

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 1427/2014

Date of institution ... 26.12.2014
Date of judgment ... 25.05.2016

Bashir Ahmad S/o Fida Muhammad,
R/o Village Sehen, P.O Ayun, District Chitral
Ex-Junior Clerk, Office of District Public Prosecutor,
District Karak.

... (Appellant)

VERSUS

1. Director General Prosecution, Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
2. Secretary, Government of Khyber Pakhtunkhwa, Home Department,
Civil Secretariat, Peshawar.
3. District Public Prosecutor, Chitral.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE OFFICE ORDER NO. DPE&A/PF/BASHIR AHMAD/ 9538-43 DATED 23.10.2014 OF RESPONDENT NO. 1, WHEREBY MAJOR PENALTY OF COMPULSORY RETIREMENT FROM SERVICE WAS IMPOSED UPON APPELLANT OF OFFICE ORDER NO. SO(PRO)/HD/1-9/2012/VOL-1 DATED 17.12.2014 OF RESPONDENT NO. 2, WHEREBY REPRESENTATION OF APPELLANT WAS REJECTED FOR NO LEGAL REASON.

Arbab Saif-ul-Kamal, Advocate.
Mr. Ziaullah, Government Pleader.

.. For appellant.
.. For respondents.

MR. PIR BAKHSH SHAH
MR. ABDUL LATIF

.. MEMBER (JUDICIAL)
.. MEMBER (EXECUTIVE)

JUDGMENT

PIR BAKHSH SHAH MEMBER:-

Appellant Bashir Ahmed, Junior Clerk of

the office of District Public Prosecution Chitral was proceeded against under Efficiency and Disciplinary Rules 2011 and vide impugned order dated 23.10.14 he was compulsorily retired.

His departmental appeal was also rejected vide order dated 17.12.2014 hence this appeal under

Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

2. In the departmental proceeding, appellant was set to face the following charges as given in the charge sheet:-

- (i) That you made spurious signature of Mr. Taj Noor Khan District Public Prosecutor, Chitral on the two bills under the head repair of furniture amounting of Rs. 3400/- & 4600/- (Total amount Rs. 8000/-) and thereby drew money from the government treasury.
- (ii) That you also embezzled government money amounting of Rs. 8000/-.
- (iii) That you withheld fee bills of Rs. 24000/- and Rs. 20400/- payable to Mr. Safirullah Special Public Prosecutor unjustifiably and when a complaint in this respect was lodged against you, then you made payment to the said SPP after a considerable delay.

3. The record shows that a fact findings inquiry in this case was conducted by Liaqat Ali, Deputy Director (Admin) Directorate of Prosecution Khyber Pakkhtunkhwa and the regular inquiry was conducted by Muhammad Ibrahim, District Public Prosecutor, Dir Lower Timergara. Reply of the appellant to the above charges is reproduced here below from the report of regular inquiry:-

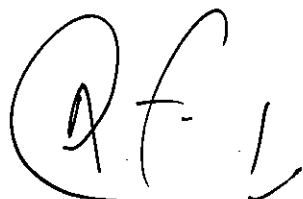
"I also recorded statement of Mr. Bashir Ahmad Junior Clerk office of the District Public Prosecutor, Chitral on oath in which he stated that he is serving as Government Servant from last 24 years and during his entire tenure no complaint has been lodged against him. Due to transfer of Mr. Haider Ali Senior Clerk, DPP Chitral directed him to look-after the affairs of account section and he humbly obeyed the order of District Public Prosecutor, Chitral inspite of the fact that he has no experience in the account matters. He further stated that as excess and surrender statement are going to be submitted before 15.06.2014 and amount of Rs. 8000/- was available in the head repair of furniture. Due to the absence of District Public Prosecutor, Chitral in the first of week of June, 2014 he with bonafide intention made two bills for Rs. 3400/- and Rs. 4600/- due to the reasons that if the amount were not utilized in the budget then Finance Department will refuse the same in the next budget. He also admitted that he received the amount in the month of June and disclosed the same to DPP Chitral, but the DPP blamed the official for mis-appropriation and show caused him. He further submitted that he was forcibly directed to submit written request in shape of Maffi Nama and also to deposit the amount through challan in the Account Office Chitral.

With regard to non-payment of Rs. 20400/- and 24000/- to Mr. Safirullah SPP Chitral in time, he admitted that he paid the amount on 10.07.2014 due to intervention of DPP Chitral. He volunteered that amount was available with him in his house, but due to his illness, he paid the amount on 10.07.2014. However, with respect to purchase of crockery for Rs. 4000/-, he denied that allegations of DPP Chitral and stated that he purchased the crockery according to the directions of DPP Chitral".

4. We have heard pro & contra arguments and have carefully perused the record.

5. After a careful perusal of the record it was found that the appellant was working on the post on the direction of DPP after transfer of Mr. Haider Ali who had assumed the charge not long before in the month of June and the Drawing and Disbursing Officer was on leave for some time in this month. To receive money from the government exchequer is not possible without signature of DDO and even if this is accepted that the appellant signed the bills with forged signature of DDO he could not receive the money despite the fact that the bills might have been signed with the forged signature of the DDO. Similarly, to disburse the amount to SPP was the responsibility of the DDO and the amount once on record, the appellant could not embezzle this amount of SPP by any stretch of imagination. It was also observed that the concerned SPP was not on good terms with the appellant. After a careful perusal of the record, the Tribunal in this case is led to the inference that the above aspects of the matter have not been properly and justly addressed to by the officers concerned. We are of the considered view that in the circumstances of the case, the penalty imposed on the appellant is harsh. As the result of the fore-going discussion, the Tribunal is constrained to set-aside the impugned order dated 17.12.2014 and 23.10.2014 consequently, the appellant is reinstated in service. The intervening period in which appellant did not perform duty be treated as his leave of the kind due. The appeal is accepted in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.05.2016



(ABDUL LATIF)
Member



(PIR BAKHISH SHAH)
Member

Appeal No. 1427/2014
Bashir Ahmad vs Govt

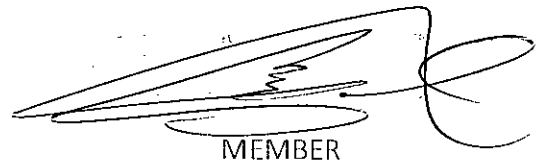
25.05.2016

Appellant with counsel and Mr. Ziaullah, Government Pleader for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today placed on file. As the result of discussion, the Tribunal is constrained to set-aside the impugned order dated 17.12.2014 and 23.10.2014 consequently, the appellant is reinstated in service. The intervening period in which appellant did not perform duty be treated as his leave of the kind due. The appeal is accepted in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record room.

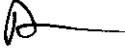
ANNOUNCED
25.05.2016


MEMBER


MEMBER

08.04.2016

Appellant with counsel and Mr. Ziaullah, GP for respondents present. Arguments heard. To come up for order on 28.04.2016.


Member


Member

28.04.2016

Agent of counsel for the appellant and Mr. Muhammad Ashraf, Senior Clerk alongwith Mr. Ziaullah, GP for respondents present. Some other clarification from learned counsel for the appellant is required in the instant case but due to strike of the Bar learned counsel for the appellant is not available therefore, case is adjourned for further clarification/order to 17.5.2016.



