BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 509/2016

Date of Institution ... 13.05.2016

Date of Decision ... 08.05.2019

Mussawar Jan, Associate Professor (BPS-19), Ex Controller of Examinations Board of Intermediate and Secondary Education Peshawar. ... (Appellant)

VERSUS

Chief Secretary, Govt: of Khyber Pakhtunkhwa Peshawar and two others. ... (Respondents)

MR. FAZAL SHAH MOHMAND,
MR. TAIMUR ALI KHAN,
MR. YASIR SALEEM,
Advocate --- For appellant.

MR. M. RIAZ KHAN PAINDAKHEL
Assistant Advocate General --- For respondents.

MR. AHMAD HASSAN, --- MEMBER(Executive)
MR. HAMID FAROOQ DURRANI --- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER:-

This judgment shall dispose of the instant service appeal as well as connected service appeals no. 397/2016 titled Taj Ali Khan and no. 540/2016 titled Irfanullah, as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

3. Learned counsel for the appellant argued that on the recommendations of Khyber Pakhtunkhwa, Public Service Commission, he was appointed as Lecturer

(BPS-17) on 14.01.2002. Again he was directly appointed as Associate Professor (Mathematics) in 2010. The appellant was posted as Secretary, Board of Intermediate & Secondary Education, Peshawar in February 2012 and thereafter transferred as Controller of Examination in the same organization on 23.10.2012. On the allegations of leakage of an award list of Intermediate Examination 2014 conducted by BISE, Peshawar, he was placed under suspension vide notification dated 23.07.2014. A fact finding enquiry was conducted by the respondents, wherein it was recommended that the appellant be repatriated to his parent department. Subsequently, regular enquiry was conducted and after winding up of the process minor penalty of stoppage of two annual increments for two years was awarded to him vide impugned order dated 23.11.2015. Feeling aggrieved, he filed review petition on 21.01.2016, which remained un-responded, hence, the present service appeal. The Coordinator Mr. Irfanullah (appellant) was appointed by the Chairman, BISE, Peshawar and had admitted the charge of leakage of award list as the same were in his custody. Moreover, charges of leakage of said list were also proved against Mr. Taj Ali Khan, SET/scrutinizer (appellant). As a sequel to the enquiry an FIR was lodged against him and held responsible for the said offense. Resultantly, major penalty of compulsory retirement was awarded to him. He further argued that perusal of enquiry report revealed that charge leveled against the appellant was not proved, therefore, minor penalty awarded to him was illegal and unlawful. Neither statements of witnesses were recorded in his presence nor opportunity of cross examination was afforded to him. He was also denied the opportunity of personal hearing. In short, he was condemned unheard.

4. On the other hand learned Assistant Advocate General argued that the appellant failed to discharge responsibilities as Controller of Examination, BISE, Peshawar. The fact finding enquiry and regular enquiry proved beyond doubt his involvement in leakage of award list referred to above. He was bound to put in place a full proof system for maintaining proper secrecy of the examination, process right from the start to the announcement of result. The Coordinator and other staff were working under his administrative control. He was held guilty of negligence/misconduct in the performance of official duty.

CONCLUSION

5. Perusal of fact finding enquiry revealed that responsibility of leakage of award list of Physics, Part-II, Chemistry, Part-II and English, Part-II of Jinnah College for Women was fixed on Controller, Coordinator, Secrecy Officer and Secrecy Superintendent of BISE, Peshawar. Various recommendations were also made in concluding part of the report. It was followed by regular enquiry conducted against the concerned as per letter dated 10.12.2014. The inquiry officer in his findings opined that charge leveled against the appellant was not proved. Similarly charge against the co-accused Mr. Irfanullah (appellant) was also not proved, whereas charge against Mr. Taj Ali Khan, SET/Scrutinizer stood proved.

6. Para-2 and Para-4 of the enquiry report were worth perusal, wherein the enquiry officer highlighted that all accused officials were cross examined and heard in person. In sub-rule-1(2) of Rule-10 of the E&D Rules 2011, it is laid down that record of the case and the list of witnesses, if any shall be communicated to the enquiry officer/ committee, as the case may be alongwith

orders of enquiry. The record placed before us proved that no such lists were provided to the enquiry officer. Sub-Rule-1 of Rule-11 stipulates that the enquiry officer/enquiry committee shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and wherein witness is produced by one party the other party shall be entitled to cross examine such witnesses. (2011 PLC (C.S) 1111, 2010 SCMR 1554 AND 2018 SCMR 108). Furthermore, sub-rule-4 of Rule-11 of the Rules ibid provides that statement of witnesses and departmental representative if possible will be recorded in the presence of the accused and vice-versa. It is pertinent to point out that all these involved in the scam tried to shift responsibility on the other by leveling counter allegations. Its veracity could not be affirmed/denied by providing them opportunity of cross examination. The enquiry officer failed to record the statements of witnesses nor opportunity of cross examination was afforded to the accused. It made the entire process dubious and without legal sanction. The role of conducting process of cross examination by the enquiry officer was utter violation of the rules referred to above. He went beyond his assigned mandate and his actions were nullity in the eyes of law.

7. We would also like to highlight that charge leveled against Mr. Taj Ali Khan(appellant) in the charge sheet was quite different from the one highlighted at serial no. 8 of para-3 of the enquiry report. The enquiry officer failed to bring on record any incriminating evidence against all the accused and specially the one referred to above. He was supposed to give tailor made recommendations after scrutiny of record. Statements of incumbent Chairman BISE, Peshawar etc. were not recorded for reasons best known to the inquiry officer. Being overall

incharge/head of the organization he should have been associated with the inquiry process. Was it not his failure to put in place a fool proof system to avoid such incidents? It can be safely inferred he mainly relied on conjectures, suppositions and surmises and failed to dig out real facts and fix responsibility on the concerned. Moreover, all the accused were held to be guilty of negligence, therefore, penalty awarded to Mr. Taj Ali on the basis of unsubstantiated charges appeared to be quite harsh. He mainly relied on mobile data obtained by BISE, Peshawar at their own in which apart from Taj Ali Khan names of Aurangzeb and Zahid were also mentioned but statements of Aurangzeb and Zahid and record of the said conversation was not made part of the enquiry report. It lends credence to the fact that the charge leveled against Mr. Taj Ali Khan was not proved, as admitted by the enquiry officer in its report and the relevant portion is reproduce before for ready reference:

> "Although, there is no record of any direct contact of Mr. Taj Ali with media person (Zahid), however, the above mentioned telephonic conversation by Taj Ali & Zahid Shows Taj Ali used Aurangzeb as a facilitator to gain access to media man (Zahid) and through this connection, the award list was leaked out to the press which caused great embarrassment to the Provincial Government."

8. Rule-14 of E&D Rules 2011 relates to passing of order on receipt of report from the enquiry officer/enquiry committee by the Competent Authority. Attention is invited to Sub-rule-(2) and (3) of the said rules. As charges against Mr. Mussawar Jan and Irfanullah were not proved so on the strength of the rule referred to above, they were required to be exonerated by an order in writing. An opening was available for the competent under Sub-rule-(6) of the above rule that in case enquiry proceedings are not conducted in accordance with the provisions

of these rules or the facts of merits of the case are ignored or there are specific grounds, it may after recording reasons in writing, either remand to the Enquiry Officer or the enquiry committee as the case may be that such directions as the competent authority may be like to give, or may order a de-novo through a different Enquiry Officer or Enquiry Committee. We have not been able to comprehend whether the competent authority was justified to give minor penalty to the accused referred to above, as charges could be established against them in the inquiry report? Prima-facie, his action appears to be a violation of laid down procedure and not tenable in the eyes of law.

9. As a sequel to above, the appeal is accepted, impugned order dated 23.11.2015 is set aside. The respondents are directed to conduct de-novo enquiry within a period of ninety days after the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)
MEMBER

(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
08.05.2019

Order

08.05.2019 Counsel for the appellant present. Mr. M. Riaz Khan Paindakhel, Asst: AG present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is accepted, impugned order dated 23.11.2015 is set aside. The respondents are directed to conduct de-novo enquiry within a period of ninety days after the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
08.05.2019

(Ahmad Hassan)
Member

(Hamid Farooq Durrani)
Chairman

19.02.2019 Clerk to counsel for the appellant and Mr. Zia Ullah learned DDA for the respondents present. Clerk to counsel for the appellant states that learned counsel for the appellant is engaged before the Apex Court Islamabad, therefore, requests for adjournment. Adjourned to 04.04.2019 before D.B.

Member Chairman

04.04.2019 Nemo for the appellant. Mr. Zia Ullah learned Deputy District Attorney for the respondents present.

Due to general strike on the call of Bar Council learned counsel for the appellant is not in attendance.

Adjourned to 08.05.2019 before D.B.

Member Chairman

Order

08.05.2019 Counsel for the appellant present. Mr. M. Riaz Khan Paindakhel, Asst: AG present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is accepted, impugned order dated 23.11.2015 is set aside. The respondents are directed to conduct de-novo enquiry within a period of ninety days after the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
08.05.2019

(Ahmad Hassan)
Member

(MUHAMMAD AMIN KHAN KUNDI)
Member

11.10.2018 Clerk to counsel for appellant and Mr. Kabirullah Khattak learned Additional Advocate General present. Clerk to counsel for appellant seeks adjournment as counsel for appellant is not in attendance. Adjourn. To come up for arguments on 21.11.2018 before D.B.

Member Member

21.11.2018 Since 21.11.2018 has been declared as public holiday on account of 12th Rabi-ul-Awal. Therefore, the case is adjourn. To come on 10.01.2019 before D.B.

Reader

10.01.2019 Counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments alongwith connected appeal on 11.01.2019 before D.B

Member Member

11.01.2019 Learned counsel for the appellant and Mr. Kabirullah Khattak learned Assistant Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 19.02.2019 before D.B.

Member Member

14.02.2018 Agent to counsel for the appellant and Assistant AG for the respondents present. Due to general strike of the bar, the case is adjourned. To come up for arguments on 17.04.2018 before D .B.

(Ahmad Hassan)
Member(E)

(M. Hamid Mughal)
Member(J)

17.04.2018 Counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney for the respondents also present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 02.07.2018 before D.B.

(Ahmad Hassan)
Member

(Muhammad Amin Khan Kundi)
Member

02.07.2018 Counsel for the appellant and Addl: AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 13.08.2018 before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

13.08.2018 Appellant Mussawar Jan in person alongwith his counsel Mr. Fazal Shah Mohmand, Advocate present. Mr.Ziaullah, DDA for respondents present and informed the Tribunal that other connected appeal is pending in this Tribunal. As such this case is also adjourned to 11.10.2018 for arguments before D.B. The office is directed to club the appeal titled Irfanullah-vs-Government and any other appeal too if any, with the appeal in hand for the date fixed.

Member

Chairman

16.01.2017 Clerk to counsel for appellant and Mr. Muhammad Jan, GP for respondents present. Clerk to counsel for appellant submitted rejoinder which is placed on file. To come up for arguments on 19.05.2017 before D.B.

(AHMAD HASSAN)
MEMBER

(ASHFAQUE TAJ)
MEMBER

19.05.2017 Clerk of the counsel for appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 13.09.2017 before D.B.

(GUL ZEB KHAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

13.09.2017 Clerk of the counsel for appellant present. Mr. Kabirullah Khattak, Assistant AG for the respondents present. The learned Member Executive, Mr. Gul Zeb Khan is on leave therefore, arguments could not be heard. Adjourned. To come up for rejoinder and arguments on 13.12.2017 before D.B.

