

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	05.08.2015	<p data-bbox="623 473 1398 556">KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, <u>PESHAWAR.</u></p> <p data-bbox="873 599 1192 637">Appeal No. 1404/2014</p> <p data-bbox="623 675 1463 758">Engr. Fazli Wahab Versus Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar etc.</p> <p data-bbox="769 796 1463 834"><u>PIR BAKHSI SHAH, MEMBER.-</u> Appellant</p> <p data-bbox="623 871 1463 1078">with counsel (Mr. Ijaz Anwar, Advocate) and Government Pleader (Mr. Muhammad Jan) with Saleem Shah, Supdt. for the respondents present.</p> <p data-bbox="623 1161 1463 2325">2. Appellant Engr. Fazli Wahab, Ex-Executive Engineer BPS-18 C&W Department, then posted at District Nowshera alongwith SDO Wajid Ahmad & Sub-Engineer, Muhammad Tahir were proceeded against under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 on the allegations of irregularities in the scheme of "Construction of RCC Bridge over River Kabul at Mistri Banda, District, Nowshera". Fortunately, the said SDO and Sub-Engineer after proper inquiry were exonerated whereas the appellant was compulsorily retired from service vide impugned order dated 12.09.2014. His review petition dated 25.09.2014 was also regretted vide letter dated 20.11.2014, received by the appellant on 20.11.2014, hence this service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p>

3. That the said scheme was not timely completed i.e. upto 30.6.2012 and that a huge amount of Rs. 40 million was irregularly credited to the contractor security deposit are the basic allegations against the appellant as revealed from the following charge sheet:-

i. You will realize that the scheme was due for completion by the ends of June 2012. the scheduled period for its completion, but you badly failed and made irregular payment in the referred scheme, thus you violated the rules/principle enumerated in Para 4.59 of the B&R Code.

ii. You had incurred an expenditure of Rs. 20 million to M/S Technicon Enterprises (PVT) Ltd vide voucher No. 58/B-II on 25.06.2012 through 17th final bill for the cited work against the different items viz parapet walls/embankment filling/back filling of culverts abutment/sub base/base course etc, but physically the works were not executed by the contractor even upto 11.01.2013, when the site was inspected and thus you have made the payment to the contractor without execution of any item of the works.

iii. You have irregularly credited a huge amount of Rs. 20 million to the contractor's security deposits, which became his property and he can claim it at any time.

iv. You have shown the approach roads completed, while its yet to be completed and the payment to this effect have been incurred, which is irregular on your part.”

Reply of the appellant to the charge sheet has also been found on record wherein he has denied the said allegations.

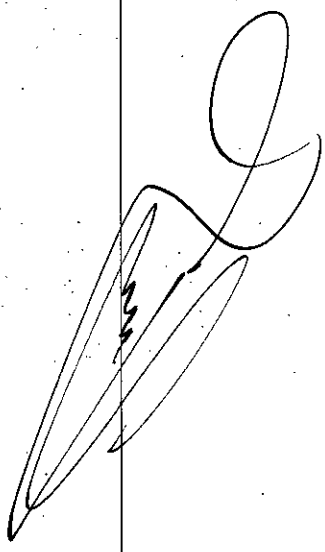
Last para of his reply, summing up his mind, may be reproduced here below:-

“To sum up, I had taken in charge a sick slow pace and flood damaged project and completed it in record 18 months time in which the working season of low water was only 9 months. The bridge was completed at very

economical cost of Rs. 0.470 million per meter and opened to traffic on 17 July 2012. There is no any loss to government, the public spending has achieved the target of a functional facility which is contributing to the uplift of the population of the area in term of saving journey time, fuel saving, easy/short access to education and health institutions, job places and providing efficient mean of transportation for agriculture products/ commercial commodities.”

Regular inquiry in the case was conducted by Engr. Muhammad Ashraf Khan, Director PBMC C&W Department Peshawar who submitted his inquiry report of three pages and while partially found the appellant guilty for charges recommended him for imposition of minor penalty of withholding of 2 increments with accumulated effect. The authority issued final shows cause notice to the appellant and tentatively decided to impose the said penalty of withholding of two increments with accumulated (2014-15). The appellant submitted his reply to the show cause notice wherein while replying in detail, he also expressed his desire to be heard in person. The record shows that the competent authority assigned this task of personal hearing to the Secretary Establishment Department, Government of Khyber Pakhtunkhwa, Peshawar. Ultimately vide impugned order dated 12.09.2014 major penalty of compulsory retirement was imposed on the appellant.

4. The learned counsel for the appellant submitted that proceedings against the appellant are based on malafide and are biased as the charges are not proved against the



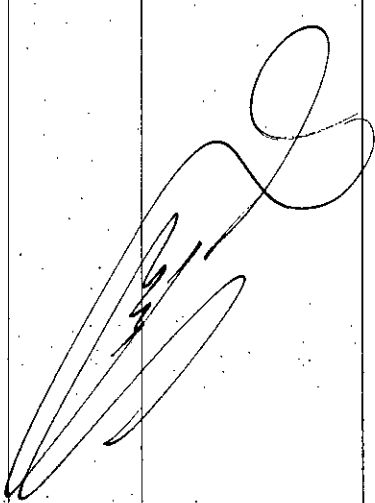
appellant as evident from the inquiry report but he was penalized. Further that the appellant was singled out from his team as SDO and Sub Engineer were exonerated and the appellant was thus discriminated and victimized. He further submitted that no opportunity of cross-examination of the witnesses particularly the incumbent XEN was provided to the appellant nor statement of the incumbent XEN was recorded in presence of the appellant. The learned counsel for the appellant stated that the penalty recommended by the inquiry officer was stoppage of two increments according to which penalty final show cause notice was also issued to the appellant but strange enough that major penalty of compulsory retirement was imposed on the appellant and thus his entire career was ruined. The learned counsel maintained that the process was unlawful and in violation of the principles of natural justice by not providing opportunity of personal defence to the appellant against imposition of the major penalty, reliance was placed on 2004-PLC(C.S)724. 2006-SCMR-403, 2009-SCMR-281 and 2013-SCMR-372. The learned counsel for the appellant submitted that the penalty is extremely excessive, therefore, on acceptance of the appeal, the impugned orders may be set aside and the appellant reinstated into service with full back benefits and wages.

5. This appeal was resisted by the learned Government Pleader on the grounds that all codal

formalities have been complied with and the appellant was given full opportunity of defence and personal hearing. It was further submitted that the scheme was not completed in the prescribed time and the appellant had credited huge amount to the security of the contractor in violation of the rules and regulations. He also defended the impugned orders by stating that the allegations against the appellant were proved and requested that the appeal may be dismissed.

6. We have considered submissions of the learned counsel for the appellant and learned Government Pleader for the respondent department and have carefully perusal the record.

7. According to the record, the scheme was initiated in the year, 2002 and revised for a third time, fell to the lot of the appellant to embark upon it and to complete it upto 30th June, 2012. According to the appellant, the scheme was completed on 17.7.2012 in which respect he has referred to the report of the daily "The News" dated 20.07.2012 as well as image secured from the Google. It is thus evident that there is no enough span between the targeted date of 30th June and the date of completion asserted by the appellant i.e. 17th July for which imposition of major penalty of compulsory retirement was excessive and could not be imposed upon the appellant. The appellant



has denied that he made any irregular payment but has rather taken the plea that each and every steps was taken in the public interest and to ensure completion of work within the fund available for the scheme. He has asserted that no loss happened to the public money. That the said plea of the appellant is not without foundation, for which we may refer to the report of the inquiry officer in which no loss was shown to have had found caused to the government ex-chequer on the part of the accused officer/officials. A careful perusal of the record shows that appellant has not been alleged for his indulgence in corruption in the cited scheme. It was also not shown that loss has been caused to the government ex-chequer because of the alleged irregularities. Beside the said factual position, it was also found that a direct opportunity of personal hearing was not provided to the appellant by the competent authority nor the impugned order of the competent authority throws light on the result or reference to any indirect personal hearing of the appellant before the Secretary Establishment Department, for which reason, the Tribunal concludes that opportunity of personal hearing was not provided to the appellant.

