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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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25/6/24

K- (55)

170/0
170/16

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Munib Akhtar
Mr. Justice Yahya Afridi

CIVIL PETITIONS NO.210-P AND 211-P OF 2020

(Against the order dated 10.03.2020, passed by the Peshawar High Court, Peshawar, in W.Ps. No.606-P of 2019 and 3698-P of 2018, respectively)

Government of KPK through Chief Secretary, ...Petitioner(s)
Civil Secretariat, Peshawar and others (in both cases)

Versus

Engineer Ziarat Khan and others
(in CP.210-P of 2020)

Muhammad Nawaz Khan and others ...Respondent(s)
(in CP.211-P of 2020)

For the Petitioner(s) : Barrister Qasim Wadood,
(in both cases) Additional Advocate General,
Khyber Pakhtunkhwa
Amanat Ullah Qureshi,
Deputy Secretary Finance, KP
Muhammad Anwar Khan,
S.O. Litigation-1,
Establishment Division, KP

For the Respondent(s) : Mr. Naveed Akhtar, ASC
(in both cases)

Date of Hearing : 19.11.2020

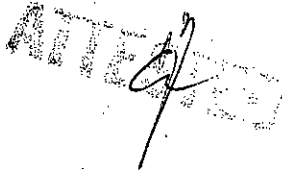
ORDER

GULZAR AHMED, CJ.- We have heard the learned Additional Advocate General, Khyber Pakhtunkhwa and dictated in Court the following order: -

"The learned Additional Advocate General, Khyber Pakhtunkhwa, contends that pursuant to the impugned order dated 10.03.2020, the Chief Secretary, Government of Khyber Pakhtunkhwa has dealt with the matter as directed by the Peshawar High Court, Peshawar and passed order, stating that the respondents are not entitled

ATTESTED


Senior Court Associate
Supreme Court of Pakistan
Islamabad



1

Service Appeal No. 949/2022 titled "Engr. Muhammad Yasin, Superintending Engineer, Bannu Irrigation Circle, Bannu versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others", decided on 15.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No.949/2022

Date of presentation of Appeal.....23.06.2022
Date of Hearing.....15.05.2024
Date of Decision.....15.05.2024

Engr. Muhammad Yasin, Superintending Engineer, Bannu Irrigation Circle, Bannu.....(*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary, Civil Secretariat, Peshawar.
2. **The Chief Secretary**, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. **The Secretary Irrigation Department**, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.....(*Respondents*)

Present:

Mr. Muhammad Asif Yousafzai, AdvocateFor the appellant
Mr. Umair Azam, Additional Advocate General.....For respondents

.....

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE PENALTY ORDER NO.SO(E)IRRI;/12-30/2015/INQUIRY DATED 02.11.2021 WHEREBY THE PENALTY OF WITHHOLDING OF TWO INCREMENTS FOR TWO YEARS WAS IMPOSED UPON THE APPELLANT AND ALSO AGAINST THE REJECTION ORDER DATED 08.06.2022 WHEREBY THE REVIEW PETITION DATED 05.11.2021 HAS BEEN REJECTED BY THE RESPONDENTS.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as enumerated in the memo and grounds of appeal are that appellant was serving as Superintending Engineer in the Irrigation Department; that he was charge sheeted for not vetting the comments timely by

the Additional Advocate General; that show cause notice was also issued to the appellant and after conducting personal hearing of the appellant, penalty of withholding of two annual increments for two years was imposed upon appellant vide impugned order dated 02.11.2022.

3. Feeling aggrieved, the appellant made representation on 05.11.2021, but the same was rejected vide order dated 08.06.2022. Therefore, he filed the instant service appeal.

4. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

5. We have heard learned counsel for the appellant and learned Additional Advocate General for respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order(s).

6. On the allegations leveled against the appellant, an inquiry committee as constituted. The inquiry committee conducted its proceedings and came up with the following findings:

Findings:

1. Both the accused were called upon for personal hearing on 27th January 2020. The Department representative for the instant case i.e. Engr: Muhammad Tahir, the then Executive Engineer

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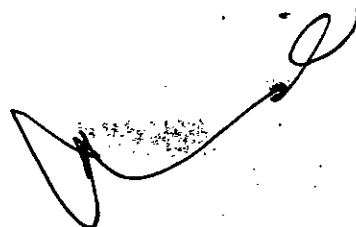
Paharpur Irrigation Division, D.I.Khan appeared and submitted his statement along with supporting documents. Similarly, the accused Engr. Muhammad Yasin, the then Superintending Engineer D.I.Khan was also heard who apprised the committee that the comments were prepared and vetted from the learned Additional Advocate General. He further apprised the committee that after vetting the comments from learned Additional Advocate General is supposed to be re-submitted to the respondents for their signature and after doing needful by all the respondents give proper certificate and affidavit and there after deposited in the Peshawar High Court D.I.Khan Bench. Needless to mention here that the order of Peshawar High Court, D.I.Khan Bench dated 01.10.2019 has already been challenged in the Honourable Peshawar High D.I.Khan "Review Petition No.1399-D/2019" which is still subjudice.

2. The comments were forwarded to AAG vide letter No.P&D/PS/Chief Engineer (North) Irrigation Department Peshawar/2020/2154, dated 27.01.2020 for verification. The learned AAG verified the comments to have been vetted by their office.

3. The record further reveals that deponent/representative of the Irrigation Department i.e. Engr. Muhammad Tahir, the then Executive Engineer Paharpur Irrigation Division D.I.Khan, was identified before the Additional Registrar at the time of deposition by the learned Additional Advocate General.

4. A review petition has been lodged in the Peshawar High Court D.I.Khan Bench, the same have been verified from the office of Additional Advocate General office vide letter No.P&D/PS/CE/2020, dated 27.01.2020."

7. The committee found the appellant not guilty of misconduct but even then, the appellant was awarded punishment of withholding of two increments for two years, which could not be justified for the sole reason that after findings of inquiry committee, there was no solid reason as to why the appellant was penalized.




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Service appeal No. 949/2022 titled "Engr. Muhammad Yasin, Superintending Engineer, Bonni Irrigation Circle, Bonni versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others" decided on 15.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

8. This being so, we allow this appeal, set aside the impugned order of withholding of increments. Costs shall follow the event.

Consign.

9. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of May, 2024.



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah

SCANNED
KPST
Peshawar

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S.A #.949/2022

ORDER

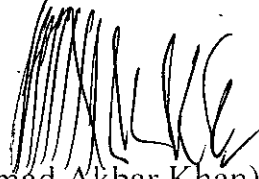
15th May, 2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present.

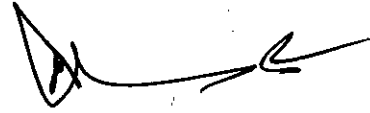
2. Vide our detailed judgment of today placed on file, we allow this appeal, set aside the impugned order of withholding of increments. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of May,*

2024:



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

Mutazem Shah

SCANNED
KPST
Peshawar

11.01.2024

Learned counsel for the appellant present.

Mr. Roz Amin, Superintendent alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 01.03.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar

(Fareeha Paul)
Member (E)

(Salah-ud-Din)
Member (J)

Naeem Amin

01.03.2024 1. Appellant present in person. Mr. Muhammad Jan District Attorney alongwith Roz Amin, Superintendent for the respondents present.

2. Appellant requested for adjournment on the ground that his learned counsel is busy in the august Supreme Court of Pakistan today. Granted. To come up for arguments on 15.05.2024 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

Fazle Subhan, P.S

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27.06.2023


1. Junior to counsel for the appellant present. Mr. Asad Ali Khan, learned Assistant Advocate General for the respondents present.

2. Former requested for adjournment due to engagement of learned senior counsel for the appellant before the Hon'ble Peshawar High Court, Peshawar. Granted. To come up for arguments on 26.10.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar

Kaleemullah


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)


26.10.2023


Junior of learned counsel for the appellant present. Syed Maqbool Hussain, Superintendent alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 11.01.2024 before the D.B. Parcha Peshi given to the parties.

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KPST
Peshawar

Naeem Amin


(Muhammad Akbar Khan)
Member (E)


(Salah-ud-Din)
Member (J)

01.12.2022

(8)

Learned counsel for the appellant present. Mr. Hamad Saleem, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Para-wise comments on behalf of respondents submitted, copy of which handed over to learned counsel for the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments on 11.01.2023 before the D.B.



(Salah-Ud-Din)
Member (J)

27.04.2023

Junior to counsel for appellant present.

Muhammad Jan, learned District Attorney alongwith Syed Maqbool Hussain Superintendent for respondents present.

Learned Member Executive (Mr. Muhammad Akbar Khan) is on leave, therefore, case is adjourned. To come up for arguments on 27.06.2023 before D.B. Parcha Peshi given to the parties.



(Rozina Rehman)
Member (J)

Mutazem Shah

SCANNED
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Peshawar

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KPST
Peshawar

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05.09.2022

Counsel for the appellant present. Preliminary arguments heard and record perused

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for submission of written reply/comments. To come up for written reply/comments on 25.10.2022 before S.B.

Rs-100/-
Appellant Deposited
Security & Process Fee


A. J. Shah
9/9/22


(Fareeha Paul)
Member (E)

25th Oct., 2022

Counsel for the appellant present. Mr. Naseerud Din Shah, Assistant Advocate General for the respondents present.

Learned Assistant Advocate General sought adjournment in order to contact the respondents to submit reply/comments on the next date. Adjourned. To come up for reply/comments on 01.12.2022 before S.B.


(Fareeha Paul)
Member (E)




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Form- A

FORM OF ORDER SHEET

Court of _____

Case No:- 949/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/06/2022	<p>The appeal of Mr. Muhammad Yasin presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	<p>24-6-22</p> <p>5th July, 2022</p>	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>5-7-22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Appellant in person present.</p> <p>Appellant seeks adjournment on the ground that his counsel is not available today. To come up for preliminary hearing on 05.09.2022 before S.B.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>

SCANNED
KPST
Peshawar

(11)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title:

Engt-Muhammad Yasin vs Govt of KPK

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:		
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	/	
3	Whether appeal is within time?	/	
4	Whether the enactment under which the appeal is filed mentioned?	/	
5	Whether the enactment under which the appeal is filed is correct?	/	
6	Whether affidavit is appended?	/	
7	Whether affidavit is duly attested by competent Oath Commissioner?	/	
8	Whether appeal/annexures are properly paged?	/	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	/	
10	Whether annexures are legible?	/	
11	Whether annexures are attested?	/	
12	Whether copies of annexures are readable/clear?	/	
13	Whether copy of appeal is delivered to AG/DAG?	/	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	/	
15	Whether numbers of referred cases given are correct?	/	
16	Whether appeal contains cutting/overwriting?	/	
17	Whether list of books has been provided at the end of the appeal?	/	
18	Whether case relate to this court?	/	
19	Whether requisite number of spare copies attached?	/	
20	Whether complete spare copy is filed in separate file cover?	/	
21	Whether addresses of parties given are complete?	/	
22	Whether index filed?	/	
23	Whether index is correct?	/	
24	Whether Security and Process Fee deposited? On	/	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974-Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On	/	
26	Whether copies of comments/reply/rejoinder submitted? On	/	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		f

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

M. Asif Yousafrai

Signature:

Asif

Dated:

23-6-22

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BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 949 /2022

**SCANNED
KPST
Peshawar**

Engr. Muhammad Yasin

VS


Govt. of KP & others

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APPELLANT


THROUGH:


(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT OF PAKISTAN


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT,

(ASAD MEHMOOD)
ADVOCATE HIGH COURT,


(SHAHKAR KHAN YOUSAFZAI)
ADVOCATE PESHAWAR.

(13) (1)

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 949/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4/0

Dated 23/6/2022

Engr. Muhammad Yasin, Superintending Engineer,
Bannu Irrigation Circle, Bannu.

(APPELLANT)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary, Irrigation Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KP SERVICE TRIBUNALS ACT, 1974 AGAINST THE PENALTY ORDER NO.SO(E)IRRI:/12-30/2015/INQUIRY DATED 02.11.2021 WHEREBY THE PENALTY OF WITHHOLDING OF TWO ANNUAL INCREMENTS FOR TWO YEARS WAS IMPOSED UPON THE APPELLANT AND ALSO AGAINST THE REJECTION ORDER DATED 08.06.2022 WHEREBY THE REVIEW PETITION DATED 05.11.2021 HAS BEEN REJECTED BY THE RESPONDENTS.

