

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 919/2014

Date of institution ... 26.06.2014

Date of judgment ... 20.09.2019

Muhammad Nazar, Deputy Director PaRRSA,
O/O the USAID Directorate, Swat

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED APPELLATE ORDER DATED 03.06.2014 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT HAS BEEN REGRETTEED ON NO GOOD GROUNDS AND AGAINST THE ORIGINAL IMPUGNED ORDER DATED 04.03.2014 WHEREBY PENALTY OF STOPPAGE OF THREE ANNUAL INCREMENTS FOR THREE YEARS WAS IMPOSED ON THE APPELLANT WITHOUT SPECIFYING ANY PERIOD.

Mr. Noor Mohammad Khattak, Advocate

.. For appellant.

Mr. Ziaullah, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was employee of the respondent-department. He was imposed minor penalty of stoppage of three annual increments for three years vide order dated 04.03.2014 on the allegations that he while posted as SDO Highway Division Swat

committed the following irregularities in the scheme "Improvement, Widening and Blacktopping of Matta Fazal Banda Bagh Dheri to Lalkoo Beryum to Shahwar Gat in Swat (30KM)" ADP#689/(2004-05)SH: Matta Fazal Banda Road (23.5 Km) 3 to 23.5=21.5 Km: he prepared and processed 9th running bill for M/S Muzaffar-ul-Mulk & Co: in respect "Improvement and Widening of Matta-Fazal Banda Road" on the basis of fictitious measurement of earth work cutting in KM 22, 23 & 24 recorded by Mr. Nasrullah Khan Sub Engineer in MB#1586 without checking measurement (CMB)".

3. The appellant filed departmental appeal (undated) which was rejected on 03.06.2014 hence, the present service appeal on 26.06.2014.

4. Respondents were summoned who contested the appeal by filing written reply/comments.

5. Learned counsel for the appellant contended that the appellant was serving in the respondent-department. It was further contended that the impugned orders dated 03.04.2014 and 03.06.²⁰¹⁴~~204~~ are against the law, facts and liable to be set-aside. It was further contended that the appellant has not been treated by the respondent-department in accordance with law and rules. It was further contended that neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor chance of personal hearing was provided to the appellant therefore, the impugned orders are illegal and liable to be set-aside.

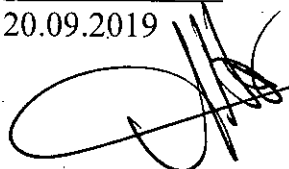
6. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in respondent-department. It was further contended that the allegations leveled against the appellant are serious in nature but the respondent-department has taken lenient view for imposing him minor penalty of stoppage of three annual increments for three years. It was further contended

M. Amin
20.9.2019

that all the codal formalities have been fulfilled and the appellant has rightly been imposed the aforesaid penalty and prayed for dismissal of appeal.

7. Perusal of the record reveals that the appellant was serving in the respondent-department. The record further reveals that the appellant was charge sheeted on the aforesaid allegations. The record further reveals that proper inquiry was conducted and after inquiry show-cause notice was also issued to the appellant but the appellant has not satisfied the competent authority. The record further reveals that all the codal formalities were fulfilled by the respondent-department before imposing him foresaid penalty. The record further reveals that the allegations leveled against the appellant are serious in nature but the respondent-department has already taken lenient view by imposing minor penalty of stoppage of three annual increments for three years therefore, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.09.2019



(AHMAD HASSAN)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

20.09.2019

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

20.09.2019



(AHMAD HASSAN)
MEMBER

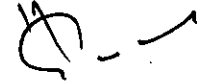


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

20.06.2019

Muhammad Maaz Madni Advocate junior to counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 20.08.2019 before D.B.


Member


Member

20.08.2019

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 11.09.2019 for arguments before D.B.



(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

11.09.2019

Member Junior to counsel for the appellant Asst: AG for respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel was busy before the august High Court, Peshawar. Being an old case of 2014 adjourned for tomorrow. Last opportunity granted for arguments. To come up for arguments on 12.09.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

12.09.2019

Counsel for the appellant Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments heard. To come up for order on 20.09.2019.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

DFA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 919/2014

Date of institution ... 26.06.2014

Date of judgment ... 20.09.2019

Muhammad Nazar, Deputy Director PaRRSA,
O/O the USAID Directorate, Swat

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED APPELLATE ORDER DATED 03.06.2014 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT HAS BEEN REGRETTEED ON NO GOOD GROUNDS AND AGAINST THE ORIGINAL IMPUGNED ORDER DATED 04.03.2014 WHEREBY PENALTY OF STOPPAGE OF THREE ANNUAL INCREMENTS FOR THREE YEARS WAS IMPOSED ON THE APPELLANT WITHOUT SPECIFYING ANY PERIOD.

Mr. Noor Mohammad Khattak, Advocate
Mr. Ziaullah, Deputy District Attorney

.. For appellant.
.. For respondents:

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. AHMAD HASSAN

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

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was employee of the respondent-department. He was imposed minor penalty of stoppage of three annual increments for three years vide order dated 04.03.2014 on the allegations that he while posted as ^{S.D.O} ~~XEN~~ Highway Division Swat

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 619 /2017

Marya Bibi Ex-TT,
GGPS Faqir Methari Kot North Waziristan Agency.

(Appellant)

VERSUS

1. The Secretary (E&SE) KPK, Peshawar.
2. The Director of Education (FATA) KPK, Peshawar.
3. The Agency Education Officer, North Waziristan Agency.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 24.02.2017, WHEREBY APPELLANT WAS TERMINATED/ DISPENSE WITH SERVICE AND NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 24.02.2017 MAY BE SET ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO REINSTATE THE APPELLANT WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was appointed on TT post (BPS-07) vide order dated 28.3.2002 after the proper recommendation of Departmental Selection Committee at GGPS Methari Kot NWA. (Copy of order dated 28.3.2002 is attached as Annexure-A)

2. That after appointment proper service book of the appellant was also prepared and since then the appellant regularly performed her duty. *Rai* duty up.

committed the following irregularities in the ~~ADP~~ scheme "Improvement, Widening and Blacktopping of Matta Fazal Banda Bagh Dheri to Lalkoo Beryum to Shahwar Gat in Swat (30KM)" ADP#689/(2004-05)SH: Matta Fazal Banda Road (23.5 Km) 3 to 23.5=21.5 Km: he prepared and processed 9th running bill for M/S Muzaffar-ul-Mulk & Co: in respect "Improvement and Widening of Matta-Fazal Banda Road" on the basis of fictitious measurement of earth work cutting in KM 22, 23 & 24 recorded by Mr. Nasrullah Khan Sub Engineer in MB#1586 without checking measurement (CMB)". The appellant filed departmental appeal (undated) which was rejected on 03.06.2014 hence, the present service appeal on 26.06.2014.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in the respondent-department. It was further contended that the impugned orders dated 03.04.2014 and 03.06.2014 are against the law, facts and liable to be set-aside. It was further contended that the appellant has not been treated by the respondent-department in accordance with law and rules. It was further contended that neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor chance of personal hearing was provided to the appellant therefore, the impugned orders are illegal and liable to be set-aside.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in respondent-department. It was further contended that the allegations leveled against the appellant are serious in nature but the respondent-department has taken lenient view for imposing him minor penalty of stoppage of three annual increments for three years. It was further contended

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 618/2017

Maria Bibi

Vs

Education Deptt:

REJOINDER ON BEHALF OF APPELLANT

PRELIMINARY OBJECTIONS:

(1-7) All objections raised by respondents are incorrect and baseless. Rather respondents are estopped by their conduct to raise any objection.

FACTS:

1. Admitted, correct. Facts pertains to record is available with respondent's department.
2. Para-2 is admitted correct. Moreover, so-called inquiry cannot be made base for awarding a major penalty of dismissal from service.
3. Para-3 is admitted correct to the extent that Mr. Gul Ahmad denied all allegations levelled against appellant. Moreover, inquiry being defective is not maintainable in the eyes of law.
4. Para-4 is admitted correct. Impugned order made on the basis of defective inquiry, hence not tenable and liable to be set aside.
5. Incorrect, hence denied. Termination of appellant is made in violation to dictates of Supreme Court.
6. Incorrect. While para-6 of appeal is correct.
7. That impugned order, being void, may kindly be set aside on the grounds inter alia.

that all the codal formalities have been fulfilled and the appellant has rightly been imposed the aforesaid penalty and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in the respondent-department. The record further reveals that the appellant was charge sheet ^{ed} on the aforesaid allegations. The record further reveals that proper inquiry was conducted and after inquiry show-cause notice was also issued to the appellant but the appellant has not satisfied the competent authority. The record further reveals that all the codal formalities were fulfilled by the respondent-department before imposing him foresaid penalty. The record further reveals that the allegations leveled against the appellant are serious in nature but the respondent-department has already taken lenient view by imposing minor penalty of stoppage of three annual increments for three years therefore, the appeal has no force which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.09.2019

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

(AHMAD HASSAN)
MEMBER

30.01.2019

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for respondents present. Counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 07.03.2019 before D.B.


Member


Member

07.03.2019 Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 19.04.2019 before D.B


Member


Member

19.04.2019

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 22.05.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER

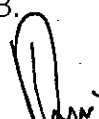

(M. AMIN KHAN KUNDI)
MEMBER

22.05.2019

Mr. Mir Zaman Safi, Advocate for appellant and Mr. Muhammad Jan, DDA for the respondents present.


Requests for adjournment is made due to engagement of learned senior counsel for the appellant before the Honourable High Court today in a number of cases. Adjourned to 20.06.2019 for arguments before the D.B.

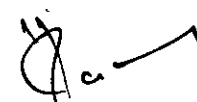

Member


Chairman

13.07.2018


Junior to counsel for the appellant and Mr. Muhammad Jan, Learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 10.09.2018 before D.B



(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

10.09.2018

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up arguments on 30.10.2018 before D.B


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

30.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. Therefore, the case is adjourned. To come up for the same on 07.12.2018.


Reader

07.12.2018

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. Case to come up for arguments on 30.01.2019 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

07.03.2018

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 30.03.2018 before D.B alongwith connected Service Appeal No. 1279/2014.



(Muhammad Hamid Mughal)
Member



(Muhammad Amin Khan Kundi)
Member

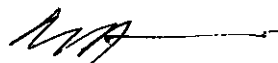
30.03.2018

Appellant with counsel and Mr. Ziaullah, DDA alongwith Noor Wazir, SO for the respondents present. Learned counsel for the appellant seeks adjournment. To come up for arguments on 15.05.2018 before the D.B.


Member
Chairman

15.05.2018

Appellant absent. Counsel for the appellant is also absent. However, junior counsel for appellant present and seeks adjournment. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Adjourned. To come up for arguments on 13.07.2018 before D.B.