Member


Member

17.05.2016

Counsel for the appellant and Mr. Muhammad Ashraf, Senior Clerk alongwith the Ziaullah, GP for respondents present. Order could not be announced due to learned Member is an official tour to A/Abad. To come up for order on 25.5.2016.

Member


Member

State Bank

Rs. 8,000/- had been deposited in State Bank

85

THE MANAGER, STATE BANK OF PAKISTAN

Dated the 22/7/2014 of _____ 200

Received from the bearer the sum of Rs. 8000/-

to be credited to Government account under the head 802610 - R.O. Punjab

on account of for furniture charges

[Signature]
Signature and full official designation of the officer ordering the money to be paid in.

STATE BANK OF PAKISTAN

Dated the _____ of _____ 200

Received from the bearer Provisional Dep't (Home Dep't)

the sum of Rs. 8000/- Eight thousand only

to be credited to Government account under the head 802610 - R.O. Punjab

on account of Furniture charges

M.A. 2014

Note: The Bank Agent is instructed not to receive money unless both portion the invoice are carefully and clearly filed in.

(See reverse)

NWFP A&T 200.

State Bank

Rs. 8,000/- had been deposited in State Bank

THE MANAGER, STATE BANK OF PAKISTAN

Date: the 27th of 2000

Received from the bearer the sum of Rs. 8000/-

to be credited to Government account under the head 202640 - R.O. Punjab

on account of Government of Punjab

[Signature]
Signature and full official designation of the officer ordering the money to be paid in

STATE BANK OF PAKISTAN

Date: the 27th of 2000

Received from the bearer Government of Punjab (Home Dept)

the sum of Rs. 8000/- Equal in amount only

to be credited to Government account under the head 202640 - R.O. Punjab

on account of Government of Punjab

APR 20 2014

RECEIVED

Note: The Bank Agent is instructed not to receive money unless both parties are present and clearly filed in.

NWFP A.T. 200 (See reverse)

14.12.2015

Counsel for the appellant and Ms. Sahibzadi Yasmeen Ara, Assistant Director Legal alongwith Mr. Muhammad Jan, GP for respondents present. Inquiry report has not been found. Respondent-department is directed to produce the same on the next date. To come up for such inquiry report and further proceedings on

22.12.2016

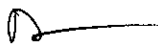

MEMBER


MEMBER

22.12.2015

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for further proceedings

on 2.2.2016


Member


Member


02.02.2016

Counsel for the appellant and Addl: AG for respondents present. The learned member (Executive) is on official tour to Swat. Therefore, the case is adjourned to 8.4.16 for arguments.


MEMBER

Appeal No. 1427/2014
Mr. Bushair Ahmad

3 25.02.2015

Appellant deposited process
fee & security


Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 23.10.2014, vide which the major penalty of compulsory from service has been imposed upon the appellant. Against the above referred impugned order appellant filed departmental appeal on 24.10.2014 which was rejected vide order dated 17.12.2014, hence the instant appeal on 26.12.2014.

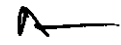
Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 22.04.2015.



Member

22.04.2015

Appellant with counsel and Asstt: AG present. None for the respondents present. Notices be issued to the respondents for submission of written reply/comments on 03.06.2015 before S.B.



Member

03.06.2015

Appellant in person and Mr. Haider Ali, Assistant alongwith Asstt: AG for the respondents present. Written reply/comments submitted. The appeal is assigned to D.B for rejoinder and final hearing on 14.12.2015.



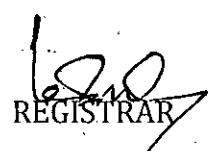

Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1427/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26.12.2014	<p>The appeal of Mr. Bashir Ahmad presented today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	21.1.2015	<p>This case is entered in the Institution register for hearing to be put up for order.</p> <p>File received from the Hon'ble Bench-I.</p> <p>None is available on behalf of the appellant. Notice be issued to appellant and his counsel. Case to come up for preliminary hearing on 25.2.2015.</p> <p style="text-align: right;"> MEMBER</p>

*Noted
for
copying*

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. 1427 /2014

Bashir Ahmad(Appellant)

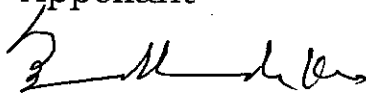
VERSUS

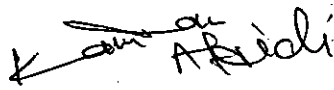
Director General Prosecution, Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar and others.....(Respondents)


I I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-5
2.	Addresses of the parties		6
3.	Copies of charge sheet and statement of allegations	A&B	7-10
4.	Copies of final show cause notice and reply	C&D	11-14
5.	Copy of office order dated 23/10/2014	E	15-0
6.	Copy of departmental appeal and order dated 17/12/2014	F&G	16-20
7.	Wakalat Nama		

Dated: 23/12/2014

Through Appellant

Saad Ullah Marwat
Advocates High Court,
Peshawar.


Kamran Afridi

&

Ashfaq Khan
Advocates Peshawar.
Cell No. 0300-5936155

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. 1427/2014

Bashir Ahmad S/o Fida Muhammad,
R/o Village Sehen, P.O. Ayun, District Chitral
Ex-Junior Clerk, Office of District Public
Prosecutor, District Karak.....(Appellant)

VERSUS

1465
26/12/2014

1. Director General Prosecution, Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
2. Secretary, Government of Khyber Pakhtunkhwa, Home
Department, Civil Secretariat, Peshawar.
3. District Public Prosecutor, Chitral.....(Respondents)

APPEAL U/S 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974, AGAINST THE OFFICE ORDER NO.
DP/E&A/PF/BASHIR AHMAD/ 9538-43
DATED 23/10/2014 OF RESPONDENT NO.
1, WHEREBY MAJOR PENALTY OF
COMPULSORY RETIREMENT FROM
SERVICE WAS IMPOSED UPON
APPELLANT OR OFFICE ORDER NO. SO
(PROS)/ HD/1-9/2012/VOL-I DATED
17/12/2014 OF RESPONDENT NO. 2,
WHEREBY REPRESENTATION OF
APPELLANT WAS REJECTED FOR NO
LEGAL REASON.

26/12/14

Respectfully Sheweth:

Short facts giving rise to the following instant appeal are as under:

1. That appellant served the Department for the last 24 years with devotion and no complaint was ever made against him.
2. That at present, appellant was posted as Junior Clerk at Chitral and he was entrusted with the work of Account matters but here it is pertinent to point out that he has no experience of the accounts and the department was legally bound to post full time accountant to deal with financial matters.
3. That anyhow, appellant was served with charge sheet and statement of allegations which was replied by denying the allegations. (Copies annexure "A" & "B").
4. That enquiry into the matter was initiated but the same was conducted as per law, yet appellant was served with final show cause notice without supply of the inquiry proceedings which was replied and denied the allegations, stating therein that no misappropriation has ever taken place. (Copies annexure "C" & "D").
5. That on 23/10/2014, appellant was awarded with major penalty of compulsory retirement from service

by Director General Prosecution Khyber Pakhtunkhwa. (Copy annexure "E").