Filed to-day

Registrar

23/6/2022

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL THE IMPUGNED ORDERS DATED 08.06.2022 AND 02.11.2021 MAY KINDLY BE SET ASIDE AND THE RESPONDENTS MAY KINDLY BE DIRECTED TO RESTORE THE

WITHHELD ANNUAL INCREMENTS FOR THE PERIOD INCURRED BY THE APPELLANT WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST. ~ TRIBUNAL CONSIDER APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:

That the appellant submits as under:

1. That the appellant is working as Superintendent Engineering in the Irrigation Department with utmost dedication and honesty.

2. That the appellant was subjected to an inquiry after the findings of a fact-finding inquiry. The appellant was charged in the charge sheet as *“That you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I.Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filing the same in the court, which has not been done in the case titled Writ Petition No. 214-D of 2019, MuhibUllahV/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court, D.I.Khan Bench causing which the court has decided the case in favour of the petitioner.”* **(Copy of Charge Sheet & Statement of Allegations are attached as Annexures - A & B).**

3. That then to probe into the charges, an inquiry committee was constituted, which comprised of Mr. Nauman Afzal, Chief Economist P&D Department and Mr. Engr. Niaz Sarwar, Chief Engineer Irrigation Department. The inquiry committee probed into the allegations leveled against the appellant. The inquiry committee after conducting the inquiry, gave the conclusion as: *“The charge sheet/ statement of allegations for failing to prepare joint parawise comments and not*

getting it vetted from the office of Additional Advocate General before filing the same in the court of Law were not proved as:

- (i) The joint Para wise comments have been prepared & got it vetted from the learned Additional Advocate General office well in time
- (ii) The Deponent/ representative of Irrigation Department has been identified before the Additional Registrar at the time of deposition by the learned Additional Advocate General.
- (iii) The Deponent/representative of the Irrigation Department deposited the vetted comments in the Peshawar High Court D.I. Khan Bench on behalf of all the respondents well in time.

Hence, the charges against the accused officers have not been proved fully and not found guilty, as per Para No.02 of the Establishment & Administration Department Notification No. SOR-V/(E&AD)/Instruction/2014, dated. 28/03/2014. **(Copy of Inquiry Report & Record are attached as Annexures - C & C1).**

- 4. That despite clear finding by the inquiry committee, the appellant was served with a show cause notice dated 28.12.2020 which was properly replied with a request of Personal Hearing. Thereafter personal hearing was conducted by Mr. Javed Marwat, Secretary Industries as per order of the worthy Chief Minister, Khyber Pakhtunkhwa. The Said Officer (Secretary Industries), after conducting personal hearing, opined that the proposed penalty in the Show Cause Notice may be reviewed as “Censure” keeping in view the finding of the inquiry committee. **Copy of Show Cause Notice and Reply to Show Cause Notice are attached as Annexures - D & E.**

5. That inspite of clear finding of the Inquiry Committee and opinion of personal hearing conducting authority, the penalty of “withholding of two annual increments for two years” vide order dated 02.11.2021. **(Copy of Order dated 02.11.2021 is attached as Annexure - F).**
6. That the appellant then filed review petition dated 05.11.2021 against the impugned penalty order but unfortunately, it was rejected by the respondent vide order 08.06.2022. **(Copy of Review Petition dated 05.11.2021 and Rejection Order dated 08.06.2022 are attached as Annexures - G & H).**
7. That the appellant comes to this Honourable Tribunal for the redressal of his grievances on the following grounds amongst others:

GROUND:

- A. That the impugned penalty order dated 02.11.2021 and rejection of review petition order dated 08.06.2022 are against the findings of the inquiry committee, where it has been categorically held that the charges against the appellant (then petitioner) have not been proved fully and not found guilty.
- B. That as per Rule-14 of E&D Rules, 2011 the Competent Authority, if satisfied that the inquiry was conducted in accordance with the provisions of E&D Rules and shall exonerate the accused official if charges are not proved. But where the Competent Authority is satisfied that the inquiry proceedings have not been conducted in accordance with the E&D Rules, 2011 (Rule-14(6)) then in that case “after recording reasons in writing” either remand the case to the same inquiry committee or may order for denovo inquiry through another inquiry committee. But in case of the appellant neither there is any dissatisfaction note of the authority upon inquiry proceedings or upon the findings of the inquiry committee nor remanded or ordered

denovo inquiry. This shows that the findings of the inquiry committee in respect of the appellant were correct and admitted so by the authority.

C. That the authority has not recorded any reasons as to why not agreeing with the findings of the authority (Secretary Industries) who had conducted personal hearing and imposed the penalty without recording disagreement note.

D. That the so-called basis as given in summaries for imposing penalty was never a part of charge sheet, and as such the appellant has been penalized without charge sheet, show cause notice etc in respect of "basis" of penalty, whereby the allegations as specified in the charge sheet, have already been held as "not proved" by the constituted inquiry committee, upon report of which the Competent Authority had shown his satisfaction as mentioned in Rule-14 of the E&D Rules, 2011.

E. That the Honourable C.M. was requested to probe into the reasons and persons behind giving and submitting such wrong and baseless summaries for penalizing the appellant at any cost. This aspect also shows the malafide intentions of the authorities / officials who have submitted incorrect and wrongly based summaries, especially, after clear findings of the inquiry committee.

F. That the appellant has been condemned unheard in respect of "so called basis referred in summaries" of imposing penalty which is the violation of principle of Natural Justice as well as of Article 10-A of the Constitution.

G. That the allegations, as contained in the charge sheet/ statement of allegations have been declared not proved by the inquiry committee, while for the rest of the "basis" of penalty were never reflected in the

charge sheet and as such also not reflected in the show cause notice. Thus the whole action becomes null and void.

- H. That Review Petition No. 1399-D/2019 against the order of High Court in W.P. No. 214-D/2019 is still pending and subjudice, meaning thereby, the cause of taking action was premature as no loss to Government Exchequer is occurred so far. Thus the impugned penalty is based on a premature lis, and cause and amounts to penalize the appellant on presumptions, which is not permissible in the eyes of law. (Copy of Review Petition is already attached in Annexure - C1).
- I. That the impugned orders are against the law, norms of justice, material on record, and also in violation of spirit of E&D Rules, 2011 as well as principle of Natural Justice, hence, liable to be set-aside.
- J. That the omission and commissions of the respondents are illegal and void ab-initio.
- K. That according to the Rule 14(6) E&D Rules, 2011 if the competent authority was not satisfied with the recommendations of the inquiry committee so the competent authority shall give reasons in writing but in case of the appellant Rule 14(6) E&D Rules, 2011 has been ignored/ violated which is also a violation of superior court judgments.
- L. That the conduct and attitude of the respondents towards the appellant with good record is against the spirit of Article 2-A, 4, 9 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973.
- M. That the mandatory provisions of law have been violated by the respondents and the appellant has not been treated according to law and rules being his fundamental right.

N. That there is no omission and commission on part of the appellatant as the appellatant has been declared innocent in the inquiry report.

O. That the appellatant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the impugned orders dated 02.11.2021 and 08.06.2022 may kindly be set-aside and the annual increments of the appellatant may be restored with all back and consequential benefits.

[Handwritten Signature]
APPELLANT

THROUGH:

[Handwritten Signature]

(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT OF PAKISTAN

[Handwritten Signature]

(SYED NOMAN ALI BUKHARI)

ADVOCATE HIGH COURT,

(ASAD MEHMOOD.)

ADVOCATE HIGH COURT,

[Handwritten Signature]

(SHAHKAR KHAN YOUSAFZAI)

ADVOCATE PESHAWAR.

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BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. _____/2022

Engr. Muhammad Yasin

VS

Govt. of KP & others.

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.


DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE
3. Any other case law as per need.


APPELLANT

THROUGH:


(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT OF PAKISTAN


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT,

(ASAD MEHMOOD)
ADVOCATE HIGH COURT,


(SHAHKAR KHAN YOUSAFZAI)

ADVOCATE PESHAWAR.

21

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BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. _____/2022

Engr. Muhammad Yasin

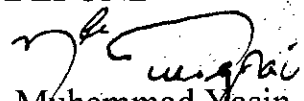
VS

Govt. of KP & others.

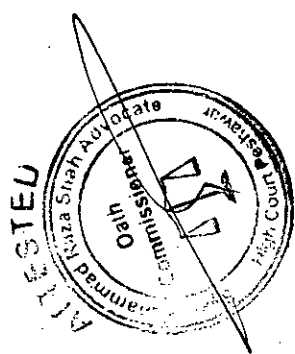
AFFIDAVIT

I, Muhammad Yasin, Superintending Engineer, Bannu Irrigation Circle, Bannu (Appellant), do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honourable Tribunal.

DEPONENT



Engr. Muhammad Yasin

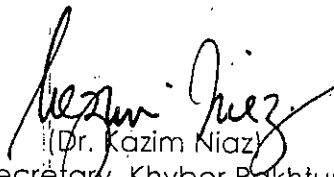


CHARGE SHEET

I, Dr. Kazim Niaz, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Engr. Muhammad Yasin, Executive Engineer (BS-18)/Superintending Engineer (OPS), Swabi Irrigation Circle, Swabi the then Superintending Engineer (OPS), Irrigation Circle, D.I. Khan.

"That you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I. Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I. Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench causing which the court has decided the case in favour of the petitioner".

2. By reasons of the above you appear to be guilty of misconduct under Rule-3 of the Govt. of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified under Rule- 4 of the rules ibid.
3. You are, therefore, required to submit your written defense within seven (07) days of the receipt of this charge sheet to the Inquiry Officer/ Inquiry Committee, as the case may be.
4. Your written defense, if any, should reach the Inquiry Officer/Inquiry Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.


(Dr. Kazim Niaz)
Chief Secretary, Khyber Pakhtunkhwa
(Competent Authority)


ATTESTED

DISCIPLINARY ACTION

I, Dr. Kazim Niaz, Chief Secretary Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Engr. Muhammad Yasin, Executive Engineer (BS-18)/Superintending Engineer, Irrigation Circle, Swabi the then Superintending Engineer (OPS), Irrigation Circle, D.I. Khan has rendered himself liable to be proceeded against, as he committed the following act/omission, within the meaning of Rule 3 of the Govt. of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

"That he while posted as Superintending Engineer (OPS), Irrigation Circle, D.I. Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I. Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench causing which the court has decided the case in favour of the petitioner".

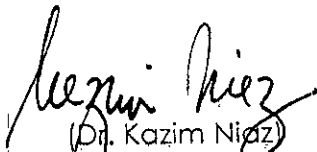
2. For the purpose of inquiry against the said accused with reference to the above allegations, an inquiry officer/inquiry committee, consisting of the following is constituted under Rule -10 1(a) of the rules ibid.

- i. Mr. Nauman Afzal Chief Economist P.O.
- ii. Engr. Niaz Sarwar Chief Engr. Irrigation.

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 submit report within 30 days of the receipt of this order, as to the commission of the aforesaid act of misconduct.

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.

ATTESTED


(Dr. Kazim Niaz)
Chief Secretary, Khyber Pakhtunkhwa
(Competent Authority)



Annexure-C (24) (12)

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT
(Establishment Section)

Dated Peshawar 08th January, 2020

NOTIFICATION

No. SOE/IRRI/3-248/2019: The Competent Authority i.e Chief Secretary Khyber Pakhtunkhwa is pleased to constitute an Inquiry Committee of the following members to conduct formal inquiry under E&D Rules, 2011 against Engr. Muhammad Yasin, the then Superintending Engineer D.I.Khan and Engr. Muhammad Tahir, Executive Engineer, Paharpur Irrigation Division, D.I.Khan to probe into " As per procedure, Joint Para Wise Comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office D.I.Khan before filling the same in the Court which has not been done in the instant case".

- 1- **Engr. Niaz Sarwar Baloch, (BS-20)**
Chief Engineer (North)
- 2- **Mr. Nauman Afzal Afridi (PAS BS-19)**
Chief Economist P&D Department

2. The Inquiry Committee shall submit the report within 14 days of receipt of this notification.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No. & Date as above

Copy of the above is forwarded to the:-

- 1- CSO to Chief Secretary, Khyber Pakhtunkhwa
- 2- Engr. Niaz Sarwar Baloch (BS-20), Chief Engineer (North) (*photocopies of Charge Sheet & Statement of Allegations are enclosed*)
- 3- Mr. Nauman Afzal Afridi (PAS BS-19), Chief Economist P&D Department (*photocopies of Charge Sheet & Statement of Allegations are enclosed*)
- 4- Engr. Muhammad Yasin, Superintending Engineer Swabi Irrigation (*photocopies of Charge Sheet & Statement of Allegations are enclosed*).
- 5- Engr. Muhammad Tahir, Executive Engineer Paharpur Irrigation Division (*photocopies of Charge Sheet & Statement of Allegations are enclosed*)
- 6- PS to Secretary to Govt. of Khyber Pakhtunkhwa, Irrigation Department.
- 7- PA to Additional Secretary Irrigation, Khyber Pakhtunkhwa
- 8- The Officer concerned.
- 9- Master File.
- 10- Personal File of the Officers.