8. In the stated scenario, the Tribunal is of the considered opinion that the major penalty of compulsory retirement is excessive which needs to be modified as the inquiry officer had also recommended imposition of minor

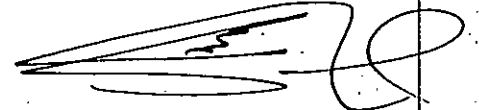
penalty of withholding of 2 increments, therefore, the major penalty of compulsory retirement is converted into minor penalty of withholding of 2 increments for one year. The appeal is allowed accordingly. The intervening period be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

05.08.2015



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

5,

11.05.2015

Appellant in person and Mr. Saleem Shah, Supdt. alongwith Assistant AG for respondents present. Comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 29.10.2015.


Chairman

2.07.2015

Appellant with counsel (Mr. Ijaz Anwar, Advocate) and Mr. Muhammad Jan, GP with Saleem Shah, Supdt. for the respondents present. Arguments heard. To come up for order on 05.8.2015.


MEMBER


MEMBER

3. 9.2.2015

Appellant with counsel present. While referring to the ground-C of his appeal, it was asserted by the learned counsel for the appellant that though minor penalty was recommended by the enquiry officer for which show cause notice was also issued to the appellant, but over-looking the legal requirement of issuing final show cause notice to the appellant as to why major penalty may not be imposed upon the appellant, and that the competent authority on his whims has imposed major penalty of compulsory retirement upon the appellant. Points raised need consideration. The appeal is admitted for regular hearing, subject to all legal exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 20.4.2015.


MEMBER

20.04.2015

Appellant in person and Mr. Saleem Shah, Supdt. alongwith Muhammad Jan, GP for respondents present. Written reply not submitted. Requested for further time to submit written reply. To come up for written reply/comments on 11.5.2015.

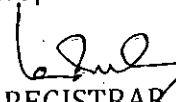
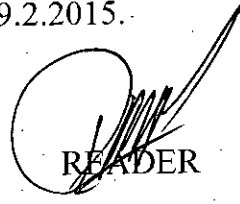

Member

*Appellant & counsel present
4 Jan 2015*

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1404/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15.12.2014.	<p style="text-align: center;">The appeal of Mr.Fazli Wahab presented today by Mr. Ijazar Anwar 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> <p style="text-align: center;">this case is entrusted to Bench for preliminary</p>
2	21.1.2015	<p style="text-align: center;">hearing to be put up in the court</p> <p style="text-align: center;">Since 20th January, 2015 has been declared as public holiday by the provincial government; therefore, case to come up for the same on 9.2.2015.</p> <p style="text-align: right;"> READER</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Appeal No. 1404 /2014

Engr Fazli Wahab, Ex-Executive Engineer BPS-18 C & W
Department R/O House No. 113 Street No. 3 Sector F/4 Phase 6
Hayat Abad Peshawar.

(Appellant)

Versus

Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa Civil Secretariat Peshawar and others.

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4	Copy of the report of the enquiry report	C	12-14
5	Copies of the show cause notice & Reply to the show cause notice	D & E	15-17
6	Copies of the letter dated 22.08.2014 & order dated 12.09.2014	F & G	18-19
7	Copies of the review petition and rejection order dated 20.11.2014	H & I	20-23
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Appellant

Through


IJAZ ANWAR

Advocate, Peshawar

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Saddar Road Peshawar Cantt

Cell: 0333-9107225 (091) 5272054

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No. 1404 /2014

1441
15-12-2014

Engr Fazli Wahab, Ex-Executive Engineer BPS-18 C & W
Department R/O House No. 113 Street No. 3 Sector F/4 Phase 6
Hayat Abad Peshawar.

(Appellant)

Versus

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Secretary to Govt: of Khyber Pakhtunkhwa Communication & Works Department Civil Secretariat Peshawar.
3. Secretary to Govt of Khyber Pakhtunkhwa Establishment Department Civil Secretariat, Peshawar.

(Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974.

AGAINST THE ORDER NO.SOE/C & WD//8-
1/2013 dated 12TH SEPTEMBER 2014,
WHEREBY THE MAJOR PENALTY OF
COMPULSORY RETIREMENT HAS BEEN
IMPOSED UPON THE APPELLANT AGAINST
WHICH THE REVIEW PETITION DATED
25.09.2014 HAS BEEN REGRETED VIDE
LETTER DATED 20.11.2014 COMMUNICATED
TO THE APPELLANT ON 24.11.2014.

Prayer in service Appeal

On acceptance of this appeal, the order of compulsory retirement dated 12.09.2014 & the rejection order dated 20.11.2014 may please be set aside and the appellant may please be reinstated in service with full back benefits and wages.

Respectfully submitted

1. That the appellant while posted as XEN C & W Division Nowshera was issued charge sheet for the some alleged irregularities in the scheme Construction of RCC bridge over River Kabul at Misri Banda District Nowshera.
(Copy of the Charge sheet & statement of allegations is attached as Annexure A)
2. That the appellant duly submitted his reply to the charge sheet refuting the allegations. (Copy of the reply to the charge sheet is attached as Annexure B).
3. That in the meantime enquiry was conducted in to the allegations, in the enquiry the charges were never proved against the appellant, however the enquiry officer concluded that the charges were partially proved against the appellant and recommended him for imposition of minor penalty of withholding of two increments with accumulated effect. (Copy of the report of the enquiry report is attached as Annexure C)
4. That without considering the defence taken by the appellant, he was served with a show cause notice dated 24.06.2014, tentatively proposed to imposed the minor penalty of "withholding of two increments with accumulated effect for the years 2014-2015. The appellant submitted his reply to the show cause notice again refuting the allegations. (Copies of the show cause notice & Reply to the show cause notice is attached as Annexure D &E)
5. That vide letter dated 22.08.2014, the appellant was called for personal hearing, he duly appeared and appraised the true facts, explained his view point, however the competent authority without considering his defence vide NO.SOE/C & WD//8-1/2013 dated 12TH SEPTEMBER 2014 awarded the appellant major penalty of compulsory retirement from service with immediate effect. (Copies of the letter dated 22.08.2014 & order dated 12.09.2014 are attached F & G)

6. That the appellant submitted review petition dated 25.09.2014, however the review petition was regretted vide order dated 20.11.2014 communicated to the appellant on 24.11.2014. (Copies of the review petition and rejection order dated 20.11.2014 are attached as H & I)
7. That the appellant prays for acceptance of his appeal inter alia on the following grounds.

GROUND

- a. That the appellant has not been treated in accordance with law, he was not given proper, fair and meaningful opportunity to defend himself, thus he was greatly prejudiced in the enquiry proceedings.
- b. That the charges leveled against the appellant were never proved against the appellant in the enquiry albeit the enquiry officer gave his finding on surmises and conjectures.
- c. That though the charges were never proved in the enquiry, but the enquiry officer recommended for minor penalty of withholding of two annual increments for two years, similarly a show cause notice to this effect proposing the penalty of withholding of two increments for two years was served upon him, however the competent authority in violation of law and illegally enhanced the penalty without showing cause for the enhanced penalty, the order of compulsory retirement is thus illegal, violative of the principles of natural justice and against the dicta laid down in the pronouncements of superior courts, reference can be made to SCMR 2013 page 372, 2004 PLC (Civil Service) page 725, 2009 SCMR 281 & 2006 SCMR page 403.
- d. That even the charge sheet has been malafidely prepared was defective, one and the same charge was twice incorporated with different wording, unnecessarily complicating the matter, besides the appellant has sufficient explained and replied it in his reply to the charge sheet but it was never considered, the reply to the charge sheet may please be read as integral part of this appeal.
- e. That the appellant has been highly discriminated in the departmental proceedings, similar placed officer/official having the same role in the construction of bridge were exonerated of the charges while the appellant has been proposed for imposition of minor penalty, this discriminatory treatment is not permissible, reliance is placed on NLR 2009 service page 88 & 2004 PLC (Civil Service) page 598.