(Muhammad Amin Khan Kundi)
Member



(Muhammad Hamid Mughal)
Member


19.06.2017

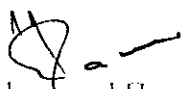
Agent to counsel for appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments could not be heard due to learned member executive is on leave. To come up for argument on 19.10.2017 before D.B.


(Muhammad Amin Khan Kundi)
Member

19.10.2017


Agent to counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Agent to counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 05.01.2018 before D.B.



(Ahmad Hassan)
Member (E)


(Muhammad Hamid Mughal)
Member (J)

05.01.2018

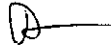
Clerk to counsel for the appellant present. Asst: AG alongwith Mr. Abdul Haleem, Assistant for respondents present. Clerk to counsel for the appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 07.03.2018 before D.B.


(Ahmad Hassan)
Member(E)


(M.Amin Khan Kundi)
Member (J)

22.12.2015

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Rejoinder submitted. To come up for arguments on 24.5.2016



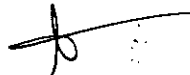
Member



Member

24.5.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Counsel for the appellant requested for adjournment. Adjourned for arguments on 21.9.2016.



Member



Member

21.09.2016

Agent to counsel for the appellant and Mr. Saleem Shah, Superintendent alongwith Additional AG for respondents present. Agent to counsel for the appellant requested for adjournment. Adjourned for arguments to 24-1-17 before D.B.



MEMBER




MEMBER

24.01.2017

Counsel for the appellant and Addl. AG for the respondents present. Counsel for the appellant requested for adjournment. To come up for final hearing before the D.B on 19.06.2017.



Member



Chairman

27.02.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was departmental proceeded against and awarded minor penalty in the shape of withholding of three annual increments vide impugned order dated 04.03.2014 against which departmental appeal was preferred which was rejected on 03.06.2014 and hence the present service appeal on 26.06.2014.

Appellant Deposited
Security & Process Fee

That no proper enquiry was conducted and that moreover, the period for withholding of the said three annual increments have not been specified.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 12.06.2015 before S.B.


Chairman

7 12.06.2015

Counsel for the appellant and Mr. Saleem Shah, Supdt. alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 22.9.2015 before S.B.


Chairman

22.09.2015

Counsel for the appellant, M/S Saleem Shah, Supdt. and Irshad Muhammad SO alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 22.12.2015.


Chairman

3.

23.09.2014

Counsel for the appellant present. Preliminary arguments partly heard. The matter required further clarification, therefore, pre-admission notice be issued to the AAG/GP to assist the Tribunal on the point whether this Tribunal has the jurisdiction to entertain the case against minor penalty or otherwise. To come up for preliminary hearing on 24.11.2014.



Member

4.

Reader Note:

24.11.2014

Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Asst: Advocate General for the respondents present. Since the Tribunal is incomplete, therefore, case is adjourned to 11.02.2015 for the same.



Reader

5

11.02.2015

Counsel for the appellant present. Requested for adjournment. Adjourned for preliminary hearing to 27.2.2015 before S.B


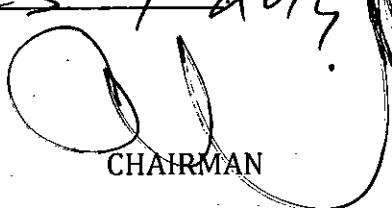


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 919/2014

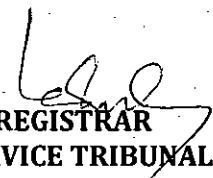
| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1 | 04/07/2014 | <p>The appeal of Mr. Muhammad Na345 resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2 | 8-7-2014 | <p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>23-9-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p> |

The appeal of Mr. Muhammad Nazar Dy. Director PaRSA received today i.e. on 26.06.2014 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copies of show cause notice and its reply mentioned in para-2 & 3 of the memo of appeal are not attached with the appeal which may be placed on it.

No. 1007 /S.T,

Dt. 26/7 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Note:

Sir,
That the Show cause notice and reply
have already been attached as annexure
A & B with the memo of appeal.

R/Sir,

*Please be put up before the
Hon'able Bench.*

9/7/14.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 919 /2014


MOHAMMAD NAZAR

VS

Govt: of KPK

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| 3. | Reply | B | 5. |
| 4. | Enquiry report | C | 6- 15. |
| 5. | Impugned order 4.3.2014. | D | 16. |
| 6. | Departmental appeal | E | 17- 18. |
| 7. | Rejection order | F | 19. |
| 8. | Vakalat nama | | 20. |

THROUGH: **APPELLANT**

NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 919 / 2014

919
26/6/2014

Mr. Muhammad Nazar, Deputy Director PaRRSA,
O/O the USAID Directorate, Swat **Appellant**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.

..... **Respondents**

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PRAYER:

That on acceptance of this appeal the impugned orders dated 04-03-2014 and 03-06-2014 may very kindly be set aside and the respondents may be directed to release the three annual increments of the appellant with all back benefits. Any other remedy which this august Tribunal deems fit may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the employee of respondent Department and is serving the respondent Department for the last 27 years quite efficiently and up to the satisfaction of his superiors.

- 2- That appellant while working as Deputy Director PaRRSA/ USAID Directorate Swat, a show cause notice vide dated 15-1-2014 was issued to the appellant in which it was alleged that appellant while working as DO Highway Sub Division Swat committed irregularities in ADP Scheme "improvement, widening and blacktopping of Matta Fazal Banda Bagh Dheri to Lalakoo Beryum to Shahwar Gat in Swat. Copy of the show cause notice is attached as annexure **A.**
- 3- That in response to the said show cause notice dated 15.1.2014 the appellant submitted his reply in which the appellant denied the allegation which was leveled against him and explained the position along with documentary proofs and justification. Copy of the reply is attached as annexure **B.**
- 4- That astonishingly vide order dated 04.03.2014 the respondent Department imposed stoppage of three annual increments for the three years on the appellant without specifying any period ad without conducting regular enquiry in the matter. Copies of the enquiry report and impugned order are attached as annexure **C & D.**
- 5- That appellant feeling aggrieved from the impugned order dated 04.03.2014 filed Departmental appeal but the same was rejected on no good grounds vide order dated 3.6.2014. Copies of the Departmental appeal and rejection order are attached as annexure **E & F.**
- 6- That feeling aggrieved and having no other remedy appellant filed this appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned orders dated 04.03.2014 and 3.6.2014 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That no chance of personal hearing/defense has been given to the appellant before issuing the impugned order dated 04.03.2014.

- D- That no period has been specified by the respondent Department in the impugned order dated 04.03.2014, which is against the law and prevailing rules.
- E- That the impugned order dated 04.03.2014 has been issued by the incompetent authority therefore the same is void ab initio in the eyes of law.
- F- That inspite of clear justification and documentary proofs provide by the appellant to the concerned authorities the respondent Department issued the impugned order dated 04.03.2014.
- G- That no regular enquiry has been conducted in the matter before issuing the impugned order dated 04.03.2014.
- H- That the rejection order dated 3.6.2014 is not a speaking order under the clause 24-A of the General Clauses Act 1897.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT



MOHAMMAD NAZAR

THROUGH:



**NOOR MOHAMMAD KHATTAK
ADVOCATE**

Recd

A-4



GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/8-4/2012

Dated Peshawar, the January 15, 2014

TO

Engr. Muhammad Nazar ✓
the then SDO Highway Sub Division Swat
Now working as Deputy Director PaRRSA/USAID
Directorate, Swat

SUBJECT: INQUIRY REGARDING "IMPROVEMENT, WIDENING AND BLACKTOPPING OF MATTA FAZAL BANDA BAGH DHERI TO LALKOO BERYUM TO SHAHWAR GAT IN SWAT (30 KM)" ADP #689/(2004-05)

Sub Head: MATTA FAZAL BANDA ROAD (23.5 KM) 3 TO 23.5 = 21.5 KM

I am directed to refer to this Department's letter of even number dated 31.12.2013, whereby two copies of the show cause Notice containing tentative minor penalty of "stoppage of 03 increments for three years" alongwith inquiry report conducted by inquiry committee comprising of Syed Nazar Hussain Shah (PCS SG BS-19) D.G Gallyat and Engr. Syed Mujahid Saeed (BS-19) Superintending Engineer Irrigation Department, Peshawar was forwarded to you with the directions to submit your reply, if any, within 7 days of the delivery of this letter, otherwise, it will be presumed that you have nothing to put in your defence and ex-party action will follow, and it was further directed to intimate whether you desire to be heard in person or otherwise, however, no response has been received so far.

2. It is, therefore, requested to submit your reply to the show cause notice within 03 days positively, and also intimate, as to whether you desire to be heard in person or otherwise.


(USMAN JAN)
SECTION OFFICER (ESTT)

Endst even No. & date

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

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SECTION OFFICER (ESTT)



B-5

OFFICE OF THE DEPUTY DIRECTOR
PaRRSA /USAID PROJECTS UNIT
C&W DEPTT SAIDU SHARIF SWAT.
Ph #: 0946-721781, Fax # 0946-721782
E-mail: parrsa.pusw@hotmail.com
NO. 1376/1-E /PaRRSA/PU-SW/2013
DATED SWAT THE 13 / 01 /2014.

To,

The Section Officer (Estt:),
Govt: of Khyber Pakhtunkhwa,
C&W Department.

Subject: INQUIRY REGARDING "IMPROVEMENT, WIDENING AND BLACKTOPPING OF MATTA FAZAL BANDA BAGH DHERI TO LAKOO BERYUM TO SHAHWAR GAT IN SWAT (30-KM" ADP NO.689/(2004-05) SH: MATTA FAZAL BANDA ROAD (23.5 KM) 3 TO 23.5 = 21.5 KM.

Kindly refer to your letter No.SOE/C&WD/8-4/2012 dated 31-12-2013, reply and defense to the show cause notice is submitted as under please.

The 9th contractor running bill was processed on account of earth work cutting in Km 22,23 & 24 according to the rules and regulations. The work has been actually executed at site and no fictitious measurements are involved and there is no loss to Govt: the payment is intermediate (running) and all intermediate payments are treated and regarded as advance against the final payments. As laid down in Para 229 of CPWA code that the advance payment, which has also been defined in Para-4 (3) of the said code, for works actually executed may be made on the certificate of responsible officer not below the rank of S.D.O. However final payments of the works are not to be made, without checking of detailed measurements.

Hence no irregularity has been committed and no loss to government. It is requested that the undersigned may kindly be exonerated from the charge, keeping in view the facts as mentioned above please.