Chairman

13.12.2017 Counsel for the appellant present. Mr. Riaz Painda Khel, Assistant Advocate General and counsel for private respondents No. 3 present. Counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 14.02.2018 before D.B.

(Gul Zeb Khan)
Member (E)

(Muhammad Hamid Mughal)
Member (J)

23.08.2016 Counsel for the appellant and Mr. Khurshid Khan, SO alongwith Addl. AG for respondents No. 1 and 2, and counsel for private respondent No. 3 present. Written reply on behalf of respondent No. 3 submitted. Learned AG requested for further adjournment. Last opportunity further extended subject to payment of cost of Rs. 1000/- which shall be borne by respondents No. 1 and 2 from their own pockets. To come up for written reply/comments and cost on 3.11.2016 before S.B.

Chairman

03.11.2016 Clerk to counsel for the appellant and Mr. Khurshid Khan, SO alongwith Addl. AG for respondents present. Written reply submitted. Cost of Rs. 1000/- also paid and receipt thereof obtained from the learned counsel for the appellant. The appeal is assigned to D.B for rejoinder and final hearing on 16.01.2017.

Member

24.05.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Controller of Examination at Board of Intermediate and Secondary Education, Peshawar when vide impugned order dated 23.11.2015 minor penalty in the shape of stoppage of two increments for two years was imposed against him which order was communicated to the appellant on 31.12.2015 where-against he preferred departmental appeal on 21.1.2016 which was not responded and hence the instant service appeal on 13.5.2016.

Appellant Deposited
Security & Process Fee

25/5/16

That the said punishment was awarded on the allegations of negligence in the performance of duty however no regular enquiry was ever conducted nor opportunity of hearing afforded to the appellant. That the impugned order was passed despite the fact that the appellant was exonerated from the charges.

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 25.7.2016 before S.B.

Chairman

25.07.2016

Appellant in person and Mr. Khurshed Khan, SO for respondents No. 1 & 2 with Addl. AG for present. Legal Advisor for respondent No. 3 present and submitted Wakalatnama. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 23.08.2016 before S.B.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 509/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	13/05/2016	The appeal of Mr. Mussawar Jan presented today by Mr. Fazal Shah Mohmand Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order please. REGISTRAR
2	23-5-2016	This case is entrusted to S. Bench for preliminary hearing to be put up there on 29-5-16. CHAIRMAN

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 509 /2016

Mussawar Jan.....Appellant

V E R S U S

Chief Secretary, and Others.....Respondents

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service Appeal with Affidavit		1-6
2.	Copy of Notification dated 23-07-2014	A	7
3.	Copy of Notification & inquiry findings	B & C	8-13
4.	Copy of Charge sheet & reply	D & E	14-18
5.	Copy of inquiry report	F	19-27
6.	Copy of Show Cause Notice & reply	G & H	28-30
7.	Copy of Notification dated 23-11-2015	I	31
8.	Copy of Review Petition	J	32-36
9.	Copy of the report dated 04-08-2014	K	37-38
10.	Copy of FIR & Notification dated 10-09-2014	L & M	39-40
11.	Wakalat Nama		41

Dated-:12-05-2016

Appellant

Through

Fazal Shah Mohmand

Advocate Peshawar

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

(1)

Service Appeal No 509 /2016

Mussawar Jan, Associate Professor (BPS-19), Ex Controller of Examinations Board of Intermediate and Secondary Education Peshawar.....**Appellant**

Diary No. 481
Dated 13-5-2016

V E R S U S

1. Chief Secretary, Govt. of KPK Peshawar.
2. Secretary Elementary and Secondary Education, Govt. of KPK Peshawar.
3. Chairman, Board of Intermediate and Secondary Education Peshawar.....**Respondents**

APPEAL U/S 4 0F THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE NOTIFICATION/ORDER NO. SO (B/T)E & SED /5-4/2015/BISE PESHAWAR DATED 23-11-2015, COMMUNICATED TO THE APPELLANT ON 31-12-2015, WHEREBY THE APPELLANT HAS BEEN AWARDED THE MINOR PENALTY OF "STOPPAGE OF TWO INCREMENTS FOR TWO YEARS" AND AGAINST WHICH THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF THE STATUTORY PERIOD.

PRAYER:-

On acceptance of this appeal, the impugned Notification/Order No. SO (B/T)E & SED /5-4/2015/BISE Peshawar dated 23-11-2015, may kindly be set aside and the increments may kindly be ordered to be restored to the appellant with all back benefits.

Respectfully Submitted:-

1. That the appellant was appointed as Lecturer (BPS 17) on 14-01-2002, and was appointed as Associate Professor (BPS-19) Mathematics through Khyber Pakhtun Khwa Public Service Commission Peshawar in the year 2010, and since then he performed his duties with honesty and full devotion with spotless service career.

Fixed for Hearing
Registrar
13/5/16

2. That the appellant was posted as Secretary Board of Intermediate and Secondary Education Peshawar (herein after referred to as BISE Peshawar) in February 2012 and was posted as Controller of Examinations BISE Peshawar on 23-10-2012.

3. That vide Notification dated 23-07-2014, the appellant was suspended on the allegations of negligence in the performance of duty as Controller on account of leakage of an award list of intermediate examination 2014. of BISE Peshawar as appeared in daily Mashriq on 23-07-2014. **(Copy of Notification dated 23-07-2014 is enclosed as Annexure A).**

4. That fact finding inquiry was ordered, an inquiry committee comprising three members, was constituted by the Secretary Elementary and Secondary Education Govt. of KPK Peshawar vide Notification dated 23-07-2014. The Committee submitted its findings and recommendations on 25-07-2014, wherein the appellant was recommended to be repatriated to his parent Department. **(Copy of Notification & inquiry findings is enclosed as Annexure B & C).**

5. That thereafter charge sheet with statement of allegations was issued to the appellant which was replied in detail refuting the allegations and explaining the true facts and circumstances. **(Copy of Charge sheet & reply are enclosed as Annexure D & E).**

6. That an unfounded and illegal inquiry was conducted and the inquiry officer submitted his findings wherein it was admitted that during the fateful time the appellant was on official duty at Lahore from 19-07-2014 to 22-07-2014. **(Copy of inquiry report is enclosed as Annexure F).**

7. That Show Cause Notice was issued to the appellant, which was also replied in detail explaining the true facts and refuting the allegations once again on 16-07-2015. **(Copy of Show Cause Notice & reply are enclosed as Annexure G & H).**

8. That finally the appellant was awarded minor penalty of **"Stoppage of two increments for two years"** vide Notification/Order NO. SO (B/T)E

& SED /5-4/2015/BISE Peshawar dated 23-11-2015. **(Copy of Notification dated 23-11-2015 is enclosed as Annexure I).**

9. That the appellant preferred departmental appeal/Review petition on 21-01-2016 which has not been responded so far despite the lapse of statutory period of more than ninety days. **(Copy of Review Petition is enclosed as Annexure J).**

10. That the impugned Notification/Order NO. SO (B/T)E & SED /5-4/2015/BISE Peshawar dated 23-11-2015, is against the law, facts and principles of justice on grounds interalia as follows:-

GROUNDS:-

A. That the impugned Notification/Order is illegal and void ab initio.

B. That mandatory provision of law have been violated while taking action against the appellant.

C. That the Co-Ordinator Mr. Irfanullah who was appointed by the chairman BISE Peshawar, has admitted that the award lists were leaked while in his custody as evident from page 2 of the inquiry report, as such the appellant could not be punished for the same.

D. That the award lists remain in the custody of the Co-Ordinator which is handed over to the Secrecy Officer or Superintendent after the declaration of result and the Controller have nothing to do with the same. It is pertinent to mention here that Award Lists were leaked before the declaration of result, which proves that the same were leaked while in the custody of the Co-Ordinator and the appellant had no role in the same. This fact has been admitted by the Chairman Board in his report No 336/PS/BISEP dated 04-08-2014, according to which award lists were leaked by on scrutinizer Mr. Taj Ali SET, of GHS Badezai as charge was proved against him and for which he has been removed from service. The chairman Board requested the Secretary Higher Education to take action against the Co-Ordinator and had never showed any adverse remarks

against the appellant. **(Copy of the report dated 04-08-2014 is enclosed as Annexure K).**

E. That even according to the inquiry, the appellant is not involved in the leakage of the award lists and further that the charge has not proved against the appellant, in the circumstances the authority was bound to had exonerated the appellant, thus the impugned Notification/Order is not maintainable and liable to be set aside on this score alone.

F. That no proper inquiry has been conducted and the appellant was not provided the opportunity to cross examine the witnesses thus was not provided reasonable opportunity to defend himself, thus the impugned Notification/Order is void.

G. That the appellant has been punished due to malafide and political reasons as he had no role but even then he was awarded the impugned punishment.

H. That the appellant did nothing that could amount to misconduct.

I. That the impugned Notification/Order is defective and as such not maintainable in the eyes of law.

J. That the appellant was not afforded the opportunity of meaningful personal hearing.

K. That the appellant was on official duty at Lahore for the printing of Official gazette and reached Peshawar on 23-07-2014, thus has no role in the alleged leakage which fact has also been admitted in both the inquiry reports, thus the appellant could not be punished for the fault of others if any.

L. That the appellant has been discriminated as the Chairman though held responsible in the preliminary report, yet no action was taken against him while the appellant was punished despite having no role in the matter.

(5)

M. That as a result of the inquiry an FIR was lodged against a Teacher named Taj Ali who was held responsible for the alleged leakage on 13-08-2014 and some teachers were also disqualified and debarred from examination in Board related duties vide Notification dated 10-09-2014. Hence when the responsibility was fixed on some other people, who were also penalized with the major penalty, then punishing the appellant for his no fault is against the norms of justice and fair play. **(Copy of FIR & Notification dated 10-09-2014 are enclosed as Annexure L & M).**

N. That there is no omission or commission on part of the appellant and he could not be held responsible for the fault of others.

O. That even otherwise no loss has been caused to any one and as such too the impugned Notification/Order is not maintainable in the eyes of law. More particularly when the same were later on reconstructed.

P. That the appellant has about 14 years of service with unblemished service record.

It is therefore prayed that on acceptance of this appeal, the impugned Notification/Order NO. SO (B/T)E & SED /5-4/2015/BISE Peshawar dated 23-11-2015, may kindly be set aside and the increments may kindly be ordered to be restored to the appellant with all back benefits.

Appellant

Dated-:12-05-2016

Through

Fazal Shah Mohmand
Advocate, Peshawar

(6)

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No_____/2016

Mussawar Jan.....**Appellant**

V E R S U S

Chief Secretary, and Others.....**Respondents**

AFFIDAVIT

I, Mussawar Jan, Associate Professor (BPS-19), Ex Controller of Examinations Board of Intermediate and Secondary Education Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT

Identified by

Fazal Shah Mohmand

Advocate Peshawar

(7)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
Block "A" Civil Secretariat Peshawar.

Dated Peshawar the, 23-07-2014

Notification.

No.SO(B/T)E&SE/5-4/2012/BISE Peshawar. In terms of Rules-6 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority is pleased to place Mr. Musawer Jan Durani, Controller of Examinations, BISE, Peshawar under suspension regarding negligence in performance of his duty as Controller on account of leakage of an award list of Intermediate Examination, 2014 of BISE, Peshawar as appeared in Daily "Mashriq" dated 23/07/2014 with immediate effect.

SECRETARY

Endst: of even No. & Date.

A Copy is forwarded to:-

1. Chairman, BISE, Peshawar.
2. P.S to Secretary, Higher Education Department.
3. PS to Secretary Elementary & Secondary Education Deptt:
4. PS to Special Secretary Elementary & Secondary Education Deptt:
5. Officer concerned.