- 6. That on 24/10/2014 appellant submitted departmental appeal before respondent No. 2 for reinstatement in service, which was rejected on 17/12/2014 without support of any reason. (Copy annexure "F" & "G").
- 7. Feeling aggrieved, appellant seeks redressal of his grievances, approaches this Hon'ble Tribunal on the following grounds, inter-alia:

GROUND:

- A. That in the 24 years service, no such allegation was ever leveled against appellant.
- B. That inquiry into the matter was not conducted as per the mandate of law because neither any statement of any witness was recorded nor appellant was afforded opportunity of cross examination being mandatory.
- C. That neither any amount was embezzled nor misappropriated but having no experience of the financial matter, some minor discrepancies took place.

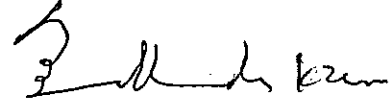
- D. That appellant was not accountant and department was legally required to post full fledged accountant on the post.
- E. That appellant has to serve for further 10 years but he was deprived of the financial benefits and future service carrier for no legal reason.
- F. That appellate order dated 17/12/2014 of respondent No. 2 is not based on legal footing as the same was not supported by any reason. The apex Supreme Court of Pakistan has held in plethora of the judgments that order of rejection of departmental appeal be supported by reasons and the same shall be also conveyed to aggrieved Civil Servant.
- G. That by keeping in view the aforesaid submissions, the impugned orders did not commensurate with the alleged guilt, so is based on malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 23/10/2014 of respondent No. 1 or 17/12/2014 of respondent No. 2

be set aside, and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

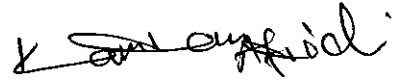

Appellant

Through




Saad Ullah Marwat
Advocates High Court,
Peshawar.

Dated: 23/12/2014



Kamran Afridi

&


Ashfaq Khan

Advocates Peshawar.

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. _____/2014

Bashir Ahmad(Appellant)

VERSUS

Director General Prosecution, Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar and others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:


Bashir Ahmad S/o Fida Muhammad,
R/o Village Sehen, P.O. Ayun, District Chitral
Ex-Junior Clerk, Office of District Public
Prosecutor, District Karak.

RESPONDENTS:

1. Director General Prosecution, Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
2. Secretary, Government of Khyber Pakhtunkhwa, Home
Department, Civil Secretariat, Peshawar.
3. District Public Prosecutor, Chitral.

Appellant

Through



Dated: 23/12/2014

Saad Ullah Marwat
Advocates High Court,
Peshawar.



Kamran Afridi

& 

Ashfaq Khan
Advocates Peshawar.



**DIRECTORATE OF PROSECUTION
KHYBER PAKHTUNKHWA**

No. DP/EPA/ (60) 9543-46
Dated Peshawar 22nd August, 2014
Office Phone # 091-9212559/ 091-9212542
Fax # 091-9212559
E-mail: kpprosecution@yahoo.com

CHARGE SHEET

I, Asmatullah Khan Gandapur, Director General Prosecution, Khyber Pakhtunkhwa as Competent Authority, do hereby charge you, Bashir Ahmad Junior Clerk office of the District Public Prosecutor, Chitral as follow:-

That you, while posted as Junior Clerk at District Chitral committed the following acts/ omission:-

- i. That you made spurious signatures of Mr. Taj Noor Khan District Public Prosecutor, Chitral on the two bills under the head repair of furniture amounting to Rs. 3400/- & Rs. 4600/- (Total amount Rs. 8000/-) and thereby drew money from the government treasury.
- ii. That you ^{also} embezzled government money amounting to Rs. 8000/-.
- iii. That you withheld amount of fee bills of Rs. 24000/- and Rs. 20400/- payable to Mr. Safir Ullah Special Public Prosecutor unjustifiably and when a complaint in this respect was lodged against you, then you made payment to the said SPP after a considerable delay.

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

3. You are therefore required to submit your written defence within seven days of the receipt of this charge sheet to the Inquiry Officer.

4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that are ex-parte action shall be taken against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegations is enclosed.

(ASMATULLAH KHAN GANDAPUR)

Director General Prosecution

Khyber Pakhtunkhwa

22/08/14

ATTESTED

by

ATTESTED



8

5

DIRECTORATE OF PROSECUTION
KHYBER PAKHTUNKHWA

No. DP/EP/1160/9583-46
Dated Peshawar 22nd August, 2014
Office Phone # 091-9212559/ 091-9212542
Fax # 091-9212559
E-mail: kpprosecution@yahoo.com

DISCIPLINARY ACTION

I Asmatullah Khan Gandapur, Director General Prosecution Khyber Pakhtunkhwa as Competent Authority, am of the opinion that Bashir Ahmad Junior Clerk, office of the District Public Prosecutor, Chitral 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

- i. That he made spurious signatures of Mr. Taj Noor Khan District Public Prosecutor, Chitral on the two bills under the head repair of furniture amounting to Rs. 3400/- & Rs. 4600/- (Total amount Rs. 8000/-) and thereby drew money from the government treasury.
- ii. That he ^{also} embezzled government money amounting to Rs. 8000/-.
- iii. That he withhold amount of fee bills of Rs. 24000/- and Rs. 20400/- payable to Mr. Safir Ullah Special Public Prosecutor unjustifiably and when a complaint in this respect was lodged against him, then he made payment to the said SPP after a considerable delay.

2. For the purpose of inquiry against the said accused with reference to the above allegations, Mr. Mohammad Ibrahim, DPP Dir (Lower) is appointed as Inquiry Officer under Rule-10(1)(A) of Khyber Pakhtunkhwa, Government Servant (Efficiency & Discipline) Rules, 2011.

3. The Inquiry Officer shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within 30-days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

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

Asmat
(ASMATULLAH KHAN GANDAPUR)
Director General Prosecution
Khyber Pakhtunkhwa

22/08/14

etc
ATTACHED
by



**DIRECTORATE OF PROSECUTION
KHYBER PAKHTUNKHWA**

No. DPI ExA/1(60)/8848

Dated Peshawar 1st October, 2014

Office Phone # 091-9212559/ 091-9212542

Fax # 091-9212559

E-mail: kpprosecution@yahoo.com

FINAL SHOW CAUSE NOTICE

I, Asmatullah Khan Gandapur, Director General Prosecution, Khyber Pakhtunkhwa as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve upon you, Bashir Ahmad Junior Clerk Office of the District Public Prosecutor, Karak, as follows:-

- (i) That consequent upon the completion of inquiry conducted against you by Mr. Muhammad Ibrahim Khan, District Public Prosecutor Dir (Lower) the inquiry officer, for which you were given opportunity of hearing and also recorded your statement.
- (ii) On going through the findings and recommendations of the inquiry officer, the material on record and other connected papers including your defence before the inquiry officer.

I am satisfied that you are found guilty of misconduct and lack of service discipline in term of Rule-3 of the said Rules.

2. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalty of compulsory retirement under Rule-4 of the Rules ibid.
3. You are, therefore, 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 (7)-days or not more than fifteen (15)-days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.
5. A copy of the findings of the inquiry officer is enclosed.

Asmat
(ASMATULLAH KHAN GANDAPUR)
Director General Prosecution
Khyber Pakhtunkhwa

ATTESTED
by

ATTESTED



12

**DIRECTORATE OF PROSECUTION
KHYBER PAKHTUNKHWA**

No. DP/ExA/1(60)/8847

Dated Peshawar 2nd October, 2014

Office Phone # 091-9212559/ 091-9212542

Fax # 091-9212559

E-mail: kpprosecution@yahoo.com

To

✓
The District Public Prosecutor,
Karak.