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DEPUTY DIRECTOR

C-6

INQUIRY REPORT

Subject:- INQUIRY REGARDING "IMPROVEMENT, WIDENING AND BLACKTOPPING OF MATTA FAZAL BANDA, BAGH DHERI TO LALKOO BERYUM TO SHAHWAR GAT ROAD IN SWAT (30 KM)" ADP # 689/ (2004-05) SUB-HEAD: "MATTA FAZAL BANDA ROAD (23.5KM) 3 TO 23.5 = 21.5KM"

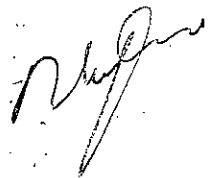
BACKGROUND:-

The Chief Minister Khyber Pakhtunkhwa, as competent authority, has ordered formal enquiry under Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 on the subject roads vide Secretary to Government of Khyber Pakhtunkhwa C&W letter No: SOE/C&WD/8-4/2012 dated 25/07/2013 (Annexure-I). The inquiry committee comprises Syed Nazar Hussain Shah (PCS SG BS-19), OSD C/O Section Officer (E-I), Establishment Department, Khyber Pakhtunkhwa, Peshawar and Engr. Syed Muhammad Mujahid Saeed, Superintending Engineer (Head Quarter), Irrigation Department Khyber Pakhtunkhwa, Peshawar. The charge sheets and statements of allegation duly approved by the competent authority (Chief Minister Khyber Pakhtunkhwa) (Annexure-II) were sent for serving on the following accused officers/officials of the C&W Department with the direction to conduct formal inquiry under Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 and submit the report.

- 1) Engr. Asif Iqbal, XEN (BS-18), presently he is working as SE (HQ) O/O CE (Centre) C&W Peshawar.
- 2) Engr. Hamidullah, XEN (BS-18), presently he is working as Design Engineer O/O CE (Centre) C&W Peshawar.
- 3) Engr. Muhammad Nazar, XEN (BS-18), presently he is working as Deputy Director PaRRSA/USAID, Swat.
- 4) Mr. Rehmanullah, SDO (BS-17), presently he is working as SDO C&W Sub Division Charsadda.
- 5) Mr. Zahoor, Sub Engineer (BS-11), presently he is working as Sub Engineer O/O XEN Highway Division Swat.

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- 6) Mr. Akhtar Hussain, Sub Engineer, presently he is working as Sub Engineer O/O XEN Highway Division Swat.
- 7) Mr. Nasrullah, Sub Engineer, presently he is working as Sub Engineer O/O XEN Highway Division Swat.

The charges leveled against the officers/official are as under:

- a. You released an amount of Rs. 123.163 million upto June, 2008 which was sufficient for the contractor to complete his contract valuing Rs. 48.742 million. But the contractor failed to complete the work within the stipulated time. You allowed the contractor to use hot bitmac, which was not approved in the PC-I, due to which Government exchequer sustained heavy loss.
- b. You made payment to the contractor for certain items of work which have not been physically executed at site.
- c. You released an amount of Rs. 1.385 million out of retention money (security deposits) to the contractor against work done which is an advance payment to the contractor while the security deposit has been prematurely released to extend undue benefit to the contractor.
- d. You made overpayments on account of escalation to the contractor, while the work has not been completed at site, therefore the escalation paid is illegal.

PROCEEDINGS

1. The charge sheets along with statement of allegations were accordingly served upon all the accused officers/officials vide a covering memo bearing office No.1044-51 /IB/HQ.P.A. dated 02/08/2013 (Annexure-III – A, B, C, D, E, F, and G). The accused officers/officials were asked to submit their replies.

2. The Chief Engineer (North), C&W Department was requested vide memo No.1052/IB/HQ.P.A. dated 02/08/2013 (Annexure-IV) for furnishing of the requisite record and nomination of an officer of his department for assistance in the enquiry process as directed by the Secretary to Government of Khyber Pakhtunkhwa C&W letter No: SO (E)/C&WD/8-4/2012 dated 25/07/2013 (see Annexure-I) with subsequent

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[Signature]

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reminder to the Secretary to Government of Khyber Pakhtunkhwa C&W vide letter No. 1200/IB/HQ.P.A dated 16-08-2013 (Annexure-V). In response to the reminder the Executive Engineer, C&W; Highway Division, Swat vide letter No. 6940/14-W dated 22-8-2013 (Annexure-VI) provided the record pertaining to the enquiry with the following documents still not provided.

- i. Original PC-I
- ii. Technically sanctioned estimate.
- iii. Measurement Book No. 1415 & 1577
- iv. Pavement Design
- v. Long Section & X-Sections of the road.
- vi. Laboratory Tests.

3. The replies against statement of allegation and charge sheet were received from all the accused officers/officials on August 19 and 26, 2013 which are attached as (Annexure-VII- A, B, C, D, E, F and G).

4. On receipt of the partial record, the site was jointly inspected in the presence of Executive Engineer Highway Division Swat and other divisional staff concerned on September 05, 2013 to ascertain the physical condition of the road, quantify the actual work on the ground and advances allowed to the contractor. During the site visit, the work done was checked randomly through visual inspection of pits dug at various locations of the road. The thicknesses of pavement layers, earth work and quality of materials used were randomly checked for comparison with the payment made.

5. The Executive Engineer were assigned task for calculation of balance work left incomplete by the contractor during the site visit and the XEN Swat retained some of the documents and after series of telephonic messages, he returned the documents vide letter No. 7318/14-W dated 23/9/2013. (Annexure-VIII)

6. Opportunity of personal hearing to all the officers/official was provided on September 12, 2013. List of attendance sheet is attached as Annexure IX.

7. The sub work under inquiry is part of a scheme initially include in the ADP (2003-04) at S. No. 842/31122. The scheme is still part of the provincial ADP and has also appeared in the ADP (2013-14). The scheme was initially approved for Rs. 83.170 million

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by the PDWP in its meeting held on 22/6/2004. The scheme has undergone a series of revision due to change in the scope of work from time to time through Chief Minister directives and inclusion of Escalation allowed by the Provincial Government with effect from 01/07/2005. Summary of these revisions are as under:

| ADP No. | Revision | PC-I approval date | Approved cost (Rs. Million) |
|---------------|--------------------------|--------------------|-----------------------------|
| 842 (2003-04) | Original | 09-7-2004 | 83.200 |
| 499 (2004-05) | 1 st Revision | 10-04-2006 | 181.325 |
| 843 (2006-07) | 2 nd Revision | 01-01-2008 | 224.684 |
| 388 (2010-11) | 3 rd Revision | 12-03-2011 | 317.590 |
| 319 (2011-12) | 4 th Revision | 13-12-2011 | 415.633 |

8. The contract for the sub work Matta Fazal Banda Road from Km 3 to Km 23.5 (23.5 Km) with contract cost of 47.472 million after approval by Chief Engineer C&W (North) vide letter 05/37-GS dated 26/10/2004 (Annexure-X) was awarded to M/S Muzaffar-ul-Mulk & Co Govt. contractor vide agreement No. 309-Swat 2004-05. The work order for commencement of the work was issued vide Deputy Director, Public Works Swat letter No.1805/2-M dated 28/10/2004. (Annexure-XI)

9. The completion period for the work as per contract agreement was Nine (9) months. The contractor started the work on November 7, 2004 but he could not complete within stipulated time and the work is still incomplete.

10. Due to non-completion of the scheme and subsequent damages in the work done, the local of the area lodged various complaints to the Provincial Government resulting into this inquiry.

11. After thorough checking of record and physical inspection of the site, the following facts were found:



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FINDINGS:

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- i) The work was awarded to Mr. Muzaffar-ul-Mulk Khan Govt. Contractor vide work order No. 1805/2-M dated 28/10/2004 (see Annexure-XI) for a bid value of Rs. 48.472 million with a completion period of Nine (9) months.
- ii) The quality of work in the initial 2 KM is satisfactory which deteriorates on ward. The main cause of degradation of quality is due to the reason that the Batch plant Asphalt concrete approved in the PC-I was replaced with Mobile plant hot Bitmac. The first 2KMs i.e. KM 3 & 4 which were black topped with Batch plant Asphalt concrete are still intact to a greater extent with pot holes at places due to deferred maintenance. Whereas, the portion of 8.5 KMs i.e. from KM 5 to KM 13 where Mobile plant hot Bitmac has been used is in very deplorable condition and in some reaches it is totally damaged and non-existent.
- iii) The premix concrete of mobile plant is therefore, highly prone to water penetration and cannot withstand in rainy climatic zones. The major reason for such a huge damage to the road surface seems to be the use of hot Bitmac premix. The mobile plant hot Bitmac is usually used for repair of road or road with small traffic volume and light vehicle usage. Although the under specification material of Bitmac was not included in the original and subsequent 3 revised PC-I but the Executive Engineer allowed hot Bitmac and also made payment for it in 12th and 15th Running Bills of the project without obtaining any approval of the competent authority.
- iv) The main argument of the accused officers/official for using hot Bitmac was the hostile security environment created by serious militancy and subsequent military operation of Pakistan Army during 2008 and 2009, respectively. The Asphalt plant at Guli Bagh (District Swat) was damaged by militant groups in 2008 and ^{or}transpiration of Asphalt concrete from other far away plants was not possible due to active militancy and military operation in 2009. This was the time when the troublesome phenomena of IDPs took place, which shattered the demographic condition of Swat valley in particular and the whole of Malakand Division in

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general. But this argument of the field staff does not hold ground as the work was started on 7/11/2004 with completion period of 9 months but the contractor failed to complete the work in stipulated time and there were further 4 years when the condition for the work was conducive and there was neither militancy nor military operation in the area. It was observed that contractor was least interested in completion of the work and the department also kept silent and initiated no action against the contractor.

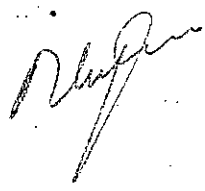
v) From perusal of the record it was noticed that the contractor was allowed 9 months for completion of the project but on expiry of the time no further extension from competent forum i.e. Chief Engineer was obtained.

vi) The work has been executed without obtaining any Technical Sanction from the competent forum i.e. Chief Engineer. The Technical Sanction was demanded from the Executive Engineer but inspite of assurance by the accused officers/official and incumbent staff of the department it was not provided to the inquiry committee.

Carried over
vii)

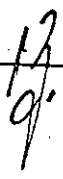
From perusal of the 4th revised approved PC-I it was noticed that Superintending Engineer, Chief Engineer as technical head of the department and Secretary recommended the PC-I and the PDWP agreed with proposal and approved double layer from KM 5 to 14 i.e. first layer of hot Bitmac already executed by the contractor with second layer of Batch plant Asphalt. The approval of the revised PC-I with all shortcomings was approved by the PDWP therefore all the irregularities, shortcomings were provided a cover.

viii) The work was started without framing estimate after carrying out survey of the entire road and allied structure. Without establishing the Natural Surface Level (NSL) it is not possible to determine the quantities for estimation, payment and later on verification. It was required as per SOP prior to starting of the work at site joint survey with the contractor for the project should have been conducted and based on this survey estimate should have been framed and accordingly payment allowed. But the supervisory staff very casually started the work on the rough cost



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estimate framed for preparation of the PC-I and accordingly made payments to the contractor.