(GAUHAR ALI)
SECTION OFFICER (BOARD/TRG)

ATTESTED

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT
Block "A" Civil Secretariat Peshawar.

8

Dated Peshawar the, 23-07-2014

Notification.

No.SO(B/T)E&SE/5-4/2012/BISE Peshawar. In supersession of Chairman, BISE, Peshawar Notification No. 0326/PS/BISEP dated 22/07/2014, the Competent Authority is pleased to constitute an Enquiry Committee comprising the following officers to conduct fact finding enquiry into the allegations regarding leakage of an award list of Intermediate Examination, 2014 of BISE, Peshawar as appeared in Daily "Mashriq" dated 23/07/2014:-

i. Professor Noor Ullah Wazir,
Director, Colleges,
Khyber Pakhtunkhwa Peshawar.

ii. Professor Dr. Muhammad Ishaq,
Principal, University College for Boys, Peshawar.

iii. Mr. Arif Jamil,
Subject Specialist (Science) in Khyber Pakhtunkhwa Textbook Board, Peshawar

2. The Enquiry Committee shall submit their report by 26/07/2014 positively.

SECRETARY

Endst: of even No. & Date.

A Copy is forwarded to:-

1. Professor Noor Ullah Wazir Director, Colleges, Khyber Pakhtunkhwa Peshawar.
2. Professor Dr. Muhammad Ishaq, Principal, University College for Boys, Peshawar.
3. Mr. Arif Jamil, Subject Specialist (Science) in Khyber Pakhtunkhwa Textbook Board, Peshawar.
4. Chairman, BISE, Peshawar.
5. PS to Secretary Elementary & Secondary Education Deptt:
6. PS to Special Secretary Elementary & Secondary Education Deptt:

ATTESTED

(GAUHAR ALI)
SECTION OFFICER (BOARD/TRG)

"C" 1

(9)

GOVERNMENT OF KHYBER PAKHTUNKHWA
Directorate OF Higher Education
Khyber Road, Peshawar.

Peshawar, July 25, 2014.

Subject: **INQUIRY REPORT REGARDING ALLEGED THEFT/LEAKAGE OF AWARD LISTS FROM BISE PESHAWAR.**

The Government of Pakhtunkhwa, Elementary & Secondary Educatic n Department vide its notification No. SO(B/T)E&SE/5-4/2012/BISE Peshawar dated 23-07-2014 constituted a committee comprising the following Officers:-

1. Professor Noorullah Khan Wazir,
   Director Higher Education (Colleges),
   KPPeshawar.
2. Professor Dr.Muhammad Ishaq,
   Principal, University College for Boys, Peshawar.
3. Mr.Arif Jamil, Subject Specialist (Science), Khyber Pakhtunkhwa Textbook Board.

The Committee has "to conduct inquiry into the allegations regarding leakage of an award list of Intermediate Examination, 2014 of BISE, Peshawar, as appeared in Daily Mashriq" the same day.

2. It happened so that on 22-07-2014 some reporter(s) came to the premises of BISE, Peshawar who besides others also met the Chairman and alleged that Award lists of the Intermediate Examination have been stolen/leaked to various institutions which according to them will make the results suspicious and/or put the credibility of the Board at jeopardy. Acting on it, the Chairman BISE has on the one hand tried to

ATTESTED

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ascertain the actual position while on the other hand suspended some officials/officers of the Board on 22-07-2014. As the said allegations were published in the Daily Mashriq and Daily Express, on 23-07-2014 with every element of exaggeration and sensation, which naturally were felt to damage the credibility of the Board, hence this Committee was constituted.

3. The inquiry Committee immediately started its proceedings on the morning of July 24, 2014, and met the Chairman of BISE Peshawar at his office. The Chairman was asked both orally and in writing to nominate an officer to assist the Committee and also to ensure the presence/availability of all concerned.

4. At the outset of the proceedings, the Chairman briefed the Committee about the background of the incident while the Secretary, Controller, Coordinator, Secrecy Officer; Secrecy Superintendent, head of the computer cell, head examiner, dispatchers and scrutinizers were also examined, interviewed and their statements recorded. Thus, the whole procedure of the preparation of Award Lists, its different stages, coding, decoding and maintenance were explained to the Committee.

5. Once the Committee got access to the record it was thoroughly compared to the reports/news published in the Daily Mashriq and Daily Express and hence the Award Lists alleged to have been leaked, copied or stolen were identified. Thus the members of the Committee narrowed down their focus and concentrated on those having or supposed to have handled the said Award List in any way. The next day Mr. Mohammad Javed Azam, the Head Examiner in English Part-II, was also summoned and examined.

6. For arrival at a just conclusion, one has to look into the practice and procedure of the preparation, development and maintenance of the Award Lists on different stages. It was revealed that once the answer-sheets are marked, a coded award list is prepared by the Head Examiner, then it is handed over to the Coordinator who hands it over to the computer cell for printing and thus it is again given to the Head Examiner for comparison with the hand written award list. The Printed Award List is again given to the Coordinator. Till then the Award list remains in coded form and once the whole marking is completed, the dispatcher's starts decoding the lists and these decoded list are handed over to the scrutineers.

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7. Here it is pertinent to note that the purported leaked/stolen Award List is decoded one i.e. if it has been stolen or copied, it has been done after this decoding by the dispatchers. It was therefore, the members of the committee concentrated on examining the Head-Examiner Prof.Javaid Azam, the Scrutineers M/S Mohammad Shoaib and Maqsood Jan, and the dispatchers M/S Inayat Ur Rehman, Khalid Khan, Shah Saud and Muhammad Hussain.

8. Here it is worth mentioning that of all those examined by the Committee, the statements of only three persons are found directly relevant to the leakage/theft of the award list. These three individuals are Prof.Javaid Azam, Head-Examiner, (English) Part-II, Mr.Baber Khan, CT teacher (having previously worked as scrutineer, but volunteered to depose before this Committee) and Prof.Mussawar Jan Durrani, Controller of Examinations. The Controller of examinations in his written statement blamed the administration of the Board for not cooperating with him leading to an attack on the Computer Cell. He further complained that his (Secrecy) staff was transferred without his consent. Prof.Javaid Azam, Head Examiner (English) disowned his signature on the award list provided to the inquiry Committee by the Secrecy officials. On going through the news story published in the Daily Express, it was revealed that the images of the award lists of Physics and Chemistry have also leaked to the media. The leakage of the award list is clear from his statement as on page -25-26 of the inquiry file. Thus, the leakage/theft of the award list has proved beyond doubt.

9. To ascertain as to who committed the theft/leakage, the statement of Mr.Baber Khan, CT teacher, GHSS, No.2 Peshawar Cantt. (page 33) is worth referring to. He in his statement revealed that four days before the incident one Mr. Ghulam Sarwar, Instructor BS-18, RITE, Peshawar had come to him saying that one Mr.Taj Ali, SST, GHSS, Nasir Bagh Road had telephonically informed him (Baber Khan) that he had got some material which may be given to any media person known to you (Baber Khan).Though I (Baber Khan) tried to stop him from doing so but on July 23, the news regarding the theft/leakage appeared in the press. The same day i.e. on July 23, Mr. Taj Ali and Mr. Mohammad Rasool,Senior Master, UPS, Peshawar came to him (Baber Khan) and had shown him the Award List, which had been handed over to the media. On further investigation Ghulam Sarwar (Page 34-35), Mohammad Rasool (Page 36) and Mr.Taj Ali

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(Page 37) negated this statement. Thus, any further inquiry can be focused on these four persons.

FINDINGS

1. After going through the statements, interviews of all concerned persons and record, the Committee has unanimously found that:
   i) The award lists of Physics Part-II, Chemistry Part-II and English Part-II, of Jinnah College for Women have rightly been leaked from the Secrecy of the Board.
   ii) The award lists now available in Secrecy, have been reconstructed later on.
   iii) Negligence on the part of Controller, Coordinator, Secrecy Officer and Secrecy Superintendent was found during the inquiry.
   iv) During the process of inquiry, it was found that there are great differences between the Secretary and the Controller of Examination which has weakened the administration of the two offices which were fully exploited by some vested interests.
   v) There is a big question mark on the role of the four persons i.e. Mr.Baber Khan, CT teacher, Mr.Ghulam Sarwar, Mr. Mohammad Rasool, and Mr.Taj Ali(mentioned in Para-9 above) in this incident.
   vi) The Committee found that the leakage/theft has not affected the nature of the result so declared.

RECOMMENDATIONS:

The Committee unanimously recommends that:-

i) The Controller of Examinations and Secretary of the Board may be repatriated to their respective parent's departments in the larger interest of the Board;

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ii) The Coordinator (Prof. Irfanullah) may be restricted from such duties in future;

iii) The Secrecy Officer and Secrecy Superintendent may be posted out from Secrecy;

iv) Strict measures may be taken for complete over hauling of the working system of the Secrecy of the Board.

v. A thorough investigation is needed to be conducted against the four persons i.e. Mr.Baber Khan, CT teacher, Mr.Ghulam Sarwar, Mr. Mohammad Rasool, and Mr.Taj Ali (mentioned in Para-9 above) for fixing responsibility.

Arif Jamil,
Subject Specialist(Science)
Khyber Pakhtunkhwa Textbook Board.

Professor Dr.Muhammad Ishaq,
Principal,University College for Boys,
Peshawar.

Prof. Noorullah Khan Wazir,
Director Higher, Khyber Pakhtunkhwa, Peshawar.

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14

DISCIPLINARY ACTION

Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, am of opinion that Mr Mussawar Jan (BS-19), Controller of Examination BISE Peshawar, has rendered himself liable to be proceeded against, as he committed the following acts/ omissions within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

The award list of physics Part-II, Chemistry Part-II and English Part-II of Jinnah College for Women have been leaked from the Secrecy of the Board on account of his negligence as appeared in Daily Mashriq dated 23rd July, 2014."

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

i. Mr. Muhammad Hamayun

ii. Secy Agriculture.

iii. _____

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

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

Pervez Khattak

(PERVEZ KHATTAK)
CHIEF MINISTER KHYBER PAKHTUNKHWA
COMPETENT AUTHORITY
18. 11. 2014.

Mussawar Jan, Controller of Examination BISE Peshawar

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15

CHARGE SHEET

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as Competent Authority, hereby charge you, Mr. Mussawar Jan, (BS-19) Controller of Examination BISE Peshawar, as follows:-

That you while posted as Controller of Examination (BS-19) BISE Peshawar committed following irregularity:

> The award list of physics Part-II, Chemistry Part-II and English Part-II of Islamia College for Women have been leaked from the Secrecy of the Board on account of your negligence as appeared in Daily Mashriq dated 23rd July, 2014."

By reason of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid.

You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the inquiry officer/ inquiry committee, as the case may be.

Your written defense, if any, should reach the inquiry officer/ inquiry committee within specified period, failing which it shall be presumed that you have no defense to put in and in case ex-parte action shall be taken against you.

You intimate whether you desire to be heard in person.

A Statement of Allegations is enclosed.

Pervez Khattak
(PERVEZ KHATTAK)
CHIEF MINISTER KHYBER PAKHTUNKHWA
COMPETENT AUTHORITY
18-11-2014.

Mussawar Jan, Controller of Examination, BISE Peshawar.