ATTESTED

OFFICE OF C.E (North) IRR. DEPT.

Serial No. 225

Min. Dary No. 08-1-20

(S.O.) *AO*

DD

DDC

Abdul Razaq
(Abdul Razaq)
Section Officer (Estt:)

~~CONFIDENTIAL~~
ENQUIRY REPORT

(25)

(12)

BACKGROUND:

The competent authority i.e. Chief Secretary of Khyber Pakhtunkhwa constituted a committee comprising of Engr: Niaz Sarwar Baloch, Chief Engineer (North) Irrigation Department, and Mr. Nauman Afzal Afridi, Chief Economist P&D Department, to conduct formal inquiry under B&D Rules, 2011 against Engr: Muhammad Yasin and Engr: Muhammad Tahir, the then Superintending Engineer D.I.Khan and Executive Engineer Paharpur Irrigation Division D.I.Khan respectively (Annex-I).

The charge sheet / statement of allegations were that "both the said officers while posted as Superintending Engineer D.I.Khan and Executive Engineer Paharpur Irrigation Division, D.I.Khan have committed the act / omission that as per procedure, joint Para wise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General office D.I.Khan before filing the same in the Peshawar High Court D.I.Khan Bench has not been done in the case titled writ petition No. 214-D of 2019: Muhib Ullah VS Government of Khyber Pakhtunkhwa causing which the court has decided the case in favour of the petitioner" (Annex-II).

PROCEEDINGS:

1. The charge sheet and statement of allegations alongwith the notification were served upon the accused, with the direction to furnish their reply within 05 days vide Chief Engineer (North) Irrigation Department Khyber Pakhtunkhwa office letter No. 186/North/ Estb/Inquiry, dated 13-01-2020 (Annex-III).
2. The accused Engr: Muhammad Yasin, the then Superintending Engineer D.I.Khan submitted his reply vide No. 7039-40/11-M, dated 23-01-2020 (Annex-IV); his reply to charge sheet / statement of allegation is reproduced as under;
 - (i) The allegation that Para wise comments were not vetted from the learned Additional Advocate General office is against facts, record and result of miss conception. The true facts are that, not only the Para-wise comments were forwarded by the representative of the case, Engr: Muhammad Tahir to the learned Additional Advocate General office for vetting before filing in the

REGISTERED

court rather the said Para wise comments were duly vetted by the learned Additional Advocate General and the said fact is proved from the contents of the back of the last page of the comments wherein, expressly and in unequivocal words it was certified by the Additional Advocate General that the comments in question were duly vetted by him. The relevant certificate duly vetted by the learned Additional Advocate General is reproduced below for convince, **"Certified that as per direction of Honorable Court comments are duly vetted"**.

(ii) Not only were the comments duly vetted by the learned Additional Advocate General rather the record further reveal that the **deponent/representative of the Department i.e. Engr: Muhammad Tahir was identified before the Additional Register, at the time of deposition by the learned Additional Advocate General himself.**

3. The accused Engr: Muhammad Tahir the then Executive Engineer Paharpur Irrigation Division D.I.Khan submitted his reply (Annex-V), which is reproduced as under;

(i) It is submitted that the allegation that Para wise comments were not got vetted from the learned Additional Advocate General office is against facts, record and result of miss conception. The true facts are that not only the Para wise comments were forwarded to the Additional Advocate General office for vetting, before filling it in the court, rather the said Para wise comments were duly vetted by the learned Additional Advocate General and the said fact is proved from the contents of the back of the last page of the comments wherein, expressly and in unequivocal words, it was certified by the Additional Advocate General that the comments in question were duly vetted by him.

(ii) It is brought to your notice that the order dated 01-10-2019 of the Peshawar High Court Bench D.I.Khan has already been challenged in Peshawar High Court Bench D.I.Khan through "Review petition, which is still sub judice. Engr. Muhammad Tahir Concluded.

ATTESTED
[Signature]

FINDINGS:

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On the perusal of the record as well as written reply of the accused against the Charge Sheet / Statement of allegations, the findings are as under:-

1. Both the accused were called upon for personal hearing on 27th January 2020. The Department representative for the instant case i.e., Engr. Muhammad Tahir, the then Executive Engineer Paharpur Irrigation Division D.I.Khan appeared and submitted his statement along with supporting documents. Similarly, the accused Engr. Muhammad Yasin, the then Superintending Engineer D.I.Khan was also heard who apprised the committee that the comments were prepared and vetted from the learned Additional Advocate General. He further apprised the committee that after vetting the comments from learned Additional Advocate General is supposed to be re-submitted to the respondents for their signature and after doing needful by all the respondents give proper certificate and affidavit and there after deposited in the Peshawar High Court D.I.Khan Bench. Needless to mention here that the order of Peshawar High Court, DIKhan Bench dated 01-10-2019 has already been challenged in the Honorable Peshawar High Court D.I.Khan Bench "Review Petitioner No. 1399-D/2019" which is still sub judicious.
2. The comments were forwarded to AAG vide letter No.P&D/PS/Chief Engineer (North) Irrigation Department Peshawar/2020-2154, dated 27-01-2020 (Annex-VI) for verification. The learned AAG verified the comments to have been vetted by their office (Annex-VII).
3. The record further reveals that deponent / representative of the Irrigation Department i.e. Engr. Muhammad Tahir, the then Executive Engineer Paharpur Irrigation Division D.I.Khan, was identified before the Additional Registrar at the time of deposition by the learned Additional Advocate General (Annex-VIII).
4. A review petition has been lodged in the Peshawar High Court D.I.Khan Bench, the same been verified from the office of Additional Advocate General office vide letter No. P&D/PS/CE/2020, dated 27-01-2020 (Annex-IX).

ATTESTED

CONCLUSION:

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The charge sheet / statement of allegations for failing to prepare joint Para wise comments and not getting it vetted from the office of Additional Advocate General before filing the same in the court of Law were not proved as:-

- (i) The joint Para wise comments have been prepared & got it vetted from the learned Additional Advocate General office well in time.
- (ii) The Deponent / representative of Irrigation Department has been identified before the Additional Registrar at the time of deposition by the learned Additional Advocate General.
- (iii) The Deponent / representative of Irrigation Department deposited the vetted comments in the Peshawar High Court D.I.Khan Bench on behalf of all the respondents well in time.

Hence, the charges against the accused officers have not been proved fully and not found guilty, as per Para No.02 of the Establishment & Administration Department Notification No.SOR-V/(E&AD)/Instruction/2014, dated 28/03/2014.

Mr. Nauman Afzal Afridi
Chief Economist P&D
Department Peshawar

Engr: Niaz Sarwar Baloch
Chief Engineer (North) (Retired)
Irrigation Department
Khyber Pakhtunkhwa

ATTESTED



OFFICE OF THE SUPERIN
SWABI IRRIGATION
Phone & Fax #

IG ENGINEER
SWABI
030

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No. 7039-40/11-M,
To

Dated Swabi the 23/01/2020

- The Enquiry Committee,
1. Engr: Niaz Sarwar Baloach,
Chief Engineer (North), Irrigation Department,
Khyber Pakhtunkhwa, Peshawar.
2. Mr. Nauman Afzal Afridi (PAS BS-19),
Chief Economist P&D Department, Peshawar.

Subject:- NOTIFICATION

- Reference:-
(i) Secretary to Govt. of Khyber Pakhtunkhwa Irrigation Department (Establishment Section) Peshawar letter No.SOE/IRRI/3-248/2019, dated 08-01-2020.
(ii) Chief Engineer (North) Irrigation Department Khyber Pakhtunkhwa Peshawar letter No.186/North/Estab/Enquiry, dated 13-01-2020.

Please refer to the above wherein the show cause notice has been served upon me stating therein that "as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filling the same in the Court which has not been done in the instant case" In the same Notification the Honourable Chief Secretary, Khyber Pakhtunkhwa Dr. Kazim Niaz, competent authority hereby charged me with the charge sheet which is reproduced as under:-

"that you while posted as Superintending Engineer (OPS) Irrigation Circle D.I.Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filling the same in the Court which has not been done in the case titled Writ Petition No.214-D of 2019. Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I.Khan Bench causing which the court has decided the case in favour of the petitioner"

ATTESTED

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The Competent Authority Dr. Kazim Niaz, Chief Secretary, Khyber Pakhtunkhwa also served upon me the statement of allegations.

STATEMENT OF ALLEGATIONS

“that you while posted as Superintending Engineer (OPS) Irrigation Circle D.I.Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filling the same in the Court which has not been done in the case titled Writ Petition No.214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I.Khan Bench causing which the court has decided the case in favour of the petitioner”

In this regard, the undersigned, Engr: Muhammad Yasin, submit the following points elaborating the factual position.

Charge Sheet/Statement of allegations	Reply
<p>“that you while posted as Superintending Engineer (OPS) Irrigation Circle D.I.Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filling the same in the Court which has not been done in the case titled Writ Petition No.214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I.Khan Bench causing which the court has decided the case in favour of the petitioner”</p>	<p>1. The allegation that the para wise comments were not vetted from the learned Additional Advocate General, office is against the facts, record and result of misconception. The true facts are that, not only the para wise comments were forwarded by the representative of the case Engr: Muhammad Tahir, to the learned Additional Advocate General office for vetting, before filing it in the Court, rather the said para wise comments were duly vetted by the learned Additional Advocate General and the said fact is proved from the Contents of the back of the last page of the Comments where in, expressly and in unequivocal words, it was certified by</p>

2/

ATTESTED

the learned Additional Advocate General that the comments in question were duly vetted by him. The relevant certificate duly vetted of the learned Additional Advocate General is reproduced below for convenience.

“Certified that as per direction of Honourable Court, comments are duly vetted”

copy of the certificate duly attested by the examiner Peshawar High Court Bench D.I.Khan is attached as Annexure-A

2. Not only the comments were vetted by the learned Additional Advocate General rather the record further reveals that the deponent/ representative of the Department i.e Engr: Muhammad Tahir, Executive Engineer (Respondent No.3) was identified before the Additional Registrar, at the time of deposition, by the learned Additional Advocate General himself.

Copy of the affidavit duly attested by the Examiner Peshawar High Court Bench D.I.Khan is attached as Annexure-B.

From the above facts, it is crystal clear that the comments were vetted by the learned Additional Advocate General and were considered fit for filling in the Court. Needless to mention here that the order dated 01-10-2019 has already been challenged in the Honourable Peshawar High Court, bench D.I.Khan through Review Petition No.1399-D/2019 which is still sub judicious.

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ATTESTED

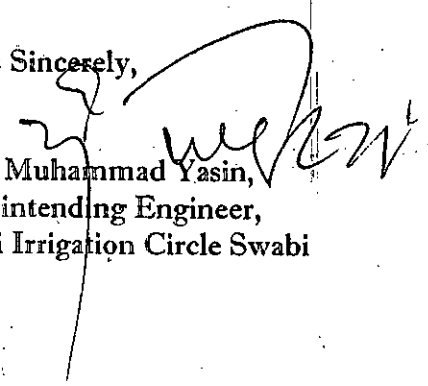
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Muhammad Yasin, have not committed the act/omission, within the meaning of Rule 3 of the Govt. of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011.

It is therefore, humbly prayed that the undersigned Engr: Muhammad Yasin, the then Superintending Engineer, D.I.Khan may kindly be exonerated from the charge and allegations and as a result thereof the inquiry proceedings against me, may please be filled.