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- ix) The committee visited the site but due to non-availability of survey, long section, cross section, bench marks, detail estimate and the lost Measurement Book No. 1415 and 1577 in which the majority of the measurements were recorded, it was not possible to check and verify the measurement for the quantities paid as per actual site condition. However, the calculation done in the previous Inquiry and as per available bills the quantities of the work done were randomly checked.
- x) It was observed that the Executive Engineer Hamidullah, SDO Rahmanullah (dual charge) and Sub-Engineer Rahmanullah in 2008 allowed the change of specification from Batch plant Asphalt Premix to the hot Bitmac that was not included in the first 3 PC-Is but it was later on approved by PDWP in the 4th revised PC-I. Engineer Hamidullah, Executive Engineer Hamidullah, SDO Rehmanullah (dual Charge) and Sub Engineer Rehmanullah executed the hot Bitmac and made payment of Rs.6.173 million. Later on during incumbency of Executive Engineer Asif Iqbal, SDO Zahoor and Sub Engineer Akhtar Hussain in the 15th running bill on 04/5/2009 also made payment of Rs. 3.024 million for hot Bitmac. The total payment allowed on the hot Bitmac is worked out to Rs.9.198 million.
- xi) During site visit the machinery was found busy on widening and cutting of road in the KM 24 and about 200 meter of work was executed. The Executive Engineer Muhammad Nazar informed that he has allowed payment amounting Rs.2.267 million in the KM 22, 23 and 24 for the widening of the road without visiting the site due to adverse law and order situation in the area. He stated that he accepts the responsibility for the lapse and stated that he would complete the work on his risk and cost shortly. In the KM 13 and KM 14 SDO Muhammad Nazar and Sub Engineer Nasrullah also made payment amounting Rs. 322576/- for the mass concrete that was not executed at site.

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xii) From scrutiny of record, it was also observed that Engr. Asif Iqbal as Executive Engineer Swat made payment amounting Rs. 1.385 million out of retention money (security deposits). According to statement of Engr. Asif Iqbal the militants had blasted two culverts and on the direction of Army authorities for the movement of troops for operation against the militants he had re-constructed the damaged culverts in emergency as no funds were available therefor he charged it to the retention money. However, the amount of Rs. 1.385 million has been recovered through Transfer Entry (TA) from the Security Deposit of the contractor.

xiii) From scrutiny of record, it was observed that escalation of Rs. 11.243 million has been made on the work done of 5th, 6th, 7th, 9th, 11th and 15th running bills. According to calculation (Annexure-XII) an amount of Rs. 8.05 million was over paid in the 9th, 14th and 17th running bills on account of escalation for the work not executed at the site. The following officer/ official are responsible for the undue escalation paid to the contractor.

- a. Executive Engineer Hamidullah
- b. Executive Engineer Asif Iqbal
- c. Sub Divisional Officer Rahmanullah
- d. Sub Divisional Officer Zahoor
- e. Sub Engineer Muthahir
- f. Sub Engineer Rahmanullah
- g. Sub Engineer Akhtar Hussain

xiv) The detail of the loss to the Government exchequer is given as under:

| | | |
|---|---|---------------------------|
| a. Loss due to un-authorized use of mobile plant hot Bitmac. | = | Rs. 9.198 million. |
| b. Loss due to advance payment | = | Rs. 6.995 million |
| c. Loss due to over payment in Escalation | = | Rs. 8.052 million |
| Total Loss | = | Rs. 18.726 Million |

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RECOMMENDATIONS:

In view of the above, the following recommendations are made:

1. The contractor has not full filled his contractual obligation and has not completed the work in time and left the work incomplete. The balance work should be executed at his risk and cost as per Clauses of the Contract agreement and the contractor should also be black listed. The advance payment made on account of work done and escalation amounting Rs. 18.726 million may be recovered from his available security, works being executed in other division and sister departments and through District Revenue Officer by confiscating his property and freezing his bank accounts after following all codal formalities.

2. Measurement Books No. 1415 and 1577 were stated to be lost but regarding loss of MB No. 1577 a letter vide No. 1135/1-M dated 22/5/2012 (Annexure-XIII) has been written by SDO, based on the letter a simple information report has been recorded by SHO Police Station, Saidu Sharif, Swat on 24/5/2012 (Annexure-XIV) and no further action has been initiated against the officer/official who has lost the MB.
 The loss of 2 MBs seems to be deliberate as major portion of project measurements and escalation bills were recorded in them. It is recommended that a separate disciplinary action needs to be initiated against the officer/official responsible for the loss of such an important document. The Sub Divisional officers or Sub-Engineer who remained the final custodian of this important official document is recommended for further action as they seem to be the real deliberate defaulter in this issue.

3. As mentioned in Para x, xi, xii and xiii of Findings the following officers / officials remained, one way or the other, involved in the irregularities committed in the subject developmental activity;
 - Engr. Asif Iqbal, XEN (BS-18), presently working as SE (HQ) O/O CE (Centre) C&W Peshawar.
 - Engr. Hamidullah, XEN (BS-18), presently working as Design Engineer O/O CE

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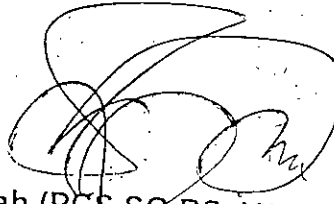


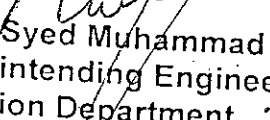
(Centre) C&W Peshawar.


- Engr. Muhammad Nazar, XEN (BS-18), presently working as Deputy Director PaRRSA/USAID, Swat.
- Mr. Rehmanullah, SDO (BS-17), presently working as SDO C&W Sub Division Charsadda.
- Mr. Zahoor, Sub Engineer (BS-11), presently working as Sub Engineer O/O XEN Highway Division Swat.
- Mr. Akhtar Hussain, Sub Engineer, presently working as Sub Engineer O/O XEN Highway Division Swat.
- Mr. Nasrullah, Sub Engineer, presently working as Sub Engineer O/O XEN Highway Division Swat.

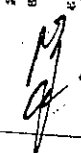
It is recommended that all these defaulting officers, including the incumbent technical staff of the division, should pursue at personal level the recovery of overpaid amount of 18.726 Million rupees so that loss to Government exchequer is re-covered. In case of non recovery of the full overpaid amount or any part of it, in a targeted time, the balance amount may be recovered on equal share basis from the above mentioned seven officers / officials. Furthermore a minor penalty of stoppage of 3 increments is also recommended for the negligence, irregularities and irresponsible attitude on the part of all the seven accused officers/officials.

Report is submitted as desired please.


Syed Nazar Hussain Shah (PCS SG BS-19),
OSD C/O Section Officer (E-I) Establishment Department,
Khyber Pakhtunkhwa, Peshawar


Engr. Syed Muhammad Mujahid Saeed (BS-19),
Superintending Engineer (Head Quarter),
Irrigation Department,
Khyber Pakhtunkhwa, Peshawar

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GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the March 04, 2014.

ORDER:

No. SOE/C&WD//8-4/2012: WHEREAS, the following officers/officials were proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 for the alleged irregularities in ADP scheme "Improvement, widening and blacktopping of Matta Fazal Banda Bagh Dheri to Lalkoo Beryum to Shahwar Gat in Swat (30 Km)" ADP #689/(2004-05) SH: Matta Fazal Banda Road (23.5 Km) 3 to 23.5 = 21.5 Km"

- i. Engr. Hamidullah Khan Khalil XEN (BS-18) the then XEN Highway Division Swat, presently working as Design Engineer O/O CE (Centre) C&W Peshawar.
- ii. Engr. Muhammad Nazar XEN (BS-18) the then SDO Highway Sub Division Swat, presently working as Deputy Director PaRRSA/USAID, Swat.
- iii. Mr. Rehmanullah SDO (BS-17) the then SDO (OPS) Highway Sub Division Swat, presently working as SDO C&W Sub Division Swabi.
- iv. Mr. Zahoor (BS-11) the then Sub Engineer and holding the additional charge of SDO Highway Sub Division Swat presently working as Sub Engineer O/O XEN Highway Division Swat.
- v. Mr. Akhtar Hussain Sub Engineer (BS-11) O/O XEN Highway Division Swat.
- vi. Mr. Nasrullah (BS-11) the then Sub Engineer O/O XEN Highway Division Swat, presently working as Sub Engineer O/O XEN Highway Division Mardan.

2. AND WHEREAS, for the said act of misconduct they were served charge sheets/ statement of allegations.

3. AND WHEREAS, Syed Nazar Hussain Shah (PCS SG BS-19) D.G Gallyat and Engr. Syed Mujahid Saeed (BS-19) Superintending Engineer Irrigation Department Peshawar were appointed as inquiry committee, who submitted the inquiry report.

4. NOW THEREFORE, the Competent Authority after having considered the charges, material on record, inquiry report of the inquiry committee, explanation of the officers/officials 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 minor penalty of "stoppage of 03 annual increment for 03 years" upon the aforementioned officers/officials.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (Centre/North), C&W Peshawar
3. Project Director PaRRSA/USAID Directorate, Swat
4. Superintending Engineer C&W Circle, Swat/Mardan
5. Executive Engineer Highway Division Swat/Mardan
6. Executive Engineer C&W Division Swabi
7. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
8. PS to Secretary Establishment Department Khyber Pakhtunkhwa, Peshawar
9. District Accounts Officer Swat/Mardan/Swabi
10. Section Officer (Litigation) C&W Department, Peshawar
11. PS to Secretary, C&W Peshawar
12. Officers/Officials concerned
13. Office order File/Personal File

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SECTION OFFICER (ESTT)

To

The Honorable
Chief Minister
 Khyber Pakhtunkhwa.

Through: PROPER CHANNELSubject:- APPEAL AGAINST IMPOSITION OF PENALTY- STOPPAGE OF 03 ANNUAL INCREMENTS FOR THREE YEARS.

Reference: - Your letter No. SOE/C&WD/8-4/2012 Dated March 04, 2014.

Respected sir,

With due diligence and regards I beg to be excuse for the liberty to encroach upon your most precious time but I am constrained to do so, by the pressures of circumstances coupled with the fact that my early submission was either not fully appreciated or looked over, whatever may be, by the competent authority, which require due consideration on the following grounds.

1. No doubt that payment worth of Rs. 2800000/=...paid to the contractor for the execution and completion of work to make the area accessible for the law enforcing agency as the outlaw/militants gathered there and had made safe heavens for themselves.
2. The civil administration had taken serious notice of the situation and deployment of law enforcing agencies which were the needs of the hours, had been moved to the area falling in the civil jurisdiction of Tehsil Matta. In order to comply the orders of civil administration and conveyed to me by my Executive engineer the work on Sub Project (Improvement ,Widening and Black Topping of Matta-Fazal Banda road) was taken in hands on emergent basis, keeping in view the geo -political compulsion necessitated establishment of strategic link road to maintain writ of the Government.
3. The stupendous task of chiseling across the mighty mountain ranges were accepted as a challenge with zeal and determination and large skilled and semi skilled labor, equipments machinery were engaged to ensure speedy completion of work and enable the law enforcing agency to maintain writ. The Sub Engineer in charge took measurement of the work done and placed before the undersigned for further processing. I called the Sub-Engineer to accompany me for the joint inspection to verify the measurement as it falls in my mandatory function under the B&R Code...
4. It will not be out of place to mention here that payment of work done and progress is always made enabling the contractor to have no lame excuse for delaying the work by one or the other, however if sum's paid for work to be done but not measured or the practice set in the Department and its subsequent adjustment is authorized under clause 7 of the contract agreement, should be treated as interim payment and such payment should be adjusted in the final Bill. (clause 7 is enclosed for reference).

