization. The SIDB Leave Rules, 1978 don't have any mention of authorizing the MD or Director Finance to avail the said facility.
- iv. MD SIDB should look into the unauthorized drawl of allowances and encashment of earned leave by Mr Muhammad Qasim, Director Local Fund Audit / former Director Finance SIDB during his stay at SIDB from 15 August, 2012 to 6 December, 2017.
- v. MD SIDB may place the loss occurred to SIDB through misappropriation of funds on account of irregular drawl of Special Allowance, Deputation Allowance and Encashment of earned leave by Mr Muhammad Qasim, former Director Finance SIDB, before the Board of Directors of SIDB having powers under serial No 3 of Schedule of Financial Powers, to write off the loss or otherwise.
- vi. Leave encashment availed may be deducted from his leave encashment in lieu of LPR of 365 days.
- vii. Recovery on account of illegal drawl of Special Allowance and Deputation Allowance may be effected through attaching of his pension under Pension Rules.


(Abdul Malik)
Deputy Secretary (Regulation-II)
Finance Department
(Enquiry Officer)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

No: SO(ESTT/FD/5-14/2018/Complaint

Dated Pesh: the 31-12-2018

Dinner - 21

25/1

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01/01/2018

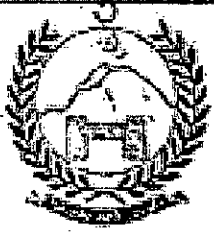
To

Mr. Muhammad Qasim,
Ex-Director Local Fund Audit, Khyber Pakhtunkhwa
House No.338, Street No.10 F/7, Phase-VI,
Hayat Abad, Peshawar.

Subject:- **DEPARTMENTAL APPEAL AGAINST THE OFFICE ORDER OF THE SECRETARY FINANCE KHYBER PAKHTUNKHWA TOWARDS RECOVERY OF LEAVE ENCASHMENT FOR 134 DAYS AND SPECIAL ALLOWANCE AMOUNTING TO RS.382527/-**

I am directed to refer to your appeal dated 7-11-2018 and to state that competent authority has been pleased to regret the subject departmental appeal, being not covered under the rules?

[Handwritten signature]
31/12
o/c SECTION OFFICER (ESTT:)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

Dated Peshawar the: 25-08-2017

65

NOTIFICATION

NO.SO(FR)FD/5-92/2005/Vol-V/6040, in exercise of the powers conferred by section 26, of the Khyber Pakhtunkhwa Civil Servant Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973, the Government of Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981, the following further amendments shall be made, namely:-

AMENDMENT

(In rule 21, for the figures "180" the figures "365" shall be substituted)

**SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Encls: No. SO(FR) FD/5-92/2005/Vol-V, 1/1/17

Date: 25-08-2017

Copy is forwarded of the above for information & necessary action to the:-

- 1) All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
- 2) The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
- 3) The Secretary to Governor, Khyber Pakhtunkhwa
- 4) The Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 5) The Secretary, Provincial Assembly, Khyber Pakhtunkhwa
- 6) All Heads of Attached Departments in Khyber Pakhtunkhwa.
- 7) All District Coordination Officers in Khyber Pakhtunkhwa.
- 8) All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
- 9) The Registrar, Peshawar High Court, Peshawar.
- 10) The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
- 11) The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Yours Faithfully,

(MUSHARRAF KHAN MARWAT)
Addl: Secretary (Regulation)

Encls: No .SO(FR) FD/5-92 /2005/Vol-V,

Copy is forwarded of the above for information to the:-

- 1) Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2) Secretaries to Government of Punjab, Sindh & Balochistan, Finance Department
- 3) All Autonomous / Semi Autonomous Bodies in Khyber Pakhtunkhwa.

Muhammad Iqbal Siddiqui

Annex-4111

66



PH. 091-9212224

FAX:091-9211860

GOVT. OF KHYBER PAKHTUNKHWA
SIDB KOHAT ROAD PESHAWAR

NO.SIDB/MD/523

DATED: 27/07/2018

To: The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department,
Peshawar.

Attention: Section Officer (Estt) Finance Department.

SUBJECT: COMPLAINT AGAINST MR. MUHAMMAD QASIM EX-DIRECTOR
LOCAL FUND AUDIT KHYBER PAKHTUNKHWA.

Dear Sir,

I have the honour to refer to your letter No.SO(ESTT/FD/5-14/2018 dated 28-06-2018 on the subject noted above and to say that Mr. Muhammad Qasim remained as Director Finance in SIDB w.e.f. 15-08-2012 to 06-12-2017. Comments on the fact-finding enquiry report in his case are as under:

Special Allowance.

Before posting to SIDB as Director Finance, the officer was OSD in Finance Department. Special Allowance had, therefore, been reflected in the LPC issued to him by Finance Department on his transfer to SIDB. He had got prepared his pay on the basis of that LPC and drawn the allowance amounting to Rs.382,527/- till its discontinuation by the Management w.e.f. 01-05-2015. Since, under the rules, the allowance was admissible only on posting in the Secretariat, therefore drawl of the same by the officer is irregular and recoverable.

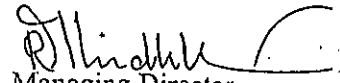
Deputation Allowance.

