

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

**Service Appeal No. 507/2024**

Shaukat Rehman, Superintendent Engineer (H/Q) O/O Chief Engineer (East), PHED,  
Peshawar.

----- Appellant

**Versus**

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary,  
Civil Secretariat, Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary PHED, Khyber Road Peshawar.

----- Respondents

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Deponent

CNIC No.17301-1500534-1

Cell# 0333-6661969

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 507/2024**

Shaukat Rehman, Superintending Engineer (H/Q) O/O Chief Engineer (East), Phed,  
Peshawar

Appellant

**VERSUS**

1. The Govt. of Khyber Pakhtunkhwa through  
Chief Secretary, Civil Secretariat, Peshawar
2. Govt. of Khyber Pakhtunkhwa through Secretary  
Public Health Engineering Department, Khyber Road, Peshawar

**Khyber Pakhtunkhwa  
Service Tribunal**

Diary No. 15178

Dated 26/8/24

Respondents

**JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDANTS NO. 1 & 2.**

**PRELIMINARY OBJECTIONS:**

1. That the appellant has no cause of action / locus standi.
2. That the appellant has not come to this Honorable Tribunal with clean hands.
3. That the present appeal in hand is not maintainable in its present form and also in the present circumstances of the issue.
4. That the present appeal is liable to be dismissed with cost for miss joinder / non joinder of necessary parties.
5. That the appellant has filed the instant appeal on malafide motives.
6. That the instant appeal is against the prevailing laws and rules.
7. That the appellant is estopped by his own conduct to file the present appeal.
8. That the instant appeal is badly time-barred.

**RESPECTFULLY SHEWETH,**

1. Pertains to record. Hence no comment.
2. Pertains to record. Hence no comment.
3. Correct. Hence no comment.
4. Pertains to record.
5. Pertains to record.
6. Incorrect and misconceived. It is clarified that disciplinary proceeding against BS-18 and above officers of the respondent department for the VR under NAB Ordinance in compliance of the Supreme Court Order dated dated 26.10.2016 passed and Suo Moto Case No.17/2016, wherein, the Chief Minister Khyber Pakhtunkhwa tentatively imposed major penalty of "Removal from Service" and the same was communicated to the appellant for reply within 14 days **(Copy of the letter along with show cause notice is attached at Annex-A).**

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The appellant submitted his appeal against his tentative penalty of "Removal from Service" wherein, the competent authority has given an opportunity of personal to the appellant and authorized the Secretary Housing to afford the opportunity of personal hearing to accused in terms of Rule-15 of Khyber Pakhtunkhwa Govt. Servants (E&D) Rules, 2011 on behalf of yhe Chief Minister, Khyber Pakhtunkhwa, the appellant was summoned for personal hearing along with departmental representative on 09.11.2020. During personal hearing of appellant and on perusal of record it transpired that he opted for Voluntary Return (VR) with the NAB under section 25(a) of NAB Ordinance 1999 and the appellant deposited amounting to **Rs. 15,299,491/-** and SUO MOTO Case and non application of the provision of VR in Rule-3 of Khyber Pakhtunkhwa E&D Rules, 2011 in retrospect, major penalty of Reduction to a lower post was recommended.

The appellant was undergone VR in connection with assets accumulated beyond non sources of income. Keeping the sanctity the order of the Supreme Court given in 2016 and order date 06.12.2016 of the august Supreme Court of Pakistan wherein, ***it is mentioned that no final order of removal from service shall be passed against any of the officials, who have entered into the voluntary return, if the amount of VR paid by him is less than 25 lacs (Copy of the Order Sheet is attached at Annex-B).***

7. Correct to the extent, however, it is clarified that major penalty of "Reduction to Lower post for a period of one year" under Rule-14 (5)(ii) of Khyber Pakhtunkhwa Govt. Servants (E&D) Rules, 2011 was imposed on appellant on 25.11.2020.

It is also worth to mention here that in light of Esta Code, Khyber Pakhtunkhwa Govt. Servants Section-4(b)(i) provides that "***Reduction to a lower post or pay scale or to a lower stage in a time scale for a maximum period of 5 years: provided that on a restoration to original pay scale or post, the penalized Government Servant will be placed below his erstwhile Juniors promoted to higher posts during subsistence of the period of penalty***". (Copy of the relevant portion of Esta Code is attached at Annex-C).