ATTESTED


5. It is incumbent upon the succeeding officer to make it sure that no payment should be made until and unless the paid amount of previous bill has been checked properly to have an eye sight and if the previous quantity has not been completed, no payment should be allowed while in this case, huge amount had been paid but no one bothered to comply with his official function. Resultantly the scheme lingering for five years had accumulative effect not only on the part of the contractor but natural phenomena that is floods, rain falls in the area to damage the portion of work which, I got executed on the orders of inquiry committee through my own pocket money.

6. During the finalization of report by the inquiry committee certain defective works have been rectified and incomplete portion has also been completed, which I bear from my source of own incomes. Copies of measurement, survey and photographs, Soft copy showing Movies of the activities which were carried out on road, are enclosed here with for ready reference.

7. Now the question of financial loss to Government exchequer has not been involved, however due to slackness on the part of my successor officers (accused officers) has created a panic situation and the public of the area when raised the issue through electronic, print media, the Government ordered high level inquiry and all the officers were put to task purely on their own negligence.

8. Keeping in view the above I therefore earnestly pray that I may kindly be granted a benefit of doubt by spending my own pocket money for completion in up-keeping the roads for smoothly vehicular traffic and solve the long outstanding problem of the public.

9. Therefore the decision for withholding of 3 No's annual increments imposed as penalty upon me may kindly be washed in accordance with the settled principles of law where in one punishment for one crime is the law of land while in my case I sustain to 1. Financial losses are due to my own pocket money, for completion of work, while my 3 Nos. annual increments, already stopped, imposed as penalty upon me, is totally injustice and carry no weight. Here kindly allow me to quote the verses of Holy Quran, Sura Nissa that "Allah commands you that the system of state is handed over to you; therefore you should based your affairs on justice. Those who are capable should be handed over all the responsibility and when you to decide. Decide in accordance with Justice". According to the settled principles of law and justice as well as dictated from the Sunnah and Hadith, the person, accused, commit a crime of a single nature may not be Punished, awarded to him double punishment for the said act. Therefore I have rectified the works, restoration of damaged portion from my own pocket money enabling the general Public of the area to easily transport their products from, to market, therefore the other penalty is totally against the ambit of law of the land, require, reconsideration purely on humanitarian grounds and also to ful-fill the ethics of justice. Submitted please.

ATTESTED

(ENGR: MUHAMMAD NAZAR)
XEN (BS.18) Then SDO
High Way Sub Division Swat,
Presently working as
Deputy Director PaRRSA/USAID Swat.

Recd.

F-19



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. No. SOE/C&WD/8-4/2012
Dated Peshawar, the June 03, 2014

TO

✓
Engr. Muhammad Nazar
Executive Engineer (BS-18)
Presently working as Deputy Director
PaRRSA/USAID Directorate, Swat

Subject: **Appeal against imposition of penalty "stoppage of 03 annual increments for 03 years"**

I am directed to refer your appeal dated NIL on the subject noted above and to convey that your appeal was examined and submitted to the Competent Authority (Chief Minister).

2. The Competent Authority has regretted and filed the same.
3. 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)

ATTESTED



VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar
OF 2014

Mohammad Nazar (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt. of KPK (RESPONDENT)
(DEFENDANT)

I/We Mohammad Nazar
Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 17 / 6 /2014



CLIENT



ACCEPTED

NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR
SERVICE APPEAL NO. 919 OF 2014

✓ Engr. Muhammad Nazar --- Appellant
Deputy Director PaRRSA/USAID
Directorate, Swat

Versus

1. Govt of Khyber Pakhtunkhwa through --- Respondents
Chief Secretary, Peshawar
2. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
3. Secretary to Govt of Khyber Pakhtunkhwa
Finance Department, Peshawar

Joint Parawise Comments on behalf of Respondents No. 1 to 3

Respectfully Sheweth

Preliminary Objections

1. That the appeal is not maintainable in its present form.
2. That the appeal is premature.
3. That the appellant has no cause of action and locus standi.
4. That the appeal is time barred.
5. That the appeal is liable to be rejected on ground of non-joinder of necessary and mis-joinder of unnecessary parties
6. That the appellant is estopped by his own conduct to file the instant appeal

Facts

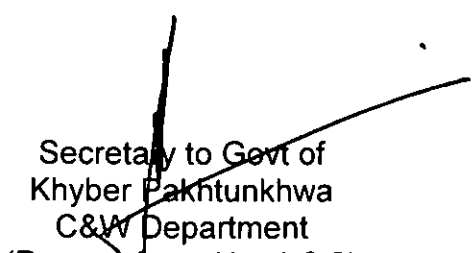
1. As per record
2. Incorrect. On complaint of local MPA of District Swat, an inquiry regarding "Improvement, widening and blacktopping" of Matta Fazal Banda Road was conducted against the officers/officials of C&W Department, including the appellant. Formal inquiry was conducted through inquiry committee under Khyber Pakhtunkhwa E&D Rules, 2011. Proper charge sheets/SOAs were served upon the officers/officials including the appellant (**Annex-I**). The inquiry committee submitted his report (**Annex-II**), mentioned that the involved officers/officials including the appellant remained one way or other involved in the irregularities committed in the developmental activity of the scheme and recommended a minor penalty of "stoppage of 03 increments for 03 years".
3. Incorrect, after approval of the competent authority show cause notices containing tentative minor penalty of "stoppage of 03 increments for 03 years" were served upon the responsible officers/officials including the appellant on 31.12.2013 with the direction to submit their replies (**Annex-III**). In compliance the appellant submitted his reply (**Annex-IV**). The reply to the show cause notice was examined which was not convincing and he had merely reproduced his earlier statement submitted to the inquiry committee, which was considered by the committee and clearly mentioned in the recommendations that the officers/officials including the appellant remained involved in one way or other in the irregularities, therefore, the minor penalty of "stoppage of 03 annual increments for 03 years" imposed tentatively upon the involved officers/officials, including the appellant was confirmed by the Competent Authority.

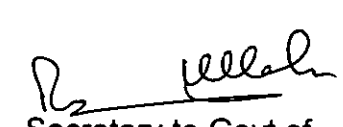
4. Incorrect. The Competent Authority after having considered the charges, inquiry report of the inquiry committee, personal hearing of the officers/ officials, including the appellant in exercise of the power under Khyber Pakhtunkhwa E&D Rules, 2011 imposed minor penalty of "stoppage of 03 annual increment for 03 years" upon the appellant on 04.03.2014 (Annex-V).
5. Correct to the extent that appellant departmental appeal was processed and regretted by the Competent Authority.
6. No comments

Grounds

- A. Incorrect. The charges leveled against the appellant were properly inquired and were proved against him as per inquiry report of the inquiry committee and impugned order is in accordance with law.
- B. Incorrect, there is no mala-fide, no discrimination and no violation of rights of the appellant was done. The instant inquiry was processed according to law, rules and regulations. Moreover, all the process of inquiry proceedings was conducted against the appellant according to law and rules.
- C. Incorrect, all the accused officers/officials including the appellant were called for personal hearing on 18.02.2014, opportunity of personal hearing was given and none of the accused stated anything new in their defence and reiterated their earlier replies.
- D. Incorrect, the appellant is very much involved in the irregularity as per instant inquiry and all the matters were carried out in accordance with relevant rules and law, and with the approval of the Competent Authority.
- E. Incorrect, as explained in Para-3 & 4 of the facts.
- F. Incorrect and mis-conceive, all relevant rules have been followed and action taken is within the prescribed law as explained in para-3 of the facts.
- G. Incorrect, as explained in Para-3 & 4 of the facts.
- H. Incorrect, as explained in Para-5 of the facts.
- I. The Respondents would like to seek permission of this Hon'able Tribunal to produce more grounds during the time of arguments.

In view of the above, it is humbly prayed that the instant appeal may kindly be dismissed with cost.


Secretary to Govt of
Khyber Pakhtunkhwa
C&W Department
(Respondents No. 1 & 2)


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

Annex-I

CHARGE SHEET

Whereas, I, Pervez Khattak Chief Minister Khyber Pakhtunkhwa, as Competent Authority, charge you Engr. Muhammad Nazar Executive Engineer (BS-18) C&W Department, presently working as Deputy Director PaRRSA/USAID Directorate Swat.

"That you while posted as SDO Highway Division Swat committed the following irregularities in the scheme "Improvement, Widening and Blacktopping of Matta Fazal Banda Bagh Dheri to Lalkoo Beryum to Shahwar Gat in Swat (30 Km)" ADP #689/(2004-05) SH: Matta Fazal Banda Road (23.5 KM) 3 to 23.5 = 21.5 KM:

You prepared and processed 9TH running bill for M/S Muzaffar-ul-Mulk & Co: in respect of the work "Improvement and Widening of Matta-Fazal Banda Road" on the basis of fictitious measurement of earth work cutting in KM 22, 23 & 24 recorded by Mr. Nasrullah Khan Sub Engineer in MB#1586 (page 28-37) without checking measurement (CMB)"

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

3. You are, therefore, required to submit your written defence within ten (10) days of the receipt of this charge sheet to the Inquiry Officer/Committee.

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

5. The Statement of Allegations is enclosed.

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa

17/06/2013

DISCIPLINARY ACTION

I, Pervez Khattak Chief Minister Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Engr. Muhammad Nazar Executive Engineer (BS-18) C&W Department, presently, working as Deputy Director PaRRSA/USAID Directorate Swat 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

"That he while posted as SDO Highway Division Swat committed the following irregularities in the scheme "Improvement, Widening and Blacktopping of Matta Fazal Banda Bagh Dheri to Lalkoo Beryum to Shahwar Gat in Swat (30 Km)" ADP #689/(2004-05) SH: Matta Fazal Banda Road (23.5 KM) 3 to 23.5 = 21.5 KM:

He prepared and processed 9TH running bill for M/S Muzaffar-ul-Mulk & Co: in respect of the work "Improvement and Widening of Matta-Fazal Banda Road" on the basis of fictitious measurement of earth work cutting in KM 22, 23 & 24 recorded by Mr. Nasrullah Khan Sub Engineer in MB#1586 (page 28-37) without checking measurement (CMB)"

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. Syed Nazar Hussain Shah (Pcs S4 - BS 19)
- ii. Engr. Mujahid Saeed (BS-19) SE Irrigation Dept.