Subject: - **FINAL SHOW CAUSE NOTICE.**

I am directed to refer to the subject noted above and to enclose a final show cause notice (in duplicate) duly signed by the competent authority i.e. Director General Prosecution Pakhtunkhwa alongwith inquiry report.

It is, therefore, requested that the above mentioned final show cause notice be served upon Bashir Ahmad, Junior Clerk of your office and acknowledgement on duplicate copy may kindly be obtained from the official and return to this Directorate as token of receipt.

Encl: (As abve)

(LIAQAT ALI)

Deputy Director Admin/ Finance

Received today

DIST PP

ATTESTED
by

D

13

To

The Deputy Director Admin/Finance
Directorate of Prosecution
Khyber Pakhtunkhwa Peshawar

Reference your No DP/EXA/1(60)/8848, dated 01.10.2014

Subject: Final Show Cause Notice

Respected Sir,


1. I have already submitted reply to the charge sheet and statement of allegation. I rely on the same. Copy enclosed.

Apart from the same, the first allegation regarding the said money was neither misappropriated nor embezzled but the same was reimbursed to the treasury through Challan, so the first allegation does not hold field because the said money was surrendered to the Government Exchequer.

As far as second allegation regarding embezzlement of the said money is concerned, the same also does not hold field because the Challans are the ample proof of the redeposit of the money in Treasury, which fact had already been explained in the aforesaid charge.

The third charge leveled against me is also of no legal effect as after said payment to the concerned SPP and the chapter became closed once for ever. Such fact of receipt of the money can be verified from him.

Sir, from the aforesaid submissions it is quite clear that no illegality has ever been taken place and at least some minor irregularities which allegedly has taken place for which legally I could not be penalized. As far as the section


ATTESTED

of law is concerned, the same does not attract in the case in hand because irregularity no where carry major punishment.

- 2. The competent authority is under legal obligation to keep in mind all then pro and cons of the case in mind and as explained above, the case in hand does not require major punishment of compulsory retirement because my unblemished service spread over 2 ½ decades does not suggest so under any rule.
- 3. I wish to be heard in person to further explain the position orally to the satisfaction of the authority because the punishment proposed does not commensurate with the situation.
- 4. As directed the reply to the final show cause notice is hereby submitted within the stipulated period for further necessary action but at the same time, it is also requested that the case in hand no where demands imposition of punishment.


It is therefore most humbly requested that the case in hand be made filed and I kindly be exonerated of the leveled charged.

Yours Sincerely

sb/-

Bashir Ahmad
Junior Clerk DPP Office
Karak.

Dated: 15/10/2014

ATTESTED
Attested
by 



15

**DIRECTORATE OF PROSECUTION
KHYBER PAKHTUNKHWA**

No.DP/E&A/PF/Bashir Ahmad/9538-4

Dated Peshawar 23rd October, 2014
Office phone # 091-9212559
Fax # 091-9212559
E-mail kp prosecution@yahoo.com


ORDER:

Whereas, the District Public Prosecutor, Chitral had complained against Mr. Bashir Ahmad Junior Clerk DPP Office Chitral for drawing and embezzling a sum of Rs. 8,000/- through fraudulent means by making bogus signature of the Drawing and Disbursing Officer on the two such bills passed from the government treasury.

Whereas, Mr. Laiqat Ali Deputy Director (Administration) Directorate of Prosecution, Peshawar was deputed to conduct a facts finding inquiry into the requisite allegations against the official concerned, the sum and substance of which was that responsibility for the alleged fraud and mis-appropriation of Government funds was fixed upon Mr. Bashir Ahmad Junior Clerk.

Whereas, a formal inquiry under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 was initiated against the delinquent official by appointing Mr. Muhammad Ibrahim Khan District Public Prosecutor, Dir (Lower) as inquiry officer under the Rules ibid with the following charge sheet:-

- i. *That you made spurious signatures of Mr. Taj Noor Khan District Public Prosecutor, Chitral on the two bills under the head repair of furniture amounting to Rs. 3,400/- & Rs. 4,600/- (total amount Rs. 8,000/-) and thereby drew money from the government treasury.*
- ii. *That you also embezzled government money amounting to Rs. 8,000/-.*
- iii. *That you withheld amount of fee bills of Rs. 24,000/- and Rs. 20,400/- payable to Mr. Safir Ullah Special Public Prosecutor unjustifiably and when a complaint in this respect was lodged against you, then you made payment to the said SPP after a considerable delay.*


ATTESTED

Whereas, the inquiry officer found the accused official guilty of the charges leveled against him and made the following recommendations:-

"On the basis of the facts, statements of witnesses and keeping in view inexperience in account matters of the accused official, I, recommend that Mr. Bashir Ahmad, the accused official is liable for the penalty specified in Section-4(b)(i) or any other penalties specified in Section-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 as deemed consider appropriate."

Whereas, the charges against the accused as framed in the charge sheet and statement allegations have been proved and there is no serious lacuna in the proceedings conducted by the inquiry officer.

And whereas, the accused official was served with a final show cause notice and heard in person by the undersigned but he could not belie the serious accusations brought about against him.

Therefore I, Mr. Asmatullah Khan Gandapur Director General Prosecution, Khyber Pakhtunkhwa having found Mr. Bashir Ahmad Junior Clerk guilty of misconduct and in exercise of the powers conferred upon me under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, impose the major penalty of compulsory retirement upon the accused official herein with immediate effect.

Asmat

(Asmat Ullah Khan Gandapur)
Director General Prosecution
Khyber Pakhtunkhwa

23-x-14

Endst: No. & date even:

Copy forwarded for information to the:-

1. District Public Prosecutors, Chitral and Karak.
2. District Accounts Officers, Karak & Chitral.
- ✓ 3. Deputy Director (Administration), Directorate of Prosecution, Peshawar.
4. Official concerned.

ATTESTED

by

To

F

17

R.No-1376


dt 24.10.14

The Home Secretary
Government of Khyber Pakhtunkhwa
Home Department, Peshawar.

Subject: APPEAL AGAINST THE OFFICE ORDER DATED 23/10/2014 OF DIRECTOR GENERAL PROSECUTION, KHYBER PAKHTUNKHWA, WHEREBY MAJOR PENALTY OF COMPULSORY RETIREMENT UPON APPELLANT WAS IMPOSED.

Respected Sir,

1. That appellant served the Department for the last 24 years with devotion and no complaint was ever made against him.
2. That at present appellant was posted as Junior Clerk at Chitral and he was entrusted with the work of Account matters but here it is pertinent to point out that he has no experience of the account and the department was legally required to post full time accountant to deal with financial matters.
3. That anyhow, appellant was served with charge sheet and statement of allegations which was replied by denying the allegations.
4. That inquiry into the matter was initiated but the same was not conducted as per the mandate of law.


ATTESTED

After conclusion of the inquiry, report was submitted to the authority for onward action.

