

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 370/2016

Date of institution ... 06.04.2016

Date of judgment ... 30.09.2016

Muhammad Pervez
Ex-Assistant Engineer,
Officer of the Chief Engineer (North)
C&W Secretariat, Peshawar.

... (Appellant)

VERSUS

1. **The Government of Khyber Pakhtunkhwa,**
through Chief Secretary, Civil Secretariat, Peshawar.
2. **The Secretary,** to Government of Khyber Pakhtunkhwa,
Communication and Work Department, Civil Secretariat, Peshawar.
3. **Additional Chief Secretary FATA,** FATA Secretariat,
Warsak Road, Peshawar.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED
10.03.2016 WHEREBY THE MAJOR PENALTY OF COMPULSORY
RETIREMENT AND RECOVERY OF RS. 18,55,680/- REMAINED INTACT.

Mr. Shumail Ahmad Butt, Advocate.

.. For appellant.

Mr. Muhammad Jan, Government Pleader

.. For respondents.

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

MR. PIR BAKHSH SHAH

.. MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:-

We intend to dispose of the instant service appeal of the appellant Muhammad Pervez and the connected Service Appeal No. 373/2016 of the appellant Sayed Iftikhar Hussain who lodged their separate appeals against the impugned order dated 10.03.2016 passed by the appellate authority.

2. Brief stated facts of the case are that the above two appellants who were posted in Highway Division Kurram Agency were proceeded against for the charges contained in the

charge-sheet and statement of allegations on the basis of findings of a fact finding inquiry by a three members committee. A formal inquiry was conducted by a committee comprising of two officers who submitted their reports and based on the findings of the inquiry report the competent authority imposed major penalty of compulsory retirement besides recovery of Rs. 18,55,680/- upon Engineer Muhammad Pervez and major penalty of compulsory retirement and recovery of Rs. 9,27,840 was imposed on Sayed Iftikhar Hussain Sub-Engineer.

3. The appellants then approached this Service Tribunal against the impugned orders in separate Service Appeals which were decided through a single judgment on 11.09.2015 the relevant paras whereof are reproduced as under:-

“Report of the departmental enquiry committee shows that the committee has not physically inspected the spot. When in response to departmental appeal of the appellant then XEN Battagram was directed to report who reported vide his letter No. 1565/PF, dated 07.03.2012 (copy available on file as annexure-J) that all is well. The Tribunal does not find any reason in the order of the appellate authority as to why and for what reasons this report was ignored. Similarly, the record shows that then XEN Kurram vide his letter dated 14.1.2011, after inspection of the spot reported that all works was complete; the same also seems to have not been taken into account by the appellate authority. This being so, we have carefully gone through order of the appellate authority dated 11.5.2012 by way of which the appeal of the appellant has been rejected but we are unable to find it having any reason for such rejection in contemplation of Section 24-A of the General Clauses Act. Further this rejection order is also not in accordance with the requirements of rule-5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 which is here below reproduced for facilitation of reference:-

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

- (a) Whether the facts on which the order appealed against was based have been established;
- (b) Whether the facts established afford sufficient ground for taking action; and
- (c) Whether the penalty is excessive, adequate or inadequate.

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

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

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

4. Through instant appeals the appellants have impugned order dated March 10, 2016 passed by the appellate authority in pursuance of the above cited judgment of this Tribunal. The learned counsel for the appellants argued that the appellate authority was mandated not only by this Tribunal but the law applicable to the matter that the appeal must be decided fairly and objectively but instead of applying independent judicial mind, the appellate authority chose to remain mechanical and ritualistic. He further argued that the appellate decision was based on misreading and non-reading of material available on record as the said decision altogether ignored the reports of XEN Kurram dated 14.1.2011 and XEN C&W Battagram dated 07.03.2012. He further contended that the decision even ignored findings of the inquiry committee with regard to charge No. 1 and charge No. 2 of the allegations adding further that the charges were vague in nature and added that the appellants had not been charged for any specific stretch or Kilometer of the road and hence could not be held liable for the entire length of road but could only be made answerable for the given stretch/reach/portion that was subject matter of the work done during their tenure.

He further argued that appellants had not been treated in accordance with law and rules which was violation of Article-4 of the Constitution of Islamic Republic of Pakistan, 1973 adding further that regular inquiry which was mandatory under Section-5 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was not conducted nor was the appellants given full opportunity of defence and opportunity of cross-examination and hence the entire proceedings were violative of the mandatory provisions of law and as such the impugned penalty was not sustainable in the eyes of law and liable to be set-aside. He further argued that since factual controversies were involved in the matter which necessitated the holding of a detailed regular inquiry but such inquiry was not conducted and the inquiry mostly based their findings upon surmises, conjectures and suspicions as was evident from the findings recorded against charge No. 1 by the inquiry committee viz "It is very difficult to differentiate between the old structures with the new one after one and half years' time and floods affecting the structure" and the phrase "it seems that irregularities have been made in payment". He further contended that as per charge No. 3 fudge payment of Rs, 27,83,520 for removal of heavy slips was made but the roads were found full of heavy slips and added that as per statement of inquiry committee in para-3 of recommendations that it was improbable to happen, hence proof of the charge become controversial and should have been verified by on the spot inspection and evidence collection from locals. He stated that there were no verbal and documentary evidence to that effect therefore the charge had not been established. He further contended that the appellate authority while re-examining the appeals of the appellants rejected the appeals without following the requirements of rule-5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 and added that appeals were not decided within 60 days as directed by this Hon'ble Tribunal which was glare violation of the court order. The learned counsel for the appellants also argued that the inquiry was conducted on the pattern of questionnaire and not on proper format wherein full opportunity of defence and cross-examination of prosecution witnesses should have been provided to the appellants and added that the issue involved factual controversy as would reveal from the report of XEN Highway Division Kurram dated 14.01.2011 and report of XEN C&W Division Battagrami

dated 07.03.2012 who gave different reports which support the appellants. He prayed that on acceptance of the instant appeals the impugned order of appellate authority dated 10.03.2016 as well as the impugned orders dated 12.01.2012 and 11.05.2012 may be set-aside and the appellants may be reinstated into service with all back benefits. He relied on 2009 SCMR 281, 2009 PLC (C.S) 19, 1993 SCMR 1440, 2005 PLC (C.S) 1559 and 2008 PLC (C.S) 786

5. The learned Government Pleader resisted the appeal and argued that all codal formalities were fulfilled before passing of the impugned order dated 10.03.2016 by the appellate authority. He further argued that there was no bar on the inquiry officer/committee to conduct inquiry on the pattern of questionnaire and objection of learned counsel for the appellants to that effect carried no legal weight. He prayed that the appeals being devoid of any merits may be dismissed. He relied on 2005 SCMR 1802.

6. Arguments of the learned counsels for the parties heard and record perused.

7. From perusal of the record it transpired that beside fact finding inquiry by a three members committee a formal inquiry through a two members committee was conducted in the allegations against the appellants as contained in the charge-sheet and statement of allegations. Besides those inquiries inspection of the cite was carried out on the direction of higher-ups of the department through XEN Highway Division Kurram(Successor) of the appellant and XEN C&W Division Battagram who submitted their reports. The original service appeals of the appellants were decided vide judgment of this Service Tribunal dated 11.09.2015, wherein after hearing detailed arguments of the learned counsel for the parties the case was remanded to the appellate authority in the following terms:-

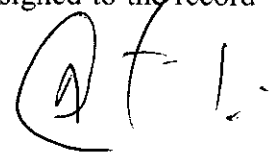
“For the reasons stated above, the Tribunal is constrained to set-aside order dated 11.5.2012 passed by the appellate authority and to remand the case to the appellate authority with direction to examine the case in its entirety and to decide the appeal strictly in accordance with rule 5 ibid. The appeal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

8. The order passed in pursuance of the above directions of the Tribunal however does not appear a speaking/reasoned order because rejection of the departmental appeals of the appellants were attributed to the recommendations of the inquiry committee wherein the committee stated "it seems irregularities have been made in the payment". Moreover instead of producing credible evidence against the appellants, it was stated that the accused could not present any proof of innocence in their support which is not fair as the burden of proof rests with the respondents. In the above scenario, we are constrained to set-aside the impugned orders dated 10.03.2016, 12.01.2012 and 11.05.2012, reinstate the appellants in service and remand the case to the respondent-department with direction to conduct de-novo inquiry in the case within a period of sixty days after receipt of this judgment strictly in accordance with law and rules providing full opportunity of defence and cross-examination to the appellants before passing of appropriate order by the competent authority. The matter of back benefits shall be subject to the outcome of the de-novo inquiry. The appeals are disposed of in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.09.2016



(PIR BAKHSH SHAH)
MEMBER



(ABDUL LATIF)
MEMBER

01.07.2016

Appellant in person, M/S Saleem Shah, Supdt and Kefayat Ullah, Admin Officer alongwith Mr. Ziaullah, GP for respondents present. Written reply submitted. Copy handed over to the appellant. To come up for rejoinder and final hearing on 17.08.2016.


Member

17.08.2016

Counsel for the appellant, M/S Kifayatullah, A/O and Gul Nawaz, Assistant alongwith Additional AG for respondents present. Rejoinder not submitted and requested for further time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 30-9-16 before D.B.

Member

Member

30.09.2016

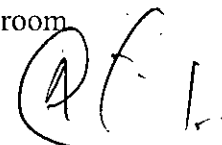
Appellant with counsel, M/S Kifayatullah, Admin Officer and Saleem Shah, Superintendent alongwith Mr. Muhammad Jan, Government Pleader for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today placed on file, this appeal is disposed of as per the said detailed judgment. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.09.2016



(PIR BAKHSH SHAH)
MEMBER


(ABDUL LATIF)
MEMBER

12.04.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Assistant Engineer when subject to enquiry on the allegations of certain financial irregularities made in repair of ADP schemes and vide impugned order dated 08.11.2011 appellant compulsorily retired from service with directions of recoveries where-against appellant approach this Tribunal and vide judgment dated 11.09.2015 in service appeal No. 585/2012, this Tribunal directed the appellate authority to decide the departmental appeal of the appellant in accordance with law. That vide impugned order dated 10.3.2016, the appellate authority has maintained the findings of the enquiry committee and hence the instant service appeal on 06.04.2016.

Appell. Deposited
Security & Process Fee
21.4.16

21.4.16 That the enquiry was not conducted in the prescribed manner and opportunity of personal hearing was not afforded to the appellant. That the allegations were not substantiated in the enquiry and no opportunity of cross examination extended to the appellant.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 01.06.2016 before S.B.


Chairman

01.06.2016



Appellant with counsel and Mr. Saleem Shah, Supdt. and Kifayatullah, Admn. Officer for the respondents present. Requested for adjournment. To come up for written reply/comments on 01.07.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 370/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	06.04.2016	<p>The appeal of Mr. Muhammad Pervez presented today by Mr. Shumail Ahmad Butt Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>12.4.16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2	11-04-2016	

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 370/2016

Muhammad Pervez

Versus

The Govt. of KPK and Others

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APPELLANT

Through


Shumail Ahmad Butt,


H Bilal Khan

& 
Zarshad Khan

Advocates, Peshawar

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Cell#03018580077

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 370 /2016

Muhammad Pervez
Ex-Assistant Engineer,
Office of the Chief Engineer (North),
C&W Secretariat, Peshawar,

A.W.F. Province
Service Tribunal
Diary No. 340
Dated 06-04-2016

.....Appellant

Versus

1. The Govt. of Khyber Pakhtunkhwa,
Through Chief Secretary,
Civil Secretariat, Peshawar.
2. The Secretary,
To Govt. of Khyber Pakhtunkhwa,
Communication and Works Department,
Civil Secretariat, Peshawar.
3. Additional Chief Secretary FATA,
FATA Secretariat,
Warsak Road, Peshawar.

.....Respondents

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10/03/2016 WHEREBY THE MAJOR PENALTY OF COMPULSORY RETIRMENT AND RECOVERY OF RS.18,55,680/- REMAINED INTACT.

May it please this Honorable Court

1. That while serving as Assistant Engineer (B&R) in the office of Chief Engineer (North) C&W Peshawar, appellant was served with a Charge Sheet and Statement of allegations dated 08/01/2011 alleging therein that irregularities have been committed in the Kirman-Sikaram Road and Surpakh to Star Patti Road when appellant was posted as Executive Engineer Highways Division, Kurram Agency and holding the Charge of SDO Highways Sub Division Kurram Agency. Appellant submitted a detailed reply dated 03/02/2011 in response of the Charge Sheet and Statement of allegations ibid,

6/4/16

wherein he with facts and figures clarified his position and vehemently denied the allegations leveled against him.

*(Charge Sheet and Statement of allegations is annexure "A")
(Appellant detailed reply dated 03/02/2011 is annexure "B")*

2. That subsequently an irregular enquiry was conducted by the Enquiry Committee by issuing a questionnaire to the appellant which was duly answered vide reply to the questionnaire dated 01/04/2011 and after which the so called enquiry report was submitted to the competent authority on 02/04/2011 and subsequently much after statutory period vide letter dated 02/06/2011 an addition was also made to the recommendations of the Enquiry Report *ibid*.

*(Reply to questionnaire dated 01/04/2011 is annexure "C")
(Enquiry report dated 02/04/2011 is annexure "D")
(Recommendation of enquiry report dated 02/06/2011 is annexure "E")*

3. That the final Show Cause Notice was served upon the Appellant vide letter dated 09/06/2011 wherein Major Penalty of compulsory retirement besides recovery of Rs.18,55,680/- was proposed against the appellant to which he once again submitted a comprehensive reply thereby clarifying the entire position to the competent authority and denied the charges leveled against him.

*(Final Show Cause Notice is annexure "F")
(Reply to the Final Show Cause is annexure "G")*

4. That without considering the reply of the appellant, the impugned order No.SOE/C&WD/8-21/2010 dated the Peshawar 12/01/2012 was passed whereby major penalty of compulsory retirement besides recovery of Rs. 18, 55,680/- were imposed upon the appellant.

(Impugned order dated 12/01/2012 is annexure "H")

5. That being aggrieved by the impugned order *ibid*, appellant preferred a departmental appeal to the appellate authority on 23/01/2012 who referred the matter to the Chief Engineer (FATA) Works & Services Department, who called for the Report of the Executive Engineer concerned who submitted his report back vide letter dated 07/03/2012 wherein the actual position was explained "*that structural works including retaining walls and removal of slips on both the roads were found completed and intact and at the moment no road slips were found. In short whatsoever been paid to the contractor under the AMO&R 2008-2009 AND 2009-2010 was found on the spot and even after lapse of more than three years, no slip was found and no pulverization of the structural work was observed. The roads were found*

neat and clean” but in spite of the same the appeal was rejected and communicated vide letter dated 11/05/2012.

(Departmental Appeal dated 23/01/2012 is annexure “I”)

(Report of Executive Engineer is annexure “J”)

(Appeal rejected dated 11/05/2012 is annexure “K”)

6. That then the appellant feeling aggrieved knocked the door of this Honorable Tribunal by way of Service Appeal No. 585 of 2012 under Section-10 of The Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 Read with Section-4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974.

(Copy of the service Appeal No.585/2012 is annexure “L”)

7. That this Honorable Tribunal was kind enough to remand the above mentioned service appeal on 11/09/2015 to the appellate authority with directions to examine the case in its entirety and to decide the appeal strictly in accordance with rule 5 ibid. Furthermore the appellate authority was also directed to decide the same within 60 days.

(Copy of the Judgment dated 11/09/2015 is annexure “M”)

8. That the Appellate Authority once again rejected the appeal of appellant ritualistically vide its judgment and order dated 10.03.2016 (hereinafter referred to as the “impugned appellate decision” for facility of reference) while ignoring altogether not only the judgment and order of this Honorable Tribunal and shutting eyes from the material available on record.

[

Hence this appeal inter-alia on the following grounds:-

Grounds:

- A. *Because* the Appellate authority was mandated not only by this Honorable Tribunal but the law applicable to the matter that the appeal must be decided fairly, objectively and in light of the directions of this Honorable Tribunal but instead of applying independent judicial mind, the Appellate authority has chosen to remain mechanical and ritualistic.
- B. *Because* the impugned appellate order is passed without any legal or plausible justification and is therefore liable to be reversed.

- C. *Because* the impugned appellate decision is fraught with partiality and is scant and scrumpy in material particulars.
- D. *Because* the impugned appellate decision is based on misreading and non-reading of material available on record.
- E. *Because* the impugned appellate decision has ignored altogether the report of the XEN dated 07.03.2012, deputed by the Appellate Authority himself in previous round of litigation.
- F. *Because* in previous round, before this Honorable Tribunal, Government has absolved the Appellant of Charge No. 2 in view of the statement of Sr.G.P., yet the Appellate Authority chose to repeat earlier decision mechanically and ritualistically.
- G. *Because* even in the inquiry report, previously, the inquiry officer has opined that nobody can determine the age of the structure therefore charge No. 1 also becomes without basis or substantiation.
- H. *Because* so far as the charge No.3, is concerned, which has also been resounded in the impugned order of the appellate authority regarding slips, the same has not been supported by the XEN deputed by the appellate authority itself. Moreover there is self-contradiction between charge No.3 which states that *"all the roads were full of slips"* however appellate authority declared it improbable to happen and the relevant portion is reproduced as *"payment on slips shows that every inch of it was full of slips, which is rather improbable to happen"*.
- I. *Because* charges are vague in nature as the Appellant has not been charged for any specific stretch or KM. He cannot be held liable for the entire stretch of road but can only be made answerable for the given stretch/reach/portion that was subject matter of work done during his tenure.
- J. *Because* Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders, which are unjust, unfair and hence not sustainable in the eyes of law.
- K. *Because* no regular enquiry, which is mandatory under Section-5 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was conducted into the allegations

leveled against the appellant. No statement was recorded in the presence of the appellant nor any documentary evidence was collected in his presence nor was he provided any opportunity of cross-examination, thus the entire proceedings of the enquiry being violative of mandatory provision of law are void and hence the impugned penalty is not sustainable on the eye of law and liable to be set aside. Moreover, the Enquiry Report has been submitted after 84 days, whereas under the law, the same was to be completed within 25 days and even competent authority the same to be completed within the same statutory period.

- L. *Because* since there was factual controversy involved in the matter which necessitated the holding of a detailed regular enquiry into the allegations without which the controversy could not be resolved but unfortunately the regular enquiry was deliberately omitted which was prejudicially affected the appellant and as such has resulted in serious miscarriage of justice. It is a settled law enunciated by the Apex Court that in cases of factual controversies, regular enquiry is must otherwise no penalty much less major could legally be imposed. Viewed from this angle the impugned penalty is without lawful authority and hence of no legal effect.
- M. *Because* even the questionnaire was deliberately sent to XEN Parachinar despite the knowledge of the Enquiry Committee that appellant was posted at Peshawar which has resulted into some delay. This reflects the biased and partial attitude on the part of the Enquiry Committee to punish the appellant at all cost.
- N. *Because* the impugned order is against the principle of natural justice in as much as appellant has not been afforded a meaningful personal hearing by the Enquiry Committee. He was also not provided the same opportunity by the competent authority and by the appellate authority in spite of his repeated requests. Thus the impugned order is against the principle of natural justice and as such is not maintainable.
- O. *Because* the perusal of the Enquiry Report would reflect that the same is not based upon any solid proof and evidence rather the same has been based upon surmises, conjectures and only suspicions which, however, the strongest they might be cannot take the place of a proof. Moreover the Enquiry Committee has gone beyond the scope of the charges contained in the Charge Sheet and the Statement of allegations and it is also a settled

principle of law that finding beyond the scope of Charge Sheet is nullity in the eye of law in as much as the accused is to be informed about the charges which he will be required to meet in advance.

- P. *Because* recommendation No.2 of the Enquiry Committee provides that *"Sub-Engineer has signed the M.B Book; therefore, it cannot be proved that the site was not visited before the payments."* Thus the charge No.2 regarding the fudge payment to the contractor without visiting the Roads has not been proved by the Enquiry Committee but in spite of the same, the same charge has been included in the Show Cause Notice as proved, which signifies that the competent authority has neither gone through the Enquiry Report nor applied his independent judicious mind to the material on the record.
- Q. *Because* in the recommendation No. 1 the Enquiry Committee has stated that *"it is very difficult to differentiate between the old structures with the new one after one and half years' time and floods affecting the structure."* Now the question arises that how the charge can be said to have been proved when the Enquiry Committee has categorically admitted that it was difficult to differentiate between old structures and the new ones because of the lapse of time and due to the impact of subsequent floods. It appears that the Enquiry Committee has not visited the spot but has prepared the Report while sitting at Peshawar. Moreover, in the remaining part of the recommendations, the Committee observed that *"it seems that irregularities have been made in payment"* whereby 'seems' cannot take the place of 'proves'.
- R. *Because* the Enquiry Committee has failed to pinpoint any violation of rules, instructions and has not established any sort of misappropriation of public money on the part of the appellant. This particular charge is also beyond the scope of Charge Sheet and Statement of allegations and is therefore, bad in the eye of law. No one can be penalized on the basis of "seems, appears, etc."
- S. *Because* Charge No.3 says that fudge payment of Rs.27, 83,520/- for removal of heavy slips was made but the roads were found full of heavy slips. As per the Show Cause the charges have been proved, which reflects that the competent authority has blindly relied upon the ipse dixit of the Enquiry Committee. As earlier submitted the Enquiry Committee has never visited the spot for confirmation/verification, otherwise it

would have collected evidence of local witnesses in support of the charge. Since there is no verbal and documentary evidence to this effect therefore the charge has not been established.