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.

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa
17⁰⁷/06/2013

Annex-II

GOVERNMENT OF KHYBER PAKHTUNKHWA



ENQUIRY REPORT

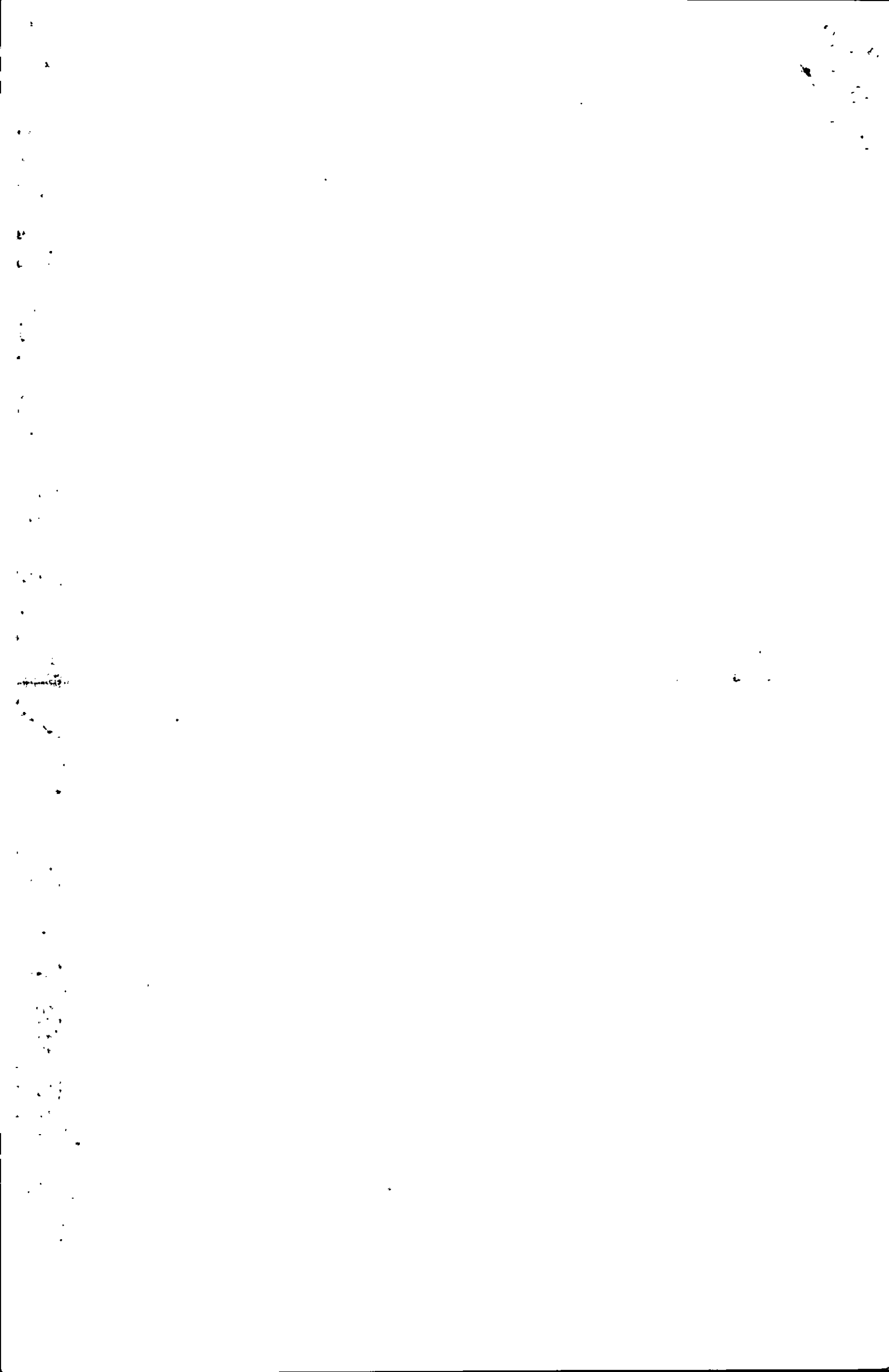
"IMPROVEMENT, WIDENING AND BLACKTOPPING OF MATTA FAZAL BANDA BAGH DHERI TO LALKOO BERYUM TO SHAHWAR GAT IN SWAT (30 KM)" ADP # 689 / (2004-05) S.H: MATTA FAZAL BANDA ROAD (23.5 KM) 3 TO 23.5 = 21.5 KM"

CONDUCTED BY

Syed Nazar Hussain Shah (PCS SG BS-19),
OSD C/O Section Officer (E-I), Establishment Department,
Khyber Pakhtunkhwa, Peshawar

Engr: Syed Muhammad Mujahid Saeed (BS-19),
Superintending Engineer (Head Quarter),
Irrigation Department,
Khyber Pakhtunkhwa, Peshawar

OCTOBER 2013



INQUIRY REPORT

Subject:- INQUIRY REGARDING "IMPROVEMENT, WIDENING AND BLACKTOPPING OF MATTA FAZAL BANDA, BAGH DHERI TO LALKOO BERYUM TO SHAHWAR GAT ROAD IN SWAT (30 KM)" ADP # 689/ (2004-05) SUB-HEAD: "MATTA FAZAL BANDA ROAD (23.5KM) 3 TO 23.5 = 21.5KM"

BACKGROUND:-

The Chief Minister Khyber Pakhtunkhwa, as competent authority, has ordered formal enquiry under Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 on the subject roads vide Secretary to Government of Khyber Pakhtunkhwa C&W letter No: SOE/C&WD/8-4/2012 dated 25/07/2013 (Annexure-I). The inquiry committee comprises Syed Nazar Hussain Shah (PCS SG BS-19), OSD C/O Section Officer (E-I), Establishment Department, Khyber Pakhtunkhwa, Peshawar and Engr. Syed Muhammad Mujahid Saeed, Superintending Engineer (Head Quarter), Irrigation Department Khyber Pakhtunkhwa, Peshawar. The charge sheets and statements of allegation duly approved by the competent authority (Chief Minister Khyber Pakhtunkhwa) (Annexure-II) were sent for serving on the following accused officers/officials of the C&W Department with the direction to conduct formal inquiry under Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 and submit the report.

- 1) Engr. Asif Iqbal. XEN (BS-18), presently he is working as SE (HQ) O/O CE (Centre) C&W Peshawar.
- 2) Engr. Hamidullah, XEN (BS-18), presently he is working as Design Engineer O/O CE (Centre) C&W Peshawar.
- 3) Engr. Muhammad Nazar, XEN (BS-18), presently he is working as Deputy Director PaRRSA/USAID, Swat.
- 4) Mr. Rehmanullah, SDO (BS-17), presently he is working as SDO C&W Sub Division Charsadda.
- 5) Mr. Zahoor, Sub Engineer (BS-11), presently he is working as Sub Engineer O/O XEN Highway Division Swat.

- 6) Mr. Akhtar Hussain, Sub Engineer, presently he is working as Sub Engineer O/O XEN Highway Division Swat.
- 7) Mr. Nasrullah, Sub Engineer, presently he is working as Sub Engineer O/O XEN Highway Division Swat.

The charges leveled against the officers/official are as under.

- a. You released an amount of Rs. 123.163 million upto June, 2008 which was sufficient for the contractor to complete his contract valuing Rs. 48.742 million. But the contractor failed to complete the work within the stipulated time. You allowed the contractor to use hot bitmac, which was not approved in the PC-I, due to which Government exchequer sustained heavy loss.
- b. You made payment to the contractor for certain items of work which have not been physically executed at site.
- c. You released an amount of Rs. 1.385 million out of retention money (security deposits) to the contractor against work done which is an advance payment to the contractor while the security deposit has been prematurely released to extend undue benefit to the contractor.
- d. You made overpayments on account of escalation to the contractor, while the work has not been completed at site, therefore the escalation paid is illegal.

PROCEEDINGS

1. The charge sheets along with statement of allegations were accordingly served upon all the accused officers/officials vide a covering memo bearing office No.1044-51 /IB/HQ.P.A. dated 02/08/2013 (Annexure-III – A, B, C, D, E, F, and G). The accused officers/officials were asked to submit their replies.

2. The Chief Engineer (North), C&W Department was requested vide memo No.1052/IB/HQ.P.A. dated 02/08/2013 (Annexure-IV) for furnishing of the requisite record and nomination of an officer of his department for assistance in the enquiry process as directed by the Secretary to Government of Khyber Pakhtunkhwa C&W letter No. SO (E)/C&WD/8-4/2012 dated 25/07/2013 (see Annexure-I) with subsequent

Reminder to the Secretary to Government of Khyber Pakhtunkhwa C&W vide letter No. 200/IB/HQ.P.A dated 16-08-2013 (Annexure-V). In response to the reminder the Executive Engineer, C&W, Highway Division, Swat vide letter No. 6940/14-W dated 22-8-2013 (Annexure-VI) provided the record pertaining to the enquiry with the following documents still not provided.

- i. Original PC-I
- ii. Technically sanctioned estimate.
- iii. Measurement Book No. 1415 & 1577
- iv. Pavement Design
- v. Long Section & X-Sections of the road.
- vi. Laboratory Tests.

3. The replies against statement of allegation and charge sheet were received from the accused officers/officials on August 19 and 26, 2013 which are attached as (Annexure-VII- A, B, C, D, E, F and G).

4. On receipt of the partial record, the site was jointly inspected in the presence of Executive Engineer Highway Division Swat and other divisional staff concerned on September 05, 2013 to ascertain the physical condition of the road, quantify the actual work on the ground and advances allowed to the contractor. During the site visit, the work done was checked randomly through visual inspection of pits dug at various locations of the road. The thicknesses of pavement layers, earth work and quality of materials used were randomly checked for comparison with the payment made.

5. The Executive Engineer were assigned task for calculation of balance work left incomplete by the contractor during the site visit and the XEN Swat retained some of the documents and after series of telephonic messages, he returned the documents vide letter No. 7318/14-W dated 23/9/2013. (Annexure-VIII)

6. Opportunity of personal hearing to all the officers/official was provided on September 12, 2013. List of attendance sheet is attached as Annexure IX.

