


FORM OF ORDER SHEET

Court of _____

Appeal No. 1084/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	01/08/2024	<p>The appeal of Mr. Zia Ullah presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 08.08.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

SERVICE APPEAL No. 1086 /2024

ZIA ULLAH VS HEALTH DEPARTMENT

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APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK
Advocate Supreme Court.

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

SERVICE APPEAL No. 1089 /2024

ZIA ULLAH DRUG INSPECTOR (BS-17) C/O DIRECTORATE GENERAL DRUG CONTROL & PHARMACY SERVICES, OLD FATA SECRETARIATE WARSAK ROAD, KHYBER PAKHTUNKHWA PESHAWAR.

.....**APPELLANT**

VERSUS

- 1- The Chief Minister through Principal Secretary, Chief Minister Secretariate Khyber Pakhtunkhwa Peshawar.
- 2- The Chief Secretary, Khyber Pakhtunkhwa Peshawar.
- 3- The Secretary Establishment Khyber Pakhtunkhwa Peshawar.
- 4- The Secretary to Government of Khyber Pakhtunkhwa, Health Department, Khyber Pakhtunkhwa Peshawar.
- 5- The Dr. Inam Ul Haq Inquiry Officer in Fact Finding Inquiry & Departmental Representative/Prosecutor in Formal Inquiry
[SIMULTANEOUSLY].

.....**RESPONDENTS**

APPEAL UNDER SECTION -4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE "IMPUGNED INQUIRY ORDER DATED 15TH APRIL 2024", HAVING BEEN SUPERSTRUCTURED/CONSTRUCTED ON A SUCH FACT FINDING INQUIRY, WHICH HAS BEEN "QUASHED" BY ESTABLISHMENT DEPARTMENT VIDE LETTER DATED 11-12-2023 AS WELL AS AGAINST THE "BIASED" PRESENCE OF A SUCH PERSON IN THE PROCEEDINGS OF FORMAL INQUIRY AGAINST THE APPELLANT WHILE PERFORMING THE DUTIES OF "DEPARTMENTAL REPRESENTATIVE /PROSECUTOR" WITHOUT PROPER APPOINTMENT, WHO ALSO HAD BEEN THE INQUIRY OFFICER IN THE AFOREMENTIONED "QUASHED" FACT FINDING INQUIRY AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

PRAYERS:

THAT ON ACCEPTANCE OF THIS APPEAL, THE "IMPUGNED INQUIRY ORDER DATED 15TH APRIL 2024" PASSED BY THE "COMPETENT AUTHORITY" MAY KINDLY BE SET ASIDE AT ITS VERY INCEPTION IN THE LIGHT OF REPORTED JUDGMENT RENDERED IN "P L D 2022 SC 119", "2007 S C M R 1643" & "1981 S C M R 1160" RESPECTIVELY AS THE SAME IS CONSIDERABLY SERIOUS BECAUSE IT REFERS TO A SUPERSTRUCTURE/ CONSTRUCTION HAVING BASED ON A SUCH FACT FINDING INQUIRY, WHICH HAS BEEN "QUASHED" BY ESTABLISHMENT DEPARTMENT VIDE A LETTER DATED "11-12-2023" AND CONSEQUENTLY ALSO RENDERED VIOLATIVE OF RULE "5" (1) OF THE "EFFICIENCY & DISCIPLINE RULES, 2011".

THAT THE PERFORMANCE OF IMPUGNED DUTIES OF DEPARTMENTAL REPRESENTATIVE/PROSECUTOR IN VIOLATION OF RULE "10" "(1)" "(c)" OF THE "EFFICIENCY & DISCIPLINE RULES, 2011" AS REFLECTED IN LETTER DATED 28-04-2024, IN THE FORMAL INQUIRY BY A SUCH PERSON ["RESPONDENT NO.5"] WHO ACTED SIMULTANEOUSLY i.e AS A JUDGE IN THE "QUASHED" FACT FINDING INQUIRY AND AS A DEPARTMENTAL REPRESENTATIVE/PROSECUTOR IN THE FORMAL INQUIRY AGAINST THE APPELLANT, MAY ALSO KINDLY BE SET ASIDE BECAUSE IT REFERS TO A SUCH ACT ON THE PART OF "RESPONDENT NO.5" WHICH IS IN UTTER DISREGARD OF REPORTED JUDGMENT RENDERED IN "P L J 2017 Lahore 462", AND THE JUDGMENT OF THIS AUGUST TRIBUNAL PASSED IN A SERVICE APPEAL VIDE "DATED 28-02-2024" FOR THE FAVOUR OF FAIR PLAY/TRIAL TO AVOID THE ELEMENT OF "BIAS" IN THE LIGHT OF "ARTICLE 10-A" OF THE CONSTITUTION OF PAKISTAN.