- T. Because* the Report of the Enquiry Committee is also clearly belied by the letter of the incumbent Executive Engineer dated 14/01/2011 wherein he has confirmed that *he has inspected all those M&R works in Para Chamkain area of Central Kurram on 30/12/2010 which were under enquiry and payments made thereon during 2008-2009 and 2009-2010 and that the respective M&R contractor has completed all the works pointed out by the Enquiry Committee in their report according to the standard specification and payment made thereon during 2008-2009 and 2009-2010.* Thus this is a certificate to the fact that the charge was false and the Government sustained no loss.
- U. Because* even the appellate authority enquired into the actual facts on the spot by referring the matter to the Chief Engineer (FATA) who directed the Executive Engineer C&W Division Battagram concerned for the needful who has reported back the matter vide his letter dated 07/03/2012 and thus has elucidated the correct position in favor of the appellant but even then strange enough that the appeal of the appellant has been rejected. That the appellate authority(Chief Minister) has not given any weight to the report of Executive Engineer
- V. Because* the findings of the Enquiry Committee in Para-1 of the observations are also the result of the going beyond the scope of the Charge Sheet. The condition introduced by the Chief Engineer is the creation of his own mind unconcerned with the facts and not supported by any law and rules that same was meant for black topped roads and cannot be applied to the shingled roads which do not involve resurfacing. The release letters say that the expenditure should be incurred judiciously with consultation and approval of the concerned Political Agent and the appellant has followed it being meant for shingled roads approved and decided by the Political Agent as is evident from the list approved by the Political Agent, thus no irregularity has been committed.
- W. Because* the Competent Authority (Chief Minister) while re-examining the appeal of the appellant has rejected the appeal without following the requirements of rule-5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986.

- X. *Because* the appellate authority was directed by the Honorable Tribunal to decide the same within **60 days** however it was decided after almost **180 days** which is a clear violation of the Court order.
- Y. *Because* the Appellant was not given chance of being heard by the appellate authority in spite of several requests.
- Z. *Because* all the Executive Engineers were directed through a letter dated 18/08/2010 to submit the report of damages occurred during the ongoing flood catastrophe.
- AA. *Because* after completion of work on site traffic remained flowing smoothly and no complaint has been made from public in duration of **18 months** since its opening till floods however Suddenly after floods in the mid of 2010 roads were inspected and reported to be full of slips.
- BB. *Because* no members of the enquiry Committee bothered to visit the site in person and carry out the spot inspection to verify the facts on grounds.
- CC. *Because* appellant will raise other grounds at the time of arguments with the prior permission of the Court.

It is therefore most humbly prayed that on acceptance of the instant appeal, the impugned order of the appellate authority dated 10/03/2016 as well as the impugned orders dated 12/01/2012 and 11/05/2012 may graciously be set aside and appellant be reinstated into service with all back benefits.

Any other relief not specifically asked for may also be granted to the appellant if deemed fit, just and appropriate.

Appellant

Through

Shumail Ahmad Butt,
Advocate Supreme Court
of Pakistan,

H Bilal Khan

&

Zarshad Khan

Advocates, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No _____/2016

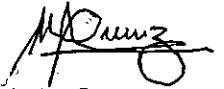
Muhammad Pervez

Versus

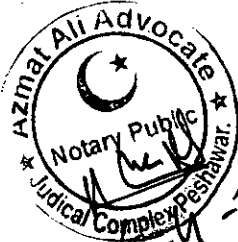
The Govt. of KPK and Others

AFFIDAVIT

I, MUHAMMAD PERVEZ (Appellant), Ex Assistant Engineer R/O Tauheed colony, PO Jhangi, Manshera Road, Abbotabad do hereby solemnly declare that the accompanying Appela is true and correct to the best of my Knowledge and belief and nothing has been concealed from this Honorable Tribunal.


DEPONENT

ATTESTED


6-4-2016

9A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No _____/2016

Muhammad Pervez

Versus

The Govt. of KPK and Others

ADDRESSES OF PARTIES

Appellant

Muhammad Pervez (Appellant), Ex Assistant Engineer R/O Tauheed colony,
PO Jhangi, Manshera Road, Abbotabad.

Respondents

1. The Govt. of Khyber Pakhtunkhwa,
Through Chief Secretary,
Civil Secretariat, Peshawar.
2. The Secretary,
To Govt. of Khyber Pakhtunkhwa,
Communication and Works Department,
Civil Secretariat, Peshawar.
3. Additional Chief Secretary FATA,
FATA Secretariat,
Warsak road, Peshawar.

Immediate

Charge Sheet

A



GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/8-21/2010
Dated Peshawar, the January 08, 2011

10

TO

- 1) Engr Shahid Hussain (BS-18)
Director (P&M) C&W Department
Peshawar
- 2) Engr Zariful Mani (BS-18)
(PCS SG) PPHI, FR, Peshawar

Subject: MIS-APPROPRIATION IN PUBLIC EX-CHEQUER

I am directed to refer to the subject noted above and to state that the competent authority (Chief Secretary) has been pleased to appoint you as inquiry committee to conduct formal inquiry under RSO 2000 in the subject case against the following officer/official.

- 1) Muhammad Pervez (BS-17)
Assistant Engineer (B&R)
O/O Chief Engineer (North)
C&W Peshawar
- 2) Iftikhar Hussain, Sub Engineer
O/O Highway Division Kurram Agency

2. I am further directed to enclose herewith copies of the charge sheets and statement of allegations duly signed by the competent authority (Chief Secretary) with the request to serve these upon the above accused officer/official and initiate proceedings against him under the provision of the Khyber Pakhtunkhwa Removal from Service (special powers) Ordinance, 2000 and submit the inquiry report within 25 days positively.

Encl: As above

(RAHIM BADSHAH)
SECTION OFFICER (ESTT)

Endst even No. & date

1. Chief Engineer (FATA) C&W Peshawar. He is requested to depute an officer to assist the inquiry committee and provide them all relevant record as required to the inquiry Committee.
2. Copy alongwith copy of the charge sheet/statement of allegations is forwarded to the following for information with the direction to appear before the inquiry committee on the date, time and place fixed by them for the purpose of inquiry proceedings
 - i. Muhammad Pervez (BS-17) Assistant Engineer (B&R) O/O Chief Engineer (North) C&W Peshawar
 - ii. Iftikhar Hussain, Sub Engineer O/O Highway Division Kurram Agency at Parachinar

ATTE

SECTION OFFICER (ESTT)

Attested

(11)

CHARGE SHEET

Whereas, I, Ghulam Dastgir, Chief Secretary, Khyber Pakhtunkhwa, charge you, Muhammad Pervez (BPS-17), presently posted as Assistant Engineer (B&R) office of Chief Engineer (North) C&W Peshawar, as under:-

That you while posted as Executive Engineer Highway Division Kurram Agency and holding the charge of SDO Highway Sub Division Kurram Agency (now reverted as Assistant Engineer BS-17), committed the following irregularities in the (i) Kirman-Sikaram Road and (ii) Surpakh to Star Parti Road:

1. You have made fudge payment amounting to Rs.23,86,863/- to the contractor on old structures i.e. retaining walls, toe walls etc, on the above noted schemes constructed in 2006-07 as an ADP scheme and none of the fresh structures taken in MB were at site.
2. You have made fudge payment out of AOM&R funds during 2009-10 to the contractor but not visited these roads for verification/inspection and the measurements have been supplied by the Munshi of the contractor.
3. You have made fudge payment amounting to Rs.27,83,520/- on removal of heavy slips but all the roads were found full of heavy slips.

*Censure
not proceed
Removal recommended*

2 By reasons of the above, you appear to be guilty of misconduct under Section-3 of Khyber Pakhtunkhwa, Removal from Service (Special Powers) Ordinance, 2000 and have rendered yourself to all or any of the penalties specified in the Section-3 of the Ordinance ibid.

3 You are, therefore, required to submit your written defence within seven (7) days of the receipt of this charge Sheet to the Inquiry Officer/Committee; as the case may be.

4 Your written defence, if any, should reach the Inquiry Officer/Committee within specified period, failing which it shall be presumed that you have no defence to put in and in that case exparte action shall follow against you.

5 A Statement of Allegations is enclosed.

[Signature]
ATTESTED
(Ghulam Dastgir)
Chief Secretary
Khyber Pakhtunkhwa

Attested

___/01/2011

DISCIPLINARY ACTION

I, Ghulam Dastgir, Chief Secretary, Khyber Pakhtunkhwa, as competent authority, am of the opinion that Muhammad Pervez (BPS-17), presently Assistant Engineer (B&R), office of Chief Engineer (North) C&W Peshawar, has rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of Section-3 of the NWFP, Removal from Service (Special Powers) Ordinance, 2000:-

STATEMENT OF ALLEGATIONS

That he while posted as Executive Engineer Highway Division Kurram Agency, and holding the charge of SDO Highway Sub Division Kurram Agency (now reverted as Assistant Engineer BS-17) committed the following irregularities in the (i) Kirman-Sikaram Road and (ii) Surpakh to Star Patti Road:

- i. He has made fudge payment amounting to Rs.23,86,863/- to the contractor on old structures i.e. retaining walls, toe walls etc, on the above noted schemes constructed in 2006-07 as an ADP scheme and none of the fresh structures taken in MB were at site.
- ii. He has made fudge payment out of AOM&R funds during 2009-10 to the contractor but not visited these roads for verification/inspection and the measurements have been supplied by the Munshi of the contractor.
- iii. He has made fudge payment amounting to Rs.27,83,520/- on removal of heavy slips but all the roads were found full of heavy slips.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Inquiry Committee consisting of the following is constituted under Section-5 of the Ordinance:-

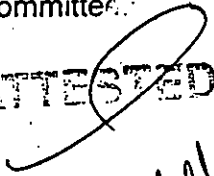
- i. Engr. Shahid Hussain Director (P&M) CR
- ii. Mr. Zafar Mani, PPHI FR Peshawar

3. The Inquiry Committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, receive its findings and make, within 25 days of receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the Inquiry Committee.


(Ghulam Dastgir)
Chief Secretary
Khyber Pakhtunkhwa

ATTESTED


Attested

___/01/2011

No. 237 /PFDated: 03/02/2011.

To: The Members Inquiry Committee;

(i) Engr. Shahid Hussain,
Director (P&M) C&W Deptt: Peshawar

(ii) Mr. Zariful Mani,
(PCS SG) PPHI, FR, Peshawar.

Subject: REPLY TO CHARGE SHEET/ STATEMENT OF ALLEGATIONS:

Reference: Your No. D(P&M) C&W/1-31/2010; dated 27.1.2011.

Before addressing the charge (as contained in the Charge sheet) and raising preliminary objections against it, I wish to say that the fate of every one is with *Almighty Allah*, who will never allow his creature to suffer for nothing and/ or holding an accused guilty without bringing sufficient proof against him. He has ordained to do justice with due care and caution while dealing with the fate of an accused. With this submission, I hope justice at your gracious hands as I have been the victim of sharp conspiracy for the last one year.

With due respect, the charge sheet served upon me is *vague* for want of necessary details as required under the law. It seems to have been drafted in a whimsical manner without confirmation of the factual position.

In general it speaks of committing irregularities and making payments without visiting the (i) *Kirman-Sikaram Road* and (ii) *Surpakh to Star Patti Road*. The charges at (i), (ii) and (iii) speak of making fudge payments of *Rs.23,86,863/-* for structure works and *Rs.27,83,520/-* against slips removal without mentioning break up of cost with reference to Kilometer number and Rd of each road. That the measurements were supplied by the Munshi of the contractor. *I deny the whole charge being false and based on verbal statement attributed to the Sub Engineer.*

In order to prove contradiction between the charge sheet and payment position as per list of vouchers attached by the inquiry committee of the PA Kurram regarding the above mentioned 2 Nos roads is described as under:

S.No.	Name of Road	Voucher # & Dt	MB # & Page	Amount paid
(i)	Kirman-Sikaram Road	17&18/CK, dated 23.6.2009 & 75/CK, dated 30.6.2009.	1316 at pages 102-106 & 106- 110 & 1299 at pages 106-110	Rs. 11,97,017/- For structure and slips.
(ii)	Surpakh to Star Patti Road	5/CK to 11/CK, dated 29.4.2010.	1324 at pages 6-10 to 35-39	Rs. 27,80,155/- For structure and slips.

(List of vouchers annexed therein by the inquiry committee is attached as annexure A for your perusal).

This contradiction in the amounts "stated in the Charge sheet" and "that paid as per list attached by the inquiry committee" (tabulated as above) can be noticed at a glance, which is much sufficient to belie/ disprove the charge.

ATTACHED
Attested

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The members of the Inquiry Committee, while conducting preliminary inquiry ordered by the Political Agent Kurram Agency, claims to have inspected the said roads on 4.10.2010, while according to vouchers, the works were carried out prior to 30.6.2009 and 29.4.2010. The delay in inspection of the repair works carried out on sites, appears to be 1 ½ years for former payments and nearly 6 month for latter payments.

With due respect, the whole world has witnessed the unprecedented rains/floods that presented the picture of "Toofan-e-Nooh", which have caused huge losses in July 2010. I enclose herewith a statement of Wikipedia from internet at (http://en.wikipedia.org/wiki/2010_Pakistan_floods) for your kind perusal and realizing the things (Please find excerpt from Wiki as annexure B).

May I ask as to why some one did not complain against me at proper time in June 2009 and April 2010, when the works done could easily be verified on spot? Why the complainant waited for long one and a half year when the heavy rains/ floods changed our good into bad. The abnormal delay in reporting the so called fudge payments constitutes a criminal offence against the complainant who ever is he. Why the works were not inspected before destruction made by the flood? It was a futile exercise to confirm things after the heavy rains/ floods. Heavy slips can occur again and again after the rains/ flood even after removal of the earlier ones. It's a matter of common sense.

The charge or allegation with such an abnormal delay is not permissible under rule of law. The delay prima facie suggests malafide of the complainant. In order to bring truth to the surface and sift grain from chuff, the complainant (if any) may be examined. In absence of any evidence/ witness, the charge falls to the ground proving my innocence.

So far as the charge at S.No.(ii) regarding making fudge payments out of AOM&R funds during 2009-10 to the contractor "without visiting these roads for verification" and "supply of measurements by the Munshi of the contractor" is concerned, the same is totally false. A single penny has not been paid without physical verification.

In addition to the aforesaid submissions, it is further added that necessary rectification have been completed by the contractor concerned after floods at his own risk and cost hence the Government have sustained no loss. The incumbent Executive Engineer has confirmed this fact in his report addressed to the PA Kurram on 14.1.2011 (Please find copy of his report attached as annexure C).

It is, therefore most humbly prayed that on acceptance of this reply, undersigned may very kindly be exonerated of the charge of Misconduct and also an opportunity to be heard in person may kindly be provided.

Received on 4/2/11 at 11.10 AM. along with three encs.
4/2/11

O/C *MP* 03/2/2011
(MUHAMMAD PERVEZ)
Assistant Engineer,
O/o Chief Engineer (North)
C&W Department, Peshawar.

ATTESTED

Attested
Ahmad Ali
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Ann: A

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S. No.	Name of Road	Voucher No.	Date	M.B. No.	Page No.	Amount Paid
						Payment made in 6/2009
1	Surpakh to Bazai road.	24/CK	23-06-09	1316	54-58	397930/-
2	-do-	23/CK	-do-	-do-	59-64	398672/-
3	-do-	22/CK	-do-	-do-	27-33	394939/-
4	Makhrani to Sarpakh road via Gogani.	21/CK	-do-	-do-	69-73	398594/-
5	-do-	20/CK	-do-	-do-	74-78	399031/-
6	-do-	19/CK	-do-	-do-	79-83	398594/-
7	Kirman-Sikaram road	18/CK	-do-	1299	106-110	399505/-
8	-do-	17/CK	-do-	-do-	102-106	398918/-
9	Surpakh-Bazai road	25/CK	-do-	1316	45-49	399750/-
10	-do-	26/CK	-do-	-do-	50-53	395229/-
11	-do-	27/CK	-do-	-do-	65-68	220071/-
12	-do-	28/CK	-do-	1299	69-101	397971/-
13	-do-	29/CK	-do-	-do-	92-96	398964/-
14	-do-	30/CK	-do-	-do-	88-92	396276/-
15	Makhrani- Surpakh via Gogani.	31/CK	-do-	1316	85-88	380035/-
16	-do-	32/CK	-do-	-do-	89-92	396132/-

Attested
Advocate
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ATTESTED

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17	Surpakh to Baza road	33/CK	-do-	-do-	34-39	394769/-
18	-do-	34/CK	-do-	-do-	40-44	398219/-
19	Makhrani to Surpakh via Gogani.	74/CK	30-06-09	-do-	-	49273/-
20	Kirman-Sikaram road	75/CK	-do-	-do-	79-83	398594/-
				A	TOTAL	7411466/-
						Payment made in 3/2010
21	Surpakh to Taudu Obu Via Gundal	3/UK	16-03-10	1324	1-5	396364/-
22	-do-	4/UK	-do-	-do-	111-114	399008/-
23	-do-	5/UK	-do-	-do-	93-98	399549/-
24	-do-	6/UK	-do-	-do-	102-106	389649/-
25	-do-	7/UK	-do-	-do-	107-110	399590/-
26	-do-	8/UK	-do-	-do-	98-102	395939/-
27	-do-	9/UK	-do-	-do-	120-124	395041/-
28	-do-	10/UK	-do-	-do-	115-119	394298/-
				B	TOTAL	3169538/-
						Payment made in 4/2010.
29	Sarpakh to Star Patti. Phase-III	5/CK	29-04-10	1324	20-34	398383/-

Attested Amount 2

ATTESTED

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30	-do-	6/CK	-do-	-do-	25-29	397751/-	✓
31	-do-	7/CK	-do-	-do-	16-19	395229/-	✓
32	-do-	8/CK	-do-	-do-	35-39	398985/-	✓
33	-do-	9/CK	-do-	-do-	20-24	399063/-	✓
34	-do-	10/CK	-do-	-do-	12-15	398594/-	✓
35	-do-	11/CK	-do-	-do-	6-10	392150/-	✓
36	Surpakh to taudo obu via Gundal.	12/CK	-do-	-do-	40-44	398234/-	
				C	TOTAL	3178389/-	

A = Rs. 74,11,466/-

B = Rs. 31,69,538/-

C = Rs. 31,78,389/-

TOTAL: A+B+C = Rs. 1,37,59,393/-

In response to the above, we the three members along-with the Sub Engineer in-charge, Mr. Iftekhar Hussain jointly inspected the following mentioned two roads in detail on 04-10-2010, where as the rest of the roads were not shown to us, with the plea by the Sub Engineer and contractor that all these roads are presently completely closed for every type of traffic due to heavy slips during recent rains.

We the under-signed inspected the following two roads in detail.

1. Kirmah-Sikaram road.
2. Surpakh to Star Patti road.

So for the detail inspection of these two road are concerned, old road structures i-e-Retaining Walls, toe-walls etc were shown to us, which were constructed probably constructed in 2006-07 during its original construction as an ADP scheme and non of the fresh structures taken in measurement book were at site.

The Sub Engineer was lastly directed to show us the structure work, which are recently constructed by the contractor, for which such huge payment has been made out of AOM&R fund during 2009-10. In reply he clearly told us that he has never come to these roads for inspection as well as for measurements (for which payments have been made) and the measurements have been supplied to him by the munshi of the contractor.

Attested
Advocate
S

ATTESTED

Ann: B

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2010 Pakistan floods

From Wikipedia, the free encyclopedia

http://en.wikipedia.org/wiki/2010_Pakistan_floods

The **2010 Pakistan floods** began in late July 2010 following heavy monsoon rains in the Khyber Pakhtunkhwa, Sindh, Punjab and Balochistan regions of Pakistan and affected the Indus River basin. At one point, approximately one-fifth of Pakistan's total land area was underwater. According to Pakistani government data the floods directly affected about 20 million people, mostly by destruction of property, livelihood and infrastructure, with a death toll of close to 2,000. The number of individuals affected by the flooding exceeds the combined total of individuals affected by the 2004 Indian Ocean tsunami, the 2005 Kashmir earthquake and the 2010 Haiti earthquake.

UN Secretary-General Ban Ki-moon had initially asked for \$460 million for emergency relief, noting that the flood was the worst disaster he had ever seen. Only 20% of the relief funds requested had been received as of 15 August 2010. The U.N. had been concerned that aid was not arriving fast enough, and the World Health Organization reported that ten million people were forced to drink unsafe water. The Pakistani economy has been harmed by extensive damage to infrastructure and crops. Structural damages have been estimated to exceed 4 billion USD, and wheat crop damages have been estimated to be over 500 million USD. Officials have estimated the total economic impact to be as much as 43 billion USD.

Causes

Current flooding is blamed on unprecedented monsoon rain. The rainfall anomaly map published by NASA shows unusually intense monsoon rains attributed to La Niña. On 21 June, the Pakistan Meteorological Department cautioned that urban and flash flooding could occur from July to September in the north parts of the country. The same department recorded above-average rainfall in the months of July and August 2010 and monitored the flood wave progression. Some of the discharge levels recorded are comparable to those seen during the floods of 1988, 1995, and 1997.

An article in the New Scientist attributed the cause of the exceptional rainfall to "freezing" of the jet stream, a phenomenon that reportedly also caused unprecedented heat waves and wildfires in Russia as well as the 2007 United Kingdom floods.

In response to previous floods of the Indus River in 1973 and 1976, Pakistan created the Federal Flood Commission (FFC) in 1977. The FFC operates under Pakistan's Ministry of Water and Power. It is charged with executing flood control projects and protecting lives and property of Pakistanis from the impact of floods. Since its inception the FFC has received Rs 87.8 billion (about 900 million USD). FFC documents show that numerous projects were initiated, funded and completed, but reports indicate that little work has actually been done due to ineffective leadership and corruption.