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To

The Chief Minister,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: **REPLY TO THE CHARGE SHEET REGARDING LEAKAGE OF AWARD LIST BISE PESHAWAR.**

R/Sir,

I (Mussawar Jan, Associate Professor) was working as Controller of Examination, BISE Peshawar at the time when the incident of leakage of award list took place. To the allegation made against me in the Charge Sheet I submit the following points in support of my defence:

1. In order to help and assist the controller of examination, a coordinator is appointed by the Chairman Board. As such Mr.Irfan Ullah, Associate Professor GDC Badhber was appointed as coordinator by the Chairman for the HSSC Annual Exam 2014. The coordinator plays an important role in the correspondence among the different sections of the Board like dispatch, marking and Computer cell. Hence, he coordinates and supervises the process of evaluation of scripts, i.e. right from coding, marking, decoding, scrutiny and finalization of result. During this period all the examination material including Award Lists remains in his custody, which is handed over to the secrecy officer or superintendent after declaration of the result. During preparation of the result the controller cannot take custody of award lists as the coordinator synchronizes all related issues during that period. As is evident, the award lists were leaked out before the declaration of the result, therefore, it confirms that the concern award lists were leaked out from the custody of the coordinator and not from the controller.

2. The facts finding enquiry report revealed that the information regarding leakage of award list was declared to Mr. Baber Khan CT teacher, GHSS No:2, Peshawar cantonment four days before declaration of the result (Annexure-A), the time when I was on duty at Lahore for the purpose of printing of the result gazette. It is on record that I was at Lahore from 19-07-2014 to 22-07-2014 (Annexure-B) and reached Peshawar on 23/07/2014 at early hours. As usual the result gazette had to be printed under the supervision of the controller in order to maintain secrecy and

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complete the printing work by the target time. Hence, my stay at Lahore during that period was indispensible. These facts shows that the award lists were leaked out from the custody of the coordinator when I was outside the station for official duty.

3. The Chairman Board, in his report No.0336/PS/BISEP "POST AWARD LIST MISSING SCENARIO" submitted to the Secretary E & S Education on 04/08/2014, pointed out that the award lists were in the safe custody of the coordinator and the Superintendent and Secrecy Officer of the Secrecy Section were equally responsible to take care of the record. He further wrote that the controller of examination was outside the Board for the purpose of printing of the result. (Annexure-C)

   Since, the Chairman is well equipped with the business of the preparation of the result; therefore, he never fixed the responsibility upon me. Had he found me responsible for the mishap he would have requested the department for my suspension as he made the request of suspension in respect of the coordinator.

4. Due to unknown reasons I was suspended by the Honourable Secretary, (E &S) Education Department on account of the said incident. His order was challenged in the court of law and resultantly the court suspended my suspension order, which shows that I was not responsible of the said incident. (Annexure-D)

5. The fact finding committee in their report had already indicated the involvement of Mr. Taj Ali, SET, Govt. High School Badizai, Pehsawar, who acted as scrutinizer during the same examination. (Annexure-E) The Chairman of the Board, in his own investigations collected the mobile data and found that Mr.Taj Ali was the real culprit and he had mobile contacts with the Media. This reveals the fact that Mr.Taj Ali, in whose custody the said award lists remained during the process of checking, not only got copies of these award lists but also handed over these to the Media for defaming the controller and the institution for his own vested interests. (mentioned in Annexure-C)

   An FIR has already been lodged against Taj Ali by the ex-Secretary Board, Mr.Hakim Ullah Khan. The case is now under process with the Police and Anticorruption Department.(Annexure-F)

6. I was repatriated to my home department on the report of fact-finding committee on the ground that due to great differences between Controller of

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Examination and Secretary Board, administration in the two offices weakened, which was exploited by some vested interests. But surprisingly the enquiry committee could not pointed out any irregularity, inefficiency or mismanagement on my part that could result in such incident. The observation of the fact-finding committee in this respect is not only irrelevant with the incident but also does not prove any negligence on my part in the performance of my duties. (mentioned at page-4 of Annexure-E)

In the closing I request your honour that I shall not be blamed for no fault at my own. Neither the coordinator nor the scrutinizers were appointed by me. In fact, the appointment authority of all the staff of the Secrecy Section is beyond my jurisdiction. Nor I was responsible for the safe custody of the award list during the course of preparation of the result. Therefore, if someone other has breach the trust bestowed upon him in respect of his official duty then the real culprit may be punished and not otherwise.

Therefore it is very humbly submitted that I may be exonerated from the subject charge and obliged.

Mussawar Jan
Associate Professor
Higher Education Deptt
Ex-Controller of Examination
BISE Peshawar

Dated: 23/12/2014

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INQUIRY AGAINST OFFICERS OF BISE, PESHAWAR.

CONDUCTED BY

ATTESTED

MUHAMMAD HUMAYUN (PAS BS-21)
SECRETARY,
GOVERNMENT OF KHYBER PAKHTUNKHWA,
AGRICULTURE, LIVESTOCK AND COOPERATIVE
DEPARTMENT.

Pages 01 to 61

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ENQUIRY REPORT REGARDING LEAKAGE OF AWARD LIST OF INTERMEDIATE EXAMINATION 2014 BISE, PESHAWAR AS APPEARED IN THE DAILY "MASHRIQ" AND "EXPRESS" DATED 23-07-2014.

The competent authority has been pleased to appoint the undersigned as Inquiry Officer conduct enquiry under E&D Rules 2011 against the following accused officers vide Notificati SO(B/T)E&SE/5-4/2014/BISE Peshawar dated 10-12-2014 **(Annex-I).**

i. Mr. Mussawar Jan, Controller BISE Peshawar.
ii. Mr. Hakeem Ullah, Secretary BISE Peshawar.
iii. Professor Irfan Ullah, Coorddinator.
iv. Mr. Shafiq Ahmad, Secrecy Offcier.
v. Mr. Mukhtiar Khan, Superintendent.
vi. Mr. Babar Khan, CT Teacher GHHS No. 2 Peshawar Cantt.
vii. Mr. Ghulam Sarwar, Instructor BS-18 RITE Peshawar.
viii. Mr. Taj Ali Khan SST, GHSS Nasir Bagh Road, Peshawar.

2. All the accused officers were contacted telephonically to furnish their written defense replies to the Charge Sheets served upon them. After submission of their written replies to the ch sheets alongwith relevant documents, they were provided the opportunity of personal hearing 30-01-2015. Each and every accused officer was cross examined and heard in person. departmental representative Mr. Azam Khan, Deputy Secretary – II, Elementary and Secon Education Department was also present on the date of hearing to assist the undersigned.

3. The charges and replies to the Charge Sheets and statements of allegations of the acc officers **(Annex-II)** are given briefly in annotated form as under:-

S. No.	Charges	Gist from replies of the accused officers
1.	**Mr. Mussawar Jan Controller BISE, Peshawar.** The Award Lists of Physics Part-II, Chemistry Pat-II and English Part-II of Jinnah College for Women, Peshawar (Intermediate Annual Examination 2014) have been leaked from the Secrecy Section of BISE, Peshawar on account of your negligence as appeared in the Daily Mashriq on 23-07-2014.	In order to assist the Controller of Examination, Irfanullah, Associate Professor Govt. Degree Co Badabir was accordingly appointed as Coordinator b Chairman of Board for the HSSC Annual Exam 2014 Coordinator plays an important role in correspondence among the different sections o Board like dispatch, marking and Computer cell. H he coordinates and supervises the process of eval of scripts, i.e. right from coding, marking, dec scrutiny and finalization of result. During this peri the examination material including Award Lists rem his custody, which is handed over to the Secrecy or Superintendent after declaration of the result evident from statement of Mr. Babar Khan, CT Te GHSS No. 2, Peshawar Cantt. the award lists were out four days before the declaration of result duri time when I was on duty at Lahore from 19-07-2 22-07-2014 for the purpose of printing of the gazette and returned to Peshawar on 23-07-201 early hours, hence it shows/confirms that the awa were leaked out from the custody of the Coordina

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		not from the Controller. Moreover, the Chairman Board in his own investigations collected the mobile and found that Mr. Taj Ali Khan, SET, GHS, [illegible] Peshawar acted as scrutinizer during the said exam was the real culprit who had mobile contact with [illegible] which reveals that the said award lists remained [illegible] custody during the process of checking. Mr. Taj Ali had not got copies of these award lists only but handed over these to the Media for defaming Controller and the institution for his own vested int (Annex – III).
2.	<u>Mr. Hakimullah Secretary BISE, Peshawar.</u> There are great differences between the Secretary and the Controller of Examination which has weakened the administration of the two offices which were fully exploited by some vested interest. The administration of the Board did not cooperate with the Controller leading to an attack on the Computer Cell and you have transferred the Secrecy Staff without consulting and obtaining prior approval of the Controller.	All postings in Board are in variably done with the approval of Chairman BISE and no malafide intent part of the administration is involved. Chairm competent authority to make all such orders and t no need to get prior approval of the Controlle pertinent to mention that majority of the staff me posted in Secrecy were old and were posted Secrecy before my posting as Secretary BISE, Pes During my posting as Secretary, the posting/trans two persons were ordered with the approval of Ch i.e. Mr. Shafiq Ahmad Assistant Secretary (B-1 posted as Secrecy Officer in place of Mr. Fazle Akl to his retirement on 26-06-2014 and Aurangzeb N replaced with Jehanzeb N/Q in Inter Secrecy (Anne
3.	<u>Irfanullah, Associate Professor of Statistics, Govt. College, Badabir, Peshawar.</u> The Award Lists of Physics Part-II, Chemistry Pat-II and English Part-II of Jinnah College for Women, Peshawar (Intermediate Annual Examination 2014) have been leaked from the Secrecy Section of BISE, Peshawar on account of your negligence as appeared in the Daily Mashriq on 23-07-2014.	I have been working in BISE Peshawar since worked as Coordinator in BISE, Peshawar in HSSC Examinations, 2010, 2013 and 2014 but I never i incident to occur. The award lists in question h been leaked while in my custody. The leaka reported one day before the announcement of r this stage the award lists were kept open to 4 Scrutineers appointed by the Controll checking/comparing with the computer print ou scrutineer has an access to the award lists for r the errors/misprint. History shows that someon the Board has committed the crime through scr for their vested interest (Annex – V).
4.	<u>Shafiq Ahmad Secrecy Officer BISE, Peshawar</u> The Award Lists of Physics Part-II, Chemistry Pat-II and English Part-II of Jinnah College for Women, Peshawar (Intermediate Annual Examination 2014) have been	The Coordinator is responsible to keep the r award lists secret in his custody till the declar result. The Secrecy Officer is not concerned wit lists which are handed over to Secrecy st declaration of result (Annex – VI).