7. The sub work under inquiry is part of a scheme initially include in the ADP (2003-04) at S. No. 842/31122. The scheme is still part of the provincial ADP and has also appeared in the ADP (2013-14). The scheme was initially approved for Rs. 83.170 million

by the PDWP in its meeting held on 22/6/2004. The scheme has under gone a series of revision due to change in the scope of work from time to time through Chief Minister directives and inclusion of Escalation allowed by the Provincial Government with effect from 01/07/2005. Summary of these revisions are as under:

| ADP No. | Revision | PC-I approval date | Approved cost (Rs. Million) |
|---------------|--------------------------|--------------------|-----------------------------|
| 842 (2003-04) | Original | 09-7-2004 | 83.200 |
| 499 (2004-05) | 1 st Revision | 10-04-2006 | 181.325 |
| 843 (2006-07) | 2 nd Revision | 01-01-2008 | 224.684 |
| 388 (2010-11) | 3 rd Revision | 12-03-2011 | 317.590 |
| 319 (2011-12) | 4 th Revision | 13-12-2011 | 415.633 |

6. The contract for the sub work Matta Fazal Banda Road from Km 3 to Km 23.5 (23.5 Km) with contract cost of 47.472 million after approval by Chief Engineer C&W (North) vide letter. 05/37-GS dated 26/10/2004 (Annexure-X) was awarded to M/S Muzaffar-ul-Mulk & Co Govt: contractor vide agreement No. 309-Swat 2004-05. The work order for commencement of the work was issued vide Deputy Director, Public Works Swat letter No.1805/2-M dated 28/10/2004. (Annexure-XI)

7. The completion period for the work as per contract agreement was Nine (9) months. The contractor started the work on November 7, 2004 but he could not complete within stipulated time and the work is still incomplete.

8. Due to non-completion of the scheme and subsequent damages in the work done, the local of the area lodged various complaints to the Provincial Government resulting into this inquiry.

9. After thorough checking of record and physical inspection of the site, the following facts were found:



FINDINGS:

- i) The work was awarded to Mr. Muzaffar-ul-Mulk Khan Govt. Contractor vide work order No. 1805/2-M dated 28/10/2004 (see Annexure-XI) for a bid value of Rs. 48.472 million with a completion period of Nine (9) months.
- ii) The quality of work in the initial 2 KM is satisfactory which deteriorates on ward. The main cause of degradation of quality is due to the reason that the Batch plant Asphalt concrete approved in the PC-I was replaced with Mobile plant hot Bitmac. The first 2KMs i.e. KM 3 & 4 which were black topped with Batch plant Asphalt concrete are still intact to a greater extent with pot holes at places due to deferred maintenance. Whereas, the portion of 8.5 KMs i.e. from KM 5 to KM 13 where Mobile plant hot Bitmac has been used is in very deplorable condition and in some reaches it is totally damaged and non-existent.
- iii) The premix concrete of mobile plant is therefore, highly prone to water penetration and cannot withstand in rainy climatic zones. The major reason for such a huge damage to the road surface seems to be the use of hot Bitmac premix. The mobile plant hot Bitmac is usually used for repair of road or road with small traffic volume and light vehicle usage. Although the under specification material of Bitmac was not included in the original and subsequent 3 revised PC-I but the Executive Engineer allowed hot Bitmac and also made payment for it in 12th and 15th Running Bills of the project without obtaining any approval of the competent authority.

The main argument of the accused officers/official for using hot Bitmac was the hostile security environment created by serious militancy and subsequent military operation of Pakistan Army during 2008 and 2009, respectively. The Asphalt plant at Guli Bagh (District Swat) was damaged by militant groups in 2008 and transportation of Asphalt concrete from other far away plants was not possible due to active militancy and military operation in 2009. This was the time when the troublesome phenomena of IDPs took place, which shattered the demographic condition of Swat valley in particular and the whole of Malakand Division in

general. But this argument of the field staff does not hold ground as the work was started on 7/11/2004 with completion period of 9 months but the contractor failed to complete the work in stipulated time and there were further 4 years when the condition for the work was conducive and there was neither militancy nor military operation in the area. It was observed that contractor was least interested in completion of the work and the department also kept silent and initiated no action against the contractor.

v) From perusal of the record it was noticed that the contractor was allowed 9 months for completion of the project but on expiry of the time no further extension from competent forum i.e. Chief Engineer was obtained.

vi) The work has been executed without obtaining any Technical Sanction from the competent forum i.e. Chief Engineer. The Technical Sanction was demanded from the Executive Engineer but inspite of assurance by the accused officers/official and incumbent staff of the department it was not provided to the inquiry committee.

vii) From perusal of the 4th revised approved PC-I it was noticed that Superintending Engineer, Chief Engineer as technical head of the department and Secretary recommended the PC-I and the PDWP agreed with proposal and approved double layer from KM 5 to 14 i.e. first layer of hot Bitmac already executed by the contractor with second layer of Batch plant Asphalt. The approval of the revised PC-I with all shortcomings was approved by the PDWP therefore all the irregularities, shortcomings were provided a cover.

viii) The work was started without framing estimate after carrying out survey of the entire road and allied structure. Without establishing the Natural Surface Level (NSL) it is not possible to determine the quantities for estimation, payment and later on verification. It was required as per SOP prior to starting of the work at site joint survey with the contractor for the project should have been conducted and based on this survey estimate should have been framed and accordingly payment allowed. But the supervisory staff very causally started the work on the rough cost



estimate framed for preparation of the PC-I and accordingly made payments to the contractor.

(c) The committee visited the site but due to non-availability of survey, long section, cross section, bench marks, detail estimate and the lost Measurement Book No. 1415 and 1577 in which the majority of the measurements were recorded, it was not possible to check and verify the measurement for the quantities paid as per actual site condition. However, the calculation done in the previous Inquiry and as per available bills the quantities of the work done were randomly checked.

2) It was observed that the Executive Engineer Hamidullah, SDO Rahmanullah (dual charge) and Sub Engineer Rahmanullah in 2008, allowed the change of specification from Batch plant Asphalt Premix to the hot Bitmac that was not included in the first 3 PC-Is but it was later on approved by PDWP in the 4th revised PC-I. Engineer Hamidullah, Executive Engineer Hamidullah, SDO Rehmanullah (dual Charge) and Sub Engineer Rehmanullah executed the hot Bitmac and made payment of Rs.6.173 million. Later on during incumbency of Executive Engineer Asif Iqbal, SDO Zahoor and Sub Engineer Akhtar Hussain in the 15th running bill on 04/5/2009 also made payment of Rs. 3.024 million for hot Bitmac. The total payment allowed on the hot Bitmac is worked out to Rs.9.198 million.

3) During site visit the machinery was found busy on widening and cutting of road in the KM 24 and about 200 meter of work was executed. The Executive Engineer Muhammad Nazar informed that he has allowed payment amounting Rs.2.267 million in the KM 22, 23 and 24 for the widening of the road without visiting the site due to adverse law and order situation in the area. He stated that he accepts the responsibility for the lapse and stated that he would complete the work on his risk and cost shortly. In the KM 13 and KM 14 SDO Muhammad Nazar and Sub Engineer Nasrullah also made payment amounting Rs. 322576/- for the mass concrete that was not executed at site.



(B) From scrutiny of record, it was also observed that Engr. Asif Iqbal as Executive Engineer Swat made payment amounting Rs.1.385 million out of retention money (security deposits). According to statement of Engr. Asif Iqbal the militants had blasted two culverts and on the direction of Army authorities for the movement of troops for operation against the militants he had re-constructed the damaged culverts in emergency as no funds were available therefor he charged it to the retention money. However, the amount of Rs. 1.385 million has been recovered through Transfer Entry (TA) from the Security Deposit of the contractor.

(C) From scrutiny of record, it was observed that escalation of Rs 11.243 million has been made on the work done of 5th, 6th, 7th, 9th, 11th and 15th running bills. According to calculation (Annexure-XII) an amount of Rs 8.05 million was over paid in the 9th, 14th and 17th running bills on account of escalation for the work not executed at the site. The following officer/ official are responsible for the undue escalation paid to the contractor.

- a. Executive Engineer Hamidullah
- b. Executive Engineer Asif Iqbal
- c. Sub Divisional Officer Rahmanullah
- d. Sub Divisional Officer Zahoor
- e. Sub Engineer Muthahir
- f. Sub Engineer Rahmanullah
- g. Sub Engineer Akhtar Hussain

(D) The detail of the loss to the Government exchequer is given as under.

| | | |
|---|---|---------------------------|
| a. Loss due to un-authorized use of mobile plant hot Bitmac. | = | Rs. 9.198 million. |
| b. Loss due to advance payment | = | Rs. 6.995 million |
| c. Loss due to over payment in Escalation | = | <u>Rs. 8.052 million</u> |
| Total Loss | = | Rs. 18.726 Million |



RECOMMENDATIONS:

In view of the above, the following recommendations are made:

The contractor has not full filled his contractual obligation and has not completed the work in time and left the work incomplete. The balance work should be executed at his risk and cost as per Clauses of the Contract agreement and the contractor should also be black listed. The advance payment made on account of work done and escalation amounting Rs. 18.726 million may be recovered from his available security, works being executed in other division and sister departments and through District Revenue Officer by confiscating his property and freezing his bank accounts after following all codal formalities.

Measurement Books No. 1415 and 1577 were stated to be lost but regarding loss of MB No. 1577 a letter vide No. 1135/1-M dated 22/5/2012 (Annexure-XIII) has been written by SDO, based on the letter a simple information report has been recorded by SHO Police Station, Saidu Sharif, Swat on 24/5/2012 (Annexure-XIV) and no further action has been initiated against the officer/official who has lost the MB.

The loss of 2 MBs seems to be deliberate as major portion of project measurements and escalation bills were recorded in them. It is recommended that a separate disciplinary action needs to be initiated against the officer/official responsible for the loss of such an important document. The Sub Divisional officers or Sub Engineer who remained the final custodian of this important official document is recommended for further action as they seem to be the real deliberate defaulter in this issue.

As mentioned in Para x, xi, xii and xiii of Findings the following officers / officials remained, one way or the other, involved in the irregularities committed in the subject developmental activity; :

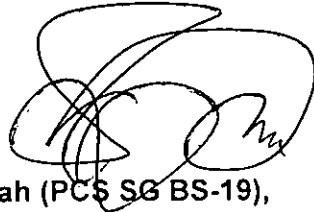
- Engr. Asif Iqbal, XEN (BS-18), presently working as SE (HQ) O/O CE (Centre) C&W Peshawar.
- Engr. Hamidullah, XEN (BS-18), presently working as Design Engineer O/O CE

(Centre) C&W Peshawar.


- Engr. Muhammad Nazar, XEN (BS-18), presently working as Deputy Director PaRRSA/USAID, Swat.
- Mr. Rehmanullah, SDO (BS-17), presently working as SDO C&W Sub Division Charsadda.
- Mr. Zahoor, Sub Engineer (BS-11), presently working as Sub Engineer O/O XEN Highway Division Swat.
- Mr. Akhtar Hussain, Sub Engineer, presently working as Sub Engineer O/O XEN Highway Division Swat.
- Mr. Nasrullah, Sub Engineer, presently working as Sub Engineer O/O XEN Highway Division Swat.

It is recommended that all these defaulting officers, including the incumbent technical staff of the division, should pursue at personal level the recovery of overpaid amount of 18.726 Million rupees so that loss to Government exchequer is re-covered. In case of non recovery of the full overpaid amount or any part of it, in a targeted time, the balance amount may be recovered on equal share basis from the above mentioned seven officers / officials. Furthermore a minor penalty of stoppage of 3 increments is also recommended for the negligence, irregularities and irresponsible attitude on the part of the seven accused officers/officials.