Yours Sincerely,


Engr: Muhammad Yasin,
Superintending Engineer,
Swabi Irrigation Circle Swabi

ATTESTED


BEFORE THE PESHAWAR HIGH COURT, D.I. KHAN BENCH



Writ Petition No.214-D/2019

Mohib Ullah

Versus

Govt. of KPK etc:

INDEX

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Filed today
22/09/19

Copy Received
24/09/2019
5/9/19

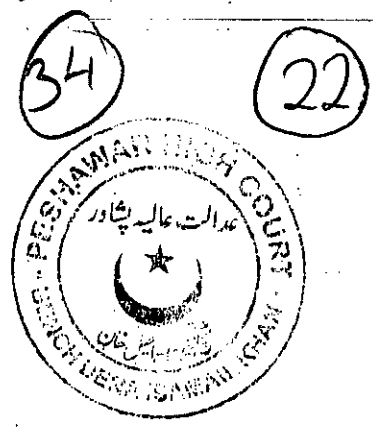
ATTESTED
13-09-2019
EXAMINOR
Peshawar High Court Bench
Dera Ismail Khan

Respondent

ATTESTED

**BEFORE THE HONOURABLE PESHAWAR HIGH
COURT, BENCH DERA ISMAIL KHAN.**

Writ Petition No. _____/2019



**Mohib Ullah Khan S/o Faiz Ullah Khan Caste Kundi
R/o Kundi Model Form, Chashma Road Tehsil &
District Dera Ismail Khan.**

.....(Petitioner)

VERSUS

- 1). Government of Khyber Pakhtunkhwa,
Through Secretary Irrigation, KPK
Peshawar.
- 2). Superintending Engineer, Irrigation
Department, Dera Ismail Khan.
- 3). Executive Engineer, Paharpur
Irrigation Canal, Dera Ismail Khan.
- 4). Deputy Commissioner / Land
Acquisition Collector, Dera Ismail
Khan.
- 5). Zilladar Irrigation Department,
Paharpur Canal, DIKhan.

.....(Respondents)

**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN 1973 TO ISSUE DIRECTION TO
RESPONDENTS TO INITIATE ACQUIRING
PROCEEDING ACCORDING TO LAND
ACQUISITION ACT 1894 AND TO PAY THE
COMPENSATION AMOUNT AS PER MARKET
VALUE OF PETITIONER'S LAND AREA 04K-
07M SITUATED IN MOUZA RATTIA KULACHI
WHICH THE RESPONDENTS HAVE
POSSESSED AND CONSTRUCTED ROAD
RIGHT OF WAY (ROW) FOR MAKALI MINER.**

Respectfully Sheweth:-

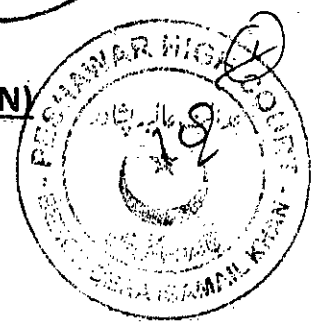
- 1-** That addresses of parties given above
are correct and sufficient for the
purpose of service.

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court Bench,
Dera Ismail Khan

35 23

IN THE PESHAWAR HIGH COURT BENCH (D.I.KHAN)



Writ Petition No.214-D/2019

Mohib Ullah Khan

vs

Govt of KPK etc

Petitioner

Respondents

Para Wise Comments on behalf of Respondent No.3

Filed today
ADUL-UL-ABSTRAC
04/09/19

Preliminary Objections

1. That the petitioner has got no cause of action or locus standi to file the instant petition.
2. That the petitioner is estopped by his own conduct to file the present petition.
3. That the petition is hit by the doctrine of bar of laches.
4. That the petitioner has deliberately and willfully concealed the real facts from this Honorable Court.
5. That the petitioner has not come to this Honorable Court with clean hands.

On Facts

1. This Para is correct.
2. That the Para No.2 is belonging to personal data of petitioner.
3. That the Para No.3 of writ petition is correct to the extent that the respondents have acquired the landed property for construction of Makali Minor according to law, in this respect related documentary proof is attached as annexure-"A"
4. That the Para No.4 is related to the revenue record and the Burdon of proof is on the shoulder of petitioner.
5. That the Para No.5 is correct to the extent that the respondents constructed Makali Minor in Khasra No.1/442 1/443 1/444 but took possession of extra land belonging to petitioner for right of way of Makali Minor which is not acquired uptil now accordingly.

ATTESTED
18-09-2019
EXAMINER
Peshawar High Court Bench (D.I. Khan)

ATTESTED

36

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- 6. That the Para No.6 pertains to revenue record and the Burdon of Proof is on the shoulders of petitioner.
- 7. This Para is incorrect. Not admitted;
- 8. That the Para No.8 is incorrect and the respondents are in correspondence with high ups for acquiring the petitioner's landed property.
- 9. Para No.9 is correct to the extent that Makali Minor was constructed in year 1987 and the right of way was made ~~parallel~~ ^{Parallel} to the Makali Minor on the petitioner's landed property remaining Para is incorrect.
- 10. Incorrect. The petitioner has no legal rights to invoke the constitutional jurisdiction of this Honorable Court with filing of writ petition in hand.

ON GROUNDS

Filed today
 14-1-2020
 02/09/19

- a). The Para a is related to revenue record and the burdon of proof is on the shoulders of petitioner.
- b). Para b is not admitted. The respondents are corresponding with Highups for acquiring the petitioner's property accordingly.
- c). Para c is incorrect, whenever the landed property of the petitioner is acquired then the respondents will be pay acquisition compensation according to the market value.
- d). Para d is incorrect under section 17 of Land acquisition Act 1894 the respondents have authority to take compulsory possession and after codal formalities the acquired land compensation will be paid to the petitioner according to market value.
- e). Para e is not concerned with answering respondents.
- f). Para f is correct to the extent that after acquiring the petitioner's landed property under land acquisition act, the respondents will pay compensation to the petitioner.
- g). Para is incorrect. the respondents are corresponding with high ups and whenever the petitioner's land is acquired under land acquisition act 1894 then the respondents will pay compensation to the petitioner as-per market value.

ATTESTED
 14-1-2020
 EXAMINOR
 Mansoor Ali Khan
 District High Court Bench,
 District Mansoor Khan

ATTESTED

37

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- h). Para h pertains to revenue record and the burdon of proof is on the shoulders of petitioner.
- i) This Para is legal, hence no comments.

It is, therefore, in the light of submissions made above, this Honorable Court may very graciously be please to dismiss the writ petition with cost.

[Signature]
 Superintending Engineer
 Irrigation Department D.I.Khan

[Signature]
 Executive Engineer Paharpur Irri:
 Canal Dera Ismail Khan

[Handwritten notes]
 109/119
 4564

127

Date	14-01-2020
Application Received on	14-01-2020
Copying Fee Deposited Rs.	
No of Papers	05 Pgs
Copying Fee	04
Urgent Fee	24/-
Total Fee	
Copy ready for delivery	14-01-2020
Copy delivered on	14-01-2020
Signature of Examiner	<i>[Signature]</i>
	14-01-2020

Certified to be true copy
 14-01-2020
 EXAMINER
 Muzaffargarh High Court Bench D.I.Khan
 Authorized Under Section 107
 Qanun-e-Shahadat 1974

ATTESTED

(50)

(26)

3 Certified that as per direction of Hon'ble
Court, comments are duly vetted.

~~ATTESTED~~
~~13-02-2020~~
EXAMINOR
Peshawar High Court
Qera Talwar

[Signature]
Assistant Director General
P. O. & S. S. Officer

ATTESTED
[Signature]

39

24
2

h). Para h pertains to revenue record and the burdon of proof is on the shoulders of petitioner.

i) This Para is legal, hence no comments.

It is, therefore, in the light of submissions made above, this Honorable Court may very graciously be please to dismiss the writ petition with cost.

[Handwritten Signature]
Superintending Engineer
Irrigation Department D.IKhan

[Handwritten Signature]
Executive Engineer Paharpur Irri:
Canal Dera Ismail Khan

ATTESTED
13-02-20
EXAMINOR
Peshawar High Court Bench.
Dera Ismail Khan

Filed today
Addl. Registrar
04/09/19

Amex - A

20

26

Certified that as per direction of Hon'ble Court, comments are duly vetted.

[Handwritten signature]

ATTESTED
~~14-01-2020~~
EXAMINER
Peshawar High Court
Dera Ismail Khan

ATTESTED
[Handwritten signature]

14-01-2020

41

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4
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BEFORE THE PESHAWAR HIGH COURT, D.I.KHAN BENCH

Writ Petition No.214/2019

Mohib Ullah

Versus

Govt. of KPK etc

AFFIDAVIT

I, Muhammad Tahir, Executive Engineer, Paharpur Irrigation Division, D.I.Khan, do hereby solemnly Affirm and declare on Oath that the contents of accompanying Para Wise Comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Court.

04/09/19

DEPONENT

CNIC-#12101-0899586-5

Identified by:

[Signature]

Assistant Advocate-General
Khyber Pakhtunkhwa DIKhan

Name: Mohib Tahir
Designation: Executive Engineer,
Paharpur, D.I.K.
On the identification of
(A. A. Emered)
on the 04 day of SEP 2019.
I declared the contents of the above
information to be true and correct on oath
3943 04/09/19

[Signature]
Assistant Advocate-General
Khyber Pakhtunkhwa
Dera Ismail Khan Bench.

ATTESTED
[Signature]
14-01-2020
EXAMINOR
Peshawar High Court Bench,
Dera Ismail Khan

ATTESTED

42

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GOVERNMENT OF KHYBER
PLANNING AND DEVELOPMENT DEPARTMENT

No. P&D/PS/CE/2020
Dated Peshawar the 27.01.2020

Ph: 091-9210501

SUMMON


Subject:- INQUIRY AGAINST ENGINEER . MUHAMMAD YASIN THE THEN SUPERINTENDING ENGINEER D.I.KHAN AND ENGINEER MUHAMMAD TAHIR, EXECUTIVE ENGINEER, PAHARPUR IRRIGATION DIVISON, D.I.KHAN.

Through proper Channel.

An Inquiry has been initiated against the above accused officers in the Writ Petition No. 214-D of 2019 Muhib Ullah Khan V/S Government of Khyber Pakhtunkhwa in PHC D.I.Khan Bench vide Notification No.SOE/IRRI/3-248/2019dated 08.01.2020 with the allegations against the accused officers for not vetting the comments from the Additional Advocate General before filing in the August High Court Bench D.I. Khan.

You are therefore requested to depute your authorized representative in the office of Chief Economist P&D Department on 06.02.2020 at 11.00 AM (Thursday) with the original/ duly attested and vetted copies of the record and comments in the instant case submitted in the Court alongwith complete file for verification and perusal. (A copy of the comments submitted by the accused officers are enclosed)

Inquiry Committee


1) Engr. Niaz Sarwar
Baloch BPS-20 CE
North.

2) Nauman Afzal Afridi,
(BPS-19) Chief
Economist P & D
Deptt.

To

Additional Advocate General.
D.I. Khan Bench D.I. Khan

ATTESTED

No. 8618 /AAG, dated D.I.Khan, the 04-02-2020.

From: The Additional Advocate-General
Khyber Pakhtunkhwa, D.I.Khan.

To: Inquiry Committee
1. Engr Niaz Sarwar
Baloch BPS-20 CE
North.
2. Nauman Afzal Afridi
BPS-19 Chief Economist
P&D Deptt.

Subject: **Inquiry against Engineer Muhammad Yasin the then
Superintending Engineer D.I.Khan and Engineer Muhammad
Tahir, Executive Engineer, Paharpur Irrigation Division,
D.I.Khan.**

Memo:

Refer to your letter No.P&D/PS/CE/2020-2154 dated 27.01.2020 on the subject noted above, it is brought to your notice that the para wise comments in writ petition No.214-D/2019, titled Mohib Ullah Khan Vs Govt. of KPK etc, were produced by respondent No.3 (Executive Engineer Paharpur Irrigation Division D.I.Khan), also signed by respondent No.2 (Superintending Engineer Irrigation Department D.I.Khan), and were duly vetted, as per assertion of the respondent department, by the then Assistant Advocate-General D.I.Khan before filing in the Honorable Peshawar High Court, D.I.Khan Bench and in this regard proper identification was also done by the then Assistant Advocate-General.

Khan
Additional Advocate-General
Khyber Pakhtunkhwa, D.I.Khan

ATTESTED
R



Ph: 091-9210501

GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING AND DEVELOPMENT DEPARTMENT

No. P&D/PS/CE/2020
Dated Peshawar the 12.02.2020

CHIEF ECONOMIST

Diary No. 2337 (B)

Dated 12/02/2020

To

The Additional Advocate-General
Khyber Pakhtunkhwa: D.I.Khan.

Subject:-

CERTIFIED COPY OF REVIEW PETITION NO. 1399-D/2019 (INQUIRY AGAINST ENGINEER. MUHAMMAD YASIN THE THEN SUPERINTENDING ENGINEER D.I.KHAN AND ENGINEER MUHAMMAD TAHIR, EXECUTIVE ENGINEER, PAHARPUR IRRIGATION DIVISION, D.I.KHAN.