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	leaked from the Secrecy Section of BISE, Peshawar on account of your negligence as appeared in the Daily Mashriq on 23-07-2014.	
5.	**Mukhtiar Khan Superintendent BISE, Peshawar.** The Award Lists of Physics Part-II, Chemistry Pat-II and English Part-II of Jinnah College for Women, Peshawar (Intermediate Annual Examination 2014) have been leaked from the Secrecy Section of BISE, Peshawar on account of your negligence as appeared in the Daily Mashriq on 23-07-2014.	All the record of dispatch, Award Lists and result sheets are under the custody of Coordinator from the date of marking till the declaration of result and then after handed over to secrecy staff **(Annex – VII)**.
6.	**Babar Khan CT Teacher, GHSS No. 2, Peshawar Cantt.** The Award Lists of Physics Part-II, Chemistry Pat-II & English Part-II of Jinnah College for Women, Peshawar (Intermediate Annual Examination 2014) have been leaked from the Secrecy Section of BISE, Peshawar on account of your negligence as appeared in the Daily Mashriq on 23-07-2014.	Four days before the incident regarding leakage of Award lists by publishing in the Daily Newspaper, I came to know through Mr. Ghulam Sarwar that Mr. Taj Ali Khan wants to hand over some secret materials of Board to media for publication. I prohibited them from such practice but on 23-07-2014, the same published in Newspapers. I had no proof about it but the same is based only on verbal hearing and discussion held between me and Ghulam Sarwar **(Annex – VIII)**.
7.	**Ghulam Sarwar Instructor RITE Peshawar** The Award Lists of Physics Part-II, Chemistry Pat-II and English Part-II of Jinnah College for Women, Peshawar (Intermediate Annual Examination 2014) have been leaked from the Secrecy Section of BISE, Peshawar on account of your negligence as appeared in the Daily Mashriq on 23-07-2014.	I have neither visited the Board nor performed any Examination duty of Board for the last 3/4 years. Mr. Babar Khan who is my neighbuor and was appointed in the Board for work of dispatch, scrutiny and preparation of result has included my name in the incident occurred on 23-07-2014. When I saw Mr. Babar Khan offering Salat in the Masjid regularly for a few days, I asked him whether duty of Examination has been over/finished. He said that no but the Controller has relieved him of the duty with remarks that there was a complaint against him that his son was appeared in Class 9th Examination and forfeited his remuneration for the work done in Secrecy. After declaration of result, he told me about the incident. He told me that he had requested Mr. Taj Ali Khan and Mr. Waqar Khan S.S for increasing the marks of his son. Probably they would have disclosed it to the Controller. I asked him that on one hand his son had appeared in the FSc Part-II Examination and on the other hand he was performing the dispatch duty of FSc Annual Examination 2014 in Board's Secrecy which was a great mistake/crime, indiscipline and contrary to the rules of Board. After

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		Salat-e-Zuhar one day before the declaration of re Mr. Babar Khan told me that the result, Roll Numbers Award lists of Jinnah College for Women, Peshawar I been published in the Daily Mashriq and Daily Exp which were coded by him. I was brought to the Boa 4:00 p.m on 25-07-2014 and was appeared before Enquiry Committee headed by Noorullah Wazir and written statement. I was locked in a room till 11:00 **(Annex – IX)**.
8.	**Mr. Taj Ali Khan SST, GHSS Nasir Bagh Road, Peshawar** The Award Lists of Physics Part-II, Chemistry Pat-II and English Part-II of Jinnah College for Women, Peshawar (Intermediate Annual Examination 2014) have been leaked from the Secrecy Section of BISE, Peshawar on account of your negligence as appeared in the Daily Mashriq on 23-07-2014.	Both I and Mr. Babar Khan were working in the Bo Secrecy of 9th class dispatch of SSC Annual Exam 2014 preparation of result from 15-03-2014 to 25-05-201 the time of preparation of result, Mr. Babar Khan a me to increase the marks of his son Afaq Babar o class under Roll No. 32487 from 476 to 500. I disclos to the Controller. He directed me to do the same I refused it. Besides Mr. Babar Khan changed the mar his another son Rovaid Babar under Roll No. 66026 ir Annual Examination 2014 in absence of Mr. Irfanu Coordinator. I disclosed it to the Coordinator, Contr and Chairman of Board. They told me that I was behind Babar Khan. When it came into the knowledg other employees of Board and teachers; the Contr relieved Mr. Babar Khan of his duty in Secrecy of Boa the first week of June, 2014. By this, Mr. Babar K threatened me for revenge. When the award published on 23-07-2014, Mr. Babar Khan gave i statement to Controller Examination on account of ta revenge from me. The Board authority has also got wi statement against me from Mr. Aurangzeb C.T, G Landi Arbab, Peshawar. Therefore, Chairman BISE loc an FIR against me and took oath on Holy Quran. Then Chairman told me that pictures and mobile recor data are also available with them. I was kept in the B till 2400 hours on 25/7/2014 **(Annex – X)**.

4. **FINDINGS**

i. Each and every accused officer/official was given full liberty and ample opportunity to offer t defense. They were also provided the opportunity of personal hearing and cross examination a submission of their written statements.

ii. Consequent upon examining the entire relevant record of the case, fact finding enquiry rep defense of the accused officers/official, replies to the charge sheets and arguments made by accused persons including the personal hearing, the following facts were noticed:

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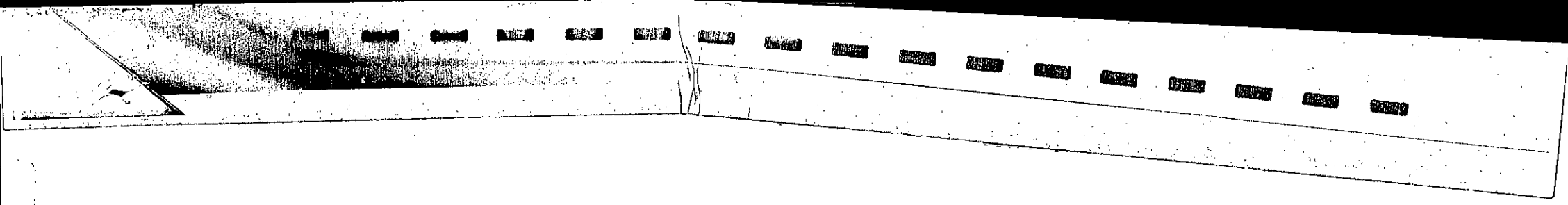

a. The incident is not only a case of inefficiency but also a case of gross negligence a irresponsible management on the part of Chairman and Controller of Examinations of the Boa regarding preparation and declaration of result of SSC and Intermediate Examinations.

b. The incident also shows lack of effective internal check against irregularities, waste and fraud the Board.

c. In the system of Board Examinations, the Coordinator plays an important and very crucial r The Coordinator is overall responsible and supervising officer of all Head Examinatic scrutinizers & Dispatch Officers. The scrutiny of Award Lists is made under the supervisior the Coordinator in a large spacious room to accommodate all the scrutinizers. The award l remain in possession of the Coordinator till the declaration of result after which these lists handed over to the Secrecy Section of the Board.

d. The Controller appoints Coordinator, Dispatch Officers, Head Examiners and Scrutinizers the approval of Chairman, BISE.

e. The incident shows that the Board had not adopted appropriate and ample Security meas to avoid leakage of the results before official declaration.

f. Strange enough, the record provided by one of the accuseds shows that the Controlle Examination has issued DMC to Rovaid Babar under Roll No. 7273 of Intermediate (Anr Examination 2013 – Pre – Medical (Part – I) indicating total obtained marks as 414 **(Annex -** while issuing combined DMC of Part – I and II to Rovaid Babar under Roll No. 6602 Intermediate (Annual) Examination 2014 – Pre – Medical (Part – II) **(Annex-XII)** which sl total obtained marks in Part – I as 454 instead of 414. There is a difference of 40 n increased by the Secrecy Section of Board which clearly is a great irregularity on the pa Head of the Institution including his subordinates.

g. It was also found that the incident took place due to the fact that the Board is appointin same Coordinator and Scrutinizing Staff for the last so many years. This creates close rela with each other which could be misused in such offices. Moreover the incident occurred d the fact that Mr. Babar Khan was assigning the duty of dispatch, scrutiny and preparati results of HSSC (A) Examinations 2013 & 2014 and SSC (A) Examinations 2012 & 2014 i Secrecy Section and his two sons appeared in the SSC and HSSC Examinations 2013 and He was declared disqualified at the time when the fact was disclosed to everyone incl majority of teachers and employees of Board.

h. The BISE Peshawar on its own retrieved the mobile data of Taj Ali Khan SST. Data of Ju 2014, a day before publication of news about the leakage of award lists, rev communication between three persons: Taj Ali, Aurangzeb teacher and Mr. Zahid, E media reporter. Mobile data of discussion dated july 22, 2014 amongst Aurangzeb, Taj Zahid is reproduced below **(Annex – XIII)** : -

i. Taj Ali gives him a call on 10:53 a.m (morning) duration 137 seconds.
ii. Aurangzeb makes a call to Zahid at 10:56 a.m (morning) duration 83 seconds.
iii. Aurangzeb makes a call to Zahid at 16:43 p.m (after noon) duration 39 seconds.
iv. Taj Ali sends an SMS to Aurangzeb at 16:50 pm (after noon).
v. Aurangzeb makes a call to Zahid at 16:51 p.m (after noon) duration 20 seconds.
vi. Aurangzeb makes a call to Taj Ali at 17:04 (evening). He talks for 28 seconds (Taj Ali l at this time is at Adnan Mansion G.T Road).

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i. **Mr. Mussawar Jan Controller BISE, Peshawar.**

As per Board's Calendar, under Rule – 3 of Schedule of First Regulations of Boards, the Controller of Examinations shall make arrangements for the conduct of all examinations of the Board and shall conduct official correspondence of the Board relating to the examinations. The award lists were leaked out four days before the declaration of result and during the period of this incident, the Controller was on official duty at Lahore from 19-07-2014 to 22-07-2014. Although the events and records shows that the Controller is not involved in the leakage of award lists but it was his responsibility to entrust the charge of his duty to someone for supervision and look after the preparation of results during the periods of his absence from duty. Beside this adoption of security measures to avoid leakage of results before the declaration of result was also the responsibility of the Controller which he could not do before leaving the station. Moreover, the record shows that the same staffs i.e. Coordinator, Dispatch Officers, Head Examiners and Scrutinizers are appointed for the last so many years on the recommendation of Controller of examination. This practice seems doubtful as these people become closed to each other have got easy access to the award list and result sheets. In order to avoid inordinate/undue circumstances, this is the responsibility of Controller to keep watch and check the antecedents of each and every officer before appointment for the purpose of examination and secrecy work. Moreover, it is also pertinent to mention here that the son of teacher (Mr. Baber Khan) who was appointed in the Secrecy Section for preparation of result got enhanced 40 marks of his son fraudulently and the Controller is responsible for this grave crime.

Charge not proved.

j. **Mr. Hakimullah Secretary BISE, Peshawar.**

As per power and duties of Secretary under Rule – 2 of Schedule of First Regulations Boards of Board's Calendar, the Secretary shall conduct the official correspondence of t Board except correspondence relating to conduct of Examinations. The Secretary transfer and posted Mr. Shafiq Ahmed as Secrecy Officer with approval of the Controller Examination which was an irregularity on the part of Secretary who has already b repatriated to his parent department, hence no further action is required to be taken aga him except that in future such sensitive assignment shall not be entrusted to him.

Charge not proved.

k. **Irfanullah, Associate Professor of Statistics, Govt. College, Badabir, Peshawar(Coordinato**

As per Board's Calendars, the Coordinator is responsible to keep all the recor dispatch, award lists and result sheets under his own custody till the declaration of result the award lists have been leaked out four days before the declaration of result. The re shows that Coordinator is not directly involved in leakage of award lists but the incident place due to his carelessness & negligence, whereas he has been suspended by the Chairm Board. Although there is no solid evidence that proves his direct involvement in the leaka award lists but being a custodian of the award lists, he cannot be absolved fron responsibility of such grave crime. He is required to be disqualified from the duty of Bo future.

Charge not proved.

ATTESTED

l. **Shafiq Ahmad, Secrecy Officer BISE, Peshawar**

The duty of Secrecy Officer is to supervise the staff posted in Secrecy and to assist t Controller of Examination in managing examinations. The responsibility/work of Secrecy St starts after the announcement of result and the award lists were leaked out four days bef the declaration of result. However, the access of Secrecy Staff to the award lists and res sheets is possible, therefore, the leakage of award lists could be happened due to carelessn of Secrecy Staff. Hence the officer is required to be posted out from the Secrecy Section Board.