5. That appellant was served with final show cause notice without supply of the inquiry proceedings which was replied in the aforesaid manner and denied the allegations, stating therein that no misappropriation has taken place.
6. That on 23/10/2014, appellant was awarded major penalty of compulsory retirement from service by Director General Prosecution Khyber Pakhtunkhwa, hence this Departmental appeal inter-alia on the following grounds:

GROUND:

- A. That in the 24 years service, no such allegation was ever leveled against appellant.
- B. That inquiry into the matter was not conducted as per the mandate of law because neither any statement of any witness was recorded nor appellant was afforded opportunity of cross examination being mandatory.
- C. That neither any amount was embezzled nor misappropriated but having no experience of the financial matter, some minor discrepancies took place.

ATTESTED



- D. That appellant was not accountant and department was legally required to post full fledged accountant on the post.
- E. That appellant has to serve for further 10 years but he was deprived of the financial benefits and future service carrier for no legal reason.
- F. That by keeping in view the aforesaid submissions, the impugned order does not commensurate with the alleged guilt, so is based on malafide.

It is, therefore, most humbly requested that order dated 23/10/2014 of Director General Prosecution, Khyber Pakhtunkhwa, Peshawar, be set aside and appellant be reinstated in service with all back benefits.

Appellant

Bashir Ahmad

Bashir Ahmad
Ex-Junior Clerk
Office of District Public
Prosecutor.
R/o Village Sehen, P.O.
Ayun, District Chitral.
Cell No. 0308-8438980

Dated: 24/10/2014

ATTACHED

By 



5

20

Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department
NO. SO (Pros)/HD/1-9/2012/Vol-I
Dated 17/12/2014

67

To

The Director General Prosecution,
Khyber Pakhtunkhwa, Peshawar.

Subject: APPEAL AGAINST THE OFFICE ORDER DATED 23/10/2014 OF DIRECTOR GENERAL PROSECUTION, KHYBER PAKHTUNKHWA WHEREBY MAJOR PENALTY OF COMPULSORY RETIREMENT UPON APPELANT WAS IMPOSED

Dear Sir,

I am directed to refer to your office order No. DP/E&A/PF/Bashir Ahmad/9538-43 dated 23rd October 2014 on the subject noted above and to state that the competent authority has been pleased to uphold the order of the Director General Prosecution and the case be filed, please. (Detail orders of the competent authority shall be communicated later on).

Yours faithfully,

br 17/12/2014
Section Officer (Prosecution)
Ph: # 091-9210541
Fax: # 091-9210201

Endst: No. & Date even

Copy forwarded to:-

1. P.S to Secretary Home & TAs Department.

Section Officer (Prosecution)

ATTACHED

By [Signature]

بعدالت

سروس ٹریبونل فیصلہ بحثوں خواہ شاور

بشیر احمد بنام ڈی جی پراسیوٹورن
2، پنجاب ایڈوانسڈ
ضلع

23/12/2014

اسیٹلے

مورثہ
مقدمہ
دعویٰ
جج

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام شاور کیلئے بشیر احمد، کامران انجیلری و اسٹافان خان ایڈووکیٹس
وکلاء مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو رضی نامہ کرنے و تقرر ثالثتہ فیصلہ بر حلقہ دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک دروپہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برادگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از 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 مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانتا تو اے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی۔ تمام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
نہ نہ کر کریں۔ لہذا ادکالت نامہ لکھد یا کہ سندر ہے۔

بشیر احمد ولد فدا محمد

Attended & accepted

Asif Ali Khan
Advocate

المرتوم 23 ستمبر 2014

بمقام

کے لئے منظور ہے۔

Asif Ali Khan
Advocate

Kamran Asif
Adv.

A. S. Kamran
Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1427/ 2014

BashirAppellant

VERSUS

1. The Secretary Home & TAs Department, Khyber Pakhtunkhwa.
2. The Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.
3. The District Public Prosecutor, Chitral.....Respondents

WRITTEN REPLY/COMMENTS ON BEHALF OF RESPONDENTS 1 TO 3

Preliminary Objections

1. That appellant has got no cause of action.
2. That the appeal is not maintainable in the present form.
3. That the Appellant has got no locus standi to bring the appeal in hand.
4. That this Honorable Tribunal has got no jurisdiction to entertain the instant appeal.
5. That the Appellant is estopped by his own conduct to file the present appeal.
6. That the Appellant has not come to this Tribunal with clean hands.
7. That the Appellant has concealed material facts from this Tribunal.
8. That the Departmental appeal of appellant is badly time barred and on this score alone the appeal in hand is liable to be dismissed.
9. The appeal is bad for non-joinder of necessary parties and mis-joinder of unnecessary parties.

PARA WISE REPLY:-

Respectfully Sheweth,

1. Correct to the extent that the appellant was serving in this Directorate, rest of the para is denied.
2. Incorrect. The assertion of the appellant are totally incorrect, unwarranted and unjustified, moreover, any duty can be assigned to a Civil Servant. Furthermore, the appellant has got no vested right to ask for particular duty.
3. Reply of the appellant was examined but the same was having no force therefore discarded by the inquiry officer as well as competent authority.
4. The appellant in this para has admitted that the inquiry proceedings had been carried out in accordance with law and Rules, thus the appeal is hit by the principal of estoppel. Moreover, the finding was provided to the appellant.
5. The appellant has committed a serious misconduct, therefore, a major penalty of compulsory retirement was imposed upon him.
6. Incorrect. Since the appeal was having no legal substance, therefore, the same was rejected by the competent authority.
7. Incorrect. That no order made or proceedings taken under these rules shall be called in question in any court and no injunction shall be granted by any court in respect of any decision so made or proceedings taken in pursuance of any power under Rule-14 of 22 of the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.

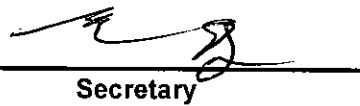
GROUNDS

- (A). Correct.
- (B). Incorrect. The inquiry proceedings were conducted in accordance with the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. This fact has already been admitted by the appellant in Para-4 of the facts above.
- (C). This para is totally incorrect and unwarranted. The appellant has committed a serious misconduct, therefore, major penalty of compulsory retirement from service was imposed upon him. However, the competent authority has shown leniency as the appellant apart from compulsory retirement was also liable for criminal prosecution.
- (D). Incorrect. As replied in Para-2 of the facts above.

- (E). Incorrect. Since the appellant has committed a serious misconduct and the same was proved in the inquiry proceedings, therefore, retention of the appellant was/is against the public interest.
- (F). Incorrect. Since the departmental appeal of the appellant was having no legal substance, therefore, the same was heard and rejected.
- (G). Incorrect. The order of the competent authority was issued in accordance with law and there was no malafide or ill will on their part. Even the appellant miserably failed to establish any malafide on the part of the competent authority.

Prayers

In the wake of above submissions the appeal of appellant is devoid of any substance and the same may kindly be dismissed with special cost.



Secretary
Home & Tribal Affairs Department
Khyber Pakhtunkhwa


Director General Prosecution
Khyber Pakhtunkhwa
District Public Prosecutor,
Chitral

INQUIRY REPORT

I was nominated as Inquiry Officer in order to conduct a facts finding inquiry against Mr. Bashir Ahmad Junior Clerk of District Public Prosecutor office Chitral vide order No. DP/E&A/1(60)/8876 dated 25/07/2014 regarding bogus signature of District Public Prosecutor Chitral on bills and embezzlement of government money.