- f. That the enquiry officer has applied double standard in the conduct of enquiry, because he has accepted the statement of the co-accused that the construction of the bridge has been completed within the prescribed period of time, and thus exonerated them, however the stance/ statement of the appellant on the same line has been rejected, the enquiry report is thus biased and has greatly prejudiced the case of the appellant. (Copies of the statement of the co-accused are attached as Annexure J)
- g. That the appellant was posted as Executive Engineer C & W on 31.12.2010, he took over the charge of the post on 1.01.2011 & remained posted there till July, 2012. It is pertinent to point out here that the Bridge was inaugurated and open to traffic on 17.07.2012, it is also pertinent to mention here that the Contract for its construction was commenced in the year 2002, astonishingly instead of appreciating the appellant for timely completion of the Bridge he has been made to suffer, the finding of the enquiry officer even his personal observation run counter to the recommendation / conclusion of the enquiry, he on inspection observed that, that contractor was busy in rectification of minor remaining work of the project, however failed to observe that rectification is done regarding the already constructed work. The enquiry officer has thus not done the enquiry fairly and justly. Even for the sake of arguments the enquiry officer cannot hold responsible only the appellant for the alleged non completion of the project, rather the officers posted right from 2002 to 2012 should have been associated with the departmental proceedings. (Copy of the news cutting dated 20.07.2012 is attached as Annexure K)
- h. That the successor of the appellant namely Muhammad Sajid Executive Engineer was summoned as witness against the appellant, however neither his statement has been recorded in his presence, nor the appellant has been allowed to cross examine him, thus such statement can under no circumstance be used in the enquiry against the appellant.
- i. That the report of enquiry officer is self contradictory, as in the enquiry he on the one hand identified the floods as factor in the timely completion of project, secondly the decision to expand the bridge and thirdly the inclusion of approach roads in the bridge, but contrary to this he then shift the burden to the appellant, thus the enquiry report is defective and cannot be termed as balanced report in any case.

- j. That the enquiry has not been conducted within the prescribed period i.e. one month, as per the record the enquiry officer took almost 14 months in the conduct of enquiry, such enquiry lost its efficacy and is violation of the mandatory provisions contained in the Govt Servant (E & D) Rules, 2011.
- k. That the appellant is jobless since his illegal compulsory retirement from service.
- l. That the appellant seeks the permission of this Honourable court to rely on additional grounds at the hearing of this appeal.

It is therefore, very humbly prayed that **On acceptance of this appeal, the order of compulsory retirement dated 12.09.2014 & the rejection order dated 20.11.2014 may please be set aside and the appellant may please be reinstated in service with full back benefits and wages.**


Appellant

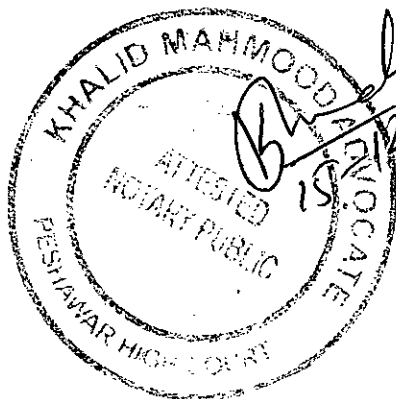
Through



Ijaz Anwar
Advocate Peshawar

Affidavit

I do hereby solemnly affirm and declare that the contents of the above service appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Hon'ble Court.




DEPONENT

(7)

ANNEX A

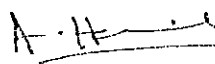
CHARGE SHEET

Whereas, I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, charge you, Fazli Wahab Executive Engineer (BS-18), C&W Department, presently working as XEN C&W Division Shangla is as under:

"That you while posted as XEN C&W Division Nowshera committed the following irregularities in the scheme of "Construction of RCC Bridge over River Kabul at Misri Banda District Nowshera" is as under:

- i. You will realize that the scheme was due for completion by the end of June 2012, the scheduled period for its completion, but you badly failed and made irregular payment in the referred scheme, thus you violated the rules/principle enumerated in Para 4.59 of the B&R Code.
 - ii. You had incurred an expenditure of Rs.20 million to M/S Technicon Enterprises (PVT) Ltd vide voucher No.58/B-II on 25.06.2012 through 17th final bill for the cited work against the different items viz parapet walls/embankment filling/back filling of culverts abutment/sub base/base course etc, but physically the works were not executed by the contractor even upto 11.01.2013, when the site was inspected and thus you have made the payment to the contractor without execution of any item of the works
 - iii. You have irregularly credited a huge amount of Rs.20 million to the contractor's security deposits, which became his property and he can claim it at any time.
 - iv. You have shown the approach roads completed, while its yet to be completed and the payment to this effect have been incurred, which is irregular on your part".
2. By reason of the above, you appear to be guilty of misconduct under rule-3 of the Khyber Pakhtunkhwa Government Servants (efficiency & Disciplinary) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule-4 of the rules ibid.
3. You are, therefore, required to submit your written defence within seven (7) days of the receipt of this charge sheet to the Inquiry Officer/Inquiry Committee, as the case may be.
4. Your written defence, if any, should reach the Inquiry Officer/Inquiry Committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case 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.

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(Amir Haider Khan Hoti)
Chief Minister
Khyber Pakhtunkhwa

15/03/2013

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DISCIPLINARY ACTION

I, Amir Haider Khan Hoti, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Engr. Fazli Wahab, Executive Engineer (BS-18) C&W Department, presently, working as XEN C&W Division Shangla 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 & Disciplinary) Rules, 2011:

STATEMENT OF ALLEGATIONS

"That he while posted as XEN C&W Division Nowshera committed the following irregularities in the scheme of "Construction of RCC Bridge over River Kabul at Misri Banda District Nowshera" is as under:

- i. He will realize that the scheme was due for completion by the end of June 2012, the scheduled period for its completion, but he badly failed and made irregular payment in the referred scheme, thus he violated the rules/principle enumerated in Para 4.59 of the B&R Code.
- ii. He had incurred an expenditure of Rs.20 million to M/S Technicon Enterprises (PVT) Ltd vide voucher No.58/B-II on 25.06.2012 through 17th final bill for the cited work against the different items viz parapet walls/embankment filling/back filling of culverts abutment/sub base/base course etc, but physically the works were not executed by the contractor even upto 11.01.2013, when the site was inspected and thus he has made the payment to the contractor without execution of any item of the works
- iii. He has irregularly credited a huge amount of Rs.20 million to the contractor's security deposits, which became his property and he can claim it at any time.
- iv. He has shown the approach roads completed, while its yet to be completed and the payment to this effect have been incurred, which is irregular on his part".

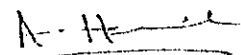
2. For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry officer/inquiry committee, consisting of the following, is constituted under rule 10(1)(a) of the ibid rules:-

- i. Engr: Muhammad Aslam Khan
- ii. SE (BS-19) CE (OPSS)

3. The Inquiry Officer/Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of 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/ Inquiry Committee.