In continuation of this Department letter of even number dated 27.01.2020 on the subject noted above an Inquiry is being conducted in the subject matter.

It is requested that attested copies of the Admission of the Review Petition No. 1399-D/2019 may kindly be submitted to facilitate the Inquiry Committee please.

Inquiry Committee

1) Engr. Niaz Sarwar
Baloch BPS-20 CE
North.

2) Naumiah Afzal Afridi,
(BPS-19) Chief
Economist P & D
Deptt.

ATTESTED

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REL # 360704

No. 2673-74/AAG, dated D.I.Khan, the 15-02-2020.

From: The Additional Advocate-General
Khyber Pakhtunkhwa, D.I.Khan.

To: Inquiry Committee
1. Engr Niaz Sarwar
Baloch BPS-20 CE
North.
2. Nauman Afzal Afridi
BPS-19 Chief Economist
P&D Deptt.

538
18/2/2020

Subject: **Inquiry against Engineer Muhammad Yasin the then
Superintending Engineer D.I.Khan and Engineer Muhammad
Tahir, Executive Engineer, Paharpur Irrigation Division,
D.I.Khan.**

Memo:

Refer to your letter No. P&D/PS/CE/2020 dated 12.02.2020 on the
subject noted above, the attested copy of Review Petition No. 1399-D/2019 is sent
herewith to you for your perusal.

Encl. certified copy of review

Kau
Additional Advocate-General
Khyber Pakhtunkhwa, D.I.Khan

D. 11
19/2
(SLO)

ATTESTED

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IN THE PESHAWAR HIGH COURT,
DERA ISMAIL KHAN BENCH

Review Petition

CIVIL MISCELLANEOUS NO. 1399 -D OF 20 19.

Petition Presented by Kamran Haidar (son of ...)

On behalf of the petitioner (or the petitioner, personally).

This petition is in proper form and is accompanied by

copies of all necessary documents. Enter petition in register

and place before a judge (S.B./D.B) for orders.

Cm
Reader to Additional Registrar

Dated 12/12/19

COUNTERSIGNED

ATTESTED

ADDITIONAL REGISTRAR

IN THE PESHAWAR HIGH COURT,
DERA ISMAIL KHAN BENCH

CIVIL MISCELLANEOUS NO. 1400 D OF 20 19

Petition Presented by Kamran Hayat (son of ...)

On behalf of the petitioner (or the petitioner, personally).

This petition is in proper form and is accompanied by

copies of all necessary documents. Enter petition in register

and place before a judge (S.B./D.B) for orders.

[Signature]
Reader to Additional Registrar

Dated 12/12/19

COUNTERSIGNED

[Signature]

ADDITIONAL REGISTRAR

ATTESTED

34

48

IN THE PESHAWAR HIGH COURT, DERA ISMAIL KHAN BENCH

CHECK LIST

		Yes	No
1	Case title <u>Court of Writ etc. vs- Mohib Ullah Khan</u>	✓	
2	Case is duly signed	✓	
3	The law under which the case preferred has been mentioned	✓	
4	Approved file cover is used	✓	
5	Affidavit is duly attested and	✓	
6	Case and Annexure are properly paged and numbered according to index	✓	
7	Copies of Annexure are legible and attested (If, not then better copies duly attested have been annexed)	✓	
8	Certified copies of all the requisite documents have been filed	✓	
9	Certificate specifying that no case on similar grounds was earlier submitted in this Court/ filed.	✓	
10	Case within time		✓
11	The value for purpose of Court fee and jurisdiction has been mentioned in the relevant column	✓	
12	Court fee in shape of Stamp Paper is affixed, (For Writ Rs.500/-) For other requirement.	✗	✗
13	Power of attorney is on proper form	✓	
14	Memo of Address filed	✓	
15	List of Book mentioned in the Petition	✓	
16	The requisite number of spare copies attached, (Writ Petition-3, Nos. Civil appeal (SB-1, SB-2), Civil Revision (SB-1, SB-2)	✓	
17	Case (Revision/ Appeal/ petition etc) is filed on the Prescribed form		✓
18	Power of Attorney is attached by Jail Authority (For Jail Prisoners Only)		✓

It is certified that formalities/documentation as required in column No.2 to 18 above, have been fulfilled.

[Signature]
 Additional Advocate General,
 Khyber Pakhtunkhwa,
 ADI Khan Advocate General
 High Court Dera Ismail Khan Bench

FOR OFFICE USE ONLY

Case No _____

Case received 12-12-2019

Complete in all respect (Yes/No) (If no, the ground _____)

Dated in Court _____

Signature *[Signature]*
 (Reader)
 Dated 12-12-2019

[Signature]
 Countersigned _____
 (Additional Registrar)

19

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IN THE PESHAWAR HIGH COURT, PESHAWAR
OPENING SHEET FOR WRIT BRANCH

Date of Filing: _____
District: _____

Case Type: Writ Petition Nature of Original Proceeding:

Category Code:

0	5	4	7
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(Categories & Sub categories are given at the back of the opening sheet)

Review/ Contempt of Court in respect of: _____

Writ of:

Habeas Corpus	Prohibition	Mandamus	Quo Warranto	Certiorari
---------------	-------------	----------	--------------	------------

If Certiorari:

Forum	Date	(Interlocutory/ (F)inal Order

Case Pertains to
 SB
 DB

Filed today 6/08
Addl. Registrar
12-12-19

Petitioner Name:	Govt. of Khyber Pakhtunkhwa etc.
Mobile No.:	09669280229
Address:	Addl. Advocate - General KPK
CNIC No.:	
Email Address:	aagdikhani@gmail.com

Counsel for Petitioner (s):	Advocate - General, KPK
Mobile No.:	0966-9280229
Address:	Addl. Advocate - General KPK
CNIC No.:	
Email Address:	aagdikhani@gmail.com

Respondents:	Mohib Ullah Khan
Address:	

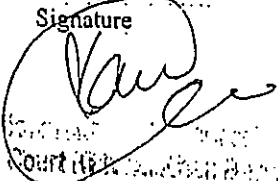
Original Order/Action/Inaction Complained of:

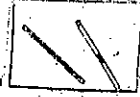
Prayer: It is, therefore, humbly prayed that on acceptance of this Review Petition the judgment/order dated 01/10/2019 passed by this Hon'ble Court in writ petition No. 214-D/2019 may kindly be reviewed and writ petition of the present Respondent may graciously be dismissed.

Law/Rules/governing the original proceedings/action/inaction

Note: Any suggestion to improve the proforma will be appreciated.

ATTESTED

Signature

High Court (Peshawar)



Annexure - D

50 'D' 36

SHOW CAUSE NOTICE

I, Mahmood Khan, Chief Minister as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Engr. Muhammad Yasin, Executive Engineer (BS-18)/Superintending Engineer (OPS), Irrigation Department as follows:

"That you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I. Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I. Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench causing which the court has decided the case in favour of the petitioner".

I am satisfied that you have committed the acts/omission specified in Rule-3 (b) of the said rules:

2. In terms of Rule-14(4) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, I as Competent Authority serve you with a show cause notice.


3. As a result thereof, I, have tentatively decided to impose upon you the following penalty/penalties specified under Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

- i. Withholding of two increments
- ii. For a two years.

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

5. If no reply to this notice is received within seven (07) days or not more than fifteen (15) days of its delivery, it shall be presumed that you have no defence to put in, and in that case an ex-parte action shall be taken against you.

ATTESTED


(Mahmood Khan)
Chief Minister,
Khyber Pakhtunkhwa



**GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT**

No. SO(Lit)/Irr:/3-248/2019 (Muhib Ullah)
Dated Peshawar the 28th December, 2020

To

Engr: Muhammad Yasin,
Superintending Engineer (OPS),
Project Manager, Remodeling of Warsak Canals System Project,
Peshawar.

Subject: SHOW CAUSE NOTICE

I am directed to refer to the subject noted above and to enclose herewith a copy of Show Cause Notice, duly signed by the competent authority i.e. Chief Minister, Khyber Pakhtunkhwa.

You are required to show cause as to why the penalty mentioned therein should not be imposed upon you and intimate whether you desire to be heard in person. If no reply to this notice is submitted within 07 days of its delivery, it shall be presumed that you have no defence to put in and experte action will be taken against you.

(Abdul Rauf)
Section Officer (Estt:)

Encl: as above

Immediate
PM
Form/a 10
29/12/20

Remodeling of Warsak Canal System Irr. Deptt:	
Copy No.	751
Date	28-12-2020
PM	D.D-I
Adviser	D.D-II
JDA	A.D

ATTESTED

Annexure - ~~10~~ E
Court

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GOVERNMENT OF KHYBER PAKHTUNKHWA
PROJECT DIRECTOR, REMODELING OF WARSAK CANAL SYSTEM
IN DISTRICT PESHAWAR & NOWSHERA, IRRIGATION DEPARTMENT,
Civil Colony, Warsak Road, Kababyan, Peshawar. Ph: 091-9222774-5 Fax: 091-52016

To

The Honorable Chief Minister,
Khyber Pakhtunkhwa

Subject:
Ref:

SHOW CAUSE NOTICE.
Secretary to Govt. of Khyber Pakhtunkhwa Irrigation Department
letter No. SO(Lit)/Irr:/3-248/2019 (Muhib Ullah), dated 28-12-2020.

Respectfully Sheweth,

The Competent Authority i.e the Honorable Chief Minister Khyber Pakhtunkhwa Mehmood Khan served upon me the Show Cause Notice stating therein that **"That you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I.Khan committed the act/omission that as per procedure, joint Para wise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench causing which the court has decided the case in favor of the petitioner"**

In this regard, the undersigned, Engr. Muhammad Yasin, Executive Engineer (BS-18)/Superintending Engineer (OPS), without prejudice my right to object the proceeding and subject show cause notice, I submit the following points elaborating the factual position.

Show Cause Notice	Reply
That you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I. Khan committed the act/omission that as per procedure, joint Para wise comments were required to be prepared and were supposed to	1. That prior to the instant show cause notice, the undersigned was served with charge sheet and statement of allegations by the inquiry Committee, the reply whereof was filed inter alia, as under: (i). The allegation that the Para wise

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ATTESTED

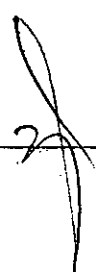
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be vetted from the Additional Advocate General Office, D.I.Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/S Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench causing which the court has decided the case in favour of the petitioner"

comments were not vetted from the learned Additional Advocate General office is against the facts, record and result of misconception. The true facts are that, not only the Para wise comments were forwarded by the representative of the case Engr. Muhammad Tahir, to the learned Additional Advocate General office for vetting, before filing it in the Court, rather the said Para wise comments were duly vetted by the learned Additional Advocate General and the said fact is proved from the Contents of the back of the last page of the Comments wherein, expressly and in unequivocal words, it was certified by the learned Additional Advocate General that the comments in question were duly vetted by him. The relevant certificate duly vetted of the learned Additional Advocate General is reproduced below for convenience. **"Certified that as per direction of Honorable Court, comments are duly vetted"** copy of the certificate duly attested by the examiner Peshawar High Court Bench D.I.Khan is attached as **Annexure-A**

(ii). Not only the comments were vetted by the learned Additional Advocate General rather the record further reveals that the deponent /representative of the Department i.e Engr. Muhammad Tahir, Executive Engineer (Respondent No.3) was



ATTACHED

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~~18/11~~

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identified before the Additional Registrar, at the time of deposition, by the learned Additional Advocate General himself. Copy of the affidavit duly attested by the Examiner Peshawar High Court Bench D.I.Khan is attached as **Annexure-B**.

(iii). Needless to mention here that the order dated 01-10-2019 has already been challenged in the Honorable Peshawar High Court, bench D.I.Khan through Review Petition No.1399-D/2019 which is still sub judicious.

2. That in the light of my reply, the inquiry committee sought the record/comments of learned Additional Advocate General who confirmed in his report that the impugned comments were duly vetted by his office, before filing it in the Court.