Flooding and impact

Monsoon rains were forecasted to continue into early August and were described as the worst in this area in the last 80 years. The Pakistan Meteorological Department reported that over 200 mm (7.88 inches) of rain fell over a 24-hour period in a number of places in Khyber Pakhtunkhwa and Punjab. A record-breaking 274 mm (10.7 inches) of rain fell in Peshawar during 24 hours; the previous record was 187 mm (7.36 inches) of rain in April 2009. As of 30 July, 500,000 or more people had been displaced from their homes. On 30 July, Manuel Bessler, head of the UN Office for the Coordination of Humanitarian

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Affairs; stated that 36 districts were involved, and 950,000 people were affected, although within a day, reports increased that number to as high as a million, and by mid-August they increased the number to nearly 20 million affected. By mid-August, according to the governmental Federal Flood Commission (FFC), the floods had caused the deaths of at least 1,540 people, while 2,088 people had received injuries, 557,226 houses had been destroyed, and over 6 million people had been displaced. One month later, the data had been updated to reveal 1,781 deaths, 2,966 people with injuries, and more than 1.89 million homes destroyed.

The Khyber Pakhtunkhwa provincial minister of information, Mian Iftikhar Hussain, said "the infrastructure of this province was already destroyed by terrorism. Whatever was left was finished off by these floods." He also called the floods "the worst calamity in our history." Four million Pakistanis were left with food shortages.

The Karakoram Highway, which connects Pakistan with China, was closed after a bridge was destroyed. The ongoing devastating floods in Pakistan will have a severe impact on an already vulnerable population, says the International Committee of the Red Cross (ICRC). In addition to all the other damages the floods have caused, floodwater has destroyed much of the health care infrastructure in the worst-affected areas, leaving inhabitants especially vulnerable to water-borne disease. In Sindh, the Indus River burst its banks near Sukkur on 8 August, submerging the village of Mor Khan Jatoi. There is also an absence of law and order, mainly in Sindh. Looters have been taking advantage of the floods by ransacking abandoned homes using boats.

Infrastructure

Floods have damaged an estimated 2,433 miles of highway and 3,508 miles (5,646 km) of railway. Cost estimates for highway damages are approximately 158 million USD, and railway damages are 131 million USD. Any unique or particularly large infrastructure damages will increase these estimates. Public building damages are estimated at 1 billion USD. Aid donors have presented an estimate that 5,000 schools have been destroyed.

ATTESTED

Attested
Adhwareali
Q

Ann: C

No. 14195 /A/C-1, Dated Parachinar the 14 /1/2011.

To,
The Political Agent,
Kurram Parachinar.

30

Subject:- MIS-APPROPRIATION OF PUBLIC FUNDS ON ACCOUNT OF
M&R FUNDS IN CENTRAL KURRAM.

Reference 1. This Office No. 1462/2-B, dated 28.12.2010.
2. Your office memo No. 37-39/Dev:M&R/H/Way/inquiry/Kurram, dt:8.1.2011

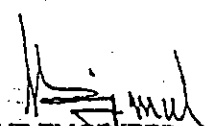
With reference to above, the detail report regarding subject issue is submitted as under :-

The undersigned has inspected all those M & R works in Para Chamkani area of Central Kurram on 30.12.2010, which were under enquiry and payment made there on during 2008-09 and 2009-10.

The respective M & R contractor has completed all the works pointed out by the enquiry committee in their report according to standard specification and payment made there on during 2008-09 and 2009-10.

EXECUTIVE ENGINEER,
HIGHWAY DIVISION KURRAM.


Copy with reference to above forwarded to the Chief Engineer (FATA) W & S Peshawar for information please.



EXECUTIVE ENGINEER,
HIGHWAY DIVISION KURRAM.

Received

by CE (FATA) office

D/No 11633
1463 Dt: 18/1/2011


ATTESTED

Attested
Anwarali


NO losses

Questionnaire

Annex C
21

To

Engr. Shahid Hussain,
Director P&M,
C&W Department Peshawar.

SUBJECT:- REPLY TO QUESTIONNAIRE

Reference:- Questionnaire received at Parachinar on 25-3-2011. & then received back at Peshawar on 28-3-2011

In reference to above, the number wise replies to questionnaire are submitted as under please.

1. Muhammad Pervez.
Executive Engineer Highway Division Kurram
2. From 1-4-2009 to 30-9-2010
3. Yes.
4. Slip removal and R/wall. a - during May & June 2009
b - during Feb :& April 2010
5. a. Rs. 2390228/-
b. Rs. 2780155/-
6. Yes. (cross sections attached as Annex-A). *Recd 2/4/2011*
7. Were partially damaged after restoring by contractor at his own expense were intact.
8. Partially released against M&R of 2008-09 and not yet released against M&R of 2009-10
9. Yes.
10. a- TS vide No 607/ 8-B Dt: 24-6-2009
b- TS vide No 1523/ 8-B Dt: 17-6-2010
11. During 2008-09- 6 Nos.
During 2009-10 7 Nos.
As the M&R works are not well conceived and fully depends on the desire of the Political Agent and are subjected to the availability of fund. Sometimes funds are withdrawn or transferred to other areas in the agency. Moreover, one time bulk of these works is very small and of exigent nature so the first and final payments are made in piece meal as per practice prevalent in Highway Division Kurram since long. However, question is not related with the instant complaint/charge sheet.
12. No. The expenditure has been incurred as per allotments and sanctions/enhancement as allowed by the Political Agent Kurram and on the written request during May 2009 vide this office No.268/CP dated 18th May 2009 and during November 2009. However, the question is not related to the instant complaint/charge sheet.
13. Yes. a. Rs. 2.00 (m)
b. Rs. 2.00 (m)
Later on increased/enhanced by the Political Agent as per Sr.No.12 above. However, the question is not related to the instant complaint/charge sheet.

Hashim Office Arohanj
received the same

M. PERVEZ

O/C *MP 1/4/2011*
(MUHAMMAD PERVEZ)
ASSISTANT ENGINEER
O/O C.E (NORTH)
C&W DEPARTMENT PESHAWAR

Then As XEN

Attested

Questionnaire sent to Parachinar via Peshawar

To

Engr. Shahid Hussain,
Director P&M,
C&W Department Peshawar.

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SUBJECT:- REPLY TO QUESTIONNAIRE

Reference:- Questionnaire received at Parachinar on 25-3-2011 and further received back at Peshawar on 28-3-2011.
In reference to above, the number wise replies to questionnaire are submitted as under please.

15. Muhammad Parvez
SDO Highway Sub Division
- 16- 2-6-2009 to 27/3/2010 and 6-6-2010 to 30-9-2010
- 17- Yes.
18. Slip removal and R/walls. a- slips km 22& 23 R/w 6,8,12,14,16& 17
b- slips km 1 to 6 & R/w 1, 3 & 4
19. a. . Rs . 2390228/-
b. . Rs . 2780155/- Check/Joint measured.
20. Yes by inspection.
21. Yes. (Cross sections attached as Annex-A). — *Handwritten signature* ~~2/4/2011~~
22. Were partially damaged & restored by Contractor at his own expenses, which were intact after that.
23. Partially released on 14-7-2009 against M&R of 2008-09 and for 2009-2010 not yet released.
24. Undersigned (Muhammad Pervez) & S.E (S.Iftikhar Hussain) had inspected several times but the A.C.S , C.E, PA or other higher officers have not inspected these works.
25. a. Rs. 2.00 (m) & estimate was prepared during 03/2009
b. Rs. 9.500 (m) & estimate was prepared during 9/2009
26. a- TS vide No 607/ 8-B Dt : 24-6-2009
b- TS vide No 1523/ 8-B Dt: 17-6-2010
27. a. During 2008-09 (6 nos).
b. During 2009-10 – (7 Nos)

As the M&R works are not well conceived and fully depends on the desire of the Political Agent and are subjected to the availability of fund. Sometimes funds are withdrawn or transferred to other areas in the agency. Moreover, one time bulk of these works is very small and of exigent nature so the first and final payments are made in piece meal as per practice prevalent in Highway Division Kurram since long. However, question is not related with the instant complaint/charge sheet.

28. 1. During 2008-09 Rs. 15.901 (m)
2. During 2009-10 Rs. 16.938 (m)

*Attended
Advocate
D*

MP 1/4/2011
(MUHAMMAD PERVEZ)
ASSISTANT ENGINEER
O/O C.E (NORTH)
C&W DEPARTMENT PESHAWAR

Then as SDO

QUESTIONNAIRE

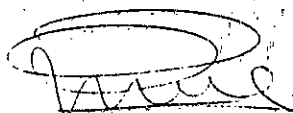
Mr. M. Pervaiz,
Executive Engineer,
Highway Division, Kurram Agency,
Parachinar

23

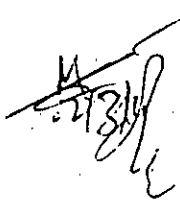
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KURRAM AGENCY AT PARACHINAR

1. Your full Name and designation
2. Your tenure as Executive Engineer Highway Division Kurram Agency at Parachinar (Give dates).
3. Have you supervised the AOM&R / repair works of the following two Nos. roads during your stay at C&W Division Kurram Agency:
 - a. Kirman - Sikaram Road
 - b. Surpakh to Star Pattti Road
4. What nature of works, you have executed, on the above mentioned roads and when?
5. How much payment, you have made to the contractors against their work done on these roads.
6. Have you signed the Cross-section of the slips/cutting before it's removal?
7. Are all the repair works executed under your supervision on these roads still intact or damaged or washed way by floods etc?
8. Have you released the security deposits of these works to the contractors? If yes, when you have released the security?
9. Have you inspected these works during execution?
10. When these works were got technically sanctioned?
11. How much total No. of bills, you have prepared for these M&R works in 2008-09 and 2009-10 and why you have splitted these in many parts?
12. Have you exceeded the financial limit of these M&R works as given in the Nomination letters by the Political Agent? If yes, have you got approval for the enhancement?
13. Have agreements of works signed and for how much amounts?

Your reply must reach to the enquiry committee before 7th March, 2011.



(ZARIFUL MANI)
(PCS SG) PPHI,
FR Peshawar

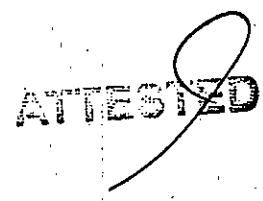


(ENGR. SHAHID HUSSAIN)
DIRECTOR (P&M)
C&W Deptt, Peshawar

C.C.

- Chief Engineer, FATA, C&W Department Peshawar
- Section Officer (Estab) C&W Department Peshawar
- PS to Secretary Govt; of Khyber Pakhtunkhwa, Peshawar

ATTESTED



(ZARIFUL MANI)
(PCS SG) PPHI,
FR Peshawar

Attested
Advocate
2

(ENGR. SHAHID HUSSAIN)
DIRECTOR (P&M)
C&W Deptt, Peshawar

QUESTIONNAIRE

24

Mi: Perviaz,
Sub Divisional Officer, O/O Executive Engineer,
Highway Division, Kurram Agency,
Parachinar

Subject: MIS-APPRPRIATION OF FUNDS ON ACCOUNT OF M&R FUNDS IN C&W DIVISION
KURRAM AGENCY AT PARACHINAR

15. Your full Name and designation
16. Your tenure as Sub Divisional Officer O/O Executive Engineer Highway Division Kurram Agency at Parachinar (Given dates).
17. Have you supervised the AOM&R / repair works of the following two Nos. roads during your stay at C&W Division Kurram Agency:
 - a. Kirman - Sikaram Road 2390228-2008-9.
 - b. Surpakh to Star Pattti Road Ph-III 2780155.
18. What nature of works, you have executed, on the above mentioned roads and where?
19. How much payment, you have made to the contractors against their work done on these 2 Nos. roads. And whether the works done at site have been measured by yourself?
20. Have you checked the quality of work done and how?
21. Have you prepared the Cross-section of the slips/cutting before it's removal and got signed those from Executive Engineer and Contractors?
22. Are all the repair work executed under your supervision on these roads still intact or damaged or mashed way by floods etc?
23. Have you released the security deposits of M&R works in question to their contractors? If yes, when you have released the security? *- yes*
24. During execution of works, have any responsible officer inspected the said works? (Give names)
25. What was the estimated cost of these works and when their estimates were prepared?
26. When these works were got technically sanctioned?
27. How much total No. of bills, you have prepared for these M&R works in 2008-09 and 2009-10 and why you have splitted these in many parts?
28. How much total funds were released for these AOM&R works during 2008-09 and 2009-10?

Your reply must reach to the enquiry committee before 7th March, 2011.

2008-9
632930
R-567100
14-7-9

(ZARIFUL MANI)
(PCS SG) PPHI,
FR Peshawar

(ENGR. SHAHID HUSSAIN)
DIRECTOR (P&M)
C&W Deptt, Peshawar

- C.C.:
- Chief Engineer, FATA, C&W Department Peshawar
 - Section Officer (Estab) C&W Department Peshawar
 - PS to Secretary Govt; of Khyber Pakhtunkhwa, Peshawar

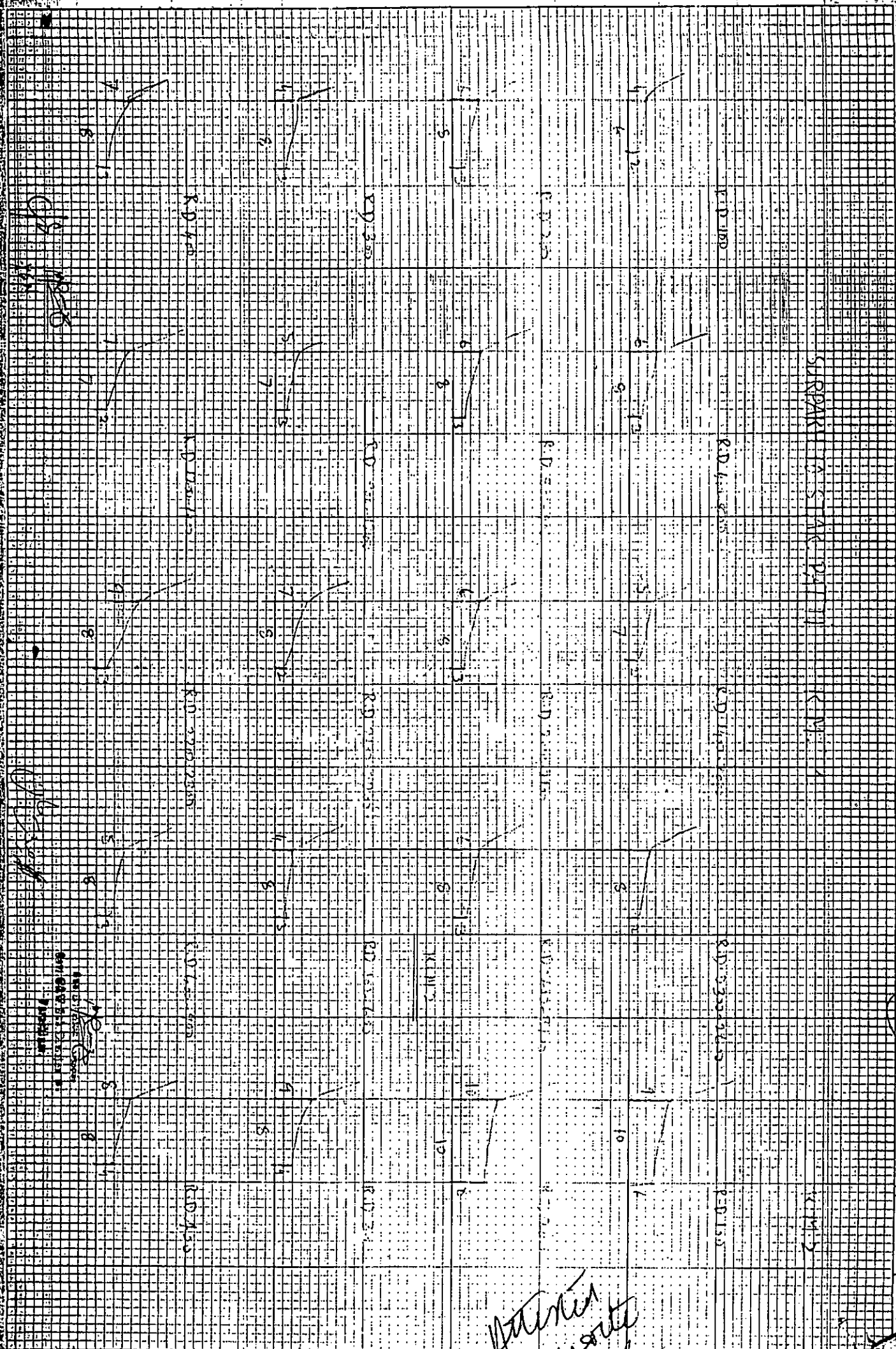
ATTESTED

(ZARIFUL MANI)
(PCS SG) PPHI,
FR Peshawar

Attested
Advocate
D

(ENGR. SHAHID HUSSAIN)
DIRECTOR (P&M)
C&W Deptt, Peshawar

28



SHRPAK 1 S AK 121 111

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25

Annex A

Handwritten signature/initials

(26)



SURPAKIL 1A STAIR PATTERNS KIMWANG

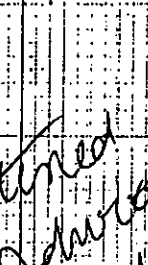
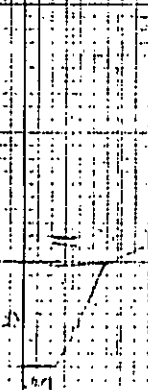
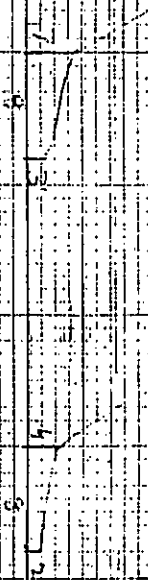
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R.D. 70-2733

R.D. 268-2733

R.D. 113

R.D. 55



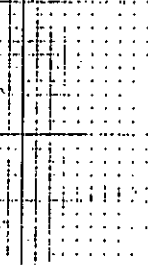
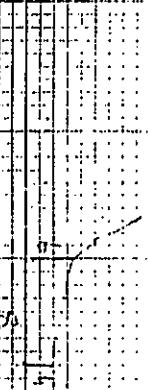
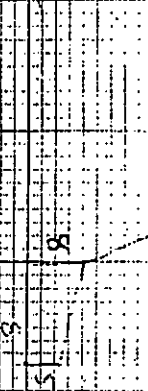
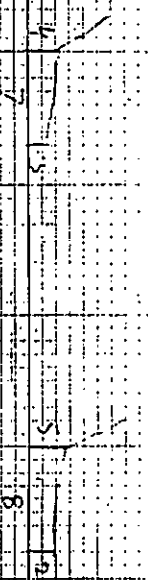
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R.D. 265-2733

R.D. 230

R.D. 60



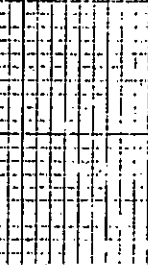
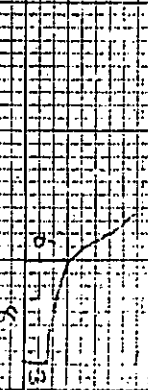
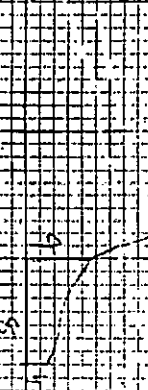
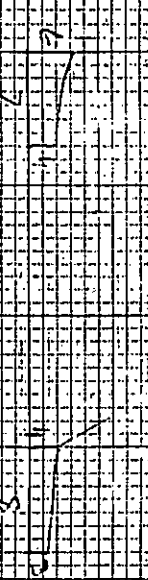
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R.D. 7-7



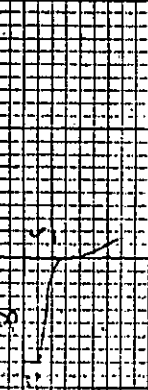
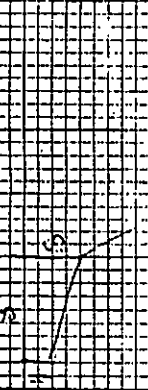
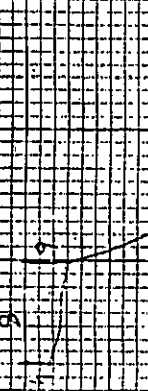
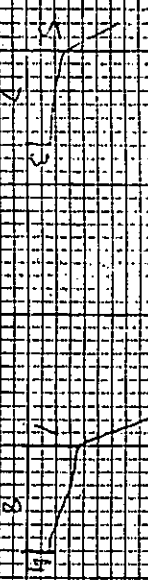
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R.D. 405