Facts of the case are that District Public Prosecutor, Chitral vide letter No. 288 dated 18/07/2014 informed this Directorate that Mr. Bashir Ahmad Junior Clerk of DPP office Chitral made bogus signatures on the repair bills of furniture amounting to Rs. 3400/- and Rs. 4600/- (total amount Rs. 8000/-) and had withdrawn the said amount from Government Treasury Chitral and have committed gross misconduct and corruption. Moreover, the delinquent official also admitted the withdrawal of said amount on the bogus signature of District Public Prosecutor, Chitral.

In this respect I visited District Public Prosecutor office Chitral on 06/08/2014 in connection with the inquiry proceedings as per order mentioned above. In support of the complaint submitted by the District Public Prosecutor, Chitral, I recorded statement of DPP, Chitral on oath, which is **Flag-A**. Similarly I also recorded statements of Muhammad Afzal Khan Assistant Public Prosecutor, Chitral **Flag-B**, Mr. Zia-Ur-Rehman Computer Operator DPP office Chitral **Flag-C** and Mr. Safir Ullah Advocate/SPP Chitral **Flag-D**.

Mr. Taj Noor Khan District Public Prosecutor, Chitral in his statement stated that Mr. Bashir Ahmad Junior Clerk is dealing with the account matters after transfer of Mr. Haider Ali since May, 2014. During scrutiny of the record of account section in first week of July, he found that amount of Rs. 8000/- under the head repair of furniture has been withdrawn from the budget and the same has not been shown in the excess or in saving by the concerned clerk. He asked Mr. Bashir Ahmad Junior Clerk regarding withdrawal of said amount from budget inspite of his clear directions for not withdrawn the same. In reply to the above the concerned Junior Clerk replied that he forget the same in the excess or in saving. He further stated that he was going to show cause Mr. Bashir Ahmad for not surrendering the same to Directorate as well as to the Finance Department. When in the meanwhile he disclosed that amount of Rs. 8000/- has been withdrawn on the signature of DPP Chitral vide two separate bills already exhibited as **Ex: P-D & P-E**. DPP Chitral also leveled allegations for withholding amount of Rs. 20400/- and Rs. 24000/- fee bills of Mr. Safir Ullah Advocate SPP Chitral and misappropriation in the purchase of crockery. DPP Chitral further requested for transfer

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of Mr. Bashir Ahmad Junior Clerk to some other District as he is a cause of continuous mental torture at District Chitral.

I also recorded statement of Muhammad Afzal APP and Zia-Ur-Rehman Computer Operator of DPP office Chitral, wherein they stated that they are the marginal witnesses of written statement **Ex:P-B** submitted by Mr. Bashir Ahmad Junior Clerk with regarding to the explanation called by the District Public Prosecutor, Chitral, in which he admit his guilt regarding preparation of bills under the head repair of furniture and bogus signature of DPP Chitral. Similarly I also recorded statement of Mr. Safir Ullah Advocate/SPP Chitral in which he stated that he made a complaint to DPP Chitral with a copy to the Director General Prosecution with regard to non-payment of fee bills for the month of March to May 2014 for Rs. 20400/-, Rs. 24000/- and Rs. 25200/-. He wait for two, three days and thereafter send copy of the complaint to the Director General Prosecution, copy of which is already Exhibited as **Ex: P-E**. The Directorate sent the same for the comments of District Public Prosecutor, Chitral and thereafter Mr. Bashir Ahmad made payment of Rs. 20400/- and Rs. 24000/- on 10/07/2014 while the remaining amount was not received due to non-availability of budget.

The undersigned cross examined Mr. Taj Noor Khan District Public Prosecutor with regard to certain questions for clarification. In the cross examination he stated that Mr. Bashir Ahmad Junior Clerk did not inform him about the withdrawal of the above mentioned above and the same was shown to him on 17/07/2014 when he was going to show cause the official for not surrendering the disputed amount. The District Public Prosecutor, Chitral also admitted that furniture present in the office do not required any expenditure for repair. He also admitted that there is some dispute between Mr. Bashir Ahmad and Mr. Safir Ullah SPP with regarding payment of some fee bills and due to his intervention he patched up the matter. The District Public Prosecutor, Chitral has also admitted his absence from the office w.e.f 06/06/2014 to 10/06/2014 due to death of the wife of one Salih Noor his nephew. The DPP Chitral denied allegations regarding taken of statement of Mr. Bashir Ahmad by force and admitted that statement of Mr. Bashir Ahmad in which he admit his guilt was not recorded in his presence. The other PWs namely Muhammad Afzal APP and Mr. Zia-Ur-Rehman Computer Operator also admitted in the cross examination that statement (Mafi Nama) of Mr. Bashir Ahmad was recorded in their presence.

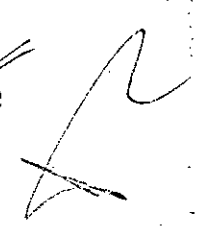
I also recorded statement of Mr. Bashir Ahmad Junior Clerk office of the District Public Prosecutor, Chitral on oath **Flag-E** in which he stated that he is serving as Government Servant from last 24 years and during his entire tenure no complaint

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has been lodged against him. Due to the transfer of Mr. Haider Ali Senior Clerk, DPP Chitral directed him to look-after the affairs of account section and he humbly obeyed the order of District Public Prosecutor, Chitral inspite of the fact that he has no experience in the account matters. He further stated that as excess and surrender statement are going to be submitted before 15/06/2014 and amount of Rs. 8000/- was available in the head repair of furniture. Due to the absence of District Public Prosecutor, Chitral in the first of week of June, 2014 he with bonafide intention made two bills for Rs. 3400/- and Rs. 4600/- due to the reasons that if the amount were not utilized in the budget then Finance Department will refuse the same in the next budget. He also admitted that he received the amount in the month of June and disclosed the same to DPP Chitral, but the DPP blamed the official for mis-appropriation and show caused him. He further submitted that he was forcibly directed to submit a written request in shape of Maffi Nama and also to deposit the amount through challan in the Account Office Chitral. He denied the allegation of Mr. Safir Ullah SPP with regard to non-payment of fee bills and also denied the allegations of purchase of crockery for less amount as directed by the DPP Chitral.

The official was crossed examined by the undersigned in which he admitted that he made the signature of Mr. Taj Noor Khan District Public Prosecutor, Chitral on the bills **Ex: P-D & P-E**. He also admitted the contents of **Ex: P-B** (Maffi Nama) which is in his hand writing and correctly bears his signature, but he voluntarily stated that the same was obtained through force by the District Public Prosecutor, Chitral with a pretext that he will solve the matter in his office and will not report the matter to the Directorate of Prosecution. The official further volunteered that both the marginal witnesses were also present when his forcible statement were taken. The official also admitted in the cross examination that Account Office accepted bills upto 15/06/2014.

// With regard to non-payment of Rs. 20400/- and Rs. 24000/- to Mr. Safir Ullah SPP Chitral in time, he admitted that he paid the amount on 10/07/2014 due to intervention of DPP Chitral. He volunteered that amount was available with him in his house, but due to his illness, he paid the amount on 10/07/2014. However, with respect to purchase of crockery for Rs. 4000/-, he denied the allegations of DPP Chitral and stated that he purchased the crockery according to the directions of DPP Chitral. Similarly the amount of Rs. 8000/- withdrawn under the head Repair of Furniture were also deposited in the Accounts Office through Challan **Ex: P-G**.