(Amir Haider Khan Hoti)
Chief Minister
Khyber Pakhtunkhwa
15/03/2013

(9)

Area B

No. 2144 / I.E
To

Dated Shangla, the 11/4/2013

Engr. Muhammad Ashraf Khan
Chief Engineer (North)
Communication & Works Department
Khyber Pakhtunkhwa Peshawars

Subject:- **Para wise Reply to Charge Sheet**
Refnce: Section Officer (Estt) C&W Department letter No.SOE/C&WD/8-1/
2013 Dated 19-3-2013

i). The scheme "Construction of RCC Bridge over River Kabul at Misri Banda District Nowshera" was originally approved in 2002 at a cost of Rs 16.239-millions as a single lane (3.65 m width) having 29.60 m span and total length of 267m. The work was awarded to "M/s Technicon Enterprises (PVT) Ltd" and started accordingly. During the course of construction on the demand of local peoples the bridge was redesigned as two lanes (7.63m width) and the span was reduced to 14.8 m. Thus the no of spans were increased from 9 to 18, hence no of piles/pile caps/pier shaft/transoms were increased to double of the original nos. For this additional scope of widening the revised cost was approved for Rs 38.419 millions on 1-12-2005.

I took over charge as XEN C&W Division Nowshera on 1.1.2011 and the physical status of the bridge was just 6 no transoms were completed out of 19 no (Google image attached) Thus in 10 year period the achieved physical progress was only 30 %. The bridge was hit by July/august 2010 devastating floods and 9 no girders launched were damaged. As per government policy being an ongoing ADP scheme further work was stopped and funds were freezed. More over I had only 3 months working season of low water till June 2011 i.e. from January up to the end of March as in April the water level raises hence the sub structure work in river bed impossible and superstructure work in high water flow very difficult. From July 2011 till June 2012 I had only 6 months of low water working season i.e. from October 2011 to March 2012. Thus in 18 months i.e. from January 2011 to June 2012 I had only 9 month working period for substructure and super structure works in flowing water. In those 9 months working period of low water my tremendous efforts and hard work ensured successful completion of a long standing sick and flood hit damaged project.

Atty

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The allegation made is false and the bridge was completed by the end of June 2012 due to my dedicated efforts. The payment made was regular and no violation of Para 4.59 of B&R code. There is no loss to the government and public spending is to the full benefits of the population of the area. The local elected representatives (MNA/MPA) inaugurated the bridge on 17 July 2012 and opened to traffic (News paper clipping attached).

ii). In 17th final bill vide voucher no 58/B-II dated 25-6-2012, an expenditure of Rs 23.677 million and not 20 million has been incurred to M/S Technicon Enterprises(Pvt) Ltd on various items of work done in substructure/superstructure and approaches. The items embankment filling, back filling of culverts abutment, sub base/base course, etc are part of bridge approaches and were executed physically and paid accordingly. The opening of bridge to traffic on 17 July is sufficient proof as traffic could not ply without bridge approaches i.e. embankment/back filling to culverts etc.

iii). The retention money/security deposit amount is to cover the risk and the potential threats to the project. Since the bridge was already hit and damaged by July 2010 flood and as per agreement clause 29 flood damage is not the government/employer risk so sufficient deposit was kept keeping in view the forthcoming monsoon and flood season of July-August 2012 falling in defect liability period in order to ensure and safe guard the government interest. Moreover the original tender cost was Rs 32.34 million and later on the scope of work was increased and the 3rd revised cost approved for an amount of Rs 125.292 million on 27 June 2012. So extra security deposited was as additional earnest money for the increased scope of work and anticipated flood damage if any as the form work to freshly laid slab were in flowing water and 28 days strength not yet achieved.

The plea that security deposit is contractor property and can be claimed any time is misconception and against the B&R code, CPW account code and contract agreement. As per CPW Account code Para 395, the security deposit can only be paid to contractor after fulfilling terms/clauses of contract agreement. Contractor claim for security deposit can only be honoured when Two conditions of the contract agreement has been fulfilled i.e. The defects/damage occurred in defect liability period is remedied/rectified by the contractor as per clause 17 and the defect liability period is expired as per clause 17a of the contract agreement.

If contractor refuse to comply with mentioned clauses, action against him can be



11

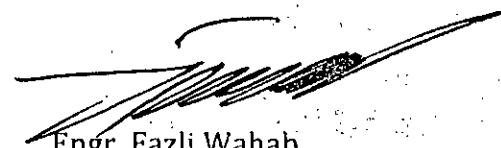
taken under clause 3 of the contract agreement and any defect/loss/damage is remedied/rectified by another agency from the security deposit.

iv). This allegation is repetition of allegation no (ii) and clearly shows biased intention. The embankment filling, sub base, base course etc is components of approach roads and as explained in Para (ii) above was executed and accordingly paid.

To sum up, I had taken in charge a sick slow pace and flood damaged project and completed it in record 18 months time in which the working season of low water was only 9 months. The bridge was completed at very economical cost of Rs 0.470 million per meter and opened to traffic on 17 July 2012. There is no any loss to government, the public spending has achieved the target of a functional facility which is contributing to the uplift of the population of the area in term of saving journey time, fuel saving, easy/short access to education and health institutions, job places and providing efficient mean of transportation for agriculture products/commercial commodities.

In view of the above replies/explanation, I may please be exonerated of charges/allegations.

I desire to be heard in person.



Engr. Fazli Wahab
Executive Engineer
C&W Division Shangla



INQUIRY REPORT

12

Approved: C

SUBJECT: IRREGULARITIES COMMITTED IN THE SCHEME OF "CONSTRUCTION OF RCC BRIDGE OVER RIVER KABUL AT MISTRI BANDA, DISTRICT NOWSHERA.

AUTHORIZATION: Section Officer (Establishment), C&W Department letter No. SOE/C&WD/8-1/2013 dated 19/3/2013.

FACTS:

The undersigned was appointed as Inquiry Officer vide C&W Department above quoted letter, to conduct formal inquiry under Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules 2011. In the subject scheme, against the following officers/officials of C&W Department, for the irregularities committed in the scheme of "CONSTRUCTION OF RCC BRIDGE OVER RIVER KABUL AT MISTRI BANDA, DISTRICT NOWSHERA".

1. Engr. Fazal Wahab, the then Executive Engineer (BS-18), C&W Division, Nowshera.
2. Mr. Wajid Ahmad, Sub-Divisional Officer (BS-17), C&W Division Nowshera.
3. Mr. Muhammad Tahir, Sub-Engineer (BS-11), C&W Division Nowshera.

The scheme "Construction of RCC Bridge Over River Kabul at Mistri Banda, District Nowshera" was originally approved in 2002 at a cost of Rs.16.239 Million as a single lane (3.65 m width) having 29.60 m span and total length of 267 m. 3rd revision of the scheme was noticed due to enhanced scope of work during the whole period from 2002 to 2012. The work was awarded to "M/S Technican Enterprises (Pvt) Ltd" and was started on 28/05/2009 accordingly, the date of completion of the scheme was June, 2012. During the execution of the project, on the demand of locals of the area, the bridge was redesigned as two lanes (7.63 m width) and the span was reduced to 14.8 m. Thus the numbers of spans were increased from 9 to 18, hence number of piles/pile caps, pier shaft/transforms were increased to double of the original numbers. The original tender cost was 32.34 million and later on the scope of work was increased and the 3rd revised cost approved for an amount of Rs.125.292 million on 27/6/2012.

PROCEEDINGS:

On receipt of communication from the department for conducting of formal inquiry against the accused officers/officials, the undersigned directed all the accused to submit their written reply in their defense and also provide the relevant record of the project.