R.D. 555



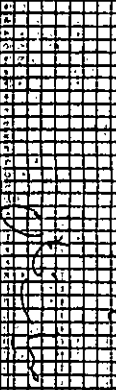
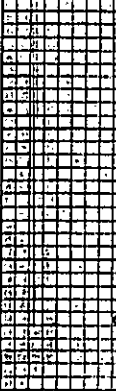
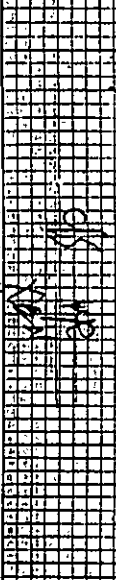
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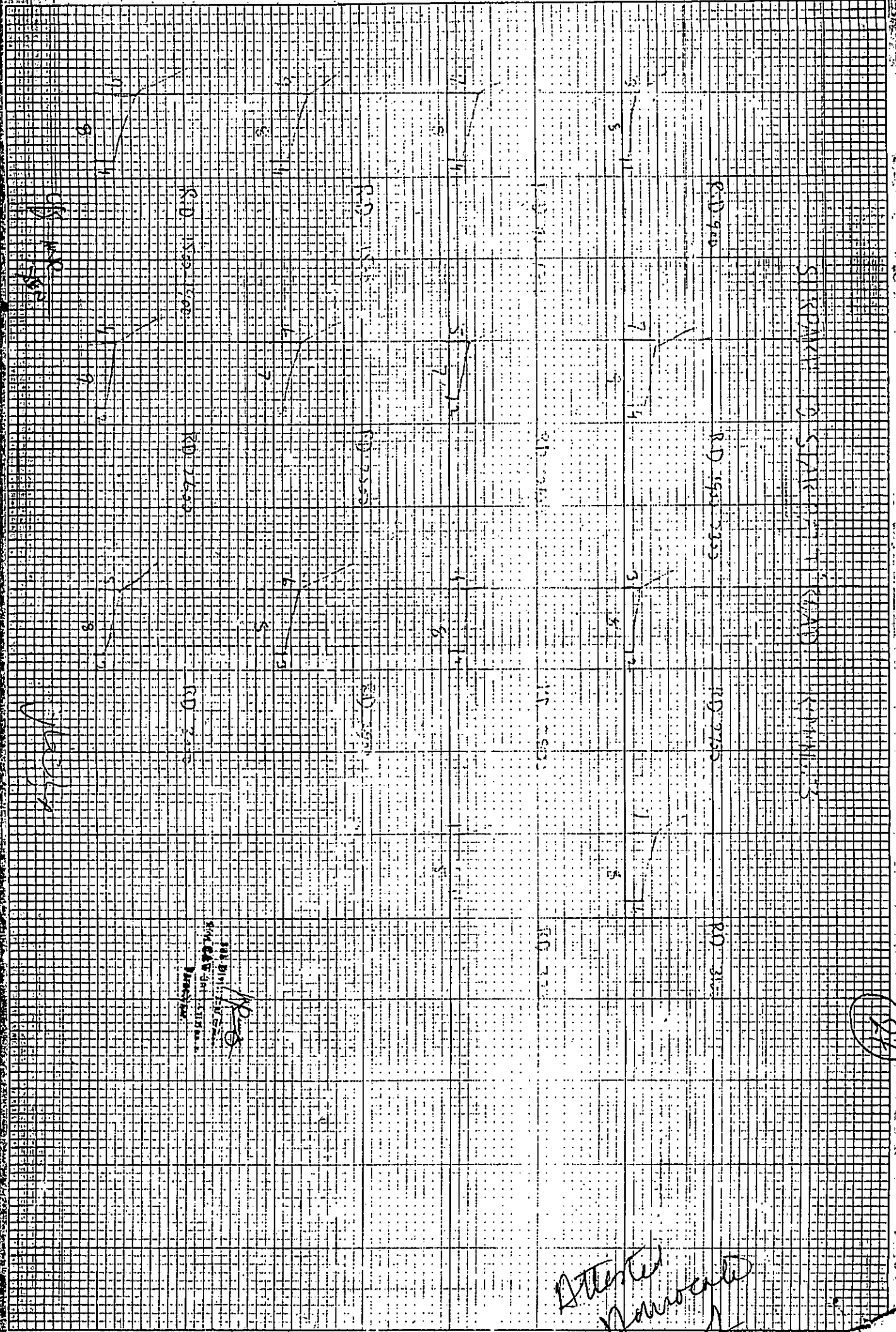
R.D. 555



(26)

Approved
Admiral

27



STANDARD TO STAR COMPANY (CAD) KENNETH

ALL DIMENSIONS
 UNLESS OTHERWISE
 SPECIFIED
 IN MILLIMETERS

Checked
 Approved

27

286

SURFACE TO STAIR WALKWAY RAMP RAINWATER

Attenuation
Review

RD 105-105

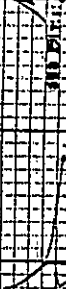
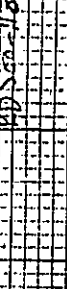
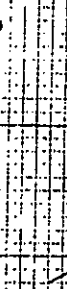
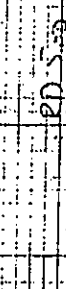
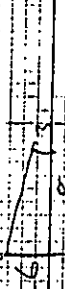
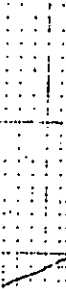
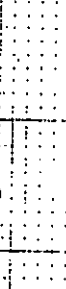
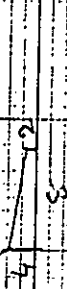
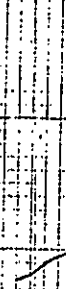
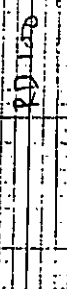
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RD 105-105

RD 105-105

RD 105-105

RD 105-105



288

NYREX



RD 105-105

RD 105-105

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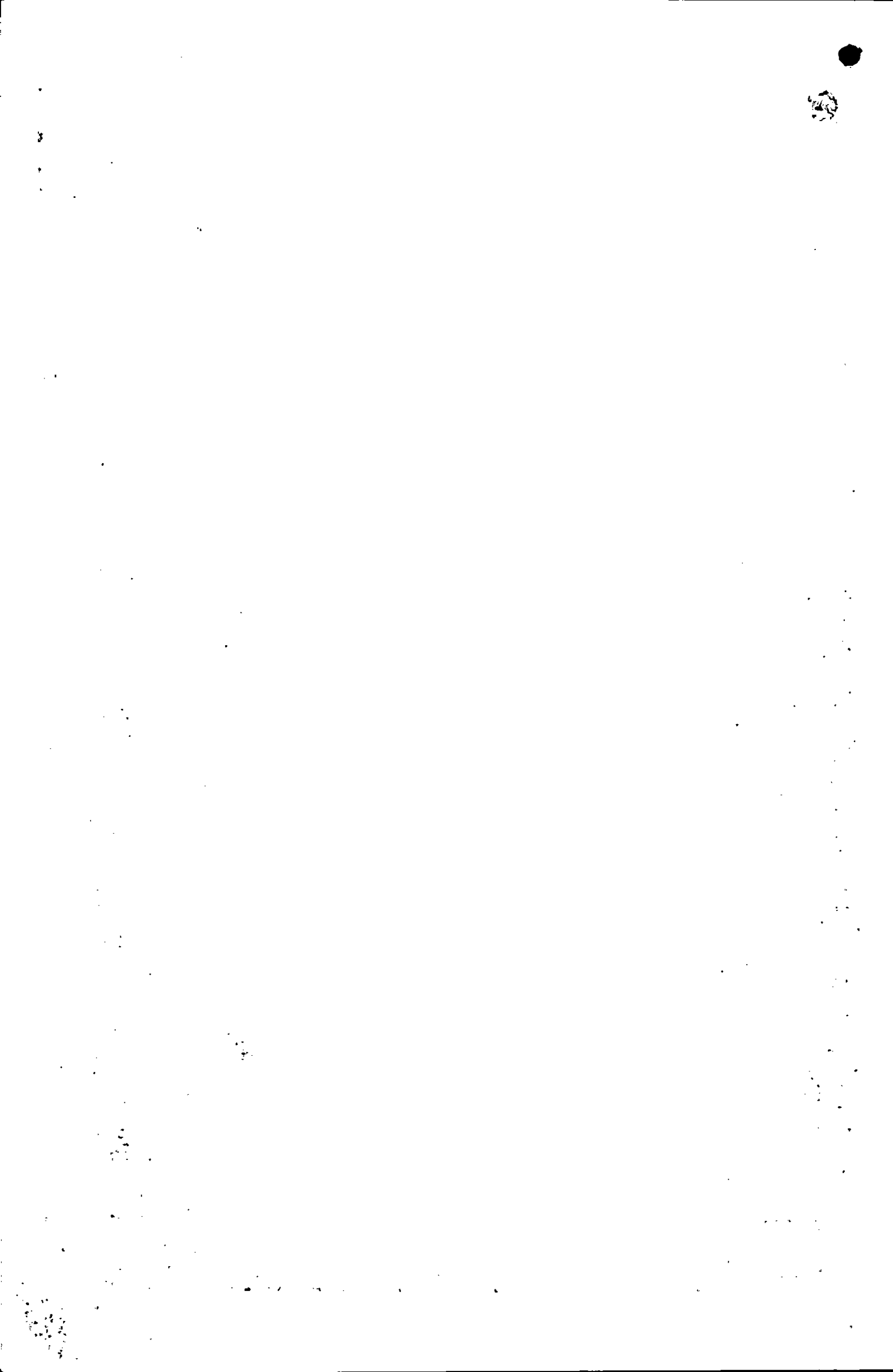
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RD 105-105

RD 105-105

RD 105-105

RD 105-105



29

SURFACE TO STRIKE PATTER ROAD. KM NO. 5

RD 1900

RD 2000

RD 2750-3000

RD 1950

RD 2050

RD 2800-3000

RD 1300-1800

RD 2650

RD 3250

RD 1900

RD 2700

Jack

NYREX
NEW DIRECTOR
MPC-46
SUNBELT
PARACHUTE

Attentive
Awh A.

29

30

ZYREX

SUPPLY TO SUPPLY ROAD KILMNOCK

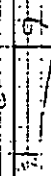
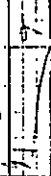
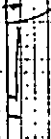
RD 105

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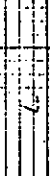
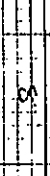
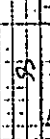
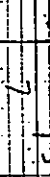
RD 105

RD 105

RD 105

RD 105

RD 105



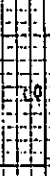
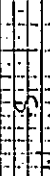
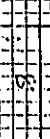
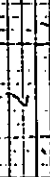
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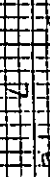
RD 105

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RD 105

RD 105

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30

Attended
Adm

100 BIL
RD 105
KILMNOCK

(17)

NYREX

REPAIR KIRMAN SIKARIM ROAD

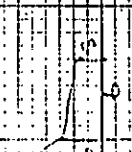
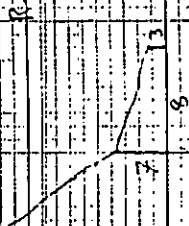
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R.D. 400

R.D. 400

R.D. 300

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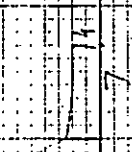
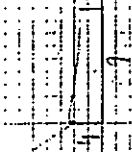
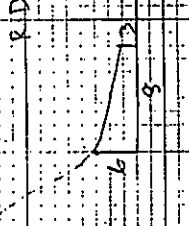


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R.D. 500

R.D. 500

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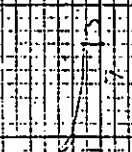
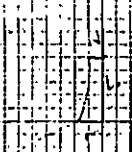
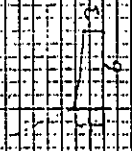
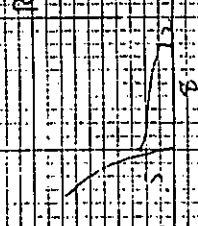


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R.D. 600

R.D. 600

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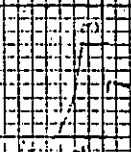
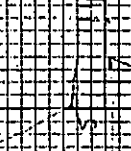
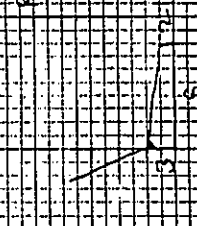


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R.D. 600

R.D. 600

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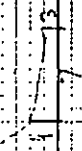
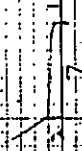
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PELAT KIRMAN SIKAWI ROAD (KIRMAN) 33

R.D. 100

R.D. 400-1000

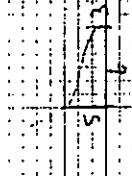
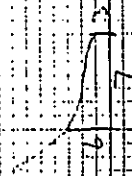
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R.D. 100-200

R.D. 100-200

R.D. 1700-1900



R.D. 100-200

R.D. 100-200

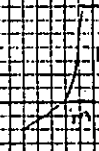
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R.D. 100-200

R.D. 100-200

R.D. 1700-1900



R.D. 100-200

R.D. 100-200

R.D. 1700-1900

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Handwritten notes: "max", "min", "R.D. 100-200", "R.D. 1700-1900"

Handwritten circled number: 33

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NYREX

GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION AND WORKS DEPARTMENT

33

No. D (P&M)/C&W/1-31/2011
Dated Peshawar the, 02, 04, 2011

ANNEX D

To

The Secretary,
Govt of Khyber Pakhtunkhwa,
C & W Department Peshawar.

Stamp: Govt of Khyber Pakhtunkhwa, Peshawar
7.6.1
07/4/11
P 19/c
DSA

Subject: MIS-APPORATION IN PUBLIC EX-CHEQUER

Please refer to your letter No.SOE/C&WD/8-21/2010,dated 08-01-2011, and enclosed please find herewith Inquiry report, regarding the subject matter, for favor of further necessary action as desired please.

DA.
Inquiry Report

(ENGR. SHARIF HUSSAIN)
DIRECTOR P & M
Inquiry Officer

G
B
9/4/11

ATTESTED

Attested
2

INQUIRY REPORT

Subject: - MIS-APPROPRIATION IN PUBLIC EXCHEQUER

AUTHORITY / ORDER OF INQUIRY: Secretary to Govt. of Khvber Pakhtunkhwa Communication and Works Department, letter No. Secy: C&W Department letter No.SOE/C&WD/8-21/2010, Dated 08.01.2011. (Annexure-1).

34

CHARGES:

1. Engr. Muhammad Pervez in the capacity of Executive Engineer, Highway Division Kurram Agency and holding the charge of SDO Highway Sub-Division Kurram Agency (now reverted as Assistant Engineer BPS-17), and Engr. Iftikhar Hussain, in the capacity of Sub-Engineer, Highway Sub-Division Kurram Agency, have committed the Irregularities in the
 - i. Kirman-Sikaram Road and
 - ii. Surpakh to Star Patti RoadAnd made payment of Rs.23,86,863/- to the contractor on old structures i.e, retaining walls, toe walls etc, on the above noted schemes constructed in 2006-07 as ADP scheme and non of the fresh structures were taken in MB at site.
2. He also made payment out of AOM&R funds during 2009-10 to the contractor but not visited these roads for verification/inspection and the measurements have been supplied by the Munshi of the Contractor.
3. Further they made payment amounting to Rs.27,83,520/- on removal of heavy slips but all the roads were found full of heavy slips.

BACKGROUND:

On the nomination of Political Agent Kurram, (Annexure-1), for the M&R works (bridges/Roads) in Central Kurram, "M&R of all roads during 2009-10 in Parachamkani area of Central Kurram" works were awarded to Mr. Muhammad Hayat, by the then Executive Engineer, C&W Highway Division Kurram at Parachinar, (Annexure-2 & 3) and two Nos. Agreements were signed by the parties as Annexure-4 & 5, for the following:-

- i. AOM&R work: SH: Parachamkani area Central Kurram, 2008-09
- ii. SH: All Roads/Bridges in Paramchamkani area (C.K), during 2009-10.

Accountant General Pakistan Revenue Sub Office Peshawar through a confidential letter No. WAD(F)/CPWA-60/2009-10/3634-35 dated 10-05-2010 and No. WAD(F)/CPWA-60/2009-10/369-92 dated 01-06-2010 whereby the Chief Engineer (FATA) W&S Department Peshawar was requested to Conduct an inquiry in the case and take action against the persons at fault. Also Recover the amount Rs 10,581,004/- and Rs 3,178,389/- respecting from the persons involved in the mis-appropriation. (Annexure-4).

In line with the Accountant General (PR) Sub office Peshawar office letter No. mentioned above, the Chief Engineer (FATA) office requested Political Agent Kurram to conduct fact finding (Departmental) inquiry at site physically through Technical Committee comprising Executive Engineer Building Division Kurram, representative from Irrigation and local Govt: Department or A.P.A and submit the report within 15 days.

The political Agent constituted an inquiry Committee comprising Assistant Political Agent Central Kurram, Executive Engineer Building Division Kurram and Executive Engineer Irrigation and Hydle Kurram. The Committee Members visited the site for physical verification on 04-10-2010 (Annexure-5).

In light of recommendation, made by the inquiry Committee punitive action was recommended vide Political Agent Kurram letter No. 1072-78/Dev:/Inquiry/M&R/Highway/ Kurram dated 08-10-2010 (Annexure-6).

On recommendation of the Political Agent Kurram / Inquiry Committee, Draft sheet / statement of Allegation, was submitted to Secretary (AOC) FATA Secretariat Peshawar vide Chief Engineer (FATA) letter No. 539/3/46-E dated 25-10-2010 (Annexure-7).

PROCEEDING OF INQUIRY:

The charge sheet and statement of allegations served upon accused duly signed by the Competent authority, (Annexure-8) with the direction to submit written defenses within seven (7) days time (Annexure-9) and the same have been provided by the accused, (Annexure-10 & 11).

On the request of the Inquiry Committee, (Annexure-12 & 13) the Executive C&W Division Kurram at Parachinar provided the relevant record to the inquiry committee (Annexure-14). The accused were called upon for appearing before the Inquiry Committee on 28.01.2011 & 17.02.2011 (Annexure-15 & 16) and were heard in person. Engr. Muhammad pervez was heard in the capacity of Executive Engineer, Kurram Agency Parachinar and as a Sub-Divisional Officer Kurram Agency at Parachinar.

Questionnaires were also served upon the accused officer / officials and Divisional Accounts Officers, Highway Division Kurram Agency, Mr. Abdur Rehman to furnish their replies by the March 2011, but Unfortunately no one could submit his reply to the questionnaire till date.

[Handwritten signature]

[Handwritten signature]
DIN/por

OBSERVATIONS:

The following documents supplied to the Committee provided enough ground to the Inquiry

Committee to prove the charges.

1. AQM&R funds were released to the Executive Engineer, Highway Division Kurram (as Parachinar) by the Chief Engineer (FATA) during 2008-09 & 2009-10 vide his letter Nos.:
 - i. 565/BW-I/13(2008-09) dated 19-08-2008
 - ii. 920/BW-I/13(2008-09) dated 12-02-2009
 - iii. 172/BW-I/13(2008-09) dated 12-05-2009
 - iv. 317/BW-I/13(2009-10) dated 03-09-2009
 - v. 934/BW-I/13(2009-10) dated 27-01-2010
 - vi. 1214/BW-I/13(2009-10) dated 19-04-2010

38

In all the above release letters the Chief Engineer (FATA) has categorically stated that "No funds should be spent on retaining walls, Dunga walls and Earth work", whereas on the other hand, all the funds under inquiry have been spent on Retaining walls, Dunga wall and Earthwork.

2. The contractor bills and technical sanctions have been splitted and deliberately restricted to total amounts less than Rs 4.00 Million each just to hide the gross irregularity from the higher authorities.
3. From the study of measurement books, it is noticed that so called slips were occurred and removed by the contractor in long lengths in kilometers without any break of even a single inch. This un-natural phenomenon is quite interesting and as touching. This is a sufficient proof of fudge measurement.
4. It is necessary to prepare x-section for any cutting / slip removal works prior to its execution, which should have been signed by all stakeholders. As after removal of any slips / cutting works, its exact measurement at site is impossible, without x-section.
5. In this specific case, the x-section of the slips / cutting of Earthwork were neither prepared nor provided to the Inquiry Committee.

Charge No. 1

RECOMMENDATION

1. It is very difficult to differentiate between the old structures with new one after one and half years time and floods affecting the structure, however, it seems that irregularities have been made in payment. As discussed in para 1 & 2 of above Observations, the payment to the contractor on structure work was not allowed at all, and the accused could not present any proof of sanction to that effect, therefore the inquiry committee recommends minor penalty for Mr. Muhammad Pervez (in capacity of Executive Engineer, SDO and Mr. Iftikhar Hussain Sub Engineer. *both are concerned.* The Sub Engineer has signed the MB Book, therefore it cannot be proved that the site was not visited before the payments.
2. As discussed in para 3 of the Observations, payments on slips show that every inch of it was full of slips which is rather improbable to happen. The Sub Engineer Iftikhar Hussain and SDO / Executive Engineer have passed the bills, therefore directly involved in the scheme; hence the charge is proven against Executive Engineer, SDO & Sub Engr. Therefore major penalty is recommended for Mr. Muhammad Parvez (Executive Engineer / SDO) and Mr. Iftikhar Hussain (Sub Engineer). *reduction to Lt/post/sing*
3. As discussed in para 1 & 2 of the observations, authorization from the competent authority was avoided by splitting the bills which is possible only with connivance of the Divisional Account Officer Mr. Abdur Rehman. Moreover the account office was supposed to abide by the instructions contained in the release letter but he failed to do so. Therefore the inquiry committee recommends that strict disciplinary action be initiated against the Divisional Account Officer.

Not part of charge

seems

Not in charge

Recovery of Rs. 2783520/- may be made from all concerned.

Zairful Mani
 Engr. ZAIRFUL MANI
 (PCS SG) PPHI, FR Peshawar
 Inquiry Officer

Shahid Hussain
 Engr. SHAHID HUSSAIN
 Director Planning & Monitoring
 Inquiry Officer.

ATTESTED

Attested
How
A.

Charge no. 2

GOVERNMENT OF KHYBER PAKHTONKHWA
COMMUNICATION AND WORKS DEPARTMENT

No. D (P&M)/C&W//31/ 2011
Dated Peshawar the, June 02, 2011

ANNEX "E"

36

To.

Section Officer (ESTT)

Subject: MIS-APPROPRIATION IN PUBLIC EX-CHEQUER.

With reference to your letter No: SOE/C&WD/8-21/2010, Dated: 27-04-2011, on the subject cited above, Please read with the recommendations part of the inquiry report:

At the end of para (i) the following should be included:

"Both the officers are-censured". *charge no.1*

At the end of para (iii) of the recommendations, the following should be included:

"Major penalty of reduction to a lower post, grade or time scale or to a lower stage in a time scale" should be accorded to Mr. Muhammad Parvez (Executive Engineer/ SDO) and Mr Iftikhar Hussain (Sub Engineer).

At the end of para (v) of the recommendations, the following should be added:

"Recovery of 27,83,520/- be made from the accused in the following manner.