Charge not proved.

m. **Mukhtiar Khan, Superintendent BISE, Peshawar.**

The duty of Secrecy Superintendent is to supervise the staff posted in Secrecy anc check the envelops, verify DMCs, process the cases of retotalling marks, papers cancella and payment of bills of marking staff. The responsibility/work of Secrecy Staff start after announcement of result and the award lists were leaked out four days before the declaratio result. However, the access of Secrecy Staff to the award lists and result sheets is possi therefore, the leakage of award lists could be happened due to carelessness of Secrecy S Hence the officer is required to be posted out from the Secrecy Section of Board.

Charge not proved.

n. **Babar Khan CT Teacher, GHSS No. 2, Peshawar Cantt.**

Mr. Babar Khan was working in the Secrecy Section of Board while his two sons l been appeared in the SSC & HSSC Exams 2013 and 2014 which was against the Board's rule concealed this fact from the Board inspite of the fact that he has signed an affidavit in respect as per Board's rules. He should not have involved in a fraudulently submissic affidavit. Therefore, he has committed a great crime and fraud by misusing his position. also involved in increasing marks of his son from 414 to 454 (i.e. increase of 40 marks).

Charge not proved.

o. **Ghulam Sarwar Instructor RITE Peshawar**

As per his statement, he has not been assigned any duty of scrutiny and examinatic for the last 03 years. Hence he is not involved in the leakage of award lists.

Charge not proved.

p. **Mr. Taj Ali Khan SST, GHSS Nasar Bagh Road, Peshawar**

According to mobile telephonic data, Mr. Taj Ali gave a call to Aurangzeb in the m at 10:53. He talked for 137 seconds. Exactly after 3 minutes, at 10:56 Aurangzeb contacts He talked for 83 seconds. In the afternoon at 16:43 (after noon), Aurangzeb again con Zahid. He talked for 39 seconds. Then exactly after 7 minutes, at 16:50 (afternoon) Taj Ali message to Aurangzeb. In response, after 1 minute, Aurangzeb talked to Zahid at 16:51 noon). Interestingly during the morning conversation with Aurangzeb, Taj Ali location Hayatabad, his residence. But during afternoon communication between Aurangzeb and

ATTESTED

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Taj Ali's location was shifted to G.T Road, which is clear from the data in Taj Ali (mobile da record. When Aurangzeb gave him the last call at 17:04 (evening) his location was at the sa G.T Road in the mobile data. After perusing the data a group of four officers of BISE Pesha including Chairman arranged a meeting with Aurangzeb at Nodh Payan High School. meeting took place on 4 August 2014 (6:38 p.m). During talk, Aurangzeb confirmed that helped Taj Ali's access to Express newspaper on July 22, 2014.

Although, there is no record of any direct contact of Mr. Taj Ali with media person (Zahid), however, the above mentioned telephonic conversation by Taj Ali & Aurangzeb an Aurangzeb & Zahid shows that Taj Ali used Aurangzeb as a facilitator to gain access to m man (Zahid) and through this connection, the award list was leaked out to the press w caused great embarrassment to the Provincial Government.

Charge proved.

The Competent Authority/Chief Minister, Khyber Pakhtunkhwa may like to pass or as deemed appropriate.

9/3

(MUHAMMAD HUMAYUN)
Secretary to Govt. of Khyber Pakhtunkhwa,
Agriculture, Live Stock and Coop Departmen
Inquiry Officer

ATTESTED

"19"

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SHOW CAUSE NOTICE

I, **Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa** as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Mussawar Jan Durani, Ex-Controller, BISE Peshawar as follows:-

That consequent upon the completion of inquiry conducted against you by the inquiry officer, you have been found inefficient in performance of your duties, due to which the instant incident of leakage of award list took place.

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

Inefficiency.

2- As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalty of "Stoppage of two annual increments for two years" under rule 4 of the said rules.

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

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

5- A copy of findings of the inquiry officer is enclosed.

(PERVEZ KHATTAK)
CHIEF MINISTER KHYBER PAKHTUNKHWA
COMPETENT AUTHORITY
02/07/15.

Mr. Mussawar Jan Durani, Ex-Controller, BISE Peshawar.

ATTESTED

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REPLY

To

The Chief Minister,
Khyber Pakhtunkhwa,
Peshawar.

Through: The Secretary to the Govt. of Khyber Pakhtunkhwa,
Elementary and Secondary Education Department,
Khyber Pakhtunkhwa,
Peshawar.

29/7/15

Subject: **SHOW CAUSE NOTICE**

Dear Sir,

Reference letter No.SO(B/T)E&SE/5-4/2015/BISE Peshawar/Inquiry, dated 13-07-2015, received on 14-07-2015 on the captioned subject:

Parawise defence is submitted as follow:

Most humbly stated that I was charged for negligence in my duties as is evident from the Charge Sheet issued to me. The concluding remarks at Clause-i on Page-6 of the Enquiry Report read that: "Charge Not Proved". Similarly, as against other accused in the enquiry, no action has been proposed against me by the enquiry officer; therefore, the imposition of penalty for no fault at my end is beyond comprehension.

Even then, the case in question is elaborated as under:

1. The enquiry report revealed that the event took place at the time when I was on duty at Lahore and was not present at the station from 19-07-2014 to 22-07-2014. The enquiry officer has further elaborated the facts with the remarks, *"the events and records shows that the controller is not involved in the leakage of Award lists"*. This clearly indicates my exoneration from the deed in question.

2. As per precedence and in conformity with the previous record, all the award lists were to remain in the safe custody of the Coordinator till declaration of the result. After declaration of the result these award lists were to be handed over to the Secrecy Officer. Since the duty of safe custody of the award list was already assigned to the Secretary Officer/Coordinator, therefore, there was no need of transferring the charge as Controller to someone else during my official duty at Lahore. So far as my obligation is concerned, I did inform the Chairman about my official engagement out of station, leaving behind the Secrecy Officer to look after the section. Reckoning it necessary, the Chairman was at liberty to superimpose another officer for secrecy supervision during my 04 days stay at Lahore. However, the immediate custodian of the Secrecy Section is the Secrecy Officer, who along with the Coordinator was to ensure the secrecy of the award lists. Hence, I committed no fault in this respect. I followed the same procedure as adopted by other BISEs now and then.

ATTESTED

3. As already referred to, the Secrecy officer is the immediate incharge of the section and in addition to other responsibilities it was his prime duty to maintain secrecy of the section by adopting appropriate measures to ensure proper blockage of secrete items from secrecy section. The same is important part of duty of the Secrecy officer.

4. So far as the appointment of the part time staff is concerned, Coordinator. Dispatch officers, Head examiners and Scrutinizers are appointed on the basis of their integrity, past experience and expertise on the job duly recommended by the Secrecy Officer. This was the second annual examination during my tenure of office and I did change many officials as I deem it necessary. Since the job is very intricate, technical and requires relevant knowhow, therefore, it is neither possible nor feasible to change all the staff every year. The old expertise must accompany the new comers to accomplish the job well in the stipulated time period. Every year the task cannot be handed to the new raw hands. However, reasonable number of such staff is changed every year. Following the same philosophy many of the hired part time staff was changed during the conduct of 2nd annual examination of my tenure. Even then, I was the forwarding-cum-recommending authority. Had I recommended any known culprit, the Chairman would have to reject it. The appointing authority was the Chairman and not the Controller.

5. So for as the case of Baber Khan is concerned, I had already done what I was required to do in that respect. During the previous SSC examination, when I got the information through Mr.Shahid Aziz, Head master, GHS Police Colony, Peshawar that the son of Babar Khan was appearing in the SSC examination. I promptly removed Baber Khan from the SSC scrutiny process. Afterward he was not allowed to take part in any of the processes held in the Secrecy Section of the Board. As such he had no concern with the HSSC examination.

6. In the enquiry report the responsibility of leakage of award list has been fixed upon Mr. Taj Ali SST, GHSS Nasir Bagh Road, Badizai, Peshawar as the charge has been proved against him. Further, certain minor actions have been proposed against other accused also. On the other hand neither the charge has been proved against me neither any action is proposed by the enquiry officer against me. Therefore, the claimant may not be panelised for no fault at his end.

Furthermore the undersigned had always performed his official duty with honesty and efficiency and had always abided by rules and regulations.

Therefore, it is requested that I may please be exonerated from the stoppage of two increments for two years.

Moreover, ***I would like to be heard in person in case the reply seems to be unsatisfactory or unconvincing,*** please.

Dated: 16/07/2015

Sincerely yours,
Mussawar Jan Durrani
Associate Professor, GPGC Charsadda
Ex Controller, BISE Peshawar
0345 907 0920

ATTESTED

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT
Block "A" Civil Secretariat Peshawar.

Dated Peshawar the, 23-11-2015

NOTIFICATION

NO.SO(B/T)E&SED/5-4/2015/BISE Peshawar. **WHEREAS** Mr. Mussawar Jan Durani, Ex-Controller, BISE Peshawar now posted as Associate Professor, Govt. Postgraduate College Charsadda, was proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the Show Cause Notice.

2. **AND WHEREAS** Mr. Muhammad Hamayun, Secretary Agriculture Department was appointed as Inquiry Officer to conduct Inquiry against the accused officer, for the charges leveled against him in accordance with the rules.

3. **AND WHEREAS** the Inquiry Officer after having examined the charges, evidence on record and explanation of the accused officer has submitted the report.

4. **AND WHEREAS** a Show Cause Notice was served upon Mr. Mussawar Jan Durani, Ex-Controller, BISE Peshawar now posted as Associate Professor, Govt. Postgraduate College Charsadda. which was communicated to the accused on 13-07-2015.

5. **AND WHEREAS** the Chief Minister/ Controlling Authority Khyber Pakhtunkhwa has been pleased to grant personal hearing to Mr. Mussawar Jan Durani, Ex-Controller, BISE Peshawar now posted as Associate Professor, Govt. Postgraduate College Charsadda.

6. **AND WHEREAS** the accused officer Mr. Mussawar Jan Durani, Ex-Controller, BISE Peshawar now posted as Associate Professor, Govt. Postgraduate College Charsadda was called for personal hearing on 14-10-2015.

7. **AND WHEREAS** the Chief Minister/ Controlling Authority after having considered the charges and evidence on record, inquiry report, explanation of the accused officer in response to the Show Cause Notice, is of the view that the charges against the accused officer have been proved.

8. **NOW, THEREFORE,** in exercise of the powers conferred under Rule-14 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the Chief Minister/ Controlling Authority Khyber Pakhtunkhwa is pleased to impose minor penalty of **"Stoppage of two increments for two years"** upon Mr. Mussawar Jan Durani, Ex-Controller, BISE Peshawar now posted as Associate Professor, Govt. Postgraduate College Charsadda of the charges levelled against him.

SECRETARY

Endst: of Even No. & Date:

Copy forwarded to the: -

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Chairman, BISE Peshawar.
3. Director, Higher Education Khyber Pakhtunkhwa Peshawar.
4. P.S to Chief Minister, Khyber Pakhtunkhwa.
5. P.S to Secretary, Higher Education Department.
6. P.S to Secretary E&SE Department.
7. Officer concerned.

Govt Post Graduate College Charsadda 31/12/15

(FAZAL HUSSAIN)
SECTION OFFICER (BOARD/TRG)

Mussawar Jan to meta
31/12/15

9 J.

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BEFORE THE CHIEF MINISTER KPK PESHAWAR.