The Executive Engineer, C&W Division Nowshera was time and again directed to provide the original record of the scheme in order to proceed further completion of the inquiry, however, due to non-availability of original record of the project which was mightly lost during the flood of July, 2012, this fact has also been recorded in the preliminary inquiry report of Engr. Rashidullah Khan, Superintending Engineer of C&W Department. ~~After all personal efforts, the record was consulted in different offices~~ concerning with dealing of the project, enabling the undersigned after tiring exercise to compile the statements of the accused officers/officials with the record and to complete the inquiry proceedings.

The undersigned inspected the project in 2013 and found the contractor busy in the rectification of minor remaining work of the project which shows that the scheme was not completed within the stipulated time.

[Handwritten Signature]

So far the charges leveled against the three accused officers/officials are concerned, the charges mentioned in the charge sheet may be perused at Annex-i, II & III, their written replies for the charges may be perused at Annex-IV, V & VI.

All the accused officers/officials were summoned for personal hearing, Engr. Fazli Wahab, the then Executive Engineer (Accused Officer), C&W Division Nowshera, explained his position as per his given written reply stating that he took over charge of the division on 1/1/2011 where the physical status of the bridge was just 6 No. transoms completed out of 19 No., thus a 10 year periods i.e. from 2002 to 2012, the achieved physical progress was only 30%. The bridge was hit by July, 2010 devastating floods and 9 No. girders launched were damaged as per government policy being an on-going ADP Scheme further work was stopped and funds were freezed. Moreover, he had only 3 months working season of low water till June, 2011, i.e. from January to the end of March as in April the water level raises hence the substructure work in river bed impossible and super structure work in high water flow very difficult. From July, 2011 till July 2012, he had only 6 months of low water working season i.e. from October 2011 till June, 2012. Thus in 18 months i.e. from January, 2011 to June, 2012 he had only 9 months working period for sub-structure and super structure work in flowing water. In those 9 months working period of low water due to his tremendous efforts and hard work ensured successful completion of a long standing sick and flood hit damaged project. Therefore, the allegation is false as the bridge was completed by the end of June, 2012.

In the 17th final bill vide voucher No.58/D-II dated 25/6/2012, an expenditure of Rs.23.677 million and not 20 million has been incurred to M/S Technican Enterprises Pvt Ltd on various item work done and substructure/super structure and approaches. The items embankment filling, back filling of culverts abutment, sub-base/base course, etc are part of bridges approached and were executed physically and paid accordingly. The opening of bridge to traffic on 17/7/2012 a sufficient proof as traffic could not lie without bridge approaches i.e. embankment/filling culverts etc.

The retention money/security deposit amount was just to cover the risk and the potential threats to the project. Since the project was already hit and damaged by July, 2010 flood and as per agreement laws 29 flood damages not the government/employer risk so sufficient deposit was required for keeping the forthcoming monsoon reaction and flood season of July, August 2012, falling in defect liability in order to ensure and safeguard the government interest. The original tender cost was 32.34 million and later on the scope of work was increased and the 3rd revised cost approved for an amount of Rs.125.292 million on 27/6/2012.

The accused officer briefly explained his position that the security deposit was just protecting the interest of the government and not favouring the contractor, the work was completed safely by doing so, therefore, he has not committed any irregularity.

~~Mr. Waqar Ahmad, Sub-Divisional Officer and Mr. Muhammad Tahir, Sub-Engineer, C&W Division Nowshera during their personal hearing denied from their charges leveled against them and stated that the scheme has been completed satisfactorily according to scope of work and specification.~~

(14)

FINDINGS:

From perusal of the record related to the project, written replies of the accused officers/officials examination, inspection of the RCC Bridge Over River Kabul at Mistri Banda District Nowshera, it transpires that the work was not actually completed upto 30/6/2012, as evident from the statement of the sitting Executive Engineer, C&W Division Nowshera, copy of which may be perused at Annex-VII. The project was identified in 2002, with the passage of time and as per demand of the people of the area, the scope/cost of the work was enhanced and go for 3rd revision which itself speak about the delay completion of the project. Payments made to the contractor through 17th running bill by cheque and transfer of the same to contractor security is found in clear violation of financial rules by the then Executive Engineer, C&W Division Nowshera which were possible in collaboration of Divisional Accounts Officer posted in the same Division at that time.


As confirmed by the existing Executive Engineer, C&W Division Nowshera that the project is satisfactorily completed by him through the contractor, therefore, no loss is found caused to the government on the part of the accused officers/officials reportedly involved in the inquiry, however, Engr. Fazli Wahab the then Executive Engineer (BS-18) C&W Division Nowshera is found guilty of the charge that he has shown the scheme completed in June, 2012 whereas it was not completed, actually, the payment was made to the contractor and placed in security deposit of the contractor which is in clear violation of rules.

Since the Principal Accounts Officer, of C&W Division Nowshera was the then Executive Engineer, C&W Division Nowshera who with the collaboration of Divisional Accounts Officer violated the financial rules, the remaining two accused i.e. Mr. Waqid Ahmad, Sub-Divisional Officer and Muhammad Tahir, Sub-Engineer have no role to play in the accounts matter, non of the charge is found established against them.

RECOMMENDATIONS:

Since Engr. Fazli Wahab, the then Executive Engineer, C&W Division Nowshera is found guilty of the charge partially, therefore, it is recommended that minor penalty for "withholding of two increments" with accumulated effect may be imposed upon him, the Divisional Accounts Officer posted at that time for procedural violation, the matter may be referred to the concerned authority for taking disciplinary action against him, whereas the two accused i.e. Mr. Waqid Ahmad, Sub-Divisional Officer and Mr. Muhammad Tahir, Sub-Engineer were not found guilty of the charge, may be exonerated from the charges leveled against them.

(ENGR; MUHAMMAD ASHRAF KHAN)
Director PBMC,
C&W Department, Peshawar.



(15) JAMES D

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, Engr. Fazli Wahab, Executive Engineer (BS-18) C&W Department; presently working as XEN Building Division Bannu as follows.

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing; and
- 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 while posted as XEN C&W Division Nowshera committed the following acts/omissions in the scheme "Construction of RCC Bridge over River Kabul at Misri Banda District Nowshera (ADP No.316/30845)", specified in Rule 3 of the said rules:

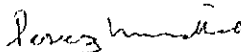
- i. You will realize that the scheme was due for completion by the end of June 2012, the scheduled period for its completion, but you badly failed and made irregular payment in the referred scheme, thus you violated the rules/principle enumerated in Para 4.59 of the B&R Code.
- ii. You had incurred an expenditure of Rs.20 million to M/S Technicon Enterprises PVT) Ltd vide voucher No.58/B-II on 25.06.2012 through 17th final bill for the cited work against the different items viz parapet walls/embankment filling/back filling of culverts abutment/sub base/base course etc, but physically the works were not executed by the contractor even upto 11.01.2013, when the site was inspected and thus you have made the payment to the contractor without execution of any item of the work.
- iii. You have irregularly credited a huge amount of Rs.20 million to the contractor's security deposits, which became his property and he can claim it at any time.
- iv. You have shown the approach roads completed, while its yet to be completed and the payment to this effect have been incurred, which is irregular on your part".


3. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of "Withholding of two increments with accumulated (2014-15)" under Rule 4 of the said rules.

4. 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.

5. If no reply to this notice is received within seven (07) 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.

6. A copy of the findings of the inquiry committee is enclosed.


(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa



16

ANNEX E

To

The Honourable Chief Minister
Khyber Pakhtunkhwa

Through: PROPER CHANNEL

Subject: FACTS FINDING INQUIRY REPORT ON THE CONSTRUCTION OF
MISRI BANDA BRIDGE ON RIVER KABAL (ADP NO.316/30845)

My reply to the show cause notice received vide Section Officer (Estabtt:) letter No.SOE/C&WD/8-1/2013, dated:24.06.2014 is as under:

The charges framed/leveled in the charge sheet were replied with detail explanation and were denied. However the following facts are submitted for further clarification.