8. Pertains to record. Hence, no comments.

#### **GROUNDS:**

- A. Incorrect and misconceived. As discussed in para-6 & 7 of the above.
- B. Incorrect and misconceived. As discussed in the preceding paras.
- C. Incorrect and misconceived. Hence denied. The appellant has been treated in light of the departmental proceedings recommended by the competent authority.
- D. Incorrect and misconceived. As discussed in para-7 of the above.
- E. Pertains to record. Hence, no comments.
- F. Incorrect and misconceived. Hence, denied. As discussed above.

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**PRAYERS:**

In view of the aforementioned facts, it is, therefore, most humbly prayed before this honorable Tribunal that in light of the penalty of "Reduction to a lower post for a period of one year" the present appeal being vexatious and devoid of merit may please be dismissed with cost.



Respondent No.1 & 2  
KHAYAM HASSAN KHAN  
Secretary PHE Department

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**  
**Service Appeal No. 507/2024.**

Shaukat Rehman, Superintendent Engineer (H/Q) O/O Chief Engineer (East), PHED,  
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**Versus**

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Civil Secretariat, Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary PHED, Khyber Road Peshawar.

----- Respondents

**AFFIDAVIT**

I, Mr. Khayam Hasan Khan, Secretary, Government of Khyber Pakhtunkhwa Public Health Engineering Department Peshawar do hereby affirm and declare on oath that the contents of the comments in Service Appeal No. 507/2024 titled "Shoukat Rehman" Versus Government of Khyber Pakhtunkhwa & Others" are true and correct to the best of my knowledge and belief and nothing has been concealed from the Honorable Service Tribunal Peshawar.

It is further stated on oath that in this appeal the answering respondents neither been placed ex-parte nor their defense has been struck off / cost.

DEPONENT  
CNIC No.17301-1500534-1  
Cell # 0333-6661969

**ATTESTED**  
  
21/8/2024

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**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**PUBLIC HEALTH ENGG: DEPARTMENT**


(Civil Secretariat, Technical Block, Police Line Road, Peshawar)


Dated Peshawar, the August 08, 2024

 PHEDKPGovt

 PHEDKPGovt

 phed.lit@gmail.com

 0919223432

 0919213922

**AUTHORITY LETTER**

**No. SO(LIT)PHED/ST-112/Shoukat Rehman:** Mr. Rehmat Khan, Section Officer (Litigation) PHE Department, is hereby authorized to submit the Joint Parawise Comments and attend the Khyber Pakhtunkhwa in connection with the defense of S.A No.507/2024 titled "Shoukat Rehman VS Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering Department & Others" on behalf of the Secretary Public Health Engineering Department, to protect the Government interest.



**SECRETARY**  
**Public Health Engineering**  
**Department Peshawar**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
PUBLIC HEALTH ENGG: DEPARTMENT

No.SO(Estt)/PHED/15-2/2016/NAB  
Dated Peshawar, the September 02, 2020

**MOST IMMEDIATE**

To

Mr. Shaukat Rehman,  
Executive Engineer (BPS-18),  
Public Health Engg: Division Bulk WS Mansehra


Subject: **DISCIPLINARY PROCEEDINGS FOR VR UNDER NAB ORDINANCE  
IN COMPLIANCE OF SUPREME COURT ORDER DATED 24-10-2016  
PASSED IN SUO MOTO CASE NO.17 OF 2016.**

I am directed to refer to the subject noted above and to enclose herewith two copies of the Show Cause Notice containing tentative major penalty of "Removal from service", duly signed by the Competent Authority (Chief Minister Khyber Pakhtunkhwa) alongwith a copy of inquiry report conducted by Mr. Masood Ahmad, Secretary Law, Parliamentary Affairs & Human Rights Department, Peshawar and to state that second copy of the Show Cause Notice may be returned to this department after having signed as a token of receipt immediately.

2. You are directed to submit your reply, if any, **within 14-days of the delivery of this letter**, otherwise, it will be presumed that you have nothing to put in your defence and that ex-parte action will follow.
3. You are further directed to intimate whether you want to be heard in person or otherwise.


Encls: As above.

**ENDST: OF EVEN NO. & DATE:**


  
SECTION OFFICER (ESTT)  
2.9.2020

Copy forwarded for information to:-

1. PS to Principal Secretary to Chief Minister Khyber Pakhtunkhwa Peshawar.
2. PS to Special Assistant to Chief Minister for PHE Khyber Pakhtunkhwa.
3. PS to Secretary PHE Department Khyber Pakhtunkhwa Peshawar.

  
SECTION OFFICER (ESTT)

Attested

  
Section Officer (Lit)  
PHE Department  
Peshawar.