1) From Muhammad Parvez (In capacity of Executive Engineer)-	927,840/-
2) From Iftikhar Hussain (In capacity of Sub Engineer)-	927,840/-
3) <u>From Muhammad Parvez (As SDO)-</u>	<u>927,840/-</u>
<u>Total-</u>	<u>27,83,520/-</u>

Enquiry Report is already submitted.

Zaritulmani 2/4/11
Zaritulmani
PCS (SG)
Inquiry Officer

Eng Shahid Hussain
Eng Shahid Hussain
Director Planning & Monitoring
Inquiry Officer

Copy to:

- 1) Secretary to Govt of Khyber Pakhtonkhwa C&W Department Peshawar for information.

Accepted

T.C.S.

Show Cause

ANNEX F



GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/8-21/2010
Dated Peshawar, the July 09, 2011

37

TO ✓
Engr Muhammad Pervez (BS-17)
Sub Divisional Officer, C&W Department
(presently on leave)
P.O. Jhangi behind PC Hotel, Toheed Colony,
Mansehra Road, Abbottabad

Subject: MIS-APPROPRIATION IN PUBLIC EX-CHEQUER

I am directed to refer to the subject noted above and to enclose herewith two copies of the show cause Notice containing tentative major penalty of "COMPULSORY RETIREMENT BESIDES RECOVERY OF Rs.18,55,680/-" alongwith inquiry report conducted by Engr. Shahid Hussain, SE C&W Circle Kohat and Zariful Mani, PPHI, FR Peshawar and to state that the 2ND copy of the show cause Notice may be returned to this Department after having signed as a token of receipt immediately.

2. You are directed to submit your reply, if any, within 7 days of the delivery of this letter, otherwise, it will be presumed that you have nothing to put in your defence and ex-parte action will follow.

3. You are further directed to intimate whether you desire to be heard in person or otherwise.

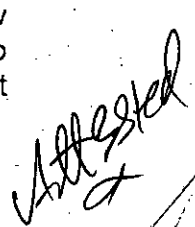

(RAHIM BADSHAH)
SECTION OFFICER (ESTT)

Endst even No. & date

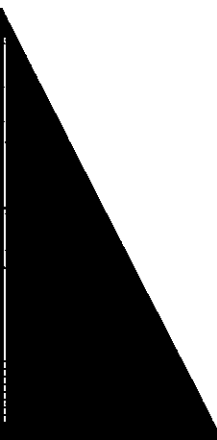
Copy of the above is forwarded to the Chief Engineer (North) C&W Peshawar, as the officer has been granted 120 days leave on his recommendations, therefore, the show cause notice may be served upon the accused officer by Chief Engineer (North) C&W to ensure the reply to the same within the stipulated period as approved by the competent authority.

SECTION OFFICER (ESTT)

ATTESTED



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SHOW CAUSE NOTICE

38

1. Ghulam Dastgir Akhtar, Chief Secretary Khyber Pakhtunkhwa as competent authority do hereby serve you, Muhammad Pervez (BPS-17), presently posted as Assistant Engineer (B&R) office of Chief Engineer (North) C&W Peshawar, under Removal from Service (Special Powers) Ordinance, 2000 with this notice for the charges mentioned in the disciplinary action/statement of allegations already served upon you vide C&W Department's endorsement No. SOE/C&WD/8-21/2010 dated 08.01.2011.

2. That on going through the inquiry report of the inquiry committee, material on record and other connected documents, I am satisfied that the following charges leveled against you have been proved:-

"That you while posted as Executive Engineer Highway Division Kurram Agency and holding the charge of SDO Highway Sub Division Kurram Agency (now reverted as Assistant Engineer BS-17), committed the following irregularities in the (i) Kirman-Sikaram Road and (ii) Surpakh to Star Patti Road:

- i. You have made fudge payment amounting to Rs.23,86,863/- to the contractor on old structures i.e. retaining walls, toe walls etc, on the above noted schemes constructed in 2006-07 as an ADP scheme and none of the fresh structures taken in MB were at site.
- ii. ~~You have made fudge payment out of AOM&R funds during 2009-10 to the contractor but not visited these roads for verification/inspection and the measurements have been supplied by the Munshi of the contractor.~~
- iii. You have made fudge payment amounting to Rs.27,83,520/- on removal of heavy slips but all the roads were found full of heavy slips".

*recommended
Conserve*

NOT proved

3. That as a result thereof, I as the authority in the exercise of powers conferred on me under RSO 2000, have tentatively decided to impose upon you the major penalty(s) of "Compulsory retirement besides recovery of Rs. 1855680/-".

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

5. If no reply to this notice is received within seven days of its delivery, it shall be presumed that you have no defence to put in and an exparte action will be taken against you.

6. The copy of the fresh inquiry report is enclosed.

*Attested
Akhtar*

(Ghulam Dastgir Akhtar)
Chief Secretary
Khyber Pakhtunkhwa

ATTESTED

___/06/2011

SHOW CAUSE NOTICE

39

1. Ghulam Dastgir Akhtar, Chief Secretary Khyber Pakhtunkhwa as competent authority do hereby serve you, Muhammad Pervez (BPS-17), presently posted as Assistant Engineer (B&R) office of Chief Engineer (North) C&W Peshawar, under Removal from Service (Special Powers) Ordinance, 2000 with this notice for the charges mentioned in the disciplinary action/statement of allegations already served upon you vide C&W Department's endorsement No.SOE/C&WD/8-21/2010 dated 08.01.2011.

2. That on going through the inquiry report of the inquiry committee, material on record and other connected documents, I am satisfied that the following charges leveled against you have been proved:-

"That you while posted as Executive Engineer Highway Division Kurram Agency and holding the charge of SDO Highway Sub Division Kurram Agency (now reverted as Assistant Engineer BS-17), committed the following irregularities in the (i) Kirman-Sikaram Road and (ii) Surpakh to Star Patti Road:

- i. You have made fudge payment amounting to Rs.23,86,863/- to the contractor on old structures i.e. retaining walls, toe walls etc, on the above noted schemes constructed in 2006-07 as an ADP scheme and none of the fresh structures taken in MB were at site.
- ii. You have made fudge payment out of AOM&R funds during 2009-10 to the contractor but not visited these roads for verification/inspection and the measurements have been supplied by the Munshi of the contractor.
- iii. You have made fudge payment amounting to Rs.27,83,520/- on removal of heavy slips but all the roads were found full of heavy slips".

3. That as a result thereof, I as the authority in the exercise of powers conferred on me under RSO 2000, have tentatively decided to impose upon you the major penalty(s) of "Compulsory retirement besides recovery of Rs.1855680/-".

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

5. If no reply to this notice is received within seven days of its delivery, it shall be presumed that you have no defence to put in and an exparte action will be taken against you.

6. The copy of the fresh inquiry report is enclosed.

*Attested
Adw
A*


(Ghulam Dastgir Akhtar)
Chief Secretary
Khyber Pakhtunkhwa

___/06/2011

ATTESTED



**COMMUNICATION & WORKS DEPARTMENT (NORTH WING)
KHYBER PAKHTUNKHWA PESHAWAR**

Block-C 3rd Floor, Attached Department Complex Near Khyber Road Peshawar



091-9210456 FAX 091-9210478 E-mail: cenorthcnw@yahoo.com

No: 810 / PF

Dated 06 / 8 / 2011

To

40

The Section Officer (E)
Communication and Works Department
Peshawar

Subject: REPLY TO SHOW CAUSE NOTICE

Reference: Your No. SOe/C&WD/8-2/2010 dated 9/7/2011, received dated 28/7/2011

Enclosed please find herewith reply to the show-cause notice for favour of further disposal please.

O/c M/P

(Muhammad Pervez)
Assistant Engineer

Copy forwarded to PA to Chief Engineer (North) for information.

Assistant Engineer

Accepted / 8.8.2011

ATTESTED

Attested

To: The Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.
(Competent Authority)

41

Subject: REPLY TO SHOW-CAUSE NOTICE:
(Wish the Authority personally go through my reply to ensure Justice)

Reverential Sir,

(A) Show-Cause Notice speaks of the following charges proved against me:

That you while posted as Executive Engineer Highway Division Kurram Agency and holding the charge of SDO Highway Sub Division Kurram Agency committed the following irregularities in (i) Kirman-Sikaram road and (ii) Surpakh to Star Patti Road:

- i. You have made fudge payment amounting to Rs. 23,86,863/- to the contractor on old structures i.e. retaining walls, toe walls etc. on the above noted schemes constructed in 2006-07 as an ADP scheme and none of the fresh structures taken in MB were at site.
- ii. You have made fudge payment out of AOM&R funds during 2009-10 to the contractor but not visited these roads for verification/ inspection and the measurements have been supplied by the Munshi of the contractor.
- iii. You have made fudge payment amounting to Rs. 27,83,520/- on removal of heavy slips but all the roads were found full of heavy slips.

Show cause notice further says that on going through the inquiry report of the inquiry committee material on record and other connected documents, the competent authority has tentatively decided to impose major penalty of "Compulsory retirement besides recovery of Rs. 18,55,680/-."

(B) With due respect, the proposed penalty is against law and far away from justice as nothing has been proved against me. Suspicion, (however strong it may be by itself), cannot take the place of proof.

(C) In the instant case, on the one hand, the Inquiry Committee has gone far beyond the scope of CHARGES contained in the Charge-sheet which is against law. Law does not permit conviction on finding beyond the scope of the charge, until and unless revised charge-sheet is issued to the accused to provide him a fair opportunity of defence, otherwise the conviction will be against law.

Attested
Doh
S.

ATTESTED

42

(D)

On the other hand, the Competent authority seems to have decided the case without looking into the record and/ or applying his independent/ judicious mind to the facts of the case. In this regard, Recommendation-2 of the Inquiry report is worth perusal, which reads as under:

"The Sub Engineer has signed the MB Book, therefore it cannot be proved that the site was not visited before the payments.

Charge (ii) is regarding fudge payment to the contractor without visiting the roads and the Committee says that "in view of the signature of Sub Engineer on MB, the charge cannot be proved.

But in the Show-Cause the said charge has been stated as proved, which proves that the competent authority has neither gone through the inquiry report nor has applied his independent/ judicious mind to the material on record. It is not understood as to what inclined the competent authority to incorporate this charge in the Show-cause as proved.

(E)

Recommendation-1 of the Inquiry report reads as under:

"It is very difficult to differentiate between the old structures with new one after one and half years time and floods affecting the structure."

How the charge can be said to have been proved when the Inquiry Committee admits that it is very difficult differentiate between old structure and new work because of the lapse of time or due to the structure affected by the subsequent floods. Strangely the Committee has not visited the road but has prepared its report while sitting in Peshawar.

In the remaining part of their recommendation they say that "however, it seems that irregularities have been made in payment". "It seems" cannot be read or treated as "it proves".

The Inquiry Committee has not pointed out any particular rule violated by the undersigned. Further more this part of the recommendation is beyond the scope of charge served upon me. Hence, no punishment can be awarded on the basis of "it seems" being surmises and conjectures.

Attested
Dow
A.

ATTESTED

43

(F)

Charge (iii) says that I have made fudge payment of Rs.27,83,520/- for removal of heavy slips but the roads were found full of heavy slips. As per Show-Cause the charge stands proved, which suggests that the Authority has not applied its independent/ judicious mind to the matter, but has blindly relied upon the ipse dixit of the Inquiry committee.

For God, Neither the Committee has gone to the site for confirmation of facts nor have they examined any witness in support of the charge. How the charge can be said to have been proved in absence of any oral or documentary evidence? /

The members of the Inquiry Committee should have gone to the area for physical verification and/ or recording statement of any local having in support of the charge. How could they confirm the charge without seeing the road and/or visiting the spot? /

They have given false reason in support of their recommendation for awarding major penalty on charge (iii) that the payment for of slips on every inch was improbable. But law does not allow punishment on the basis of probabilities. Perhaps they have never seen the heavy slips.

In order to belie the ipse dixit of the inquiry committee, a copy of the incumbent Executive Engineer letter dated 14.1.2011 is attached (Annexure-A) for perusal of the Competent authority, wherein the Executive Engineer has confirmed that:

He has inspected all those M&R works in Para Chamkani area of central Kurram on 30.12.2010, which were under enquiry and payment made there on during 2008-09 and 2009-10 and that:

The respective M&R contractor has completed all the works pointed out by the enquiry committee in their report according to standard specification and payment made there on during 2008-09 and 2009-10.

ATTESTED

This letter in fact is a certificate of the fact that the charge was false and flimsy and that the government has sustained no loss. hence, there arises no question of awarding major penalty and/ or recovery.

*Attested
A.A.W.
D.*

0

4

44

(G)

So far as the release letters referred to in the inquiry report are concerned, they pertain to the financial year 2009-10 (from 8/2008 to 4/2010). However they do not prove the charge contained in the Charge-sheet.

With due respect, the findings of the Inquiry Committee in para-1 of the observations are the result of going beyond the scope of Charge-sheet.

The self created condition introduced by the Chief Engineer is not supported by any law/ rules beside that the same was meant for "black topped" road and cannot be applied on to the "shingled roads", which do not involve resurfacing. The release letters say that "the expenditure should be incurred judiciously with consultation/ approval of the concerned Political Agent" and the undersigned has followed it being meant for "shingled roads approved and decided by the Political Agent". In this regard copy of sanction by P.A. Kurram are attached Annexure-B and C) to prove that the M&R works were carried with consultation and approval of the concerned P. A. and hence no irregularity committed.

No charge was framed regarding splitting contractor bills and technical sanctions in the Charge-sheet. It is mere concoction as nothing as such has happened. The findings are therefore out of place.

(II)

With due respect, the Inquiry Committee was not only inefficient but also inimical towards the undersigned. It has falsely been stated in the last para of Report at page 1 and in Observation-4 and 5 at page-2 that the accused have neither responded to the questionnaires nor have they furnished the X-section for the cutting/ slips.

Despite knowing that I am posted at Peshawar, they sent my questionnaires to Xen Parachinar, who sent it back to Peshawar and there occurred delay in furnishing reply. My address on questionnaire letter can be checked please.

Instead of admitting their own fault they falsely deposed in their report that I have not submitted my reply to their questionnaire and not furnished X-sections. In rebuttal thereof, I enclose herewith the acknowledgement receipt of my replies and X-sections, which prove that the Inquiry committee has falsely deposed against me.

*Dattaraj
Saw*

ATTESTED

45

The Inquiry committee has falsely alleged so in their report to fill color in their sketchy report, otherwise I have provided it to Engr. Shahid Hussain through his assistant namely Mr. Hashmat on 2.4.2011 as is evident from his signature on my replies at Annexure-D.

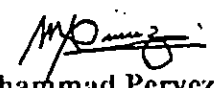
This prima facie suggest that the Inquiry Committee has purposely kept my reply to questionnaire and the X-Sections away from record. Evidently, they have done so to poison the competent authority against me, otherwise there seems no other reason. I condemn this attitude of the Inquiry committee and request the Hon'ble Competent authority to issue proper charge-sheet to the inefficient members of Inquiry Committee for their falsehood and ruining the career of others for personal motives.

Whether such an inefficient and inimical Inquiry Committee can be trusted for deciding the fate of the undersigned? No, not at all, unless one is in league with them.


With the aforesaid submissions, it is most humbly prayed that the Show-Cause Notice issued to the undersigned, may graciously be withdrawn/ vacated being it against law/ facts and natural justice and the undersigned may kindly be exonerated of the vague / false charges leveled against him in a whimsical manner.

I also wish to be heard in person.

Yours Obediently,


(Muhammad Pervez) 5/8/2011
Accused Officer:

ATTESTED



No. 1495 /A/C-1, Dated Parachinar the 14 /11/2011.

To,

The Political Agent,
Kurram Parachinar.

Subject:- MIS-APPROPRIATION OF PUBLIC FUNDS ON ACCOUNT OF
M&R FUNDS IN CENTRAL KURRAM.

Reference 1. This Office No. 1462/2-B, dated 28.12.2010.
2. Your office memo No. 37-39/Dev:M&R/H/Way/inquiry/Kurram, dt:8.1.2011

With reference to above, the detail report regarding subject issue is submitted as under :-

The undersigned has inspected all those M & R works in Para Chamkar area of Central Kurram on 30.12.2010, which were under enquiry and payment made there on during 2008-09 and 2009-10.

The respective M & R contractor has completed all the works pointed out by the enquiry committee in their report according to standard specification and payment made there on during 2008-09 and 2009-10.

EXECUTIVE ENGINEER,
HIGHWAY DIVISION KURRAM

Copy with reference to above forwarded to the Chief Engineer (FATA) W & S Peshawar for information please.

EXECUTIVE ENGINEER,
HIGHWAY DIVISION KURRAM

ATTESTED

Attested
Dow
A.

Office of the Executive Engineer
Highway Division Kurram Agency
No 268 /Camp Peshawar
Dated: 18 /05/2009

47

To

The Political Agent
Kurram Agency Parachinar

Subject: - AOM & R OF ROADS IN KURRAM AGENCY DURING 2008-09

It is submitted that the Roads/Bridges as noted below are in deplorable condition and in dire need of AOM&R during current financial year.

UPPER KURRAM

S.No	Name of work	Estimated Cost Rs (M)	Expenditure Rs (M)	Remarks
1.	Parachinar to Kimran Road.	0.553836	0.398836	
2.	Ahmad Zai Road.	0.648452	0.448452	
3.	Parachinar Kara Khail Burqui Road.	1.231257	1.131257	
4.	Parachinar Tarimangal Road.	0.826174	0.626174	
5.	Parachinar Nasti Kot Road.	0.744195	0.644195	
6.	Alamsher Dangila Road.	0.396259	0.396259	
7.	Parachinar to Maulana Road.	0.600	---	
	TOTAL	5.000	3.645	

CENTRAL KURRAM

S.No	Name of work	Estimated Cost Rs (M)	Expenditure Rs (M)	Remarks
1.	Sarpakh to Bagzai Road.	3.00	---	
2.	Makhrni Surpakh via Gogani Road.	2.00	---	
3.	Repair of Said Ali Mela to Central Kurram.	2.00	---	
	TOTAL	7.00	---	

LOWER KURRAM

S.No	Name of work	Estimated Cost Rs (M)	Expenditure Rs (M)	Remarks
1.	Baggan to Zarrana Road.	0.523		
2.	Ali Zai Bridge	3.378	---	Governor No. 1062 SOP/35 dated 29/05/09
	TOTAL	3.901	---	
	Grand Total	15.901	3.645	

Note: - In case Ali Zai Bridge is not further endorsed by ACS then Dad Kamar to Pastawani Road, Arwali to Narrari Road. Sadda to Koochi Bridge and bridge Protection work will be repaired against the amount allocated to Ali Zai Bridge

As the fund to the tune of Rs. 15.901 Million has been released, it is therefore requested that sanction to above mentioned roads may please be granted to carry out AOM&R during the current financial year.

Counter Signed by: -

Political Agent
Kurram Agency

*Attended
A.W.
S.*

M. J. Khan
Executive Engineer Highway
Division Kurram Agency
at Parachinar

TESTED

48

LIST OF AQM & R OF DURING 2009-10 IN RESPECT OF HIGHWAY DIVISION KURRAM AGENCY.

S/No.	Name of Road	Estimated Amount Allocated for.
Upper Kurram		
1	Special Repair to Parachinar Karkhela Burki road	Rs.4000000
2	Special Repair to Parachinar Nastkot road road	Rs.4000000
3	Special Repair to Shalozan village road	Rs.2500000
4	Special Repair to Malana road	Rs.2500000
5	Special Repair to Alamsher Dangeela road	Rs. 1600000
6	Special Repair to Tari Managal Road.	Rs. 3000000
7	Special Repair to Ahmadzai Road	Rs. 2000000
8	Special Repair to Village Kirman road.	Rs.2000000
9	Special Repair to Mali Kali to Abdullah Khan Kali road	Rs.2000000
10	Special Repair to Rehandling of all Causeways in Upper Kurram	Rs.900000
11	Special Repair to Agra Sultan road	Rs.1000000
12	Special repair to Luoman Khel road	Rs.1500000
13	Special repair to Kirman Bughaki road	Rs.1500000
Total		Rs.28400000
OR		Rs.28.40 Million
Lower Kurram		
1	Special Repair to Shakardara road	Rs.2500000
2	Special Repair to track in Sadda under APA & Kurram Militia	Rs. 2000000
3	Special Repair to Jalandar road	Rs. 2000000
4	Special Repair of Sadda Link road Kochi Bridge	Rs. 1700000
Total		Rs. 8200000
OR		Rs.8.20 Million
Central Kurram		
1	Special Repair of Narrari to Jarana road	Rs. 4000000
2	Special Repair of Shashoo Chinarak Mundan road	Rs. 3500000
3	Special Repair of Bagan Jarana road	Rs.2000000
4	Special Repair of Sadda Murghan road	Rs. 2500000
5	Special Repair to Khyber Agency Border via <u>Wacha Mela Star Patti & Koki Khel road (Km 6-18)</u>	Rs.4500000
6	Special Repair to Khyber Agency Border via <u>Wacha Mela Bazi Star Patti & Koki Khel road (Km 28-30)</u>	Rs. 4000000
7	Special Repair of Surpakh to Taudo Obo via Gundal (5 Kms)	Rs. 4000000
8	Special Repair to Ghakhar to Surpakh Pattak (16 Kms)	Rs.3900000
Total		Rs.28400000
OR		Rs.28.40 Million

1)	Upper Kurram	Rs. 28.40 Million
2)	Lower Kurram	Rs. 8.20 Million
3)	Central Kurram	Rs. 28.40 Million
	Total	Rs. 65.00 Million

[Signature]
Political Agent Kurram

[Signature]
Executive Engineer
Highway Division Kurram
ATTESTED

Attention
Muhammad Pevez
Assist. Engineer

[Signature]
Political Agent
Kurram Agency

at Parachinar

To

Engr. Shahid Hussain,
Director P&M,
C&W Department Peshawar.