- 1) In charge no 1, reference has been quoted from B&R code (para no 4.59), while the referred reference speaks that funds should be surrendered instead of making hasty expenditure. This Para is for a through forward scheme and not for a scheduled completion scheme. The fund could not be surrendered from a scheduled completion scheme and full fund has to be utilized in the end of financial year as the scheme is not carried over to next year ADP. (Copy of para 4.59 is attached as annexure-1).
- 2) The enquiry officer admits in the enquiry report that during his inspection he found rectification of minor work of the project, meaning by that the project was already completed.
- 3) The newspaper clipping confirming the bridge inauguration on 17/7/2012 and google earth imagery of 2013 showing traffic flow is enclosed as annexure-2.
- 4) In the findings enquiry report the enquiry officer admits that during personal hearing the co charged SDO and Sub Engineer denied the charges and stated that the scheme was completed satisfactorily according to scope of work and specification. Their statements were accepted and exonerated from charges.
- 5) In the findings of enquiry report the enquiry officer rely on the statement of setting Executive Engineer that the work was not completed upto 30/6/2012 and held responsible the undersigned only, while the co-charged SDO and Sub Engineer were exonerated from the same charge.
- 6) In the findings of enquiry report the enquiry officer contention that in 17th running bill the payment of cheque was transferred to security deposit is misconception and lack of accounts knowledge as the cheque being cash payment cannot be put in contractor security deposit. Further he has stated about violation of financial rules but has not quoted such rules either in GFR or CPW accounts code. Actually the 17th bill was final payment hence as per para-326 of CPW Accounts code before making final payment all recoverable amount has to be deducted and as such after deduction of recoverable amount i.e securities etc. the balance payment was made through cheque. (Para-326 attached as Annexure-3).
- 7) In the findings of the enquiry report, the enquiry officer further states that the u/s has showed the bridge completed in June 2012, whereas it was not completed actually, hence found guilty of the charge the undersigned only while the co-charged SDO and Sub Engineer were exonerated of the same charge. As per B&R code para no 4.5(5) the Sub Engineer and SDO are 100 percent responsible for the work done, and Executive Engineer is 10 percent responsible of the work done. (Para-4.5(5)(j) attached as annexure-4).



8) In enquiry report findings the enquiry officer states that SDO and Sub engineer has no role in accounts matter and undersigned being principal accounting officer is proved guilty of the charge is again misconception and lack of accounts knowledge. The undersigned is not principal accounting officer but drawing/disbursing officer only. As per B&R code para 4.5 and CPW Accounts code para No 208 Measurement Book (MB) is the basis of all accounts and very important account record. Measurements of work done are recorded by sub engineer in MB. Then abstract of work done in amount is recorded in MB by applying approved rates to the quantities worked out from measurements. From the abstract of work done a bill is prepared and signed by SDO.


Also work done is certified by SDO on the bill and submitted to Xen for payment. After clearing by pre audit of the Divisional accounts officer the bill is then paid by Xen as per releases being DDO. Hence SDO and Sub engineer has very important role in works accounts. (Copy of para 4.5 and para 208 attached as annexure-5).

9) Adjoining to the right approach of Misri Banda Bridge another ADP scheme "Improvement and Black Topping of road from GT Road to Misri Banda Bridge Nowshera "ADP No. 299/120839 "was under construction and scheduled for completion in June 2013 .The enquiry officers visits to the bridge in 2013 and travelling on the under construction road might have miss leded them and augmented the same road with the Misri Banda Bridge and therefore have presumed it incomplete. (Copy of a page of ADP 2012-13 attached as Annexure-6)

10) The bridge was completed in June 2012 and there was a potential risk of direct damage due to forthcoming floods in July 2012, either by direct hitting the girders/dick slabs or loss of stability after affecting formworks, or with structure collision or tilting failures. Moreover security deducted in running bill beyond original AA was 8 percent of the total work done, hence has to be made 10 percent of total work done as per B&R code Para no 2.66. Also 10 percent security of total work done is meager amount and is only meant for defects removal. For direct damage as happened in July 2010 floods and in the absence of insurance clause in the agreement in vogue, Rs 20 million was kept in security to coup with direct damage and make total 10 percent security as per enhanced revised cost. (Copy of Para 2.66 attached as Annexure-7).

Keeping in view the above explanations and confirmation of enquiry officer for no loss to government exchequer, it is humbly submitted that the enquiry officer report and recommendation be set aside and the undersigned be exonerated from the leveled charges. I am hopeful for getting justice from a government founded on justice and merit. I desire to be heard in person.

Yours Obedient


(Eng. Fazli Wahab)
Superintending Engineer(OPS)
C&W Circle Bannu





GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/8-1/2013
Dated Peshawar, the August 22, 2014

TO

Engr. Fazli Wahab
Superintending Engineer (OPS)
C&W Circle, Bannu

Subject: PERSONAL HEARING

I am directed to refer the Establishment Department letter No.SOR-V (E&AD)1-646/2014 dated 21.08.2014, whereby the Establishment Department has informed that the Competent Authority (Chief Minister) authorized Secretary Establishment to hear you on behalf of Chief Minister on 25.08.2014 at 1100 hours in his office.

2. You are, therefore, directed to appear before Secretary Establishment Department for personal hearing on the above mentioned date, time and venue.


(USMAN JAN)
SECTION OFFICER (Estb)

Handst even No. & date

Copy forwarded to PS to Secretary C&W Department, Peshawar


SECTION OFFICER (Estb)





Dated Peshawar, the Sept 12, 2014

ORDER:

No.SOE/C&WD//8-1/2013: WHEREAS, Engr. Fazli Wahab XEN (BS-18), presently working as Superintending Engineer (OPS) C&W Circle Bannu was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 for the alleged irregularities in the scheme "Construction of RCC Bridge over River Kabul at Misri Banda District Nowshera (ADP No.316/30845)".

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

3. AND WHEREAS, an inquiry officer Engr. Muhammad Ashraf Khan Superintending Engineer PBMC C&W Peshawar was appointed, who submitted the inquiry report.

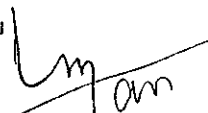
4. NOW THEREFORE, the Competent Authority after having considered the charges, material on record, inquiry report of the inquiry officer, explanation of the officer concerned, in exercise of the powers under Rule-14(5)(ii) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the major penalty of "**Compulsory retirement**" upon Engr. Fazli Wahab XEN (BS-18), presently working as Superintending Engineer (OPS) C&W Circle Bannu with immediate effect.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar
2. Accountant General Khyber Pakhtunkhwa, Peshawar
3. Advisor to CM for C&W Khyber Pakhtunkhwa, Peshawar
4. All Chief Engineers, C&W Peshawar
5. Chief Engineer EQAA Abbottabad
6. Managing Director PKHA Peshawar
7. All Superintending Engineer C&W Circles,
8. Superintending Engineer C&W Circle, Bannu
9. Executive Engineer C&W Division Nowshera/Lakki Marwat
10. Executive Engineer Building Division Bannu
11. District Accounts Officer Bannu/Nowshera
12. Section Officer (PAC) C&W Department, Peshawar
13. Incharge Computer Centre C&W Department, Peshawar
14. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
15. PS to Secretary C&W Department Peshawar
16. Engr. Fazli Wahab Superintending Engineer (OPS) C&W Circle Bannu
17. Managing Printing Press for publication
18. Office order File/Personal File


(USMAN JAN)
SECTION OFFICER (Estb)



(20)