FINDING

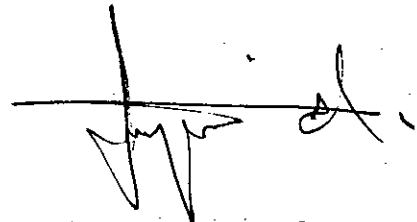
From the above mentioned statements and record available on file, its come to the conclusion that Mr. Bashir Ahmad Junior Clerk of District Public Prosecutor Office Chitral is guilty of making bogus signatures of Mr. Taj Noor Khan District Public Prosecutor, Chitral on two bills under the head Repair of Furniture and also of misappropriation of government money. Similarly he is also guilty of withholding amount of Mr. Safir Ullah SPP Chitral for sufficient time and when complaint was lodged against the delinquent official, he made the payment after a considerable delay.

RECOMMENDATIONS

On the basis of above mentioned facts and evidence collected by the undersigned, the following recommendations are formulated for the approval of the Director General Prosecution, Khyber Pakhtunkhwa.

1. A formal inquiry under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 may kindly be initiated against Mr. Bashir Ahmad Junior Clerk of DPP office Chitral.
2. Mr. Bashir Ahmad Junior Clerk may kindly be transferred to some other District for safe administration of justice.
3. Any other action deem necessary by the competent authority.

Inquiry report is submitted.

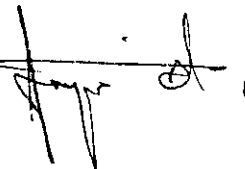


(LIAQAT ALI)

Inquiry Officer/
Deputy Director Admin/ Finance
Directorate of Prosecution
Khyber Pakhtunkhwa

Date:- 15-08-2013

Note:- The inquiry report is consisting of 4-pages
duly signed by the undersigned.



DD (Admin)

Pe. procur

18/08/14

INQUIRY REPORT:-

The Hon'able Director General Prosecution, Khyber Pakhtunkhwa, vide his order No. DP/E&A/1(60)9543-46 dated 22nd August, 2014 appointed me as inquiry officer to conduct formal inquiry against Bashir Ahmad, Junior Clerk (hereinafter referred to as accused official) in the office of District Public Prosecutor, Chitral under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for committing him the acts of commission and omission by submitting bills for drawl of amount on forged signatures of District Public Prosecutor, Chitral, causing misappropriation of government money (**Annex-A**).

The competent authority served him a charge sheet and statement allegations in the following terms (**Annex-B&C**):-

1. That he made spurious signatures of Mr. Taj Noor Khan District Public Prosecutor, Chitral on the two bills under the head repair of furniture amounting to Rs. 3400/- & Rs. 4600/-(Total amount Rs. 8000/-)and thereby drew money from the Government treasury.
2. That he also embezzled Government money amounting to Rs.8000/-.
3. That he withhold amount of bills of Rs.24000/- and Rs. 20400/- payable to Mr. SafirUllah Special Public Prosecutor unjustifiable and when a complaint in this respect was lodged against him, then he made payment to the said SPP after a considerable delay.

In the charge sheet, the accused official was asked to submit his written defense to the Inquiry Officer within seven days of the receipt of charge sheet and statement of allegations failing which he would be proceeded ex-parte.

A notice was issued to the accused official as well as District Public Prosecutor, Chitral to appear before the inquiry officer on 5th September, 2014 at 10:00 Am in the office of District Public Prosecutor Chitral to probe the allegations (**Annex-D**).

Pursuant to the direction, the accused official submitted his written statement in response to the show cause notice, inter-alia stated that:-

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 958 /ST

Dated 6/6/2016

To


The Director General Prosecution,
Peshawar.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 25.5.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

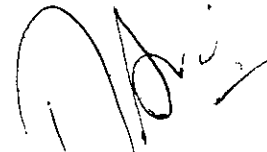
FINDINGS.

Keeping in view the facts, statements of witnesses, it is proved that the accused official namely, Bashir Ahmad, Junior Clerk DPP Office, Chitral is responsible for the acts of commission and omission referred in the charge sheet and statement of allegations. His conduct is prejudicial to good order and service discipline.

RECOMMENDATIONS.

I, the undersigned hereby recommend to the Director General, Prosecution, being a competent authority for appropriate order:-

"On the basis of the facts, statements of witnesses and keeping in view inexperience in account matters of the accused official, I, recommend that Mr. Bashir Ahmad, the accused official is liable for the penalty specified in section 4(b) (i) or any other penalties specified in section 4 of the Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011 as deemed consider appropriate."



MOHAMMAD IBRAHIM
Inquiry Officer
25/09/2014

**OFFICE OF THE
DISTRICT PUBLIC PROSECUTOR
DIR LOWER AT TIMERGARA**

No. 556 /D.P.P/Dir/Lower

Dated Timergara, The 26-9-2014

To,

The Director General Prosecution,
Directorate of Prosecution,
Khyber Pakhtunkhwa

Subject: **INQUIRY REPORT.**

Page 2

Reference Order No. DP/E&A/1 (60)9543-46 dated 22-08-2014 the subject inquiry was conducted per your honor order by the undersigned against Bashir Ahmad Joiner Clerk DPP Office, Chitral therefore, inquiry report consisting on 7 pages along with annexures is hereby submitted for further order on your part please.

Mohammad Ibrahim (Inquiry Officer)
District Public Prosecutor,
Dir Lower at Timergara.

Office General	8134 30/9/14 30/
	lor.
	REVA

*Re. name the account official
with a final show cause notice
final retirement
D.D. (Adm.)*

(a) So far as para-1 of the allegations is concerned it is stated that in the month of June, 2014 final report was required to be submitted in the District Account office regarding access & surrender for the financial year 2013-2014 and the learned District Public Prosecutor / DDO was on leave. I draw the amount mentioned in Para-1 with the intention that the same budget should be utilized so that for the next financial year, finance department may not allocate budget for the next financial year. I told DPP that the same amount with the intention mentioned above have been drawn and DPP directed me to deposit the same in the Account office through challan. As per direction, I surrender the same through challan in the account office. It was honestly drawn and I was not experienced in account matter because after leaving the charge of Mr. Haider Ali the same was handed over to me and in the interest of this office I have drawn the same. Human being learns through mistake and I shall be careful in future learning through this mistake.

(b) So far as Para-II of allegation is concerned the same amount has not been embezzled rather the same has been surrender in the District Account office Chitral through challan.

(c) So far as Para No.III of allegations of fee bills of Mr. Safir Ullah SPP is concern the same amount have been paid. I was busy in civil case of my family Quarter and at the same time my mother was admitted in hospital and Mr. Safir Ullah in my absence visited this office and without contacting me directly complaint against me to Director General Prosecution. It is pertinent to mentioned that Mr. Safir Ullah SPP has not taken in the notice of DPP and directly sent the same to DG Prosecution. DPP Chitral asked me about the matter and I submitted that Mr. Safir Ullah SPP was not available and therefore I have kept the same in my possession and handed over the amount Rs,44400/- to Mr. Safir Ullah in presence of DPP Chitral.

The accused official submitted that he was not experience in account matters, drawn the amount with good intention and with justification, therefore, he may be exonerated from the charges leveled against him. **(Annex-E)**.