49

SUBJECT:- REPLY TO QUESTIONNAIRE

Reference:- Questionnaire received at Parachinar on 25-3-2011. & then received back at Peshawar on 28-3-2011
In reference to above, the number wise replies to questionnaire are submitted as under please.

1. Muhammad Pervez.
Executive Engineer Highway Division Kurram
2. From 1-4-2009 to 30-9-2010
3. Yes.
4. Slip removal and R/wall . a - during May & June 2009
b - during Feb :& April 2010
5. a. Rs. 2390228/-
b. Rs. 2780155/-
6. Yes. (cross sections attached as Annex-A).
7. Were partially damaged after restoring by contractor at his own expense were intact.
8. Partially released against M&R of 2008-09 and not yet released against M&R of 2009-10
9. Yes.
10. a- TS vide No 607/ 8-B Dt : 24-6-2009
b- TS vide No 1523/ 8-B Dt: 17-6-2010
11. During 2008-09- 6 Nos.
During 2009-10 7 Nos.
As the M&R works are not well conceived and fully depends on the desire of the Political Agent and are subjected to the availability of fund. Sometimes funds are withdrawn or transferred to other areas in the agency. Moreover, one time bulk of these works is very small and of exigent nature so the first and final payments are made in piece meal as per practice prevalent in Highway Division Kurram since long. However, question is not related with the instant complaint/charge sheet.
12. No. The expenditure has been incurred as per allotments and sanctions/enhancement as allowed by the Political Agent Kurram and on the written request during May 2009 vide this office No.268/CP dated 18th May 2009 and during November 2009. However, the question is not related to the instant complaint/charge sheet.
13. Yes. a. Rs. 2.00 (m)
b. Rs. 2.00 (m)
Later on increased/enhanced by the Political Agent as per Sr.No.12 above. However, the question is not related to the instant complaint/charge sheet.

*Attested
Adm
A*

O/C *MP 1/4/2011*
(MUHAMMAD PERVEZ)
ASSISTANT ENGINEER
O/O C.E (NORTH)
C&W DEPARTMENT PESHAWAR

Then As XEN

ATTESTED

QUESTIONNAIRE

Mr. M. Pervaiz,
Executive Engineer,
Highway Division; Kurram Agency,
Parachinar

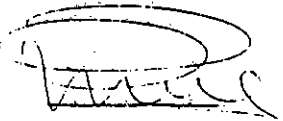
50

Subject:

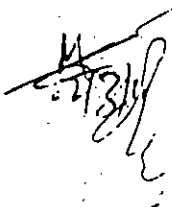
MIS-APPRPRIATION OF FUNDS ON ACCOUNT OF M&R FUNDS IN C&W DIVISION
KURRAM AGENCY AT PARACHINAR

1. Your full Name and designation
2. Your tenure as Executive Engineer Highway Division Kurram Agency at Parachinar (Give dates).
3. Have you supervised the AOM&R / repair works of the following two Nos. roads during your stay at C&W Division Kurram Agency:
 - a. Kirman - Sikaram Road
 - b. Surpakh to Star Pattti Road
4. What nature of works, you have executed, on the above mentioned roads and when?
5. How much payment, you have made to the contractors against their work done on these roads.
6. Have you signed the Cross-section of the slips/cutting before it's removal?
7. Are all the repair works executed under your supervision on these roads still intact or damaged or washed way by floods etc?
8. Have you released the security deposits of these works to the contractors? If yes, when you have released the security?
9. Have you inspected these works during execution?
10. When these works were got technically sanctioned?
11. How much total No. of bills, you have prepared for these M&R works in 2008-09 and 2009-10 and why you have splitted these in many parts?
12. Have you exceeded the financial limit of these M&R works as given in the Nomination letters by the Political Agent? If yes, have you got approval for the enhancement?
13. Have agreements of works signed and for how much amounts?

Your reply must reach to the enquiry committee before 7th March, 2011.



(ZARIFUL MANI)
(PCS SG) PPHI,
FR Peshawar



(ENGR. SHAHID HUSSAIN)
DIRECTOR (P&M)
C&W Deptt, Peshawar

C.C.

- Chief Engineer, FATA, C&W Department Peshawar
- Section Officer (Estab) C&W Department Peshawar
- PS to Secretary Govt; of Khyber Pakhtunkhwa, Peshawar

(ZARIFUL MANI)
(PCS SG) PPHI,
FR Peshawar

ATTESTED

(ENGR. SHAHID HUSSAIN)
DIRECTOR (P&M)
C&W Deptt, Peshawar

Attested
How
A

(10)

To

Engr. Shahid Hussain,
Director P&M,
C&W Department Peshawar.

SUBJECT;- REPLY TO QUESTIONNAIRE

51

Reference;- Questionnaire received at Parachinar on 25-3-2011 and further received back at Peshawar on 28-3-2011.

In reference to above, the number wise replies to questionnaire are submitted as under please.

15. Muhammad Parvez
SDO Highway Sub Division
- 16- 2-6-2009 to 27/3/2010 and 6-6-2010 to 30-9-2010
- 17- Yes.
18. Slip removal and R/walls. a- slips km 22& 23 R/w 6,8,12,14,16& 17
b- slips km 1 to 6 & R/w 1, 3 & 4
19. a. . Rs. 2390228/-
b. . Rs. 2780155/- Check/Joint measured.
20. Yes by inspection.
21. Yes. (Cross sections attached as Annex-A).
22. Were partially damaged & restored by Contractor at his own expenses, which were intact after that.
23. Partially released on 14-7-2009 against M&R of 2008-09 and for 2009-2010 not yet released.
24. Undersigned (Muhammad Pervez) & S.E (S.Iftikhar Hussain) had inspected several times but the A.C.S, C.E, PA or other higher officers have not inspected these works.
25. a. Rs. 2.00 (m) & estimate was prepared during 03/2009
b. Rs. 9.500 (m) & estimate was prepared during 9/2009
26. a- TS vide No 607/ 8-B Dt: 24-6-2009
b- TS vide No 1523/ 8-B Dt: 17-6-2010
27. a. During 2008-09 (6 nos).
b. During 2009-10 - (7 Nos)

As the M&R works are not well conceived and fully depends on the desire of the Political Agent and are subjected to the availability of fund. Sometimes funds are withdrawn or transferred to other areas in the agency. Moreover, one time bulk of these works is very small and of exigent nature so the first and final payments are made in piece meal as per practice prevalent in Highway Division Kurram since long. However, question is not related with the instant complaint/charge sheet.

28. 1. During 2008-09 Rs. 15.901 (m)
2. During 2009-10 Rs. 16.938 (m)

ATTESTED
MP 1/4/2011
(MUHAMMAD PERVEZ)
ASSISTANT ENGINEER
O/O C.E (NORTH)
C&W DEPARTMENT PESHAWAR

Then as SDO

Attested
Adh
A

QUESTIONNAIRE

Mr. Perviaz,
Sub Divisional Officer, O/O Executive Engineer,
Highway Division, Kurram Agency,
Parachinar

52

Subject: MIS-APPRPRIATION OF FUNDS ON ACCOUNT OF M&R FUNDS IN C&W DIVISION
KURRAM AGENCY AT PARACHINAR

15. Your full Name and designation
16. Your tenure as Sub Divisional Officer O/O Executive Engineer Highway Division Kurram Agency at Parachinar (Given dates).
17. Have you supervised the AOM&R / repair works of the following two Nos. roads during your stay at C&W Division Kurram Agency:
a. Kirman - Sikaram Road _____ 2390228-2008-9.
b. Surpakh to Star Pattti Road _____ Ph-III 2780155.
18. What nature of works, you have executed, on the above mentioned roads and where?
19. How much payment, you have made to the contractors against their work done on these 2 Nos. roads. And whether the works done at site have been measured by yourself?
20. Have you checked the quality of work done and how?
21. Have you prepared the Cross-section of the slips/cutting before it's removal and got signed those from Executive Engineer and Contractors?
22. Are all the repair work executed under your supervision on these roads still intact or damaged or mashed way by floods etc?
23. Have you released the security deposits of M&R works in question to their contractors? If - Yes, when you have released the security?
24. During execution of works, have any responsible officer inspected the said works? (Give names)
25. What was the estimated cost of these works and when their estimates were prepared?
26. When these works were got technically sanctioned?
27. How much total No. of bills, you have prepared for these M&R works in 2008-09 and 2009-10 and why you have splitted these in many parts?
28. How much total funds were released for these AOM&R works during 2008-09 and 2009-10?

Your reply must reach to the enquiry committee before 7th March, 2011.

2008-9
632930
R-567100
14-7-9

(ZARIFUL MANI)
(PCS SG) PPHI,
FR Peshawar.

(ENGR. SHAHID HUSSAIN)
DIRECTOR (P&M)
C&W Deptt, Peshawar

- C.C.
- Chief Engineer, FATA, C&W Department Peshawar
 - Section Officer (Estab) C&W Department Peshawar
 - PS to Secretary Govt; of Khyber Pakhtunkhwa, Peshawar

(ZARIFUL MANI)
(PCS SG) PPHI,
FR Peshawar

(ENGR. SHAHID HUSSAIN)
DIRECTOR (P&M)
C&W Deptt, Peshawar

ATTESTED

ANNEX "H"
53

GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the January 12, 2012

ORDER:

No. SOE/C&WD/8-21/2010: WHEREAS, Engr Muhammad Pervez, Assistant Engineer (BS-17) C&W Department was proceeded against under the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance 2000 for the the following irregularities committed in the "(i) Kirman-Sikaram Road and (ii) Surpakh to Star Patti Road".

2. AND WHEREAS, for the said act of misconduct, he was served with charge sheet/statement of allegations.

3. AND WHEREAS, Engr Shahid Hussain Director (P&M) C&W Department and Mr Zairful Mani, (PSC SG) PPHI, FR Peshawar was appointed as inquiry committee, who submitted inquiry report.

4. AND WHEREAS, show cause Notice for imposition of major penalty of "compulsory retirement besides recovery of Rs.18,55,680/-" was served upon the accused officer alongwith a copy of inquiry report, who submitted his reply.

5. NOW THEREFORE, the competent authority after having considered the charges, material on record, inquiry report of the inquiry committee, in exercise of the powers conferred by Section-3 of Khyber Pakhtunkhwa Removal from Services (special powers) Ordinance 2000, has been pleased to impose the major penalty of "compulsory retirement besides recovery of Rs.18,55,680/-" upon the aforementioned officer.

Secretary to
Govt of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

- 1) Additional Chief Secretary FATA Secretariat, Warsak Road, Peshawar
- 2) Accountant General Khyber Pakhunkhwa, Peshawar
- 3) All Chief Engineers, C&W Peshawar
- 4) Chief Engineer (North) C&W Peshawar
- 5) Chief Engineer FATA C&W Peshawar
- 6) Secretary (Admn & Coordination) FATA Secretariat, Warsak Road, Peshawar
- 7) Executive Engineer Highway Division Kurram Agency at Parachinar
- 8) Agency Accounts Officer Kurram Agency at Parachinar
- 9) PS to Chief Secretary Khyber Pakhunkhwa, Peshawar
- 10) PS to Secretary Establishment Deptt, Khyber Pakhunkhwa, Peshawar
- 11) Incharge Computer Centre C&W Department, Peshawar
- 12) PS to Secretary C&W Peshawar
- 13) Officer concerned
- 14) Office order File/Personal File

ATTESTED

(RAHIM BADSHAH)
SECTION OFFICER (ESTT)

Attested
Adm
A

To

The Honourable Chief Minister,
Khyber Pakhtunkhwa.

Subject: APPEAL FOR RE-INSTATEMENT IN SERVICE.

Respected Sir,

It is submitted that I the undersigned, was proceeded against the different charges leveled under the Removal from Service (Special Powers) Ordinance, 2000, amongst one of the same was at (iii) of Charge Sheet and Statement of Allegation:-

"You have made fudge payment amounting to Rs. 27,83,520/- on removal of heavy slips but all the roads were found full of heavy slips"

Engr. Shahid Hussain Planning & Monitoring C&W Department and Mr. Zaif-ul-Maani PCS (SG) were appointed as Inquiry Officer/Committee.

I replied to the inquiry committee with supporting documents (Annexed) and was also personally heard.

On their report / findings, the Chief Secretary as Competent Authority, issued a show cause notice where the Authority in exercise of his powers vested under the RSO, 2000, tentatively decided to impose a major penalty of "Compulsory retirement and recovery of Rs. 18,55,680/-" to which I submitted my reply and was also personally heard by the Authority.

Now vide order No. SOE/C&WD/8-21/2010 dated 12-01-2012 of the Secretary C&W, after having approved the penalty by the Competent Authority (Chief Secretary) I am "Compulsory retired, besides recovery of Rs. 18,55,680/-".

So, I hereby submit that the orders of Competent Authority may kindly be set-aside and I may please be re-instated into my status of Asstt. Engineer / SDO as I am not guilty and every work of M&R nature in the Agencies are always/usually are carried-out on the Nomination basis even the scope and nature of works is duly approved by the respective Political Agents who generally discuss all repair works of Roads/Bridges as well as Buildings with his line staff viz. Assistant Political Agents / Tehsildars of the area, well before the issue direction to the executing agency to take work in hand through his Nominated Contractors and the C&W Department as its executing agency follows with the direction of Political Administration in accordance with the powers vested in XEN as per the Delegation of Powers under Financial Rules of the Provincial Govt. because for Agencies/FRs, no specific Financial Rules are defined/introduced, the same are applied since long as per practice in past in FATA/FRs.

It is worth to say that the Inquiry Officer who is though of Engineer category but he is lacking of the experience and practice in vogue in FATA as he in his entire services right from SDO to the present status has not worked even for a single day in these areas, so his findings are totally un-just and not based with ground reality and the situation prevailing in FATA.

It is hoped that your kind honour will consider my request as prayed in preceding Paras favourably and orders for my reinstatement in service.

Thanks in advance!

Dated 23/01/2012

Sincerely yours,

(Muhammad Pervaiz)
Es-SDO (Comp. Retd.)
R/O Vill: & P/O Jhangra,
The: Havellian, Distt: A/Abad

23/01/2012

(85)

GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the January 12, 2012

ORDER:

No.SOE/C&WD/8-21/2010: WHEREAS, Engr Muhammad Pervez, Assistant Engineer (BS-17) C&W Department was proceeded against under the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance 2000 for the the following irregularities committed in the "(i) Kirman-Sikaram Road and (ii) Surpakh to Star Patti Road":

2. AND WHEREAS, for the said act of misconduct, he was served with charge sheet/statement of allegations.

3. AND WHEREAS, Engr Shahid Hussain Director (P&M) C&W Department and Mr Zairful Mani, (PSC SG) PPHI, FR Peshawar was appointed as inquiry committee, who submitted inquiry report.

4. AND WHEREAS, show cause Notice for imposition of major penalty of "compulsory retirement besides recovery of Rs.18,55,680/-" was served upon the accused officer alongwith a copy of inquiry report, who submitted his reply.

5. NOW THEREFORE, the competent authority after having considered the charges, material on record, inquiry report of the inquiry committee, in exercise of the powers conferred by Section-3 of Khyber Pakhtunkhwa Removal from Services (special powers) Ordinance 2000, has been pleased to impose the major penalty of "compulsory retirement besides recovery of Rs.18,55,680/-" upon the aforementioned officer.

Secretary to
Govt of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

- 1) Additional Chief Secretary FATA Secretariat, Warsak Road, Peshawar
- 2) Accountant General Khyber Pakhtunkhwa, Peshawar
- 3) All Chief Engineers, C&W Peshawar
- 4) Chief Engineer (North) C&W Peshawar
- 5) Chief Engineer FATA C&W Peshawar
- 6) Secretary (Admn & Coordination) FATA Secretariat, Warsak Road, Peshawar
- 7) Executive Engineer Highway Division Kurram Agency at Parachinar
- 8) Agency Accounts Officer Kurram Agency at Parachinar
- 9) PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
- 10) PS to Secretary Establishment Deptt, Khyber Pakhtunkhwa, Peshawar
- 11) Incharge Computer Centre C&W Department, Peshawar
- 12) PS to Secretary C&W Peshawar
- 13) Officer concerned
- 14) Office order File/Personal File


(RAHIM BADSHAH)
SECTION OFFICER (ESTT)

*Attested
Adm
A*

No. 237 /PF

Dated: 03/02/2011.

To: The Members Inquiry Committee;
(i) Engr. Shahid Hussain,
Director (P&M) C&W Deptt: Peshawar
(ii) Mr. Zariful Mani,
(PCS SG) PPHI, FR, Peshawar.

56

Subject: REPLY TO CHARGE SHEET/ STATEMENT OF ALLEGATIONS:

Reference: Your No. D(P&M) C&W/1-31/2010; dated 27.1.2011.

Before addressing the charge (as contained in the Charge sheet) and raising preliminary objections against it, I wish to say that the fate of every one is with *Almighty Allah*, who will never allow his creature to suffer for nothing and/ or holding an accused guilty without bringing sufficient proof against him. He has ordained to do justice with due care and caution while dealing with the fate of an accused. With this submission, I hope justice at your gracious hands as I have been the victim of sharp conspiracy for the last one year.

With due respect, the charge sheet served upon me is *vague* for want of necessary details as required under the law. It seems to have been drafted in a whimsical manner without confirmation of the factual position.

In general it speaks of committing irregularities and making payments without visiting the (i) *Kirman-Sikaram Road* and (ii) *Surpakh to Star Patti Road*. The charges at (i), (ii) and (iii) speak of making fudge payments of *Rs.23,86,863/-* for structure works and *Rs.27,83,520/-* against slips removal without mentioning break up of cost with reference to Kilometer number and Rd of each road. That the measurements were supplied by the Munshi of the contractor. *I deny the whole charge being false and based on verbal statement attributed to the Sub Engineer.*

In order to prove contradiction between the charge sheet and payment position as per list of vouchers attached by the inquiry committee of the PA Kurram regarding the above mentioned 2 Nos roads is described as under:

S.No.	Name of Road	Voucher # & Dt	MB # & Page	Amount paid
(i)	Kirman-Sikaram Road	17&18/CK, dated 23.6.2009 & 75/CK, dated 30.6.2009.	1316 at pages 102-106 & 106- 110 & 1299 at pages 106-110	Rs. 11,97,017/- For structure and slips.
(ii)	Surpakh to Star Patti Road	5/CK to 11/CK, dated 29.4.2010.	1324 at pages 6-10 to 35-39	Rs. 27,80,155/- For structure and slips.

(List of vouchers annexed therein by the inquiry committee is attached as annexure A for your perusal).

This contradiction in the amounts "stated in the Charge sheet" and "that paid as per list attached by the inquiry committee" (tabulated as above) can be noticed at a glance, which is much sufficient to belie/ disprove the charge.

Attested
Adv
S

ATTESTED

57

The members of the Inquiry Committee, while conducting preliminary inquiry ordered by the Political Agent Kurram Agency, claims to have inspected the said roads on 4.10.2010, while according to vouchers, the works were carried out prior to 30.6.2009 and 29.4.2010. The delay in inspection of the repair works carried out on sites, appears to be 1 ½ years for former payments and nearly 6 month for latter payments.

With due respect, the whole world has witnessed the unprecedented rains/floods that presented the picture of "*Toofan-e-Nooh*", which have caused huge losses in July 2010. I enclose herewith a statement of Wikipedia from internet at ([http://en.wikipedia.org/wiki/2010 Pakistan floods](http://en.wikipedia.org/wiki/2010_Pakistan_floods)) for your kind perusal and realizing the things (Please find excerpt from Wiki as annexure B).

May I ask as to why some one did not complain against me at proper time in June 2009 and April 2010, when the works done could easily be verified on spot? Why the complainant waited for long one and a half year when the heavy rains/ floods changed our good into bad. The abnormal delay in reporting the so called fudge payments constitutes a criminal offence against the complainant who ever is he. Why the works were not inspected before destruction made by the flood? It was a futile exercise to confirm things after the heavy rains/ floods. Heavy slips can occur again and again after the rains/ flood even after removal of the earlier ones. It's a matter of common sense.

The charge or allegation with such an abnormal delay is not permissible under rule of law. The delay prima facie suggests malafide of the complainant. In order to bring truth to the surface and sift grain from chuff, the complainant (if any) may be examined. In absence of any evidence/ witness, the charge falls to the ground proving my innocence.

So far as the charge at S.No.(ii) regarding making fudge payments out of AOM&R funds during 2009-10 to the contractor "without visiting these roads for verification" and "supply of measurements by the Munshi of the contractor" is concerned, the same is totally false. A single penny has not been paid without physical verification.

In addition to the aforesaid submissions, it is further added that necessary rectification have been completed by the contractor concerned after floods at his own risk and cost hence the Government have sustained no loss. The incumbent Executive Engineer has confirmed this fact in his report addressed to the PA Kurram on 14.1.2011 (Please find copy of his report attached as annexure C).

It is, therefore most humbly prayed that on acceptance of this reply, undersigned may very kindly be exonerated of the charge of Misconduct and also an opportunity to be heard in person may kindly be provided.

R
11.10 AM. on 4/2/11 at
along with three encs.
4/2/11

Attested
A. A.

O/C MP 03/2/2011
(MUHAMMAD PERVEZ)
Assistant Engineer,
O/o Chief Engineer (North)
C&W Department, Peshawar.