Answer: H

The Hon'able Chief Minister
Khyber Pakhtunkhwa

Through: Secretary to Govt: of Khyber Pakhtunkhwa C&W Department Peshawar

Subject: REVIEW PETITION AGAINST THE PENAL ORDER BEARING NO. SOE/C&WD/8-1/2013 DATED 12-9-2014 C&W DEPARTMENT (COMPULSORY RETIREMENT) ON ACCOUNT OF ALLEGED IRREGULARITIES IN THE SCHEME "CONSTRUCTION OF RCC BRIDGE OVER RIVER KABAL AT MISRI BANDA DISTRICT NOWSHERA" (ADP NO.316/30845)

It is humbly requested that the subject penalty order dated 12.09.2014 (copy enclosed) may kindly be reviewed under provision of the Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011 (17(1) and set-aside it on the following legal/factual grounds and the undersigned be reinstated with all back benefits:

1. I have not been treated in accordance with law, rules, policy and acted in violation of article 4 of the Constitution of Pakistan.
2. Section 16 of the KPK Civil Servant Act 1973/ESTA CODE 2011 provide that every civil servant is liable for prescribed disciplinary action and penalty in accordance with the prescribed procedure. But in the instant case the Competent Authority has not followed the referred statutory provisions. In absence of conformity with the prescribed procedure as envisaged in E&D Rules, 2011, the so called disciplinary action is invalid and is liable to be set aside.
3. The Enquiry Officer has failed to procure an iota of evidence in respect of the charges leveled against me. The finding of the enquiry officer is based on conjectures and surmise, which has no evidentiary value in the eyes of law. So far the factual position is concerned, I have well explained the position in detail in my reply to the charge sheet and show cause notice. However I would like to submit the following factual position for favourable consideration please:-

- i. The charge No.ii was also served upon the other two accused which says that Rs. 20 million were paid on certain items in 17th final bill in June 2012 but were not executed till January 2013. The enquiry officer has mentioned in the report that during personal hearing both the accused denied from the charges and confirmed that the scheme has been completed satisfactorily according to the scope of work/specifications, hence the enquiry officer accepted their stance and recommended their exoneration. However in respect of the undersigned, the enquiry officer relied on the statement of sitting Executive Engineer that the scheme was not completed in June 2012, hence recommended imposition of minor penalty of withholding of two increments. Hence it is clear contradiction and discrimination on the part of inquiry officer.

Atty



(21)

This charge No. iii is continuation and sub part of charge No. i as Rs. 20 million was kept in contractor security deposit on 17th final bill. The amount of Rs. 20 million paid on certain items in 17th final bill in June 2012 were presumed to be executed at site as mentioned in charge No. i was further presumed to be credited irregularly to contractor security deposit in charge No. iii. Since the enquiry officer exonerated the co-accused SDO/Sub Engineer from charge No. ii. Therefore it was confirmed that Rs. 20 million expenditures on certain items in 17th final bill was actual work done at site in June 2012. Hence depositing the amount of work done in contractor security is not irregular. In this connection, CPW CODE para-280 speaks that arrangement should be made for withholding sufficient balance from contractor bills or for making necessary recoveries from them in due course (copy enclosed). So that the damages if occurred at a later stage are to be incurred at his risk & cost. Moreover, it is also common practice that if the completed scheme is not tested or the authorizing officer due to rush of office work as in the month of June being financial year closing could not find time for final detail inspection could retain the bill presented by SDO in deposit till testing or final detail inspection. In the instant case it was in the government interest to observe extraordinary care to keep the amount of work done in deposit till the bridge tested by opening to traffic flow and also to cope with flood direct damages if any in the forth-coming monsoon during defects liability period, which was contractor risk as per clause 29 of the contract agreement. Also the overall expenditure on the bridge was Rs. 125.292 million as per 3rd revised approval on 27.06.2012; hence Rs. 20 million kept in security deposit was only 16% of the total expenditure. The Government has already notified 8% additional security in case the tender rates are 10% below on approved cost based on prevailing schedule of rates to compel the contractor to be abiding by the contract agreement. In the instant case the contractor was executing the work on CSR-1999 rates and the scheme was revised from original AA Rs 32.34 million to Rs 125.292 million hence the additional scope of work amounting to Rs. 92 million was under execution on CSR-1999 up to June 2012, so the tendered rates compared to CSR-2012 rates were more than 10% below. Hence keeping Rs. 20 million of work done in security deposit was justified to compel the contractor to be abiding by the contract agreement in letter and spirit in case of direct damage to bridge in forth coming monsoon. More over the enquiry officer has not quoted a single rule for it to be irregular.

iii. Since the charges No. i and No. iv also relates with bridge non completion in June 2012. But the enquiry officer has confirmed the bridge completion in June 2012 by exonerating SDO/Sub Engineer. Hence these charges are also not justified.

4. The enquiry officer proposed imposition upon me the minor penalty and accordingly the same tentatively imposed by the Competent Authority through show cause notice. But after personal hearing, the Competent Authority has enhanced and imposed major penalty of compulsory retirement against the rule 14(6) of E&D Rules, 2011.

(22)

5. The enquiry officer has only relied upon the so-called statement of sitting Executive Engineer. The alleged statement has been recorded in my absence. The enquiry officer has not shared the statement of the sitting Executive Engineer. The inquiry officer was require to scrutinize the statement of the sitting XEN and should have placed it for cross examination. Moreover, the alleged statement does not predict the true picture of the ground facts and is contradictory.
6. That the so called alleged charges are flimsy and contradictory in nature. The charges against me has been splitted and divided for the reason best known to the authority.
7. I have been highly discriminated by exonerating Mr. Wajid Ahmad SDO and Muhammad Tahir Sub Engineer from the same charges by the enquiry officer, whereas I was treated differently..


From perusal of aforementioned grounds and explanations, it is quite clear that the imposition of major penalty "compulsory retirement" upon the undersigned is not justified, even there is no loss caused to the government exchequer, which has confirmed by the inquiry officer in the report.

Therefore, it is requested to kindly review the penalty order No. SOE/C&WD/8-1/2013 dated 12.09.2014 issued by C&W Department in respect of my compulsory retirement kindly be set-aside, being callous, without justification and merits. I may also kindly be reinstated in service with all back benefits to meet the ends of justice.

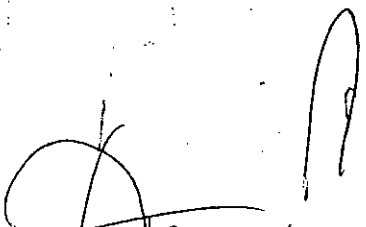
Your's sincerely

Dated: 25.09.2014

Diary No: 16993
Date: 25/9/14
Secretary C&W Deptt.
Khyber Pakhtunkhwa


(Engr. Fazil Wahab)
Ex-Superintending Engineer (OPS)
C&W Circle Bannu




125/9-2014



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. No. SOE/C&WD/8-1/2013
Dated Peshawar, the Nov 20, 2014

TO

Engr. Fazli-e-Wahab
the then Executive Engineer
C&W Department
(Now compulsory retired)

Subject: REVIEW PETITION AGAINST THE PENAL ORDER BEARING NO. SOE/C&WD/8-1/2013 DATED 12-9-2014 C&W DEPARTMENT (COMPULSORY RETIREMENT) ON ACCOUNT OF ALLEGED IRREGULARITIES IN THE SCHEME "CONSTRUCTION OF RCC BRIDGE OVER RIVER KABAL AT MISRI BANDA DISTRICT NOWSHERA" (ADP NO.316/30845)

I am directed to refer your appeal/representation dated 25.09.2014, which was examined and submitted to the Competent Authority (Chief Minister). The Competent Authority has rejected your appeal/representation.