Office of the PSCM Diary No. 176 Dated 21/1/16

Received 21/1/16

Subject:- **Review against Notification/Order NO. SO (B/T)E & SED /5-4/2015/BISE Peshawar dated 23-11-2015, communicated to the appellant on 31-12-2015, whereby the appellant has been awarded the minor penalty of "Stoppage of Two Increments for Two Years".**

Respectfully Submitted:-

1. That the appellant was appointed as Lecturer (BPS 17) on 14-01-2002, and was appointed as Associate Professor (BPS-19) Mathematics through Khyber Pakhtun Khwa Public Service Commission in the year 2010, and since then he performed his duties with honesty and full devotion with spotless service career.

2. That the appellant was posted as Secretary Board of Intermediate and Secondary Education Peshawar (herein after referred to as BISE Peshawar) in February 2012 and was again posted as Controller of Examinations BISE Peshawar on 23-10-2012.

3. That vide Notification dated 23-07-2014, the appellant was suspended on the allegations of negligence in the performance of duty as Controller on account of leakage of an award list of intermediate examination 2014. **(Copy of Notification is enclosed as Annexure A).**

4. That a fact finding inquiry committee comprising of three members was constituted by the Secretary Elementary and Secondary Education Govt. of KPK Peshawar vide Notification dated 23-07-2014. The Committee submitted its findings and recommendations on 25-07-2014, wherein the appellant was recommended to be repatriated to his parent Department. **(Copy of Notification & inquiry findings are enclosed as Annexure B & C).**

5. That thereafter charge sheet with statement of allegations was issued to the appellant which was replied in detail refuting the allegations and

ATTESTED

explaining the true facts and circumstances. **(Copy of Charge sheet & reply are enclosed as Annexure D & E).**

6. That an unfounded inquiry was conducted and the inquiry officer submitted his findings wherein it was admitted that during the fateful time the appellant was on official duty at Lahore from 19-07-2014 to 22-07-2014. **(Copy of inquiry report is enclosed as Annexure F).**

7. That Show Cause Notice was issued to the appellant and which was also replied in detail explaining the true facts and refuting the allegations once again on 16-07-2015. **(Copy of Show Cause Notice & reply are enclosed as Annexure G & H).**

8. That finally the appellant was awarded minor penalty of **"Stoppage of two increments for two years"** vide Notification/Order NO. SO (B/T)E & SED /5-4/2015/BISE Peshawar dated 23-11-2015. **(Copy of Notification dated 23-11-2015 is enclosed as Annexure I).**

9. That the impugned Notification/Order NO. SO (B/T)E & SED /5-4/2015/BISE Peshawar dated 23-11-2015, is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUNDS:-

A. That the impugned Notification/order is illegal and void ab initio.

B. That mandatory provisions of law have been violated while taking action against the appellant.

C. That the Coordinator, Mr. Irfanullah who was appointed by the Chairman BISEP, has admitted that the Award lists were leaked while in his custody as

ATTESTED

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evident from page 02 of the inquiry report, as such the appellant could not be punished for the same.

D. That the Award Lists remains in the custody of the Coordinator which are handed over to the Secrecy Officer or Superintendent after the declaration of result and the Controller has nothing to do with the same. It is pertinent to mention here that Award Lists were leaked before the declaration of result, which proves that the same were leaked while in custody of the Coordinator and the appellant had no role in the same. This fact has been admitted by the Chairman Board in his report No 336/PS/BISEP dated 04-08-2014, according to which the Award Lists were leaked by one Scrutinizer Mr. Taj Ali SET, GHS Badezai Peshawar. The Chairman Board requested the Secretary Higher Education to take action against the Coordinator and had never showed any adverse remarks against the appellant. **(Copy of the report is enclosed as Annexure J).**

E. That even according to the inquiry the appellant is not involved in the leakage of Award Lists and further that the charge has not proved against the appellant, thus the impugned Notification is not maintainable an liable to be set aside on this score alone.

F. That no proper inquiry has been conducted and the appellant was not provided the opportunity to cross examine the witnesses thus was not provided reasonable opportunity to defend himself, thus the impugned Notification/Order is void.

G. That the appellant did nothing that could amount to misconduct.

H. That the impugned order is defective and as such not maintainable in the eyes of law.

I. That the appellant was not afforded the opportunity of meaningful personal hearing.

J. That it the appellant was on official duty at Lahore for the printing of Official gazette and reached Peshawar on 23-07-2014 thus has no role in the alleged leakage which fact has also been admitted in both the inquiry reports, thus the appellant could not be punished for the fault of others, if any.

K. That the appellant has been wrongfully ill-treated in the subject case as the Chairman though held responsible in the inquiry report yet no action was taken against him. But the appellant was punished for no fault at his end.

L. That as a result of the inquiry an FIR was lodged against a teacher named Taj Ali who was held responsible for the alleged leakage on 13-08-2014 and some teachers were also disqualified and debarred from any examination and Board related duties vide Notification dated 10-09-2014. Hence, when the responsibility was fixed on some other people who were also penalized with the major penalty, then punishing the appellant for his no fault is against the norms of justice and fairness. **(Copy of FIR & Notification dated 10-09-2014 is enclosed as Annexure K & L).**

M. That there is no omission or commission on part of the appellant and he could not be held responsible for the fault of others.

N. That even otherwise no loss has been caused to any one and as such too the impugned Notification/Order is not maintainable in the eyes of law. More particularly when the same were later on reconstructed.

O. That the appellant has about 14 years of service with unblemished service record.

It is therefore prayed that on acceptance of this Review, the impugned Notification/Order NO. SO (B/T) E & SED /5-4/2015/BISE Peshawar dated 23-11-2015, may kindly

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be set aside and the increments may kindly be ordered to be restored to the appellant with all back benefits.

Dated:-18-01-2016.

Mussawar Jan Durrani

Ex-Controller of Examinations BISE Peshawar
Presently Associate Professor (BPS-19)
Govt. Postgraduate College Charsadda

CELL#: 0345-9070920

Copy Forwarded to:

1. Secretary, Elementary and Secondary Education, Government of KPK Peshawar

SECRETARY DIARY
No: 1426
Dated 22/1/16

ATTESTED

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION PESHAWAR

Phone: 091-9216260
Fax: 091-9222037

No. 0336 / PS / BISEP

Date: 04/08/2014

To The Secretary,
Govt. of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department,

Subject **POST AWARD LIST MISSING SCENARIO**

Sir,

As per the verbal directives of Additional Secretary of E&SE on July 24, the preliminary report from Chairman BISE Peshawar on the development in the issue is as under:

Following the subject event, though an Enquiry Committee approved by Elementary & Secondary Education Department was conducting its business completed by July 26, 2014 and the report was forwarded to Additional Secretary, E&SE Deptt:. In the meantime BISE Peshawar on its own level pursuit the search based on the statement of Mr. Babar to reach to the real culprit. A request was made to the CKC (Counter Kidnapping Cell) for retrieval of mobile phone data. After preliminary scrutiny it revealed that one scuritiner Mr. Taj Ali, SET, GHS Badizai, Peshawar leaked out the award list of Intermediate annual examination 2014.

The Data also reflects his direct connection with media. This was further confirmed through a reliable source that helped him access to media.

Taj Ali being scrutiner in Intermediate Examination 2014 (annual) had direct access to the leaked document. As a scruitiner it was his duty to keep the secrecy (as per attached SOP). However, he breached the trust of official duty. Moreover, the Award List are lying in the safe custody of Coordinator, who was also supposed to take care of these Award Lists. Besides, Secrecy Officer & Superintendent Secrecy Section were equally responsible to take care of this record. The Cont oller of Examinations was outside the board from July 20 to 22 for the purpose of printing of result.

ATTESTED

This office has already suspended two employees, Secrecy Officer & Superintendent of Secrecy Section and stop Coordinator from further work in Secrecy Section (by suspending his services/duties assigned).

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ACTION PROPOSED:

The honourable Secretary E&SE Department is requested to take appropriate action against Mr. Taj Ali being an employee of E&SE Department. He breached the trust and leaked secrecy item.

The case of Prof. Irfan, (coordinator) is submitted to Secretary, Higher Education to take appropriate action against him under misconduct of official duty being the custodian of Award Lists.

Appropriate punishment is also proposed to the Secrecy Officer & Superintendent Secrecy Section (BISE Peshawar) for their negligence.

CHAIRMAN
BISE PESHAWAR

ATTESTED

ATTESTED

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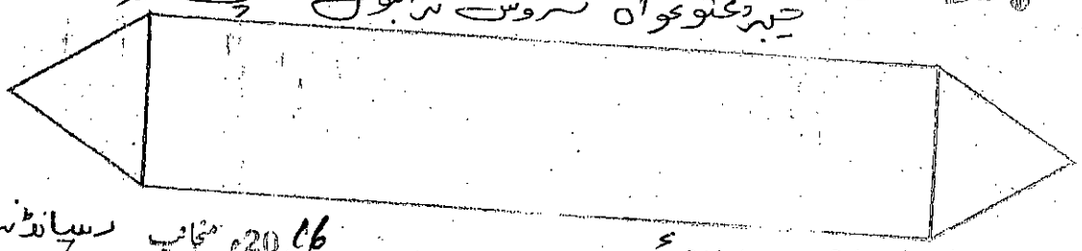
3. PS to Chief Secretary, Khyber Pakhtunkhwa Peshawar.
4. PS to Governor, Khyber Pakhtunkhwa Peshawar.
5. PS to Secretary E & SE, Khyber Pakhtunkhwa Peshawar
6. S.O (B/T) E & SE Department, Khyber Pakhtunkhwa Peshawar.
7. The Chairman Board of Intermediate and Secondary Education, Abbott[illegible] Bannu, Swat, Mardan, Kohat, Gujranwala, Bahawalpur, Faisalabad, A[illegible] Kashmir and Federal Board Islamabad.
8. PA to Director E & SE Khyber Pakhtunkhwa Peshawar.
9. The Executive District Education Officer (Male Secondary) Peshawar, Nowshera Charsadda, Mardan, Swabi, Kohat, Karak and Chitral, Bannu, D.I. Khan.
10. Controller of Examinations Peshawar University, Agriculture, Engineering University Khyber Pakhtunkhwa Peshawar, Gomal University D.I. Khan, Hazara University, Kohat University, Bacha Khan University Charsadda, Abdul Wali Khan University Mardan and Malakand University.
11. DEO (M/F) in Khyber Pakhtunkhwa.
12. All the Principals / Head Masters of the concerned schools.
13. Audit Officer / Auditor BISE Peshawar.
14. Section In charges, BISE Peshawar.
15. Superintendent Bill Section, BISE Peshawar.
16. PS to Chairman BISE Peshawar.
17. PA to Secretary BISE Peshawar.

Controller of Examinations
Board of Intermediate and Secondary
Education Peshawar.

Legal/BISEP/2140

Dated 03 / 06 / 16 20

بعدالت خیبر ٹرانسپورٹ سروس ٹرائبونل پشاور



3 سپلیمنٹ بنام 2016ء

جولائی 25 ،

اپیل نمبر 509/2016

Chairman, BISE Peshawar بنام Musawar Jan V S Board

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن

Advocate Shakila Begum Peshawar

کو دعویٰ

مقرر کرکے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ وکیل صاحب

کو بھی دعویٰ دائر کرنے کا اختیار ہوگا نیز وکیل صاحب بلاتحریری اجازت اقبال دعویٰ دینے یا راضی نامہ کرنے کا مجاز

ہوگا بصورت ڈگری کرنے اجرائے ڈگری روپیہ وصولی چیک، روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر

دستخط کرانے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل

نگرانی ونظرثانی وپیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور

وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقررشدہ کو بھی وہی جملہ مذکورہ بالا اختیارات

حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے

ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی

مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

الرقوم 25 ماہ جولائی 2016ء

الجب

کو بمقام

کے لئے منظور ہے

بمقام پشاور ہائی کورٹ پشاور

CHAIRMAN
BOARD OF INTERMEDIATE &
SECONDARY EDUCATION
PESHAWAR

BEFORE THE SERVICE TRIBUNAL KPK PESHAAR

Service Appeal No.509 /2016

Mussawar Jan..... Appellant

VERSUS

Chief Secretary and Others ..... Respondents.