3. That after the receipt of report and record of learned Additional Advocate General no force and substance was left in the charge and allegation and that is why that the Inquiry Committee in its report gave finding / opinion in an unequivocal terms that the impugned comments were got vetted by learned Additional Advocate General. It was also reported by learned Additional Advocate General. That representative of the Department i.e Muhammad Tahir Executive Engineer, Pharpur Irrigation Division D.I.Khan was identified before

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ATTESTED

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7/9/21
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		<p>Assistant Registrar. The inquiry Committee also opioned that the charge was not proved fully and the accused were found not guilty. Copy of the inquiry report is attached as Annexure-C.</p> <p>4. In the light of the report of learned Additional Advocate General coupled with the opinion of inquiry Committee, where by it declared the accused innocent, there was no justification for issuance of instant show cause notice and no ground is present for imposing penalty of withholding of increments for two years, particularly in the circumstance when the very show cause notice, charge sheet and statement of allegation are issued in gross violation of E&D Rules, 2011.</p>
--	--	---

In these circumstances, it is crystal cleared that the undersigned Engr. Muhammad Yasin, Executive Engineer (BS-18)/Superintending Engineer (OPS) has not committed the act/omission specified in the Rule 3(b) of Efficiency & Disciplinary Rule 2011. Therefore, the penalty, proposed in the Show Cause Notice, is unjustified, against the Law & Rules and the undersigned may kindly be exonerated from the charges.

Note: "It would be matter of honor for me to avail the chance of personal hearing, if given"

[Signature]
 Engr. Muhammad Yasin,
 Project Manager (RWCS)
 04/1/2021

ATTESTED

To be substituted for this Department order of even number dated
26th October, 2021



GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 02nd November, 2021

ORDER

No. SO(E)/IRRI/12-30/2015/Inquiry: WHEREAS, Engr. Muhammad Yaseen, Executive Engineer (BS-18)/Superintendent Engineer (OPS) Irrigation Department was proceeded against under the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, for the alleged allegation that you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I. Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and be vetted from the Additional Advocate General Office, D.I. Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench, the court decided the case against Department and resultant interest of the Government was compromised.

2. AND WHEREAS, for the said act/omission specified in rule-3(b) of the rules ibid, he was served charge sheets/statement of allegations.

3. AND WHEREAS, an inquiry committee comprising of Engr. Niaz Serwar Baloch, Chief Engineer (North) Irrigation Department and Mr. Noman Afzal Afridi, Chief Economics P&D Department was constituted, who submitted the inquiry report.

4. AND WHEREAS, an opportunity of personal hearing was afforded by the competent authority before the Secretary to Govt. of Khyber Pakhtunkhwa Industries, Commerce & Technical Education Department to the accused in terms of Rule- 15 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 so as to fulfill the legal requirements, who submitted the report.

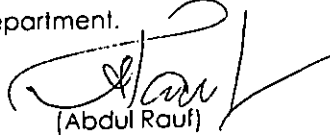
5. NOW THEREFORE, the Competent Authority, after having considered the charges, material on record, inquiry report of the inquiry committee and explanation of the officers/official concerned, in exercise of the Powers under Rule- 14 (5)(ii) of Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose the minor penalty of "withholding of two annual increments for two years" upon the aforementioned officer.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy of the above is forwarded to: -

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South) Irrigation Department, Peshawar.
3. The Chief Engineer (North) Irrigation Department, Peshawar.
4. All Superintending Engineers of Irrigation Department.
5. The District Accounts Officer, Bannu.
6. PSO to Chief Secretary, Khyber Pakhtunkhwa.
7. PS to Secretary Irrigation Department.
8. PS to Secretary Establishment Department.
9. PA to Additional Secretary, Irrigation Department.
10. PA to Deputy Secretary (Tech) Irrigation Department.
11. Officers/Official concerned.


(Abdul Rauf)
Section Officer (Estt:)





OFFICE OF THE SUPERINTENDING ENGINEER
GOVT: OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT BANNU

Annexure - G

57

"G"

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No. 2224 / 1-E /

Dated Bannu the 05 / 11 / 2021.

To

The Secretary to Govt: of Khyber Pakhtunkhwa,
Irrigation Department Peshawar.

Attention: Section Officer (Establishment)

Subject: ORDER

Reference: Your good office No: SO(E)/Irr:/12-30/2015/Inquiry, dated: 02-11-2021.

Received
05/11/2021

Your kind attention is invited to the orders issued vide letter under reference and the Review Petition under Rule-03 of the Khyber Pakhtunkhwa Civil Servant (Appeal) Rules, 1986 read with Rule-17 of the Government Servant (E&D) Rule-2011 against the penalty order dated: 02-11-2021 is hereby submitted for your kind perusal and with the request to kindly process the same to the Honorable Chief Minister for his consideration, please.

Encl: As Above

SUPERINTENDING ENGINEER

Copy forwarded in advance to the Honorable Chief Minister for consideration, please.

PSCMD.

Received Review Spal.

Amir
07/11/2021.

07
G

SUPERINTENDING ENGINEER
Bannu Irrigation Circle Bannu

05/11/2021

Office of the PSCM

Diary No. 1749

Dated 07/11/2021

ATTESTED

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To

The Worthy Chief Minister,
Khyber Pakhtunkhwa, Peshawar

(Reviewing Authority)

THROUGH PROPER CHANNEL

Subject: - **REVIEW PETITION UNDER RULE-3 OF THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPEAL) RULES, 1986 READ WITH RULE-17 OF THE GOVERNMENT SERVANTS (E&D) RULES, 2011 AGAINST THE PENALTY ORDER NO.SO(E)/IRR:/12-30/2015/INQUIRY DATED 02.11.2021, WHEREBY THE PENALTY OF WITHHOLDING OF TWO ANNUAL INCREMENTS FOR TWO YEARS IS IMPOSED UPON THE PETITIONER.**

Sir,

Most profoundly, the petitioner submits as under:-

1. That the petitioner was subjected to a formal inquiry after the findings of the fact-finding inquiry.
2. That the petitioner was charged in the charge sheet as "*that you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I.Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I.Khan before filing the same in the Court, which has not been done in the case titled writ petition No. 214-D/2019, Mohibullah VS Govt. of Khyber Pakhtunkhwa in Peshawar High Court, D.I.Khan Bench causing which the court has decided the case in favour of the petitioner.*" (Charge Sheet & Statement of Allegation are attached as Ann-I & II.)
3. That to probe into the charges, an inquiry committee was constituted, comprised of Mr. Nauman Afzal Chief Economist P&D Department and Mr. Engr: Niaz Sarwar, Chief Engineer Irrigation Department. The inquiry committee probed into the allegations leveled against the petitioner. The inquiry committee after conducting the inquiry, gave the conclusion as

ATTESTED



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" The charge sheet/ statement of allegations for failing to prepare joint para wise comments and not getting it vetted from the office of Additional Advocate General before filing the same in court of law"

were not proved as:-



- (i) The joint para-wiswe comments have been prepared & got it vetted from the learned Additional Advocate General office well in time.
- (ii) The Deponent/ representative of Irrigation Deptt: has been identified before the Additional Registrar at the time of deposition by the learned Additional Advocate General.
- (iii) The Deponent/representative of the Irrigation Deptt: deposited the vetted comments in the Peshawar High Court D.I Khan Bench on behalf of all the respondents well in time.

Hence, the charges against the accused officers **have not been proved fully and not found guilty**, as per para-No.02 of the Establishment & Administration Department Notification No. SOR-V/(E&AD)/Instructions/2014, dated. 23.03.2014."

(Copy of inquiry report is attached as -Ann-III.)

- 4. That despite clear finding by the inquiry committee, the petitioner was served with a show cause notice dated 28.12.2020 which was properly replied with a request of Personal Hearing. Thereafter personal hearing was conducted by Mr. Javed Marwat, Secretary Industries as per order of the worthy Chief Minister, Khyber Pakhtunkhwa. The Said Officer (Secretary Industries), after conducting personal hearing, opined that the proposed penalty in the Show Cause Notice may be reviewed as "**Censure**" keeping in view the finding of the inquiry committee.
- 5. That inspite of clear finding of the Inquiry Committee and opinion of personal hearing conducting authority, the penalty of withholding of two annual increments for two years has been imposed upon the petitioner under (E&D) Rules, 2011 vide order dated 02.11.2021.

(Copy of order is attached as Annex-IV)


ATTESTED


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6. That the penalty order, referred to above, is liable to be reviewed/set-aside on the following grounds amongst the other.

GROUND:-

- A. Because, the impugned penalty order is against the findings of the inquiry committee, which has categorically held that "Charge not proved" and the petitioner "not found guilty".
- B. Because as per Rule-14 of E&D Rules, 2011 the Competent Authority, if satisfied that inquiry was conducted in accordance with the provisions of E&D Rules and shall exonerate the accused official if charges are not proved. But where the Competent Authority is satisfied that the inquiry proceedings have not been conducted in accordance with the E&D Rules, 2011 (Rule-14(6)) then in that case "after recording reasons in writing" either remand the case to the same inquiry committee or may order for denovo inquiry through another inquiry committee. But in case of petitioner, neither there is dis-satisfaction note of the authority upon inquiry proceedings or upon the findings of the inquiry committee nor remanded or ordered denovo inquiry. This shows that the findings of the inquiry committee in respect of petitioner were correct and admitted so by the authority.
- C. Because the authority has not recorded any reasons as to why not agreeing with the findings of the authority (Secretary Industries) conducted personal hearing and imposed the penalty without recording disagreement note.
- D. Because, the so-called basis as given in summaries of imposing penalty was never a part of charge sheet or show cause notice and as such the petitioner has been penalized without charge sheet, show cause notice etc in respect of "basis" of penalty, whereby the allegations as specified in the charge sheet, have already been held as "not proved" by the constituted inquiry committee, upon report of which the Competent Authority had shown his satisfaction as mentioned in Rule-14 of the E&D Rules, 2011.
- E. The Hon'able C.M is requested to probe into the reasons and persons behind giving and submitting such wrong and baseless summaries for penalizing the petitioner at any cost. This aspect also shows the malafide intentions of the

~~REJECTED~~

61

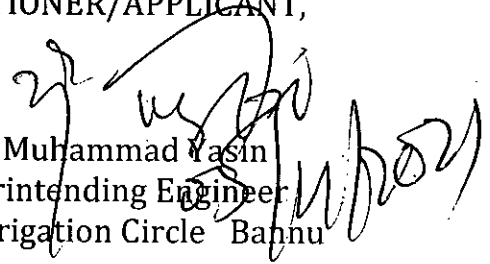
477

authorities / officials who have submitted incorrect and wrongly based summaries, especially, after clear findings of the inquiry committee.

- F. Because, the petitioner has been condemned unheard in respect of "so called basis referred in summaries" of imposing penalty which is the violation of principle of Natural Justice as well as of Article 10-A of the Constitution.
- G. Because the allegations, as contained in the charge sheet/ statement of allegations have been declared not proved by the inquiry committee, while for the rest of the "basis" of penalty were never reflected in the charge sheet and as such also not reflected in the show cause notice. Thus the whole action becomes null and void.
- H. Because, a Review petition No. 1399-D/2019 against the order of High Court in W.P No. 214-D/2019 is still pending and subjudice, meaning thereby, the cause of taking action was premature as no loss to Govt: Exchequer is occurred so far. Thus the impugned penalty is based on a premature lis, and cause and amounts to penalize the petitioner on presumptions, which is not permissible in the eyes of law.
- I. Because, the impugned penalty order is against the law, norms of justice, material on record, and also in violation of spirit of E&D Rule, 2011 as well as principle of Natural Justice, hence, liable to be set-aside.

It is, therefore, most humbly prayed that the impugned order dated 26.11.2021 (referred in heading of Review Petition) may very graciously be set-aside/reviewed and the annual increments of the petitioner may be restored with all back and consequential benefits.

PETITIONER/APPLICANT,


Engr: Muhammad Yasin
Superintending Engineer
Bannu Irrigation Circle Bannu

ATTORNEY


Annexure - H

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"H"

48

Most Immediate



**GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT**

No. SO(E)/Irr:/9-3/99/NAB/Vol-VIII
Dated Peshawar the 08th June, 2022

To

Engr. Muhammad Yaseen,
Superintending Engineer,
Bannu Irrigation Circle, Bannu

Subject:

**REVIEW PETITION UNDER RULE-3 OF THE KHYBER
PAKHTUNKHWA CIVIL SERVANTS (APPEAL) RULES, 1986 READ
WITH RULE-17 OF THE GOVERNMENT SERVANTS (E&D) RULES,
2011 AGAINST THE PENALTY ORDER NO. SO E/IRR/12-
30/2015/INQUIRY DATED 02.11.2021, WHEREBY THE
PENALTY OF WITHHOLDING OF TWO ANNUAL INCREMENTS
FOR TWO YEARS IS IMPOSED UPON THE PETITIONER.**

I am directed to refer to your appeal against the penalty "Withholding of Two Increment for Two Years" received to this Department vide Chief Minister's Secretariat Letter No. SO(Lit/Estt) CMS/KP/4-1/Appeals/2021/11716-17 dated: 26.11.2021 on the subject noted above and to state that the competent authority (Chief Minister, Khyber Pakhtunkhwa) has considered your appeal and has decided to uphold the order of penalty and to reject the review petition having no valid grounds.