ATTESTED

Ann: A

58

S. No.	Name of Road	Voucher No.	Date	M.B. No.	Page No.	Amount Paid
						Payment made in 6/2009
1	Surpakh to Bazai road.	24/CK	23-06-09	1316	54-58	397930/-
2	-do-	23/CK	-do-	-do-	59-64	398672/-
3	-do-	22/CK	-do-	-do-	27-33	394939/-
4	Makhrani to Sarpakh road via Gogani.	21/CK	-do-	-do-	69-73	398594/-
5	-do-	20/CK	-do-	-do-	74-78	399031/-
6	-do-	19/CK	-do-	-do-	79-83	398594/-
7	Kirman-Sikaram road	18/CK	-do-	1299	106-110	399505/-
8	-do-	17/CK	-do-	-do-	102-106	398918/-
9	Surpakh-Bazai road	25/CK	-do-	1316	45-49	399750/-
10	-do-	26/CK	-do-	-do-	50-53	395229/-
11	-do-	27/CK	-do-	-do-	65-68	220071/-
12	-do-	28/CK	-do-	1299	69-101	397971/-
13	-do-	29/CK	-do-	-do-	92-96	398964/-
14	-do-	30/CK	-do-	-do-	88-92	396276/-
15	Makhrani- Surpakh via Gogani.	31/CK	-do-	1316	85-88	380035/-
16	-do-	32/CK	-do-	-do-	89-92	396132/-

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17	Surpakh to Baza road	33/CK	-do-	-do-	34-39	394769/-
18	-do-	34/CK	-do-	-do-	40-44	398219/-
19	Makhrani to Surpakh via Gogani.	74/CK	30-06-09	-do-	-	49273/-
20	Kirman-Sikaram road	75/CK	-do-	-do-	79-83	398594/-
				A	TOTAL	7411466/-
						Payment made in 3/2010
21	Surpakh to Taudo Obu Via Gundal	3/UK	16-03-10	1324	1-5	396364/-
22	-do-	4/UK	-do-	-do-	111-114	399008/-
23	-do-	5/UK	-do-	-do-	93-98	399649/-
24	-do-	6/UK	-do-	-do-	102-106	389649/-
25	-do-	7/UK	-do-	-do-	107-110	399590/-
26	-do-	8/UK	-do-	-do-	98-102	395939/-
27	-do-	9/UK	-do-	-do-	120-124	395041/-
28	-do-	10/UK	-do-	-do-	115-119	394298/-
				B	TOTAL	3169538/-
						Payment made in 4/2010
29	Sarpakh to Star Patti. Phase-III	5/CK	29-04-10	1324	20-34	398383/-

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30	-do-	6/CK	-do-	-do-	25-29	397751/-	✓
31	-do-	7/CK	-do-	-do-	16-19	395229/-	✓
32	-do-	8/CK	-do-	-do-	35-39	398985/-	✓
33	-do-	9/CK	-do-	-do-	20-24	399063/-	✓
34	-do-	10/CK	-do-	-do-	12-15	398594/-	✓
35	-do-	11/CK	-do-	-do-	6-10	392150/-	✓
36	Surpakh to taudobu via Gundal.	12/CK	-do-	-do-	40-44	398234/-	
				C	TOTAL	3178389/-	

A = Rs. 74,11,466/-

B = Rs. 31,69,538/-

C = Rs. 31,78,389/-

TOTAL: A+B+C = Rs. 1,37,59,393/-

In response to the above, we the three members along-with the Sub Engineer in-charge, Mr. Iftekhar Hussain jointly inspected the following mentioned two roads in detail on 04-10-2010, where as the rest of the roads were not shown to us, with the plea by the Sub Engineer and contractor that all these roads are presently completely closed for every type of traffic due to heavy slips during recent rains.

We the under-signed inspected the following two roads in detail.

1. Kirman-Sikaram road.
2. Surpakh to Star Patti road.

So for the detail inspection of these two road are concerned, old road structures i-e Retaining Walls; toe-walls etc were shown to us, which were constructed probably constructed in 2006-07 during its original construction as an ADP scheme and non of the fresh structures taken in measurement book were at site.

The Sub Engineer was lastly directed to show us the structure work, which are recently constructed by the contractor, for which such huge payment has been made out of AOM&R fund during 2009-10. In reply he clearly told us that he has never come to these roads for inspection as well as for measurements (for which payments have been made) and the measurements have been supplied to him by the munshi of the contractor.

Attended
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LIST OF AOM & R OF DURING 2009-10 IN RESPECT OF HIGHWAY DIVISION KURRAM AGENCY.

S/No.	Name of Road	Estimated Amount Allocated for
Upper Kurram		
1	Special Repair to Parachinar Karkhela Burki road	Rs. 4000000
2	Special Repair to Parachinar Nastkot road	Rs. 4000000
3	Special Repair to Shalozan village road	Rs. 2500000
4	Special Repair to Malana road	Rs. 2500000
5	Special Repair to Alamsher Dangeela road	Rs. 1500000
6	Special Repair to Tari Managal Road	Rs. 3000000
7	Special Repair to Ahmadzai Road	Rs. 2000000
8	Special Repair to Villaje Kirman road	Rs. 2000000
9	Special Repair to Mali Kali to Abdullah Khan Kali road	Rs. 2000000
10	Special Repair to Rehandling of all Causeways in Upper Kurram	Rs. 900000
11	Special Repair to Agra Sultan road	Rs. 1000000
12	Special repair to Luqman Khel road	Rs. 1500000
13	Special repair to Kirman Bughaki road	Rs. 1500000
Total		Rs. 28400000
OR		Rs. 28.40 Million
Lower Kurram		
1	Special Repair to Shakardara road	Rs. 2500000
2	Special Repair to track in Sadda under APA & Kurram Militia	Rs. 2000000
3	Special Repair to Jalandar road	Rs. 2000000
4	Special Repair of Sadda Link road Kochi Bridge	Rs. 1700000
Total		Rs. 8200000
OR		Rs. 8.20 Million
Central Kurram		
1	Special Repair of Narrari to Jarana road	Rs. 4000000
2	Special Repair of Shashoo Chinarak Mundan road	Rs. 3600000
3	Special Repair of Bagan Jarana road	Rs. 2000000
4	Special Repair of Sadda Murghan road	Rs. 2500000
5	Special Repair to Khyber Agency Border via Wacha Mela Star Patti & Koki Khel road (Km 6-18)	Rs. 4500000
6	Special Repair to Khyber Agency Border via Wacha Mela Bazi Star Patti & Koki Khel road (Km 28-30)	Rs. 4000000
7	Special Repair of Surpakh to Taudo Obo via Gundal (5 Kms)	Rs. 4000000
8	Special Repair to Ghakhar to Surpakh Pattak (16 Kms)	Rs. 3900000
Total		Rs. 28400000
OR		Rs. 28.40 Million

1)	Upper Kurram	Rs. 28.40 Million
2)	Lower Kurram	Rs. 8.20 Million
3)	Central Kurram	Rs. 28.40 Million
	Total	Rs. 65.00 Million


Political Agent Kurram


Executive Engineer
Highway Division Kurram

Attention
Muhammad Pevez
Assist. Engineer

Attested
Adh
D

62

To

The Political Agent
Kurram Agency Parachinar

Subject: - AOM & R OF ROADS IN KURRAM AGENCY DURING 2008-09

It is submitted that the Roads/Bridges as noted below are in deplorable condition and in dire need of AOM&R during current financial year.

UPPER KURRAM

S.No	Name of work	Estimated Cost Rs (M)	Expenditure Rs (M)	Remarks
1.	Parachinar to Kimran Road.	0.553836	0.398836	
2.	Ahmad Zai Road.	0.648452	0.448452	
3.	Parachinar Kara Khail Burqui Road.	1.231257	1.131257	
4.	Parachinar Tarimangal Road.	0.826174	0.626174	
5.	Parachinar Nasti Kot Road.	0.744195	0.644195	
6.	Alamsher Dangila Road.	0.396259	0.396259	
7.	Parachinar to Maulana Road.	0.600	---	
TOTAL		5.000	3.645	

CENTRAL KURRAM

S.No	Name of work	Estimated Cost Rs (M)	Expenditure Rs (M)	Remarks
1.	Sarpakh to Bagzai Road.	3.00	---	
2.	Makhrni Surpakh via Gogani Road.	2.00	---	
3.	Repair of Said Ali Mela to Central Kurram	2.00	---	
TOTAL		7.00	---	

LOWER KURRAM

S.No	Name of work	Estimated Cost Rs (M)	Expenditure Rs (M)	Remarks
1.	Baggan to Zarrana Road.	0.523		
2.	Ali Zai Bridge	3.378	---	Governor No. 1062 SOP/35 dated 29/05/09
TOTAL		3.901	---	
Grand Total		15.901	3.645	

Note: - In case Ali Zai Bridge is not further endorsed by ACS then Dad Kamar to Pastawani Road, Arwali to Narrari Road. Sadda to Koochi Bridge and bridge Protection work will be repaired against the amount allocated to Ali Zai Bridge

As the fund to the tune of Rs. 15.901 Million has been released, it is therefore requested that sanction to above mentioned roads may please be granted to carry out AOM&R during the current financial year.

ATTESTED

Counter Signed by: -

Political Agent
Kurram Agency

Attested
Adw
B.

Executive Engineer Highway
Division Kurram Agency
at Parachinar

FDMA

FLOODS-2010 Letter-Dt: 18⁶/₈ 2010



OFFICE OF THE CHIEF ENGINEER (FATA)
WORKS & SERVICES DEPARTMENT
PESHAWAR

No. P31 M-FD
Dated Peshawar the 18/7/2010

63A

To

All Executive Engineers
In Works & Services FATA.

Subject: RECOVERY PLAN IN THE BACKDROP OF PRESENT ONGOING FLOOD CATASTROPHE

Enclosed please find herewith a copy of Administrative Officer, FATA Disaster Management Authority, Peshawar letter No. FS/FDMA/Floods/Damages/2010/428-435, dated 18.8.2010 for information and necessary action.

You are directed to submit the requisite information on the above noted subject pertaining to communication, PHE and Housing sectors (in soft and hard copies) within 3 days positively.

D.A/As Above

[Signature]
(Engr. Amir Shahbaz Khan)
Chief Engineer

Copy forwarded to the Administrative officer, FATA Disaster Management Authority, House No. 38-1/D, Old Jamrud Road Peshawar w/r to his letter No. quoted above for information.

Chief Engineer

*Saw
Submitted for Perusal Pcl
19/8*

Put up covering memo

To The C.E (FATA)

*Sub
Ref: 1. FDMA No F.S./FDMA/Floods/Damm
12010/428-435 Dt: 18/8/10
2 Your No 731/M-FD Dt: 18/8/10*

*Enclosed please find h/w
requisite information for
favour of further work.*

*Advised
Adw*

18/8/10

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63

2010 Pakistan floods

From Wikipedia, the free encyclopedia
http://en.wikipedia.org/wiki/2010_Pakistan_floods

The **2010 Pakistan floods** began in late July 2010 following heavy monsoon rains in the Khyber Pakhtunkhwa, Sindh, Punjab and Balochistan regions of Pakistan and affected the Indus River basin. At one point, approximately one-fifth of Pakistan's total land area was underwater. According to Pakistani government data the floods directly affected about 20 million people, mostly by destruction of property, livelihood and infrastructure, with a death toll of close to 2,000. The number of individuals affected by the flooding exceeds the combined total of individuals affected by the 2004 Indian Ocean tsunami, the 2005 Kashmir earthquake and the 2010 Haiti earthquake.

UN Secretary-General Ban Ki-moon had initially asked for \$460 million for emergency relief, noting that the flood was the worst disaster he had ever seen. Only 20% of the relief funds requested had been received as of 15 August 2010. The U.N. had been concerned that aid was not arriving fast enough, and the World Health Organization reported that ten million people were forced to drink unsafe water. The Pakistani economy has been harmed by extensive damage to infrastructure and crops. Structural damages have been estimated to exceed 4 billion USD, and wheat crop damages have been estimated to be over 500 million USD. Officials have estimated the total economic impact to be as much as 43 billion USD.

Causes

Current flooding is blamed on unprecedented monsoon rain. The rainfall anomaly map published by NASA shows unusually intense monsoon rains attributed to La Niña. On 21 June, the Pakistan Meteorological Department cautioned that urban and flash flooding could occur from July to September in the north parts of the country. The same department recorded above-average rainfall in the months of July and August 2010 and monitored the flood wave progression. Some of the discharge levels recorded are comparable to those seen during the floods of 1988, 1995, and 1997.

An article in the New Scientist attributed the cause of the exceptional rainfall to "freezing" of the jet stream, a phenomenon that reportedly also caused unprecedented heat waves and wildfires in Russia as well as the 2007 United Kingdom floods.

In response to previous floods of the Indus River in 1973 and 1976, Pakistan created the Federal Flood Commission (FFC) in 1977. The FFC operates under Pakistan's Ministry of Water and Power. It is charged with executing flood control projects and protecting lives and property of Pakistanis from the impact of floods. Since its inception the FFC has received Rs 87.8 billion (about 900 million USD). FFC documents show that numerous projects were initiated, funded and completed, but reports indicate that little work has actually been done due to ineffective leadership and corruption.

Flooding and impact

Monsoon rains were forecasted to continue into early August and were described as the worst in this area in the last 80 years. The Pakistan Meteorological Department reported that over 200 mm (7.88 inches) of rain fell over a 24-hour period in a number of places in Khyber Pakhtunkhwa and Punjab. A record-breaking 274 mm (10.7 inches) of rain fell in Peshawar during 24 hours; the previous record was 187 mm (7.36 inches) of rain in April 2009. As of 30 July, 500,000 or more people had been displaced from their homes. On 30 July, Manuel Bessler, head of the UN Office for the Coordination of Humanitarian

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Affairs, stated that 36 districts were involved, and 950,000 people were affected, although within a day, reports increased that number to as high as a million, and by mid-August they increased the number to nearly 20 million affected. By mid-August, according to the governmental Federal Flood Commission (FFC), the floods had caused the deaths of at least 1,540 people, while 2,088 people had received injuries, 557,226 houses had been destroyed, and over 6 million people had been displaced. One month later, the data had been updated to reveal 1,781 deaths, 2,966 people with injuries, and more than 1.89 million homes destroyed.

The Khyber Pakhtunkhwa provincial minister of information, Mian Iftikhar Hussain, said "the infrastructure of this province was already destroyed by terrorism. Whatever was left was finished off by these floods." He also called the floods "the worst calamity in our history." Four million Pakistanis were left with food shortages.

The Karakoram Highway, which connects Pakistan with China, was closed after a bridge was destroyed. The ongoing devastating floods in Pakistan will have a severe impact on an already vulnerable population, says the International Committee of the Red Cross (ICRC). In addition to all the other damages the floods have caused, floodwater has destroyed much of the health care infrastructure in the worst-affected areas, leaving inhabitants especially vulnerable to water-borne disease. In Sindh, the Indus River burst its banks near Sukkur on 8 August, submerging the village of Mor Khan Jatoi. There is also an absence of law and order, mainly in Sindh. Looters have been taking advantage of the floods by ransacking abandoned homes using boats.

Infrastructure

Floods have damaged an estimated 2,433 miles of highway and 3,508 miles (5,646 km) of railway. Cost estimates for highway damages are approximately 158 million USD, and railway damages are 131 million USD. Any unique or particularly large infrastructure damages will increase these estimates. Public building damages are estimated at 1 billion USD. Aid donors have presented an estimate that 5,000 schools have been destroyed.

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No. 1495 /A/C-1, Dated Parachinar the 14 /1/2011.

To,
The Political Agent,
Kurram Parachinar.

Subject:- MIS-APPROPRIATION OF PUBLIC FUNDS ON ACCOUNT OF
M&R FUNDS IN CENTRAL KURRAM.

Reference 1. This Office No. 1462/2-B, dated 28.12.2010.
2. Your office memo No. 37-39/Dev:M&R/H/Way/inquiry/Kurram, dt:8.1.2011

With reference to above, the detail report regarding subject issue is submitted as under :-

The undersigned has inspected all those M & R works in Para Chamkani area of Central Kurram on 30.12.2010, which were under enquiry and payment made there on during 2008-09 and 2009-10.

The respective M & R contractor has completed all the works pointed out by the enquiry committee in their report according to standard specification and payment made there on during 2008-09 and 2009-10.

EXECUTIVE ENGINEER,
HIGHWAY DIVISION KURRAM.

Copy with reference to above forwarded to the Chief Engineer (FATA) W & S Peshawar for information please.

EXECUTIVE ENGINEER,
HIGHWAY DIVISION KURRAM.

Received
by CE (FATA) office

D/No 11633
1463 Dt: 18/1/2011

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QUESTIONNAIRE

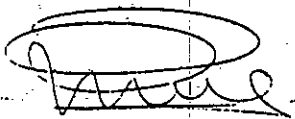
66

Mr. M. Pervaiz,
Executive Engineer,
Highway Division, Kurram Agency,
Parachinar

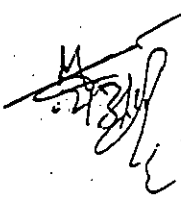
Subject: MIS-APPRPRIATION OF FUNDS ON ACCOUNT OF M&R FUNDS IN C&W DIVISION
KURRAM AGENCY AT PARACHINAR

1. Your full Name and designation
2. Your tenure as Executive Engineer Highway Division Kurram Agency at Parachinar (Give dates).
3. Have you supervised the AOM&R / repair works of the following two Nos. roads during your stay at C&W Division Kurram Agency:
 - a. Kirman - Sikaram Road
 - b. Surpakh to Star Pattti Road
4. What nature of works, you have executed, on the above mentioned roads and when?
5. How much payment, you have made to the contractors against their work done on these roads.
6. Have you signed the Cross-section of the slips/cutting before it's removal?
7. Are all the repair works executed under your supervision on these roads still intact or damaged or washed way by floods etc?
8. Have you released the security deposits of these works to the contractors? If yes, when you have released the security?
9. Have you inspected these works during execution?
10. When these works were got technically sanctioned?
11. How much total No. of bills, you have prepared for these M&R works, in 2008-09 and 2009-10 and why you have splitted these in many parts?
12. Have you exceeded the financial limit of these M&R works as given in the Nomination letters by the Political Agent? If yes, have you got approval for the enhancement?
13. Have agreements of works signed and for how much amounts?

Your reply must reach to the enquiry committee before 7th March, 2011.



(ZARIFUL MANI)
(PCS SG) PPHI,
FR Peshawar



(ENGR. SHAHID HUSSAIN)
DIRECTOR (P&M)
C&W Deptt, Peshawar

C.C.

- Chief Engineer, FATA, C&W Department Peshawar
- Section Officer (Estab) C&W Department Peshawar
- PS to Secretary Govt; of Khyber Pakhtunkhwa, Peshawar

(ZARIFUL MANI)
(PCS SG) PPHI,
FR Peshawar

(ENGR. SHAHID HUSSAIN)
DIRECTOR (P&M)
C&W Deptt, Peshawar

ATTESTED

Attested
Adw
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To

Engr. Shahid Hussain,
Director P&M,
C&W Department Peshawar.

67

SUBJECT:- REPLY TO QUESTIONNAIRE

Reference:- Questionnaire received at Parachinar on 25-3-2011. & then received back at Peshawar on 28-3-2011
In reference to above, the number wise replies to questionnaire are submitted as under please.

1. Muhammad Pervez.
Executive Engineer Highway Division Kurram
2. From-1-4-2009 to 30-9-2010
3. Yes.
4. Slip removal and R/wall . . . a - during May & June 2009
b -during Feb :& April 2010
5. a. Rs. 2390228/-
b. Rs. 2780155/-
6. Yes. (cross sections attached as Annex-A). *Recd 2/4/2011*
7. Were partially damaged after restoring by contractor at his own expense were intact. *Recd*
8. Partially. released against M&R of 2008-09 and not yet released against M&R of 2009-10
9. Yes.
10. a- TS vide No 607/ 8-B Dt: 24-6-2009
b- TS vide No 1523/ 8-B Dt: 17-6-2010
11. During 2008-09- 6 Nos.
During 2009-10 7 Nos.
12. No. The expenditure has been incurred as per allotments and sanctions/enhancement as allowed by the Political Agent Kurram and on the written request during May 2009 vide this office No.268/CP dated 18th May 2009 and during November 2009. However, the question is not related to the instant complaint/charge sheet.
13. Yes. . . a. Rs. 2.00 (m)
b. Rs. 2.00 (m)

Later on increased/enhanced by the Political Agent as per Sr.No.12 above. However, the question is not related to the instant complaint/charge sheet.

REC'D
O/C *MP 1/4/2011*
(MUHAMMAD PERVEZ)
ASSISTANT ENGINEER
O/O C.E (NORTH)
C&W DEPARTMENT PESHAWAR

Then AS XEN

*Attended
Adv
D*

QUESTIONNAIRE

Mr. Perviaz,
Sub Divisional Officer, O/O Executive Engineer,
Highway Division, Kurram Agency,
Parachinar

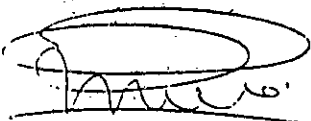
68

Subject: MIS-APPRPRIATION OF FUNDS ON ACCOUNT OF M&R FUNDS IN C&W DIVISION
KURRAM AGENCY AT PARACHINAR

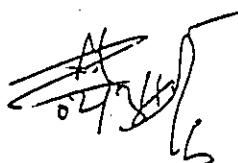
15. Your full Name and designation
16. Your tenure as Sub Divisional Officer O/O Executive Engineer Highway Division Kurram Agency at Parachinar. (Given dates).
17. Have you supervised the AOM&R / repair works of the following two Nos. roads during your stay at C&W Division Kurram Agency:
 - a. Kirman - Sikaram Road 2390228-2008-9.
 - b. Surpakh to Star Pattti Road Ph-III 2780155.
18. What nature of works, you have executed, on the above mentioned roads and where?
19. How much payment, you have made to the contractors against their work done on these 2 Nos. roads. And whether the works done at site have been measured by yourself?
20. Have you checked the quality of work done and how?
21. Have you prepared the Cross-section of the slips/cutting before it's removal and got signed those from Executive Engineer and Contractors?
22. Are all the repair work executed under your supervision on these roads still intact or damaged or mashed way by floods etc?
23. Have you released the security deposits of M&R works in question to their contractors? If yes, when you have released the security? - Yes
24. During execution of works, have any responsible officer inspected the said works? (Give names)
25. What was the estimated cost of these works and when their estimates were prepared?
26. When these works were got technically sanctioned?
27. How much total No. of bills, you have prepared for these M&R works in 2008-09 and 2009-10 and why you have splitted these in many parts?
28. How much total funds were released for these AOM&R works during 2008-09 and 2009-10?