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2.	**Appoitment Order of Coordinator**	**'A'**	**3**

Respondent No.3

Through

Shakila Begem
Advocate/Legal Advisor, BISEP

Cell: 03339333404

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 509/2016.

Musawar Jan .....Versus.....Chief Secretary etc.

Written Reply/Comments on behalf of Respondent No. 3.

Respectfully Sheweth:

Written reply/Comments on behalf of Respondent No. 3 is as under;

PRELEMINARY OBJECTIONS.

A) The Appellant has no cause of action or locus stadin against the reply Respondent.

B) The replying Respondent is not a necessary party and has wrongly impleading in the instant Appeal.

ON FACTS.

1) Needs no reply.
2) Correct.
3) Correct.
4) Needs no reply.
5) Has no concern with the replying Respondent.
6) Has no concern with the answering Respondent.
7) Has no concern with the replying Respondent.
8) Correct.
9) Has no concern with the replying Respondent.
10) The replying Respondent has not issued the impugned notification, hence, needs no reply on behalf of replying Respondent.

GROUNDS

A) Has no concern with the replying Respondent.

B) No reply as the replying Respondent has no concern.

C) In reply to this Para it is submitted that the coordinator was appointed by the Appealant under his own order and signature.

D) Correct.

E) No reply because, has no concern with the replying Respondent.

F) No reply as the replying Respondent has no concern with this Para.

G) Needs no reply as the answering Respondent has no concern.

H) Needs no reply.

I) No comments.

J) No reply as the replying Respondent has no concern.

K) Correct.

L) In reply to this Para it is submitted that as the replying Respondent has not committed any mis-conduct, therefore, no action was taken against the replying Respondent.

M) Correct to the extant of lodging of FIR and issuance of Notification dated 10/09/2014. The replying Respondent has no concern with the remaining contents of this Para.

N) Needs no reply.

O) Has no concern with the replying Respondent.

P) Needs no reply.

It is, therefore, requested that as the impugned Notification has not been issued by the replying Respondent and no relief has been asked against the replying Respondent, therefore, the name of replying Respondent may kindly be deleted from the panel of Respondents.

Respondent No. 3.

Through

(Shakila Begum)
Advocate,
Peshawar.

Annex-A

3

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION PESHAWAR

OFFICE ORDER

Mr. Irfan Ullah, Associate Professor, GC Badaber Peshawar is hereby appointed as coordinator for HSSC Annual Examination 2014 w.e.f 23.04.2014 till the declaration of result.

Controller of Examinations

Copy to:

1. PS to Chairman, BISE Peshawar.
2. PS to Secretary, BISE Peshawar.
3. PS to Controller, BISE Peshawar.
4. Concern.

Attested to be true copy

I Received A sum of Rupees 1000/-
in the titled case Mushawir Jan
-Vs- Edu. et. Appeal No. 509/16.

Fazal Shah Mohmand
Advocate

03.11.2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 509/2016

Mussawar Jan, Associate Professor (BS-19) Ex-Controller BISE, Peshawar.....**Appellant**

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & Others..... **Respondent**

Parawise Comments for & on behalf of Respondents 1-2.

Respectfully Sheweth,

The Respondent submits as under:-

Preliminary Objections:-

1. The appellant has got no cause of action/ locus standi.
2. The instant appeal is badly time barred.
3. The appellant has concealed the material facts from this Hon 'able Tribunal, hence is liable to be dismissed on this score.
4. The appellant has not come to this Hon 'able Tribunal with clean hands.
5. The present appeal is liable to be dismissed for mis-joinder & non joinder of necessary parties.
6. The instant appeal is against the prevailing law and rules.
7. The appellant is estopped by his own conduct to file the instant appeal.
8. The instant appeal is not maintainable in its present form and also in the present circumstances of the issue.
9. That this Hon'able Tribunal has got no jurisdiction to entertain the instant service appeal.
10. That the instant Appeal is barred by Law.
11. That the Notifications dated 23-07-2014 and 23-11-2015 are legally competent.
12. That the instant Appeal is not maintainable in its present form.

FACTS.

1. Para-1needs no comments besides the unblemished service of appellant needs proof. Appellant has failed to discharge his responsibilities as a Controller with clean-hands.
2. Para-2 is also needs no comments.
3. Para-3 is correct. Respondent 2, being the competent authority, was fully satisfied with the circumstances which were enough to proceed against the Appelant as the continuation of appellant at such an important post was causing damage to the credibility not only to BISE, but also to the public interest.
4. Para-4 is also correct. Through the essence of inquiry, there left nothing beyond the shadow of doubt that appellant failed to realize his responsibility and lost his grip on the situation, thereby leading to repatriation to his Parent Department, which is maintainable as per Service Rules and R...

5. Respondent Department followed the required procedure of existing Service Rule. Hence charge sheet and statement of allegation was quite understandable in the light of findings of inquiry and the consequent Rule-3 Khyber Pakhtunkhwa Ordinance 2011.
6. Incorrect. Proper inquiry was conducted.
7. Para-3 is correct. As has already been pointed out in the foregoing para that appellant has committed mismanagement/negligence of control, hence, liable to be served with show cause notice in accordance with Service Rules.
8. Para is correct. At least, appellant was liable to meet his fate in form of stoppage of 2 annual increment due to utter negligence in maintaining the Secrecy and the responsibility as a Controller of BISE.
9. Para is not admitted. The Departmental appeal with out the credence of law and acceptance was, thus, liable to be dismissed.
10. Para is incorrect. The said Notification passed by Respondent 2, met the requirements of the principle of Justice and, therefore, maintainable in accordance with law.

GROUNDS.

A. Incorrect. The charge against the appellant have been proved through the findings of Inquiries that appellant was equally responsible in exposing the secrecy of award list, through excessive dependence and entrusting his responsibilities to others.
B. Incorrect. Appellant failed to refer before this Honorable Court the mandatory provision of law, which has been violated by the Respondent in proceeding against the Appellant.
C. Para is not admitted. The statement of Mr. Irfanullah does not count the matter. The fact remains that Appellant, being wholly in command of the affairs, failed to manage a fool proof system in maintaining the secrecy. The leakage of award list was the result of poor performance and control of Appellant.
D. Para is also not admitted. It is quite illogical that the Appellant was supposed nothing to do with the situation wherefrom the award list was exposed. The Co-ordinator and others were under the supervision of Controller (Appellant) who was supposed to manage the secrecy of document sound and intact throughout. Moreover, it is also pointless that Chairman BISE, did not adversely remarked against the Appellant, nor he asked Respondent 2 to proceed against the Appellant. The fact remains that a Government servant is always liable to Departmental proceedings due to inefficiency in discharging his duty.
E. Para is incorrect. The essence of the both the inquiry reports fully disclose that the Appellant is not found immune from the act of breach/violation of Rules in the outlet of such an important and confidential document, which has caused [illegible] earning a bad name of BISE. The Appellant failed to

manage/control his subordinates and supervisory staff, which clearly amounts to an unfortunate and miserable scene of loose administration.

F. Para is not admitted. The process of investigation/inquiry against the Appellant and others has been much fulfilled, leaving no doubt of any kind of nepotism, ambiguity and partiality. The two reports clearly identify that Appellant, being the Controller of BISE, cannot be held irresponsible.

G. Para is incorrect. The appellant has been treated according to law.

H. Incorrect. The appellant was liable to be proceeded under the efficiency Rules due to utter negligence in maintaining the secrecy.

I. Incorrect, already explained.

J. Para is not admitted. The written replies/statements of Appellant indicate of providing ample opportunities to the Appellant in defending his case besides personal hearing.

K. Para is denied by the fact that Appellant was indulging in ill-managed administration and control. He mostly counted upon other and entrusted, essential duties to others. The working staff was allowed free hands in maintaining even the important affairs of BISE. The stoppage of 2 annual increments is, thus, justifiable.

L. Para is incorrect. the matter of keeping the secrecy intact was solely lying within the jurisdiction and custody of Controller.

M. Incorrect. Appellant has caused an utter deficiency in revealing the confidential documents. Thus law, reason and commonsense justify that Appellant is equally guilty of the affair.

N. Incorrect. Appellant has been proceeded only on the part committed by himself, which is maintainable.

O. Para is incorrect. The impugned Notifications are passed after fulfilling all codal formalities.

P. Incorrect. Appellant is guilty of sheer negligence of his responsibility and the consequent departmental proceeding is maintainable.

In view of the above made submissions, it is, therefore, most humbly requested that the appeal being baseless, may very graciously be pleased to dismiss in favour of the Respondents with cost.

Secretary
Elementary & Secondary Education, Department
(Respondent No. 1 & 2)

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR.

Service Appeal No 509/2016.

Mussawar Jan.....**Appellant**

VERSUS

Secretary & Others.....**Respondents**

REPLICATION ON BEHALF OF THE APPELLANT.

REPLY TO PRELIMINARY OBJECTIONS.

All the preliminary objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action/locus stand to file instant appeal, instant appeal is well within time, which is maintainable in its present form; appellant has concealed nothing from this honorable Tribunal and have come to this honorable Tribunal with clean hands, instant appeal is not barred by law and limitation. All necessary parties have been imp leaded, the appellant is not stopped by his conduct to bring instant appeal, and this honorable Tribunal has got jurisdiction to entertain and adjudicate upon the matter.

REPLY TO FACTS/GROUNDS.

Comments of the respondents are full of contradictions and are based on malafide. Respondents have failed to show that the impugned order is legal and justified. The comments amount to admissions on part of the respondents, as they have failed to deny the plea of the appellant. The malafide of the respondents is proved from their contradictory version, more particularly in reply to **Ground "C",** wherein the issue regarding the appointment of Co-Ordinator has been taken. Respondents have not denied the plea of the appellant that the Co-Ordinator was appointed by the Chairman of the Board and that the lists remained in his custody. It is also a fact that the award lists lies in the custody of the Co-Ordinator as evident from the inquiry conducted by the Chairman Board. The appellant during the fateful time was on official duty at Lahore for printing of the result. No proper inquiry has been conducted in the matter and even

according to the illegal inquiry report the charge against the appellant has not been proved. The appellant was not provided the opportunity to cross examine the witnesses, thus was not provided reasonable and proper opportunity to defend himself.

Even no omission or commission on part of the appellant has been found, nor was he benefited in any manner. The actual culprits have also been named in the preliminary inquiry and no role or involvement of the appellant has been proved on record. Respondents have failed to substantiate their version and bring anything on record in support of their version; as such the impugned order is not maintainable in the eyes of law and liable to be set aside.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:- 16-01-2017 **Appellant**

Through

Fazal Shah Mohmand

Advocate Peshawar

AFFIDAVIT

I, Mussawar Jan, Associate Professor (BPS-19), Ex Controller of Examinations Board of Intermediate and Secondary Education Peshawar, (The Appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT

Identified by

Fazal Shah Mohmand

Advocate Peshawar.

ATTESTED NOTARY PUBLIC KHAIBER PESHAWAR

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 983 /ST Dated 22 - 5 - 2019

To

The Secretary E&SE Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - **JUDGMENT IN APPEAL NO. 509/2016, MR. MUSAWAR JAN & OTHERS.**

I am directed to forward herewith a certified copy of Judgement dated 08.05.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.