2. You are hereby informed accordingly.


(USMAN JAN)
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to PS to Secretary C&W Department, Peshawar

SECTION OFFICER (Estb)

(26)

Armed J

To

The Chief Engineer (North)
Communication & Works Department
Khyber Pakhtunkhwa Peshawar

Subject: FACTS FINDING INQUIRY REPORT ON THE CONSTRUCTION OF MISRI BANDA BRIDGE ON RIVER KABUL DISTRICT NOWSHERA (ADP NO.316 / 30845)

The scheme "Construction of bridge over River Kabul at Misri Banda District Nowshera" was due for completion in June 2012.

It was seemed difficult to complete the work up to June 2012, due to the high level of water in River Kabul and also due to the slow / poor pace of work by the contractor. The 3rd revised PC-I was also not approved until May 2012.

I personally intimated my higher ups that the work may be placed in the ongoing works of the provincial ADP. It is added that the same request was also made for the RCC Bridge Pir Sabak district Nowshera. As a result, RCC Bridge Pir sabak was placed in the ongoing scheme of ADP, but the request for Misri Banda Bridge was not accepted.

Upon this, I and my office made great efforts for the completion the work and it was made possible that the work on the sub structure and super structure was completed 100 %. Also the bridge approaches including 6 nos RCC culverts were completed by the end of June 2012 and the then MPA and MNA of Distt Nowshera inaugurated the scheme on 17/07/2012 (All the local news papers of July 2012 can be seen). How was it possible to inaugurate an incomplete scheme.

All types of vehicles including light and heavy are passing over the bridge since June 2012. How ever due to the risk of high floods in river Kabul, I along with my higher ups decided to with held an amount of RS 20(m) from the contractor bill.


It is worth to remind that 9 nos girders, which were launched over the transom, were washed away during the July 2010 heavy floods. So the decision to with held the retention money is quite reasonable and can be termed as useful and in the interest of work.

Atty

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It is quite clear that the contractor was paid in accordance with the work done and no payment has been made to the contractor in advance.

In light of the above, it is humbly stated that there is no loss to the Govt: exchequer and hence the inquiry may please be furnished in favor of the undersigned.



WAJID AHMAD
SUB DIVISIONAL OFFICER





Recd

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GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/8-1/2013
Dated Peshawar, the March 19, 2013

TO

Engr. Muhammad Ashraf Khan (BS-19)
Chief Engineer (North) C&W, Peshawar (OPS)

Subject: Facts finding inquiry report on the construction of Misri Banda Bridge on River Kabul (ADP No.316/30845)

I am directed to refer to the subject noted above and to state that the competent authority (Chief Minister) has been pleased to appoint you as inquiry officer to conduct formal inquiry under Khyber Pakhtunkhwa Govt Servants (Efficiency & Discipline) Rules, 2011 in the subject case against the following officers/official C&W Department.

1. Engr. Fazle-Wahab (BS-18)
the then XEN C&W Division Nowshera
now working as XEN C&W Division Shangla
2. Mr. Wajid Ahmad (BS-17)
SDO C&W Sub Division Nowshera
3. Mr. Tahir (BS-11)
Sub Engineer C&W Division Nowshera


2. I am further directed to enclose herewith copies of the charge sheets and statement of allegations duly signed by the competent authority (Chief Minister) with the request to serve these upon the above accused officers/official and initiate proceedings against them under the provision of the Khyber Pakhtunkhwa Govt Servants (Efficiency & Discipline) Rules, 2011 and submit the **inquiry report within 30 days positively.**

Encl: As above

(RAHIM BADSHAH)
SECTION OFFICER (ESTT)

Endst even No. & date

1. Chief Engineer (Centre) C&W Peshawar. He is requested to depute an officer to assist the inquiry officer and provide him all relevant record as required to the inquiry officer.
2. Executive Engineer C&W Division Nowshera
3. Copy alongwith copy of the charge sheet/statement of allegations is forwarded for information with the direction to appear before the inquiry officer on the date, time and place fixed by him for the purpose of inquiry proceedings to the following officers/official:
 - i) Engr. Fazle Wahab (BS-18) XEN C&W Division Shangla
 - ii) Mr. Wajid Ahmad (BS-17) SDO C&W Division Nowshera
 - iii) Mr. Tahir (BS-11) Sub Engineer C&W Division Nowshera


SECTION OFFICER (ESTT)



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Ameer Haider



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MNA inaugurates bridge

Our correspondent

Friday, July 20, 2012

NOWSHERA: Member National Assembly (MNA) Masood Abbas Khattak inaugurated bridge built over Kabul river in Misri Banda in Nowshera on Thursday. Speaking a gathering on the occasion, the Awami National Party (ANP) lawmaker said the bridge would benefit the residents of 36 villages in the area. He added the government would soon complete work on the Pir Sabaq and Zara Mena bridges as Rs220 million were allocated for the purpose. He said despite financial crunch, the Khyber Pakhtun-khwa government was spending huge amounts on the development projects in Nowshera. He lauded the KP Chief Minister Ameer Haider Hoti for providing funds for the development projects in the flood-affected district.

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SECTOR : Roads
SUB-SECTOR : District Roads

(Rs. in Million)

ADP S.#	Code, Name of the Scheme, (Status) with forum and date of last approval	Cost		Exp. Upto June 12	Allocation for 2012-13				TF Beyond 2012-13
		Local	Foreign		Local			Foreign	
					Cap	Rev	Total		
295	110648 - Improvement & Rehabilitation of Mardan Kattang Road from Km 15 to Km 21, Mardan.	174.031	0.000	90.000	4.031	0.000	84.031	0.000	0.00
	(A) PDWP / /								
296	120265 - Rehabilitation of Garhi Habibullah Baraikot Road (7Kms).	74.045	0.000	0.000	0.000	0.000	20.000	0.000	54.045
	(A) DDWP 11/02/12								
297	120265 - Construction and Black Topping of road from Zoor Mandi to Khana Bridge including 50 m span RCC Bridge (3.50 km), PK-25, District Mardan.	122.443	0.000	30.000	2.443	0.000	92.443	0.000	0.00
	(A) PDWP 07/02/12								
298	120267 - Ren/Imp of Abbotabad Thandiani Road (length 25 Kms) District Abbotabad.	25.786	0.000	0.000	5.786	0.000	25.786	0.000	0.00
	(A) DDWP 03/04/12								
299	120839 - Improvement and Black Topping of road from G.T Road to Misri Banda Nowshera.	29.439	0.000	0.000	5.439	0.000	29.439	0.000	0.00
	(A) DDWP / /								
300	120876 - Construction Oof Box culverts at Maryan Jani Khel Road Near Mali Khel Pak-72, District Bannu.	5.532	0.000	0.000	5.532	0.000	5.532	0.000	0.00
	(A) PDWP 07/05/12								
301	120877 - Repair and Blacktopping of Road from Army gate No.1 to Swat Scout Headquarter Gate Wrsak Road via Syphan Korona District Peshawar.	22.721	0.000	0.000	5.000	0.000	5.000	0.000	17.721
	(A) DDWP 07/05/12								
Total ONGOING PROGRAMME		9,510,988	0,000	4,628,067	2,23,309	0,000	2,283,609	0,000	2,598,312

Page 1 of 1

Planning and Development Department, Govt. of Punjab, Pakistan

Date: 20/08/2014

POWER OF ATTORNEY

In the Court of

K P K Service Tribunal Peshawar

Engo Fazale Wachs

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of K P K

} Defendant
} Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/We, the undersigned, do hereby nominate and appoint

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

Syed Amin Advocate

my true and lawful attorney, for me in my name and on my behalf to appear at *Pesh* to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year _____
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Fai
Air

Syed Amin
Advocate

Ijaz Anwar

Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3 & 4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar City
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