The post of Director Finance in SIDB is a deputation post under the Rules. The post of Managing Director SIDB has also been reflected in the rules as deputation post. According to the record available since 1999, all the DMG, PCS and other Cadre officers posted as Managing Directors till 2012 have drawn deputation allowance. Similarly all the officers posted as Director Finance upto 2017 have also drawn the said allowance. Therefore, the same cannot be termed as irregular as it is covered under the rules governing deputation to foreign service.

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iii. Leave Encashment.

So far as leave encashment is concerned, the same had been drawn by all the employees working in the SIDB including deputationists from Government Service under SIDB Rules 1978 (copy enclosed). However under the SIDB Rules 2005, government Rules had to be followed in this regard according to which only maximum of 365 days leave encashment is admissible at the time of retirement. Therefore the irregular encashment of leave was brought into the notice of SID Board of Directors in its meeting held on 4th January 2017. The Board regularized the earlier leave encashment to all employees and stopped the same forthwith (copy enclosed). Therefore the leave encashment by the officer has already been regularized by the Board and is not recoverable.


Managing Director
SIDB, Peshawar

Copy to:

Circulation File

Annex XII

XII

68



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT

Dated Peshawar, the August 10, 2012

NOTIFICATION

~~NO. SO(E-I)/E&AD/9-93/2012. The Government of Khyber Pakhtunkhwa is
ordered to post Mr. Muhammad Oasim (BS-19 Officer of Finance Department)
of Finance Department as Director (Finance), Small Industries Development
Board, against the vacant post, in the public interest, with immediate effect.~~

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

Encl: No. & date even

Copy forwarded to the:-

1. Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary to Govt of Khyber Pakhtunkhwa, Finance Department.
4. Secretary to Govt of Khyber Pakhtunkhwa, Industries Department.
5. Managing Director, Small Industries Development Board, Khyber Pakhtunkhwa.
6. Accountant General, Khyber Pakhtunkhwa.
7. Director Information, Khyber Pakhtunkhwa.
8. Asst. to Chief Secretary, Khyber Pakhtunkhwa.
9. Asst. to Secretary Establishment.
10. Officer concerned.
11. Manager, Govt. Printing Press Peshawar.

[Handwritten Signature]

SECTION OFFICER (ESTT. I)
PHONE & FAX # 091-9210529

In The Khyber Pakhtunkhwa Service Tribunal Peshawar

Appeal No 315 of 2019

Muhammad Qasim ...V/S... Chief Secretary & others.

PARAWISE COMMENTS FOR AND ON BEHALF OF RESPONDENT NO. 4

RESPECTFULLY SHEWETH: **PRELIMINARY OBJECTIONS**

- i- **That** the Petitioner has approached this Honorable Tribunal with unclean Hands hence denuded of all equities in their favor.
- ii- **That** with all due respect and regards this Hon'ble Tribunal has got no jurisdiction to entertain the matter in hand.
- iii- **That** the Petitioner has raised factual controversy, which cannot be resolved without pro& contra evidence.

Reply on Facts

1. **That** Para 1 of the Appeal is correct.
2. **That** Para 2 of the Appeal is correct.
3. **That** Para 3 of the Appeal is not related to the answering Respondent.
4. **That** Para 4 of the Appeal is correct.
5. **That** Para 5 of the Appeal is correct up to the extent of payments but rest of the para is incorrect as laid. It is respectfully submitted that the said LPC was issued to him due to his transfer from SIDB to his parent Department before any enquiry/complaint against him. But after his transfer/repatriation the Respondent No. 3 has ordered Fact Finding Enquiry in a complaint dated 11-04-2018 about admissibility of special allowance/Deputation Allowance and leave encashment and notice of recovery was issued to him on 24-05-2018 as per enquiry/Fact Finding Report.
6. **That** Para 6 of the Appeal is replied above.
7. **That** Para 7 of the Appeal is not related to the answering respondents.
8. **That** Para 8 of the Appeal is not related to the answering respondents, however all the acts and action taken by the Finance department are in accordance with law on the subject.
9. **That** Para 9 of the Appeal is incorrect as laid because the order of recovery is in accordance with law.

10. That Para 10 of the Appeal is incorrect as laid.

REPLY ON GROUNDS

A- Incorrect hence denied.

The Petitioner has been dealt in accordance with law. Detail reply given above.

B- Incorrect as laid.

All acts and actions taken by the answering Respondents are strictly in accordance with law.

C- Incorrect as laid.

It is submitted that the appellant was transferred and posted as Director Small Industries Development Board (SIDB) on deputation basis and after his repatriation to his parent department. The said department has correctly ordered fact finder inquiry. Detailed reply given above.

D- Not related to the answering respondents

Detail reply given above.

E- Incorrect hence denied.

Detail reply given above.

F- Incorrect as laid.

It is respectfully submitted that writing of the letter does not confer any right to the appellant and neither such letter can wave the law or relax the rule on the subject.

G- Incorrect hence denied.

Any illegal financial gain obtained can be recovered. It may graciously be noted that the appellant by himself is the person who allowed the said monitory benefit to himself.


H. Incorrect.

Not related to the answering respondents.

It is, therefore, respectfully prayed that the Appeal may kindly be disposed of accordingly.

Respondents No. 4

Through


Waseem Ud Din Khattak
Advocate, Peshawar