## SHOW CAUSE NOTICE

I, Mahmood Khan, Chief Minister, Khyber Pakhtunkhwa, as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you Mr. Shaukat Rehman (BPS-18), Design Engineer (North) Public Health Engg: Department Peshawar, as follows:-

1. (i) that consequent upon the completion of inquiry conducted against you by the Inquiry Officer for which you were given opportunity of hearing vide communication No.AS(OP)/1-1/INSTRUCTIONS/ENQUIRY/2020/3171-73 dated 02-03-2020; and  
(ii) on going through the findings and recommendations of the inquiry officer/inquiry committee, the material on record and other connected papers including your defence before the inquiry officer,

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

- (a) Corruption
- (b) Misconduct

2. As a result thereof, I, as the Competent Authority, have tentatively decided to impose upon you the following penalty of "Removal from Service" under rule-4 of the said rules.

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

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

5. A copy of the findings of the Inquiry Officer is enclosed.



( MAHMOOD KHAN )  
CHIEF MINISTER  
KHYBER PAKHTUNKHWA

Attested

Section Officer (Lit)  
PHE Department  
Peshawar.



Mr. N.A. Butt, ASC (CMA.7361/16)  
Mr. Abdul Latif Afridi, ASC (CMA.7258, 7259 & 7293/16)  
Syed Arshad, ASC (CMA.7270 & 7274/16)

Date of hearing : 06-12-2016

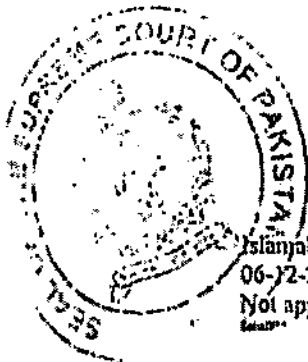
**ORDER**

AMIR HANI MUSLIM, J.- The learned Attorney General for Pakistan has requested for time to seek instructions from the Government on the issue of exercise of powers by the Chairman NAB under Section 25(a) of the NAB Ordinance.

2. We have heard the Prosecutor General NAB. For want of time, the matter is adjourned. The Federal and Provincial Governments shall conclude the departmental proceedings against the officials who have entered into voluntary return and report compliance. ~~However, no final order of removal from service shall be passed against any of the officials who have entered into voluntary return if the amount of voluntary return paid by him is less than 25 lacs.~~

3. In the intervening period, the restraining order passed against the Chairman NAB and or any other officer authorized by him in this behalf from accepting any offer of voluntary return in term of Section 25(a) of the NAB Ordinance, shall continue till disposal of these proceedings. To come up on 2<sup>nd</sup> January 2017.

Sd/- Anwar Zaheer Jamali, CJ  
Sd/- Amir Hani Muslim, J  
Certified to be True Copy



Islamabad the,  
06-12-2016

Not approved for reporting

21342/16

*[Signature]*  
8/12/16

Court Associate  
Supreme Court of Pakistan  
Civil/Crisis/Insiaad

Date of Pre.	08-12-16
No of Words	900
No of Pages	2
Requis.	5-00
Copy	5-50
Court Fee	10-50
Date of Completion	8/12/16
Date of delivery	8-12-16
Compared by/Prepared by	<i>[Signature]</i>

Affected

Section Officer (Lit)  
PHE Department  
Peshawar.

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**GOVERNMENT OF THE KHYBER PAKHTUNKHWA ESTABLISHMENT AND  
ADMINISTRATION DEPARTMENT.**

**NOTIFICATION**

*Peshawar dated the 16th September, 2011.*

NO.S0(REG-VII)E&AD/2-6/2010.-In exercise of the powers conferred by section 26, of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

1. Short title, application and commencement.—(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

(3) These shall come into force at once.

2. Definitions.—(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "accused" means a person in Government service against whom action is initiated under these rules;
- (b) "appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;
- (c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made thereunder or an authority as notified under the specific laws/rules of Government;
- (d) "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;
- (e) "Chief Minister" means the Chief Minister of the Khyber Pakhtunkhwa;
- (f) "competent authority" means-
  - (i) the respective appointing authority;
  - (ii) in relation to a Government servant of a tribunal or court functioning under Government, the appointing authority or the Chairman or presiding officer of such tribunal or court, as the case may be, authorized by the appointing authority to exercise the powers of the competent authority under these rules;

Provided that where two or more Government servants are to be proceeded against jointly, the competent authority in relation to the accused Government servant senior most shall be the competent authority in respect of all the accused.