Encl; As Above;

Ijaz Khan
(IJAZ KHAN)
Section Officer (Estt.) 8/6/22

Endst: Even No. and Date.

Copy of the above is forwarded to: -

1. The Section Officer (Lit/Estt), Chief Minister's Secretariat, Peshawar, w/r to the letter quoted above.
2. PS to Secretary Irrigation Department.
3. PA to Additional Secretary Irrigation Department.
4. PA to Deputy Secretary (Admn) Irrigation Department.

[Signature]

Section Officer (Estt:)

63

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 949/2022

Muhammad Yaseen

Petitioner

VERSUS

Chief Secretary, Khyber Pakhtunkhwa & others

Respondents

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 949/2022

Muhammad Yaseen

Petitioner

VERSUS

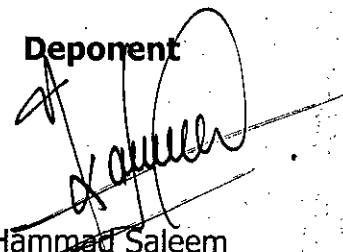
Chief Secretary, Khyber Pakhtunkhwa & others

Respondents

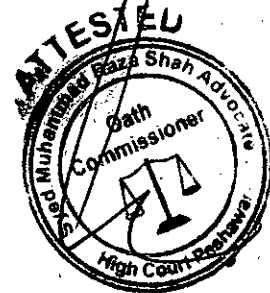
AFFIDAVIT

I, Hammad Saleem, Superintendent (OPS) Litigation Section, Irrigation Department on behalf of respondent No. 01 to 03 do hereby affirm and declare on oath that the contents of report are true and correct to the best of my knowledge and belief that nothing has been kept concealed from this Hon'ble Tribunal.

Deponent



Hammad Saleem
Superintendent (OPS) Litigation Section
Irrigation Department
CNIC No. **42401-2662972-5**
Cell No. **0345-2846304**



Service appeal No. 949/2022

65

Engr. Muhammad Yaseen.....Appellant/Petitioner

Versus

Chief Secretary, Khyber Pakhtunkhwa and others Respondents

JOINT PARA-WISE COMMENTS ON BEHALF OF THE RESPONDENT NO. 01 to 03

RESPECTFULLY SHEWETH:

Preliminary objections:

1. That the appellant has got no cause of action/locus standi.
2. That the appellant has not come to this court with clean hands.
3. That the appellant has concealed some material facts from this Hon'ble Court.
4. That the appellant is disentitled for the relief claimed.
5. That the appeal of the appellant is time barred.
6. That the appeal is bad for misjoinder and nonjoinder of necessary parties.

ON FACTS


1. Pertains to record.
2. **Incorrect.** Parawise comments were required to be prepared and were supposed to be vetted from the AAG office D.I.Khan before filing the same in court which has not properly been done in the case titled W.P. No. 214-D/07-2022 Mohibullah VS Govt. of KPK. Furthermore, it was found that the comments have been submitted without consulting and signature of the Secretary Irrigation (**Annex-I**).
3. **Incorrect.** The competent authority after considering facts of the case, observed that joint parawise comments submitted by the accused to the court were not properly vetted and consenting reply was filed without consulting and without signature of Secretary Irrigation. The competent authority exercises his powers in term of Rule 14(5) of KPK, Efficiency and Discipline-Rules, 2011 imposed minor penalty of two increments for two years.
4. **Correct** to the extent that while extending personal hearing conducted by Mr. Javed Marwat Secretary Industries Department deduced that joint parawise reply submitted by the accused officer to the court were although stamped by the office of the AAG but not properly vetted and the charges were proved as a result the case has been decided against the Government due to consenting reply from the accused officer (**Annex-II**).
5. The competent authority after thorough examination of the findings of inquiry committee and opinion of personal hearing observed that consenting parawise comments were submitted without proper vetting from the AAG office and not agreed with recommendations of inquiry committee and exercised the powers in term of rule 14(5) of KPK Government Servant Efficiency & Disciplinary Rules, 2011 and imposed minor penalty of withholding of two increments for two years.
6. Pertains to record.
7. **Incorrect.**

Grounds: -

- A. **Incorrect.**
- B. **Incorrect.**
- C. Pertains to record.
- D. Charge sheet and statement of allegations were properly served upon the accused officer incorporating therein, the allegations as per E&D Rules 2011 and opportunity to submit written defense was also provided.
- E. **Incorrect.**

- 66
- F. **Incorrect.** Proper show cause notice was served upon the accused officer before the imposition of minor penalty of withholding of two increments for two years.
- G. According to E&D Rules, 2011 Charge sheet and statement of allegations contains the allegations while in show cause notice penalty to be imposed is required to be incorporated.
- H. Correct to the extent that CPLA has been filed in Supreme Court of Pakistan against the judgement of Peshawar High Court. However, PHC D.I.Khan decided the case against the Government and directed that extra compensations amount may be made by Irrigation Department on account of possession of extra land of the petitioner. The case was decided in favor of the petitioner due to submission of consenting, faulty parawise comments showing malafide of the accused officer. It is further submitted that the accused officer was bound to defend the interest of the government but he failed to discharge his duties.
- I. Disciplinary proceeding was taken against the officer purely in the light of E&D Rules, 2011 and no violation in any form has been committed.
- J. **Incorrect.**
- K. **Incorrect.** Para-B above is reiterated.
- L. **Incorrect.**
- M. **Incorrect.**
- N. **Incorrect.**
- O. That the respondents also seek permission to arise further points at the time of arguments.

It is, therefore humbly prayed that the service appeal No. 949/2022 of Engr. Muhammad Yaseen VS Govt. of Khyber Pakhtunkhwa with devoid of merits may be dismissed with cost, please.


Secretary to Govt. of Khyber Pakhtunkhwa,
Irrigation Department
Respondent No. 01 to 03

41/5

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Mohib Ullah Khan
Petitioner

vs

GOVERNMENT
Respondents

Para Wise Comments on behalf of Respondent No.3

Filed today
Addl. Sessions Judge
02/05/19

Any Objections

That the petitioner has got no cause of action or locus standi to file the instant petition.

That the petitioner is estopped by his own conduct to file the present petition.

That the petition is hit by the doctrine of bar of laches.

That the petitioner has deliberately and willfully concealed the real facts from this Honorable Court.

That the petitioner has not come to this Honorable Court with clean hands.

Facts

1. This Para is correct.
2. That the Para No.2 is belonging to personal data of petitioner.
3. That the Para No.3 of writ petition is correct to the extent that the respondents have acquired the landed property for construction of Makali Minor according to law, in this respect related documentary proof is attached as annexure-"A"
4. That the Para No.4 is related to the revenue record and the Burdon of proof is on the shoulder of petitioner.
5. That the Para No.5 is correct to the extent that the respondents constructed Makali Minor in Khasra No.1/442 1/443 1/444 but took possession of extra land belonging to petitioner. for right of way of Makali Minor which is not acquired upto now accordingly.

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6. That the Para No.6 pertains to revenue record and the Burdon of Proof is on the shoulders of petitioner. 42/5

7. This Para is incorrect. Not admitted. 68

8. That the Para No.8 is incorrect and the respondents are in correspondence with high ups for acquiring the petitioner's landed property.

9. Para No.9 is correct to the extent that Makali Minor was constructed in year 1987 and the right of way was made ~~Parallel~~ ^{Parallel} to the Makali Minor on the petitioner's landed property remaining Para is incorrect.

10. Incorrect. The petitioner has no legal rights to invoke the constitutional jurisdiction of this Honorable Court with filing of writ petition in hand.

ON GROUNDS

Filed today
Addl. Registrar
[Signature]

a). The Para a is related to revenue record and the burdon of proof is on the shoulders of petitioner.

b). Para b is not admitted. The respondents are corresponding with Highups for acquiring the petitioner's property accordingly.

c). Para c is incorrect, whenever the landed property of the petitioner is acquired then the respondents will be pay acquisition compensation according to the market value.

d). Para d is incorrect under section 17 of Land acquisition Act 1894 the respondents have authority to take compulsory possession and after codal formalities the acquired land compensation will be paid to the petitioner according to market value.

e). Para e is not concerned with answering respondents.

f). Para f is correct to the extent that after acquiring the petitioner's landed property under land acquisition act, the respondents will pay compensation to the petitioner.

g). Para is incorrect. the respondents are corresponding with high ups and whenever the petitioner's land is acquired under land acquisition act 1894 then the respondents will pay compensation to the petitioner as per market value.

ATTESTED

13-02-22
EXAMINOR
Dehwar High Court Bench,
Dehra Dun, U.P.

69

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Para h pertains to revenue record and the burdon of proof is on the shoulders of petitioner.

This Para is legal, hence no comments.

It is, therefore, in the light of submissions made above, this Honorable Court may very graciously be please to dismiss the writ petition with cost.

[Signature]
Superintending Engineer
Irrigation Department D.IKhan

[Signature]
Executive Engineer Paharpur Irri:
Canal Dera Ismail Khan

ATTESTED
13-02-2020
EXAMINOR
Peshawar High Court Bench
Dera Ismail Khan

Monday 4064
10/09/19
Registrar

70

44

Certified that as per direction of Hon'ble Court, comments are duly vetted.

ATTESTED
13-2-20
EXAMINOR
Peshawar High Court
Dera Ismail Khan

[Signature]
Assistant Advocate General
Dera Ismail Khan



(70)

8

**GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE AND TECHNICAL
EDUCATION DEPARTMENT**

PERSONAL HEARING

**Subject: WRIT PETITION No. 214-D OF 2019 FILED BY MUHIB ULLAH KHAN
VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA ETC IN
PESHAWAR HIGH COURT D.I. KHAN BENCH**

23. According to Rule 15 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, the Chief Minister Khyber Pakhtunkhwa is the Competent Authority to grant an opportunity of "Personal Hearing" to the accused. The task of personal hearing in the subject case was entrusted to the undersigned.
24. In pursuance to the above, the accused officers, Engr. Muhammad Yasin, the then Superintending Engineer (OPS), Irrigation Circle, D.I Khan and Engr. Muhammad Tahir, the then XEN, Paharpur Irrigation Division, D.I Khan were called for personal hearing on 29th March, 2021 along with Section Officer (Estab), Irrigation Department, as departmental representative.
25. Brief background of the case is that back in 1987, the Government of Khyber Pakhtunkhwa acquired land measuring to 11 Kanal and 09 Marlas for construction of Mechali Minor in CRBC Irrigation Division, D.I Khan, after fulfillment of all codal formalities.
26. In the year 2019, one Mr. Muhib Ullah, the owner of 08 Kanal and 03 Marlas land out of the total 11 Kanal and 09 Marlas land in the above case, filed Writ Petition No. 214/2019 in the Peshawar High Court, D.I Khan Bench, claiming that Irrigation Department illegally possess 04 Kanal and 07 Marlas extra land of the Petitioner and requested for payment of Rs. 10,000,000/- per Kanal as compensation.
27. On 01st October, 2019, the case was decided in favour of the petitioner after submission of consenting comments by the respondents i.e. Engr. Muhammad Yasin, the then Superintending Engineer (OPS), Irrigation Circle, D.I Khan and Engr. Muhammad Tahir, the then XEN, Paharpur Irrigation Division, D.I Khan.
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28. On the advice of Law Department, a Review Petition was filed in the PHC, D.I. Khan Bench against the above judgment because the XEN CRBC, Irrigation Division D.I. Khan has verified that the Division possesses no extra land of the Petitioner. A fact finding enquiry was conducted in the case by Engr. Muhammad Mujahid Saeed, the then DG, Small Dams and the officers were served by the Competent Authority with the charges that;

"as per procedure, joint para-wise comments were required to be prepared and were supposed to be vetted from office of the Adl. Advocate General, D.I. Khan before filing the same in the Court which has not been done in the subject case, causing which the Court has decided the case in favour of the Petitioner."

29. Formal enquiry in the case was conducted by Mr. Noman Afzal Afridi Chief Economist P&D and Mr. Niaz Sarwar Baloch, Chief Engr. Irrigation against Engr. Muhammad Yasin and Engr. Muhammad Tahir. The Enquiry Committee concluded that;


"the joint para-wise comments were verified from office of the Additional Advocate General well in time. The rep of Irrigation Department has been identified before the Adl. Registrar at the time of deposition of learned AAG and deposited the vetted comments in the PHC D.I. Khan Bench on behalf of the respondents well in time."