Report is submitted as desired please.



Syed Nazar Hussain Shah (PCS SG BS-19),
OSD C/O Section Officer (E-I) Establishment Department,
Khyber Pakhtunkhwa, Peshawar



Engr. Syed Muhammad Mujahid Saeed (BS-19),
Superintending Engineer (Head Quarter),
Irrigation Department,
Khyber Pakhtunkhwa, Peshawar



GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/8-4/2012
Dated Peshawar, the Dec 31, 2013

TO

Engr. Muhammad Nazar
the then SDO Highway Sub Division Swat
Now working as Deputy Director PaRRSA/USAID
Directorate, Swat

SUBJECT: INQUIRY REGARDING "IMPROVEMENT, WIDENING AND BLACKTOPPING OF MATTA FAZAL BANDA BAGH DHERI TO LALKOO BERYUM TO SHAHWAR GAT IN SWAT (30 KM)" ADP #689/(2004-05)

Sub Head: MATTA FAZAL BANDA ROAD (23.5 KM) 3 TO 23.5 = 21.5 KM

I am directed to refer to the subject noted above and to enclose herewith two copies of the show cause Notice containing tentative minor penalty of "stoppage of 03 increments for three years" alongwith inquiry report conducted by inquiry committee comprising of Syed Nazar Hussain Shah (PCS SG BS-19) D.G Gallyat and Engr. Syed Mujahid Saeed (BS-19) Superintending Engineer Irrigation Department, Peshawar and to state that the 2ND copy of the show cause Notice may be returned to this Department after having signed as a token of receipt immediately.


2. You are directed to submit your reply, if any, **within 7 days of the delivery of this letter**, otherwise, it will be presumed that you have nothing to put in your defence and ex-party action will follow.
3. You are further directed to intimate whether you desire to be heard in person or otherwise.


(USMAN JAN)
SECTION OFFICER (ESTT)

Endst even No. & date

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


SECTION OFFICER (ESTT)


02/01/14

SHOW CAUSE NOTICE

I, Pervez Khattak Chief Minister Khyber Pakhtunkhwa as competent authority, do hereby serve you, Engr. Muhammad Nazar XEN (BS-18) now working as Deputy Director PaRRSA/USAID Directorate Swat, under the Khyber Pakhtunkhwa Govt Servants (Efficiency & Discipline) Rules, 2011, with this notice for the charges mentioned in the disciplinary action/statement of allegations already served upon you vide C&W Department's endorsement No.SOE/C&WD/8-4/2012 dated 25.07.2013.

2. That on going through the report of the inquiry committee, material on record and other connected documents, I am satisfied that the following charges leveled against you have been proved as specified in Rule 3 ibid:

That you while posted as SDO Highway Sub Division Swat committed the following irregularities in ADP scheme "Improvement, Widening and Blacktopping of Matta Fazal Banda Bagh Dheri to Lalkoo Beryum to Shahwar Gat in Swat (30 km)" ADP #689/(2004-05) SH: Matta Fazal Banda Road (23.5 Km) 3 to 23.5 = 21.5 Km:

You prepared and processed 9TH running bill for M/S Muzaffar-ul-Mulk & Co: in respect of the work "Improvement and Widening of Matta-Fazal Banda Road" on the basis of fictitious measurement of earth work cutting in KM 22, 23 & 24 recorded by Mr. Nasrullah Khan Sub Engineer in MB#1586 (page 28-37) without checking measurement (CMB)"

3. That as a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of "Stoppage of 3 increments for three years." under Rule 4 ibid.

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 15 days of its delivery, it shall be presumed that you have no defence to make in which case exparte action will be taken against you.

6. Copy of the findings of the inquiry committee has already been provided to you with earlier show cause notice.

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa

25/12/2013

Annex-IV

To

The Hon'able Chief Minister
Khyber Pakhtunkhwa Peshawar

Diary No: 1204
Date 21/01/2014
Secretary C&W Deptt:
Khyber Pakhtunkhwa

Order
AS/OSA

22.1.14

Through: **PROPER CHANNEL**

SUBJECT: **INQUIRY REGARDING "IMPROVEMENT, WIDENING AND BLACKTOPPING OF MATTA FAZAL BANDA BAGH DHERI TO LALKOO BERYUM TO SHAHWAR GAT IN SWAT (30 KM)" ADP #689/(2004-05) S.H: MATTA FAZAL BANDA ROAD (23.5 KM) 3 TO 23.5 = 21.5 KM**

Respected Sir,

With reference to the Secretary C&W letter dated 31.12.2013, vide which Show Cause Notice containing tentative minor penalty of "stoppage of 03 increments for three years" has been serviced upon the undersigned for reply. In this regard charge wise replies may be perused as under:

"I have been charged for preparing and processing 9th running bill for M/S Muzafar-ul-Mulk & CO in respect of the work improvement and widening of Matta Fazal Banda Road on the basis of factious measurements of earth work cutting in KM 22,23 & 24. In this regard it is clarified that I have paid Rs.3.549 million as 9th running bill being interim payment only for those items which were actually executed at site i.e. "Earth work cutting and plum concrete retaining walls" already approved in PC-I, the rest of payment have not been paid by the undersigned. It is further to clarify that I have not allowed the contractor for use of hot bitmac nor the work has been carried out/paid in my tenure. The same can be verified from the 9th running bill (copy enclosed for ready reference)". Therefore, the charge is not justified.

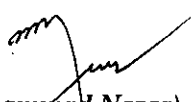
Besides above, the 4th revised PC-I with all shortcomings was approved by PDWP, owing to this way all the irregularities, shortcomings were provided a cover, as this point has also been admitted by inquiry committee.

It is, therefore, requested that my reply may be accepted and exonerate from the charges leveled upon the undersigned and be heard in person for which I shall be obliged.

Dated 21.01.2014

SO(E) 2/1

Yours Faithfully


(Muhammad Nazar)
the then Sub Divisional Officer
Highway Division Swat
Now working as Deputy Director
PaRRSA/USAID Swat



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the March 04, 2014

ORDER:

No.SOE/C&WD//8-4/2012: WHEREAS, the following officers/officials were proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 for the alleged irregularities in ADP scheme "Improvement, widening and blacktopping of Matta Fazal Banda Bagh Dheri to Lalkoo Beryum to Shahwar Gat in Swat (30 Km)" ADP #689/(2004-05) SH: Matta Fazal Banda Road (23.5 Km) 3 to 23.5 = 21.5 Km"

- i. Engr. Hamidullah Khan Khalil XEN (BS-18) the then XEN Highway Division Swat, presently working as Design Engineer O/O CE (Centre) C&W Peshawar.
- ii. Engr. Muhammad Nazar XEN (BS-18) the then SDO Highway Sub Division Swat, presently working as Deputy Director PaRRSA/USAID, Swat.
- iii. Mr. Rehmanullah SDO (BS-17) the then SDO (OPS) Highway Sub Division Swat, presently working as SDO C&W Sub Division Swabi.
- iv. Mr. Zahoor (BS-11) the then Sub Engineer and holding the additional charge of SDO Highway Sub Division Swat presently working as Sub Engineer O/O XEN Highway Division Swat.
- v. Mr. Akhtar Hussain Sub Engineer (BS-11) O/O XEN Highway Division Swat.
- vi. Mr. Nasrullah (BS-11) the then Sub Engineer O/O XEN Highway Division Swat, presently working as Sub Engineer O/O XEN Highway Division Mardan.

2. AND WHEREAS, for the said act of misconduct they were served charge sheets/ statement of allegations.

3. AND WHEREAS, Syed Nazar Hussain Shah (PCS SG BS-19) D.G Gallyat and Engr. Syed Mujahid Saeed (BS-19) Superintending Engineer Irrigation Department, Peshawar were appointed as inquiry committee, who submitted the inquiry report.

4. NOW THEREFORE, the Competent Authority after having considered the charges, material on record, inquiry report of the inquiry committee, explanation of the officers/officials 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 minor penalty of "stoppage of 03 annual increment for 03 years" upon the aforementioned officers/officials.

SECRETARY TO
Government of Khyber Pakhtunkhwa
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (Centre/North), C&W Peshawar
3. Project Director PaRRSA/USAID Directorate, Swat
4. Superintending Engineer C&W Circle, Swat/Mardan
5. Executive Engineer Highway Division Swat/Mardan
6. Executive Engineer C&W Division Swabi
7. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
8. PS to Secretary Establishment Department Khyber Pakhtunkhwa, Peshawar
9. District Accounts Officer Swat/Mardan/Swabi
10. Section Officer (Litigation) C&W Department, Peshawar
11. PS to Secretary, C&W Peshawar
12. Officers/Officials concerned
13. Office order File/Personal File

SECTION OFFICER (ESTT)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 919/2014

ENGR: MUHAMMAD NAZAR

VS

C&W DEPTT:

REJOINDER ON BEHALF OF APPELLANT IN
RESPONSE TO THE REPLY SUBMITTED BY
THE RESPONDENTS

R/ SHEWETH:

PRELIMINARY OBJECTIONS:

(1 TO 6):

All the preliminary objections raised by the respondents are incorrect and baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

- 1- Admitted correct, hence need no comments.
- 2- Incorrect and not replied accordingly. That appellant while working as Deputy Director PARRSA/USAID Directorate Swat, a show cause Notice dated 15-01-2014 was served on the appellant in which it was alleged that appellant while working as Director of Highway Sub Division Swat committed irregularities in ADP scheme "Improvement, widening and black topping of Mata Fazal Banda Bagh Dheri to Lalakoo Beryum to shahwar Gate Swat.
- 3- Incorrect and not replied accordingly. That in response to the to the show cause notice dated 15-01-2014 the appellant submitted his reply in which the appellant denied the allegation which was leveled against him and explained the position along with the proofs and justification.
- 4- Incorrect and not replied accordingly. That astonishingly vide order dated 04-03-2014 the respondent Department imposed stoppage of three annual increments for three years on the appellant without specifying any period and without conducting regular enquiry in the matter.

5- Incorrect and not replied accordingly hence denied.

6- Admitted correct hence need no comments.

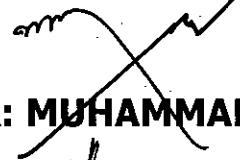
GROUND:

(A TO I):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondents are incorrect and baseless hence denied. That the action of the respondents is against the law, facts and norms of natural justice. That no chance of personnel hearing/defense has been given to the appellant. That no period has been specified by the respondent Department in the impugned order dated 04-03-2014. That the impugned order dated 04-03-2014 has been issued by the incompetent authority therefore the same is void ab initio in the eyes of law.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted as prayed for.

APPELLANT



ENGR: MUHAMMAD NAZAR

THROUGH:



**NOOR MUHAMMAD KHATTAK
ADVOCATE**