- (g) "corruption" means-
  - (i) accepting or obtaining or offering any gratification or valuable thing, directly or indirectly, other than legal remuneration, as a reward for doing or for bearing to do any official act; or
  - (ii) dishonestly or fraudulently misappropriating, or indulging in embezzlement or misusing Government property or resources; or
  - (iii) entering into plea bargain under any law for the time being in force and returning the assets or gains acquired through corruption or corrupt practices voluntarily; or
  - (iv) possession of pecuniary sources or property by a Government servant or any of his dependents or any other person, through his or on his behalf,

*Attested*  
Section Officer (Lit)  
PHE Department  
Peshawar.

which cannot be accounted for and which are disproportionate to his known sources of income; or

- (v) maintaining a standard of living beyond known sources of income; or
- (vi) having a reputation of being corrupt;
- (h) "Governor" means the Governor of the Khyber Pakhtunkhwa;
- (i) "inefficiency" means failure to efficiently perform functions assigned to a Government servant in the discharge of his duties;
- (j) "inquiry committee" means a committee of two or more officers, headed by a convener, as may be appointed by the competent authority under these rules;
- (k) "inquiry officer" means an officer appointed by the competent authority under these rules;
- (l) "misconduct" includes-
  - (i) conduct prejudicial to good order or service discipline; or
  - (ii) conduct contrary to the Khyber Pakhtunkhwa Province Government Servants (Conduct) Rules, 1987, for the time being in force; or
  - (iii) conduct unbecoming of Government servant and a gentleman; or
  - (iv) involvement or participation for gains, directly or indirectly, in industry, trade, or speculative transactions by abuse or misuse of official position to gain undue advantage or assumption of such financial or other obligations in relation to private institutions or persons as may compromise the performance of official duties or functions; or
  - (v) any act to bring or attempt to bring outside influence, directly or indirectly, to bear on the Governor, the Chief Minister, a Minister or any other Government officer in respect of any matter relating to the appointment, promotion, transfer or other conditions of service; or
  - (vi) making appointment or having been appointed or promoted on extraneous grounds in violation of any law or rules; or
  - (vii) conviction for a moral offence by a court of law.
- (2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

3. Grounds for proceedings.—A Government servant shall be liable to be proceeded against under these rules, if he is-

- (a) inefficient or has ceased to be efficient for any reason; or
- (b) guilty of misconduct; or
- (c) guilty of corruption; or
- (d) guilty of habitually absenting himself from duty without prior approval of leave; or
- (e) engaged or is reasonably believed to be engaged in subversive activities, or is reasonably believed to be associated with others engaged in subversive activities, or is guilty of disclosure of official secrets to any un-authorized person, and his retention in service is prejudicial to national security; or
- (f) entered into plea bargaining under any law for the time being in force and has returned the assets or gains acquired through corruption or corrupt practices voluntarily.

4. Penalties.—(1) The following are the minor and the major penalties, namely:

- (a) Minor penalties:
  - (i) censure;
  - (ii) withholding, for a specific period, promotion or increment subject to a maximum of three years, otherwise than for unfitness for

Attested  
Section Officer (Lit)  
PHE Department  
Peshawar.

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promotion or financial advancement, in accordance with the rules or orders pertaining to the service or post:

Provided that the penalty of withholding increments shall not be imposed on a Government servant who has reached the maximum of his pay scale:

(iii) recovery of the whole or any part of any pecuniary loss caused to Government by negligence or breach of order;

(b) Major penalties:

<sup>4</sup>(i) reduction to a lower post or pay scale or to a lower stage in a time scale for a maximum period of five years:

Provided that on a restoration to original pay scale or post, the penalized Government servant will be placed below his erstwhile juniors promoted to higher posts during subsistence of the period of penalty;]

- (ii) compulsory retirement;
- (iii) removal from service; and
- (iv) dismissal from service.

(2) Dismissal from service under these rules shall disqualify a Government servant from future employment under Government.

(3) Any penalty under these rules shall not absolve a Government servant from liability to any other punishment to which he may be liable for an offence, under any other law, committed by him while in service.

5. Initiation of proceedings.—(1) If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules it shall either:-

(a) proceed itself against the accused by issuing a show cause notice under rule 7 and, for reasons to be recorded in writing, dispense with inquiry:

Provided that no opportunity of showing cause or personal hearing shall be given where-

- (i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or
- (ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment; or
- (iii) a Government servant is involved in subversive activities; or
- (iv) it is not reasonably practicable to give such an opportunity to the accused; or

(b) get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 11:

Provided that the competent authority shall dispense with the inquiry where-

- (i) a Government servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or
- (ii) a Government servant is or has been absent from duty without prior approval of leave:

Provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary

<sup>1</sup> Subs. by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18<sup>th</sup> July, 2012.

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Section Officer (Lit)  
PHE Department  
Peshawar.