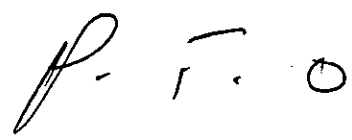
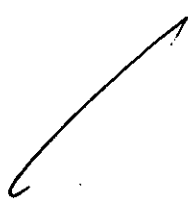
30. In their reply, the accused officers denied the charges and requested for Personal Hearing, which was held on 29th March, 2021 as mentioned in para-24/N above.

31. The officers were heard and record was perused. It was deduced that the joint para-wise reply, submitted by the accused officers in the Court, were although stamped by office of the AAG but not properly vetted. It was also observed that although the case has been decided against the Government due to consenting reply from the accused officers / respondents, however, Review Petition has been filed and the case is still subjudice in the Court, which, apparently, causes no loss to the Government Exchequer.

32. In view of the above, the undersigned is of the view that minor penalty of "withholding of two annual increments for two years" may be reviewed as "censure" to be served upon Engr. Muhammad Yasin, the then Superintending Engineer, Irrigation Circle, D.I Khan and Engr. Muhammad Tahir, the then XEN, Paharpur Irrigation Division, D.I Khan in the instant case.

Chief Secretary
Khyber Pakhtunkhwa


(M. JAVED MARWAT) 4/10/2021
Ex-Secretary Industries, Commerce &
Technical Education Department



Chief Secretary
Khyber Pakhtunkhwa
Diary No: 304
Dated: 5/10/21

709
4-10-2021

33. Consenting parawise comments submitted without proper vetting from the Advocate General office has been partially proved against the accused officer. Mere filing review petition against the decision will not change loss to Government. I therefore, do not agree with the recommendation of the authorized officer for reduction of the penalty.

[Signature]
8/10
CHIEF SECRETARY

CHIEF MINISTER

34 - P- 23/5, approved. Two years increment
~~with 4 days for two years~~
12-10-2007 approved.
Chief Minister
Khyber Pakhtunkhwa

[Signature]

Secretary / Migration

[Signature]

CA. to Chief Secretary
Khyber Pakhtunkhwa
Diary No: 2094
Dated: 8/10/07

[Signature]

BS(A)

[Signature]
14/11/07
14/10

SO(B)

14/10

Diary No. 1715
Date 08-10-07

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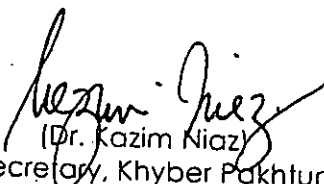
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CHARGE SHEET

I, Dr. Kazim Niaz, Chief Secretary, Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Engr. Muhammad Yasin, Executive Engineer (BS-18)/Superintending Engineer (OPS), Swabi Irrigation Circle, Swabi the then Superintending Engineer (OPS), Irrigation Circle, D.I. Khan.

"That you while posted as Superintending Engineer (OPS), Irrigation Circle, D.I. Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I. Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench causing which the court has decided the case in favour of the petitioner".

2. By reasons of the above you appear to be guilty of misconduct under Rule-3 of the Govt. of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified under Rule- 4 of the rules ibid.
3. You are, therefore, required to submit your written defense within seven (07) days of the receipt of this charge sheet to the Inquiry Officer/ Inquiry Committee, as the case may be.
4. Your written defense, if any, should reach the Inquiry Officer/Inquiry Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.


(Dr. Kazim Niaz)
Chief Secretary, Khyber Pakhtunkhwa
(Competent Authority)

DISCIPLINARY ACTION

I, Dr. Kazim Niaz, Chief Secretary Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Engr. Muhammad Yasin, Executive Engineer (BS-18)/Superintending Engineer, Irrigation Circle, Swabi the then Superintending Engineer (OPS), Irrigation Circle, D.I. Khan has rendered himself liable to be proceeded against, as he committed the following act/omission, within the meaning of Rule 3 of the Govt. of Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

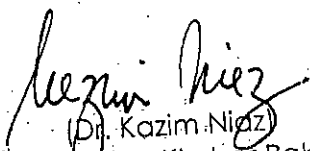
"That he while posted as Superintending Engineer (OPS), Irrigation Circle, D.I. Khan committed the act/omission that as per procedure, joint parawise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General Office, D.I. Khan before filing the same in the court which has not been done in the case titled Writ Petition No. 214-D of 2019 Muhib Ullah V/s Govt. of Khyber Pakhtunkhwa in the Peshawar High Court D.I. Khan Bench causing which the court has decided the case in favour of the petitioner".

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 rules ibid.

- i. Mr. Nauman Afzal Chief Economist P&D.
- ii. Engr. Niaz Sarwar Chief Engr. Irrigation.

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 submit report within 30 days of the receipt of this order, as to the commission of the aforesaid act of misconduct.

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.


 (Dr. Kazim Niaz)
 Chief Secretary, Khyber Pakhtunkhwa
 (Competent Authority)

BACKGROUND:

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13/15

The competent authority i.e. Chief Secretary of Khyber Pakhtunkhwa constituted a committee comprising of Engr: Niaz Sarwar Baloch, Chief Engineer (North) Irrigation Department, and Mr. Nauman Afzal Afridi, Chief Economist P&D Department, to conduct formal inquiry under I&D Rules, 2011 against Engr: Muhammad Yasin and Engr: Muhammad Tahir, the then Superintending Engineer D.I.Khan and Executive Engineer Paharpur Irrigation Division D.I.Khan respectively (Annex-I).

The charge sheet / statement of allegations were that "both the said officers while posted as Superintending Engineer D.I.Khan and Executive Engineer Paharpur Irrigation Division, D.I.Khan have committed the act / omission that as per procedure joint Para wise comments were required to be prepared and were supposed to be vetted from the Additional Advocate General office D.I.Khan before filling the same in the Peshawar High Court D.I.Khan Bench has not been done in the case titled writ petition No. 214-D of 2019: Muhib Ullah VS Government of Khyber Pakhtunkhwa causing which the court has decided the case in favour of the petitioner" (Annex-II).

PROCEEDINGS:

1. The charge sheet and statement of allegations alongwith the notification were served upon the accused, with the direction to furnish their reply within 7 days vide Chief Engineer (North) Irrigation Department Khyber Pakhtunkhwa office letter No. 186/North/Estb/Inquiry, dated 13-01-2020 (Annex-III).
2. The accused Engr: Muhammad Yasin, the then Superintending Engineer D.I.Khan submitted his reply vide No. 7039-40/11-M, dated 23-01-2020 (Annex-IV), his reply to charge sheet / statement of allegation is reproduced under:
 - (i) The allegation that Para wise comments were not vetted from the learned Additional Advocate General office is against facts, record and result of conception. The true facts are that, not only the Para wise comments forwarded by the representative of the case, Engr: Muhammad Tahir learned Additional Advocate General office for vetting before filling



77 14/8 (14) 19

court rather the said Para wise comments were duly vetted by the learned Additional Advocate General and the said fact is proved from the contents of the back of the last page of the comments wherein, expressly and in unequivocal words it was certified by the Additional Advocate General that the comments in question were duly vetted by him. The relevant certificate duly vetted by the learned Additional Advocate General is reproduced below for convince. "Certified that as per direction of Honorable Court comments are duly vetted".

- (ii) Not only were the comments duly vetted by the learned Additional Advocate General rather the record further reveal that the deponent/representative of the Department i.e. Engr: Muhammad Tahir was identified before the Additional Register, at the time of deposition by the learned Additional Advocate General himself.
3. The accused Engr: Muhammad Tahir the then Executive Engineer Baharpur Irrigation Division D.I.Khan submitted his reply (Annex-V), which is reproduced as under;
- (i) It is submitted that the allegation that Para wise comments were not got vetted from the learned Additional Advocate General office is against facts, record and result of miss conception. The true facts are that not only the Para wise comments were forwarded to the Additional Advocate General office for vetting, before filling it in the court, rather the said Para wise comments were duly vetted by the learned Additional Advocate General and the said fact is proved from the contents of the back of the last page of the comments wherein, expressly and in unequivocal words, it was certified by the Additional Advocate General that the comments in question were duly vetted by him.
- (ii) It is brought to your notice that the order dated 01-10-2019 of the Peshawar High Court Bench D.I.Khan has already been challenged in Peshawar High Court Bench D.I.Khan through "Review petition, which is still sub judice. Engr. Muhammad Tahir Concluded.

FINDINGS:

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15 (15)

On the perusal of the record as well as written reply of the accused against Charge Sheet / Statement of allegations, the findings are as under:-

1. Both the accused were called upon for personal hearing on 27th January. The Department representative for the instant case i.e. Engr: Muhammad Tahir, the then Executive Engineer Paharpur Irrigation Division D.I appeared and submitted his statement along with supporting documents. Similarly, the accused Engr: Muhammad Yasin, the then Superintendent Engineer D.I.Khan was also heard who apprised the committee the comments were prepared and vetted from the learned Additional Advocate General. He further apprised the committee that after vetting the comments from learned Additional Advocate General is supposed to be re-submitted to the respondents for their signature and after doing needful by the respondents give proper certificate and affidavit and there after deposited in Peshawar High Court D.I.Khan Bench. Needless to mention here that the writ of Peshawar High Court, D.I.Khan Bench dated 01-10-2019 has already been challenged in the Honorable Peshawar High Court D.I.Khan Bench "Review Petitioner No. 1399-D/2019" which is still sub judicious.
2. The comments were forwarded to AAG vide letter No.P&D/PS/Chief Engr (North) Irrigation Department Peshawar/2020-2154, dated 27-01-2020 (Annex-VI) for verification. The learned AAG verified the comments to be vetted by their office (Annex-VII).
3. The record further reveals that deponent / representative of the Irrigation Department i.e. Engr: Muhammad Tahir, the then Executive Engineer Paharpur Irrigation Division D.I.Khan, was identified before the Additional Registrar at the time of deposition by the learned Additional Advocate General (Annex-VIII).
4. A review petition has been lodged in the Peshawar High Court D.I.Khan Bench, the same been verified from the office of Additional Advocate General's office vide letter No. P&D/PS/Chief Engr/2020, dated 27-01-2020 (Annex-IX).

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CONCLUSION:


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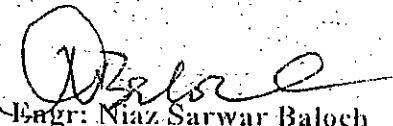
16 (15)
21

" The charge sheet / statement of allegations for failing to prepare joint Para wise comments and not getting it vetted from the office of Additional Advocate General before filing the same in the court of Law were not proved as:-

- (i) The joint Para wise comments have been prepared & got it vetted from the learned Additional Advocate General office well in time.
- (ii) The Deponent / representative of Irrigation Department has been identified before the Additional Registrar at the time of deposition by the learned Additional Advocate General.
- (iii) The Deponent / representative of Irrigation Department deposited the vetted comments in the Peshawar High Court D.I.Khan Bench on behalf of all the respondents well in time.

Hence, the charges against the accused officers have not been proved fully and not found guilty, as per Para No.02 of the Establishment & Administration Department Notification No.SOR-V/(I&AD)/Instruction/2014. dated 28/03/2014.


Mr. Nauman Afzal Afridi
Chief Economist P&D
Department Peshawar


Major Niaz Sarwar Baloch
Chief Engineer (North) (Retired)
Irrigation Department
Khyber Pakhtunkhwa



AUTHORITY LETTER

I, Secretary to Govt. of Khyber Pakhtunkhwa Irrigation Department do hereby authorize Mr. Hammad Saleem, Superintendent (OPS) Litigation Section, Irrigation Department to file report and make statement before the Khyber Pakhtunkhwa Service Tribunal, Peshawar in connection with Service Appeal No. 949/2022 filed by Muhammad Yaseen V/S Government of Khyber Pakhtunkhwa through Chief Secretary & others.

Secretary to Govt. of Khyber Pakhtunkhwa,
Irrigation Department

VAKALAT NAMA

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NO. _____/20

IN THE COURT OF KP SERVICE TRIBUNAL, PESHAWAR.

Engr. Muhammad Yasin (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Govt. of KP and others (Respondent)
(Defendant)

I/We, Engr. Muhammad Yasin

Do hereby appoint and constitute **Mr. M. Asif Yousafzai, ASC** 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

Y. Asif Yousafzai
(CLIENT)

ACCEPTED

M. Asif Yousafzai
M. ASIF YOUSAFZAI, ASC,

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar

S. Khan
SHAHKAR KHAN YOUSAFZAI
ADVOCATE.