It is pertinent to pointed out that in the instant case facts finding inquiry was also conducted by Mr. Liaqat Ali, Deputy Director Admin / Finance Directorate of Prosecution Peshawar. His inquiry

report along with enclosures is at **annex-"F"** available on the file. The inquiry officer recorded statement of Mr. Taj Noor Khan DPP Chitral who handed over the relevant documents pertaining to the allegations which are duly exhibited. He also recorded statements of Mohammad Afzal Khan APP Chitral, Zia Ur Rahman, Computer Operator DPP Office Chitral and Mr. Safir Ullah Advocate. Mr. Safir Ullah Advocate presented a copy of application addressed to DPP Chitral wherein he complained against accused official. The Inquiry Officer annexed the said application as **PF** available on the file. The inquiry officer had also recorded the statement of the accused official in rebuttal of allegations.

Briefly relevant portion of statements of all said officers / officials are reproduced hereinafter.

Mr. Taj Noor Khan, DPP in his statement narrated that in the month of May, 2014 after transfer of Mr. Haider Ali J/C to Peshawar, the account work was entrusted to accused official. In the first week of July, 2014, after so many directions, the said accused official produced expenditure record to DPP. On examination, it revealed that an amount of Rs.3400+4600 = 8000/- under the Head of Furniture was withdrawn by the accused official under forged signatures of DPP. For committing the forgery of tempering the signatures on bills, his explanation was called vides letter No. 285-86 dated 17-07-2014, exhibited as **PA**. The reply of accused official received and is exhibited as **PB**. Thereafter he reported the matter vide letter No. 288 dated 18-07-2014 to the Directorate of Prosecution which is exhibited **PC**. The forged signatures which he made on the bills, the copies whereof were produced to the inquiry officer Mr. Liaqat Ali which he exhibited as **PD&PF**. As per his statement, the accused J/C dis-heartened him with regard to the payment of fees to Mr. Safir Ullah SPP and also misappropriation in the purchase of crockery for office. Due to these illegal acts of accused official he expressed his displeasure and asked the Directorate for his transfer to some other District as he got no trust on him anymore.

Mohammad Afzal Khan APP and Zia Ur Rahman, Computer Operator DPP Office deposed to the effect that accused J/C on his own free will in their presence recorded written forgiveness statement (MuafiNama) addressed to DPP Chitral duly signed by him as well as by them. Mohammad Afzal Khan APP also deposed that in his presence Bashir Ahmad J/C purchased crockery for Rs.2600/- only and he was not in knowledge of subsequent purchase for remaining amount of Rs.1400/-.

Mr. SafirUllah advocate / SPP recorded his statement before the fact finding inquiry officer to the effect that he made a complaint to DPP Chitral with a copy to DG Prosecution Khyber Pakhtunkhwa for nonpayment of his professional fee amounting to Rs.20400+24000=44400/-. When DG Prosecution called comments of DPP Chitral only then the payment was made by the accused official. He was sure that his fee was withheld with ulterior motive.

//The accused official deposed before the fact finding inquiry officer that on transfer of Mr. Haider Ali J/C to Peshawar, the District Public Prosecutor Chitral entrusted the office account charge to him in spite that he had no experience in financial / account matter. According to him as excess surrender statement was required to be submitted before 15th June, 2014, therefore, under the Head of repair of furniture, he prepared bills for Rs. 3400/- and Rs. 4600/- under the signature of DPP Chitral. He was of the view that if the amount was not utilized within the financial year 2013-14 then finance department will not grant budget in the next financial year. According to him he withdrew the said amount in the month of June and informed the DPP of the same. But the DPP Chitral annoyed it and directed him to deposit the amount in the account office through challan. According to him DPP forcibly obtained "MuafiNama" from him. But even then DPP Chitral informed the Directorate of Prosecution. In cross examination by inquiry officer, he admitted all the charges leveled against him. //

The facts finding inquiry officer, after examination of the witnesses and the accused official concluded the findings as under:-

"That Mr. Bashir Ahmad J/C of DPP Office Chitral is guilty of bogus signatures of Mr. Taj Noor Khan DPP Chitral on two bills under the Head repair of furniture and also misappropriation of Government money. Similarly he is also guilty of holding amount of Mr. SafirUllah SPP for sufficient time and when complaint was lodged against the delinquent official, he made the payment after the considerable delay".

Recommendations of the inquiry officer for the approval of DG Prosecution Khyber Pakhtunkhwa formulated as under:

1. A formal inquiry under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 may kindly be initiated against Mr. Bashir Ahmad Junior Clerk of DPP office Chitral.
2. Mr. Bashir Ahmad Junior Clerk may kindly be transferred to some other District for safe administration of justice.
3. Any other action deem necessary by the competent authority.

In order to proceed against the delinquent official under the provisions of the Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011, the undersigned being authorized inquiry officer, undertook the inquiry into the allegations leveled against the accused official and called for hearing the accused and other witnesses on 5th September 2014 in the office of DPP Chitral. The statements of the accused as well as of witnesses were received in the presence of the accused official and witnesses. DPP Chitral owned and relied upon the statement already recorded by him before the fact finding inquiry officer. He recorded similar statement which is at **annex-G**. In cross examination, he explained that due to the death of his nephew's wife on 06-06-2014, he had gone to his native village and was not present up to 9th June, 2014 and attended the office on 10-06-2014. He strongly refuted the statement of accused official that due to non-availability of DPP Chitral he put fake, fraudulent signatures on bills whereas he was available in the office. He submitted that the charges leveled against the accused official in the charge sheet and statements of allegations were true to his best knowledge and these charges were admitted by the accused official in his statement. Mr. SafirUllah advocate / SPP also owned and relied upon the statement recorded

before the fact finding inquiry officer. However, he has also recorded his statement before me which is at **annex-H**. He was cross examined wherein he narrated that he was sure that payment of fee bills was held up by accused J/C with ill will but he received the money and pardoned him with assurance that he would not repeat such act in future.

Mohammad Afzal Khan APP and Zia Ur Rahman Computer Operator were verbally examined who confirmed their statements made before the fact finding inquiry officer therefore, their further re-examination was found unnecessary.

Mr. Bashir Ahmad J/C, the accused official also owned and relied upon his previous statement which he recorded before the facts finding inquiry officer. According to him as excess and surrender statement was required to be submitted before 15th June, 2014, therefore, under the Head of repair of furniture he prepared two bills for Rs. 3400/- and Rs. 4600/- total rupees 8000/- under the signature of DPP Chitral. For doing so he argued that if the amount allocated in the budget was not utilized within the financial year 2013-14, then Finance Department would not allocate further amount in the budget of next financial year. Therefore, according to him he did this in good faith. When he presented the said amount to the DPP Chitral, he was not happy over it and directed him to deposit the amount in the account office through challan.

The allegations of Mr. SafirUllah, he declared were incorrect. He was of the view that he paid to him entire drawn fee amount. About delay in payment of the fee, he is of the explanation that he was ill and after recovery from illness, he paid the amount to him.

Allegation about purchase of crockery he was of the view that he had purchased the crockery for which amount was drawn and had not embezzled the amount for his own use even a penny.

Hence, the allegations are baseless, unfounded and he may be exonerated from the charges leveled against him in the show cause.