Your reply must reach to the enquiry committee before 7th March, 2011.

2008-9
632930
R - 567100
14-7-9.



(ZARIFUL MANI)
(PCS SG) PPHI,
FR Peshawar



(ENGR. SHAHID HUSSAIN)
DIRECTOR (P&M)
C&W Deptt, Peshawar

C.C.

- Chief Engineer, FATA, C&W Department Peshawar
- Section Officer (Estab) C&W Department Peshawar
- PS to Secretary Govt; of Khyber Pakhtunkhwa, Peshawar

ATTESTED

(ZARIFUL MANI)
(PCS SG) PPHI,
FR Peshawar

(ENGR. SHAHID HUSSAIN)
DIRECTOR (P&M)
C&W Deptt, Peshawar

Attested
Adv
A.

To

Engr. Shahid Hussain,
Director P&M,
C&W Department Peshawar.

69

SUBJECT;- REPLY TO QUESTIONARE

Reference;- Questionnaire received at Parachinar on 25-3-2011 and further received back at Peshawar on 28-3-2011.
In reference to above, the number wise replies to questionnaire are submitted as under please.

15. Muhammad Parvez
SDO Highway Sub Division
- 16- 2-6-2009 to 27/3/2010 and 6-6-2010 to 30-9-2010
- 17- Yes.
18. Slip removal and R/walls. a- slips km 22& 23 R/w 6,8,12,14,16& 17
b- slips km 1 to 6 & R/w 1, 3 & 4
19. a. . Rs . 2390228/-
b. . Rs . 2780155/- Check/Joint measured.
20. Yes by inspection.
21. Yes. (Cross sections attached as Annex-A). *Handwritten signature and date 14/4/2011*
22. Were partially damaged & restored by Contractor at his own expenses, which were intact after that.
23. Partially released on 14-7-2009 against M&R of 2008-09 and for 2009-2010 not yet released.
24. Undersigned (Muhammad Pervez) & S.E (S.Iftikhar Hussain) had inspected several times but the A.C.S , C.E, PA or other higher officers have not inspected these works.
25. a. Rs. 2.00 (m) & estimate was prepared during 03/2009
b. Rs. 9.500 (m) & estimate was prepared during 9/2009.
26. a- TS vide No 607/ 8-B Dt : 24-6-2009
b- TS vide No 1523/ 8-B Dt: 17-6-2010
27. a. During 2008-09 (6 nos).
b. During 2009-10 - (7 Nos)

As the M&R works are not well conceived and fully depends on the desire of the Political Agent and are subjected to the availability of fund. Sometimes funds are withdrawn or transferred to other areas in the agency. Moreover, one-time bulk of these works is very small and of exigent nature so the first and final payments are made in piece meal as per practice prevalent in Highway Division Kurram since long.

However, question is not related with the instant complaint/charge sheet.

28. 1. During 2008-09 Rs. 15.901 (m)
2. During 2009-10 Rs. 16.938 (m)

Handwritten signature MP 1/4/2011
(MUHAMMAD PERVEZ)
ASSISTANT ENGINEER
O/O C.E (NORTH)
C&W DEPARTMENT PESHAWAR

*Attested
Adv
A*

Then as SDO
TESTED

No 1565 / PR

Dated Battagram the 07/3/2012

Answer "J"
70

To,

The Chief Engineer (Fata)
Works & Services Department
Khyber Pakhtun Khwa Peshawar

Subject: APPEAL FOR REINSTATEMENT IN SERVICE
MIS-APPROPRIATION OF PUBLIC FUNDS ON ACCOUNT OF
AOM&R FUNDS IN CENTRAL KURRAM

Reference: Your letter No 913/2/46-I dated 3/03/2012.

In continuation of the letter No as mentioned above, will due honour and most humbly it is submitted that all the road were inspected by the undersigned in two consecutive days dated 21/12/2011 and 22/12/2011 of para chamkain area i/c Kirman -Sikaram Road (28-Kms) and Surpakh to Star Patti Road (30Kms)

It is worth mentioned that the structural works including retaining walls and removal of slips on both the roads were found completed and intact. At the moment no road slips were found. In short what so ever been paid to the contractor under AMO&R 2008-09 and 2009-10 was found completed on spot and even after lapse of more than three year, no slip was found and no pulverization of structural work was observed. The Roads were found neat and clean. The report is submitted for further necessary action please.

Executive Engineer
C&W Division Battagram

works done

Attested
Adw
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RECEIVED

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No. 1495 /A/C-1, Dated Parachinar the 14 /11/2011.
To,

The Political Agent,
Kurram Parachinar.

Subject:- MIS-APPROPRIATION OF PUBLIC FUNDS ON ACCOUNT OF
M&R FUNDS IN CENTRAL KURRAM.

Reference 1. This Office No. 1462/2-B. dated 28.12.2010.
2. Your office memo No. 37-39/Dev:M&R/H/Way/inquiry/Kurram. dt:8.1.2011


With reference to above, the detail report regarding subject issue is submitted as under :-

The undersigned has inspected all those M & R works in Para Chamkan area of Central Kurram on 30.12.2010, which were under enquiry and payment made there on during 2008-09 and 2009-10.

The respective M & R contractor has completed all the works pointed out by the enquiry committee in their report according to standard specification and payment made there on during 2008-09 and 2009-10.

EXECUTIVE ENGINEER,
HIGHWAY DIVISION KURRAM

Copy with reference to above forwarded to the Chief Engineer (FATA) W & S Peshawar for information please.


EXECUTIVE ENGINEER,
HIGHWAY DIVISION KURRAM

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Receipts

Amir K

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GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/8-21/2010
Dated Peshawar, the May 11, 2012

TO



Engr. Muhammad Pervez
Ex-Assistant Engineer
Village & P.O. Jhangra
Tehsil Havelian, District Abbottabad

Subject: Appeal for Reinstatement in Service

I am directed to refer to your appeal/petition dated 23.01.2012 for withdrawal of your major penalty of "Compulsory Retirement besides recovery of Rs.18,55,680/-" was processed and submitted to competent authority (Chief Minister) for orders, however, the competent authority has rejected your appeal.

2. You are hereby informed accordingly.

[Signature]
(RAHIM BADSHAH)

SECTION OFFICER (ESTT)

Encl even No. & date

Copy forwarded to PS to Secretary C&W Department

SECTION OFFICER (ESTT)

Received
on 16/5/2012
[Signature]

w/o reasons in violation of
Rule 5 Appeal Rules 1986

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 585 /2012

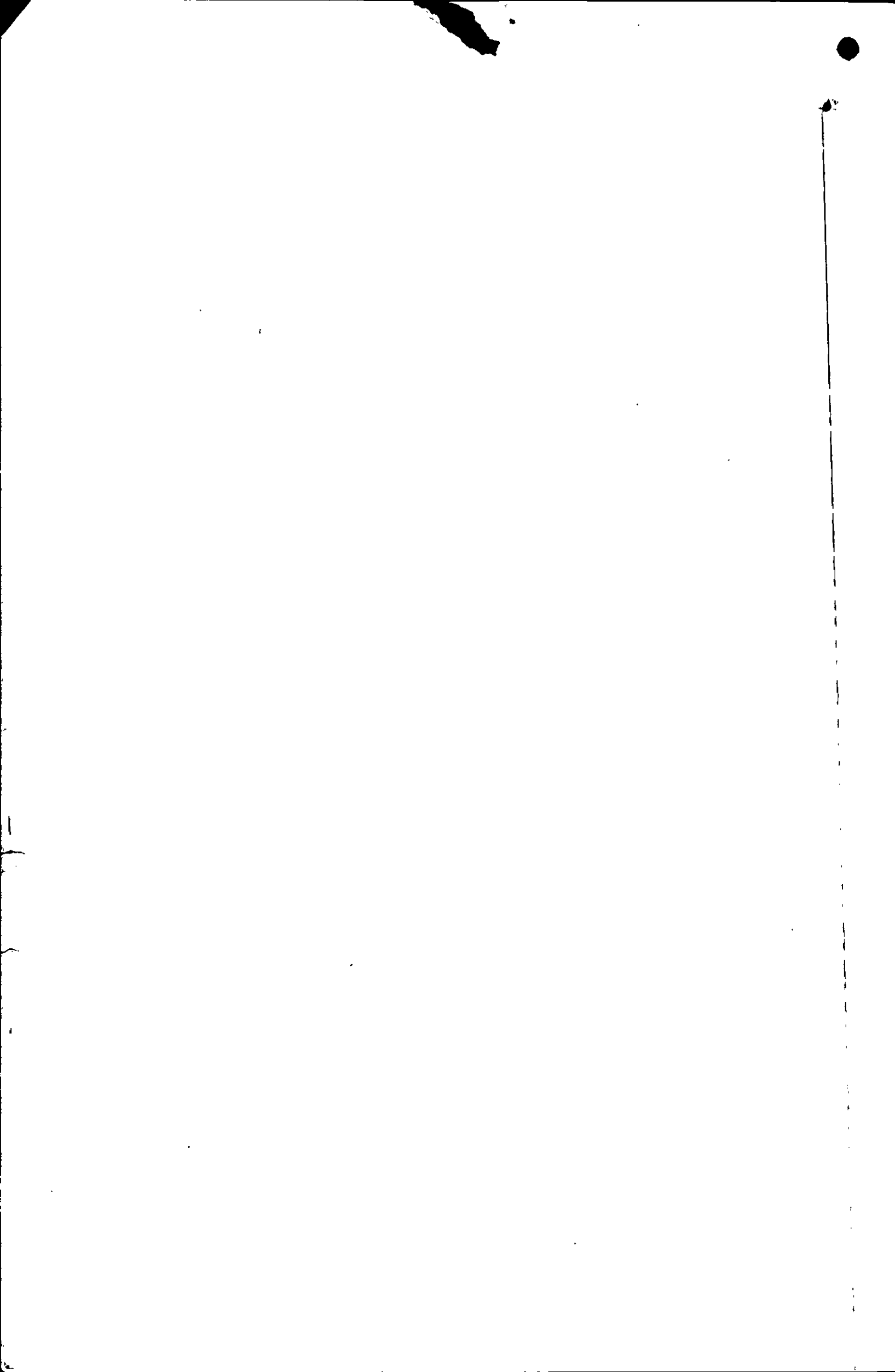
Muhammad Pervez,
Ex-Assistant Engineer,
Office of the Chief Engineer (North),
C&W Department, Peshawar.....Appellant.

Versus

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

SERVICE APPEAL UNDER SECTION-10 OF THE
KHYBER PAKHTUNKHWA REMOVAL FROM
SERVICE (SPECIAL POWERS) ORDINANCE, 2000
READ WITH SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974
AGAINST THE IMPUGNED ORDER DATED
12.01.2012 WHEREBY MAJOR PENALTY OF
COMPULSORY RETIREMENT BESIDES RECOVERY
OF RS.18,55,680/- WERE IMPOSED UPON
APPELLANT AGAINST WHICH HE PREFERRED A
DEPARTMENTAL APPEAL on 23.01.2012 BEFORE
THE APPELLATE AUTHORITY WHICH WAS
REJECTED AND COMMUNICATED VIDE LETTER
DATED 11.05.2012.

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PRAYER:

On acceptance of the instant appeal, the impugned order dated 12.01.2012 and the appellate order dated 11.05.2012 may graciously be set aside and appellant be reinstated into service with all back benefits.

Respectfully Sheweth,

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

1. That while serving as Assistant Engineer (B&R) in the office of Chief Engineer (North) C&W Peshawar, appellant was served with a Charge Sheet and Statement of allegations (*Annex:-A*) dated 08.01.2011 alleging therein the commission of irregularities in the Kirman-Sikaram Road and Surpakh to Star Patti Road when appellant was posted as Executive Engineer Highways Division, Kurram Agency and holding the charge of SDO Highways Sub Division Kurram Agency. Appellant submitted a detailed reply dated 03.02.2011 (*Annex:-B*) in response of the Charge Sheet and Statement of allegations *ibid*, wherein he clarified his position and vehemently denied the allegations leveled against him. The reply *ibid* alongwith its annexures may kindly be taken as a part of this appeal.
2. That subsequently an irregular enquiry was conducted by the Enquiry Committee by issuing a questionnaire to the appellant which was duly answered vide reply to the questionnaire dated 01.04.2011 (*Annex:-C*) and after which the so called enquiry report (*Annex:-D*) was submitted to the competent authority on 02.04.2011 much after

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the statutory period and subsequently vide letter dated 02.06.2011 (*Annex:-E*) an addition was also made to the recommendations of the Enquiry Report *ibid*.

3. That Final Show Cause Notice was served upon the appellant vide letter dated 09.06.2011 (*Annex:-F*) wherein major penalty of compulsory retirement besides recovery of Rs.18,55,680/- was proposed against the appellant to which he once again submitted a comprehensive reply (*Annex:-G*) thereby clarifying the entire position to the competent authority and denied the charges leveled against him. The reply to the show cause notice alongwith its annexures may kindly be taken as part of this appeal.
4. That without considering the reply of the appellant, the impugned order No.SOE/C&WD/8-21/2010 dated the Peshawar 12.01.2012 (*Annex:-H*) was passed whereby major penalty of compulsory retirement besides recovery of Rs.18,55,680/- were imposed upon the appellant.
5. That being aggrieved by the impugned order *ibid*, appellant preferred a departmental appeal to the appellate authority on 23.01.2012 (*Annex:-I*) who referred the matter to the Chief Engineer (FATA) Works & Services Department, who called for the Report of Executive Engineer concerned who submitted his report back vide letter dated 07.03.2012 (*Annex:-J*) wherein the actual position was explained *that structural works including retaining walls and removal of slips on both the*

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roads were found completed and intact and at the moment no road slips were found. In short whatsoever been paid to the contractor under the AMO&R 2008-2009 and 2009-2010 was found completed on the spot and even after the lapse of more than three years, no slip was found and no pulverization of the structural work was observed. The roads were found neat and clean but in spite of the same the appeal was rejected and communicated vide letter dated 11.05.2012 (Annex:-K), hence this appeal inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders, which are unjust, unfair and hence not sustainable in the eye of law.
- B. That no regular enquiry, which is mandatory under Section-5 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was conducted into the allegations leveled against the appellant. No statement was recorded in the presence of the appellant nor any documentary evidence was collected in his presence nor was he provided any opportunity of cross-examination, thus the entire proceedings of enquiry being violative of mandatory provision of law are void and hence the impugned penalty is not sustainable in the eye of law and liable to be set aside. Moreover, the Enquiry Report has been submitted after 84 days, whereas under the law, the same was to be completed within 25 days and even the

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competent authority the same to be completed within the same statutory period.

- C. That since there was factual controversy involved in the matter which necessitated the holding of a detailed regular enquiry into the allegations without which the controversy could not be resolved but unfortunately the regular enquiry was deliberately omitted which has prejudicially affected the appellant and as such has resulted in serious miscarriage of justice. It is a settled law enunciated by the Apex Court that in cases of factual controversies, regular enquiry is must otherwise no penalty muchless major could legally be imposed. Viewed from this angle the impugned penalty is without lawful authority and hence of no legal effect.

- D. That the procedure of questionnaire adopted by the Enquiry Committee was also against the settled law and has been deprecated by the Apex Court in numerous Judgments. Even the questionnaire was deliberately sent to XEN Parachinar despite the knowledge of the Enquiry Committee that appellant was posted at Peshawar which has resulted into some delay. This reflects the biased and partial attitude on the part of the Enquiry Committee to punish the appellant at all cost.

- E. That the impugned order is against the principle of natural justice inas much as appellant has not been afforded a meaningful personal hearing by the Enquiry Committee. He was also not provided the same opportunity by the competent authority and by the appellate authority inspite of his repeated requests. Thus the impugned order is against the principle of natural justice and as such is not maintainable.

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- F. That the appellant, has at his credit more than 26 years service during which period no complaint whatsoever has ever been voiced against him from any quarter, thus appellant has longstanding unblemished service record and keeping in view the circumstances of the case the impugned penalty is quite harsh, excessive and does not commensurate with his guilt.
- G. That the perusal of the Enquiry Report would reflect that the same is not based upon any solid proof and evidence rather the same has been based upon surmises, conjectures and empty suspicions which, however, strongest they might be cannot take the place of a proof. Moreover the Enquiry Committee has gone beyond the scope of the charges contained in the Charge Sheet and the statement of allegations and it is also a settled principle of law that finding beyond the scope of Charge Sheet is nullity in the eye of law inas much as the accused is to be informed about the charges which he will be required to meet in advance.
- H. That recommendation No.2 of the Enquiry Committee provides that *Sub-Engineer has signed the M.B Book, therefore, it cannot be proved that the site was not visited before the payments.* Thus the charge No.2 regarding the fudge payment to the Contractor without visiting the Roads has not been proved by the Enquiry Committee but inspite of the same, the same charge has been included in the Show Cause Notice as proved, which signifies that the competent authority has neither gone through the Enquiry Report nor applied his independent judicious mind to the material on the record.
- I. That in the recommendation No. ¹2 the Enquiry Committee has stated that *it is very difficult to*

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differentiate between the old structures with the new one after one and half years time and floods affecting the structure. Now the question arises that how the charge can be said to have been proved when the Enquiry Committee has categorically admitted that it was difficult to differentiate between old structures and the new ones because of the lapse of time and due to the impact of subsequent floods. It appears that the Enquiry Committee has not visited the spot but has prepared the Report while sitting at Peshawar. Moreover, in the remaining part of the recommendations, the Committee observed that it seems that irregularities have been made in payment. "Seems" cannot take the place of "Proves".

J. That Enquiry Committee has failed to pinpoint any violation of rules, instructions nor has established any sort of misappropriation of public money on the part of the appellant. This particular charge is also beyond the scope of Charge Sheet and Statement of allegations and is therefore, bad in the eye of law. No one can be penalized on the basis of "seems, appears etc."

K. That Charge No.3 says that fudge payment of Rs.27,83,520/- for recovery of heavy slips was made but the roads were found full of heavy slips. As per Show Cause the charges have been proved, which reflects that the competent authority has blindly relied upon the ipse dixit of the Enquiry Committee. As earlier submitted the Enquiry Committee has never visited the spot for confirmation/verification, otherwise it would have collected evidence of local witnesses in support of the charge. Since there is no verbal and documentary evidence to this effect therefore the

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charge has not been established.

L. That the Report of Enquiry Committee is also clearly belied by the letter of the incumbent Executive Engineer dated 14.01.2011 wherein he has confirmed that *he has inspected all those M&R works in Para Chamkani area of Central Kurram on 30.12.2010 which were under enquiry and payment made thereon during 2008-2009 and 2009-2010 and that the respective M&R Contractor has completed all the works pointed out by the Enquiry Committee in their report according to standard specification and payment made thereon during 2008-2009 and 2009-2010.* Thus this is a certificate to the fact that the charge was false and the Govt. sustained no loss.

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M. That even the appellate authority enquired into the actual facts on the spot by referring the matter to the Chief Engineer (FATA) who directed the Executive Engineer concerned for the needful who has reported back the matter vide his letter dated 07.03.2012 and thus has elucidated the correct position in favour of the appellant but even then strange enough that the appeal of the appellant has been rejected.

N. That the findings of the Enquiry Committee in Para-1 of the observations are also the result of going beyond the scope of the charge sheet. The condition introduced by the Chief Engineer is the creation of his own mind unconcerned with the facts and not supported by any law and rules that the same was meant for black topped roads and cannot be applied to the shingled roads which do not involve resurfacing. The release letters say that the expenditure should be incurred judiciously with consultation of the concerned Political Agent and the appellant has followed it being meant for

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shingled roads approved and decided by the Political Agent as is evident from the letter of Political Agent, thus no irregularity has been committed.

- O. That appellant begs to submit other grounds at the time of arguments.

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

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

Through


Appellant


Khaled Rahman,
Advocate, Peshawar.

Dated: 28 / 05/ 2012

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Annexure "M" 1

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 585 /2012



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28/5/12

Muhammad Pervez,
Ex-Assistant Engineer,
Office of the Chief Engineer (North),
C&W Department, Peshawar.....Appellant.

Versus

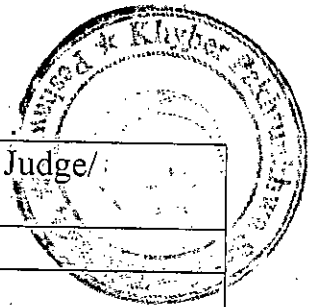
1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Communication & Works Department, Civil Secretariat, Peshawar.....Respondents

SERVICE APPEAL UNDER SECTION-10 OF THE KHYBER PAKHTUNKHWA REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE, 2000 READ WITH SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 12.01.2012 WHEREBY MAJOR PENALTY OF COMPULSORY RETIREMENT BESIDES RECOVERY OF RS.18,55,680/- WERE IMPOSED UPON APPELLANT AGAINST WHICH HE PREFERRED A DEPARTMENTAL APPEAL on 23.01.2012 BEFORE THE APPELLATE AUTHORITY WHICH WAS REJECTED AND COMMUNICATED VIDE LETTER DATED 11.05.2012.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNOUNCED by Mr. Zahid Ali Khan Member
 11-9-2015 by Mr. Irfan Latif Member

Handwritten notes and signatures:
 17-9-2015
 17-9-2015
 17-9-2015
 Certified to the...
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