THAT FURHTERMORE, THE "COMPETENT AUTHORITY" MAY ALSO FURTHER PLEASE BE DIRECTED TO NOT ACT UPON/INITIATE ANY DISCIPLINARY PROCEEDINGS AGAINST THE APPELLANT IN FUTURE UNDER THE GARB OF A SUCH FACT FINDING INQUIRY REPORTS; AUDIT REPORTS, PROGRESS REPORTS OR ANY OTHER MATERIALS & INFORMATIONS PLACED BEFORE IT WHICH HAS NO LEGAL BACKING/SANCTION OF LAW UNDER THE RELEVANT RULES & LAW.

ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE AWARDED IN FAVOUR OF THE APPELLANT.

R/SHEWETH:
ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That, the appellant was directed by the one i.e Dr. Inam Ul Haq ("respondent No.5") pretending himself a Fact Finding Inquiry Officer, to appear before him vide a letter dated 29-11-2023, while mentioning the reference of the "rule "5" Khyber Pakhtunkhwa Government Servant E & D rules R/W Cabinet Sectt: Est: Divn. Islamabad letter No.11/5/2000-D-1, Dated 27-3-2000 & S&GAD letter No.SOR-II (S&GAD) 5(29)/99/Vol-III, Dated 21-04-2000, of E & D Rules, 1973" in the letter ibid for the favour of justification of the validity of fact finding inquiry regarding its initiation, hence the appellant complied with orders and appeared before the "respondent No.5".
(Copy of the letter dated 29-11-2023 attached as Annexure....."A").

2- That, the appellant in addition to his appearance also submitted a reply/letter vide a dated 30-11-2023, while impugning the legal status of the fact finding inquiry, to the extent of the reference made in the abovementioned letter with a copy endorsed thereof to the Establishment Department.

(Copy of the reply/letter dated 30-11-2023 attached as Annexure....."B").

3- That, the Establishment Department clarified the legal status of the fact finding inquiry at the very outset and quashed the same by communicating the matter under reference to the quarter concerned while declaring it without of legal force/invalid ("void inquiry") vide a letter 11-12-2023 ("letter dated 11-12-2023"), at its Para 2, with the remarks as that "the reference mentioned in the letter dated 29-11-2023, has been repealed and is no more in the field".

(Copy of the letter dated 11-12-2023 attached as Annexure....."C").

4- That, the Health Department feeling the gravity of the "void inquiry", subsequently communicated the same to the concerned attached Department vide a letter dated 02-01-2024 for the favour of further necessary action.

(Copy of the letter dated 02-01-2024 attached as Annexure....."D").

5- That, in spite of abovementioned communication, the "respondent No.5" proceeded unilaterally and concluded the "void inquiry" as such and forwarded it to the "Competent Authority" as an information/recommendation for the favour of initiating a formal inquiry, hence the same was initiated.

6- That, the Civil Servant Act, 1973 ("CSA, 1973") is an act to regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of the Khyber Pakhtunkhwa and there are twenty seven (27) various Sections contained in it.

7- That, the Section "26" of the "CSA, 1973" provides as that, the Governor or any person authorized by the Governor in this behalf, may make such rules as appear to him to be necessary or expedient for carrying out the purposes of this Act.

8- That, the respondents No.1 2 & 3, have framed the Efficiency & Discipline Rules, 2011 ("E & D Rules") while exercising the powers to make Rules under Section "26" of the "CSA, 1973".

9- That, the respondent No.2 i.e Chief Secretary ("Competent Authority") under rule "10" of the "E & D Rules", is the only Statutory Authority to pass an order of inquiry in writing in the instant case.

10- That, rule "10" of the "E & D Rules", holds the Title of "Procedure to be followed by Competent Authority where inquiry is necessary". According to rule "10" (1) of the "E & D Rules", the "Competent Authority" shall pass an order of inquiry in writing which shall include;

- (a) Appointment of an inquiry officer or inquiry committee, provided that the inquiry officer or inquiry committee, as the case may/be, shall be of a rank senior to the accused and where two or more accused are proceeded jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused.
- (b) The grounds for proceedings, clearly specifying the charges along with apportionment of responsibility;
- (c) Appointment of departmental representative by designation; and
- (d) Direction to the accused to submit his written defense to the inquiry officer or inquiry committee, as the case may be, within reasonable time which shall not be less than ten and more than fourteen days from the date of receipt of orders under clause (b) or within such an extended period as the competent authority may allow.

(Copy of the ibid rule attached as Annexure....."E").

11- That, the rule "5" of the "E & D Rules", holds the Title of "Initiation of proceedings" and subsequently rule "5" (1) (b) is reproduced for perusal as under,

(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 the Government servant under these rules it shall either:-

(b) Get an inquiry conducted into charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under rule 10";

(Copy of the ibid rule attached as Annexure....."F").

- 12- That, the **"Competent Authority"** while exercising the statutory powers so vested under rule **"10"** of the **"E & D Rules"** initiated the formal inquiry while relying on **"void inquiry"** and constituted an inquiry committee in the light of rule **"5" (1) (b)** of **"E & D Rules"**.

- 13- That, the above constituted inquiry committee directed the appellant vide a letter/summon dated 04-04-2024, to appear on 15-04-2024 for the favour of disciplinary proceedings.
(Copy of the letter dated 04-04-2024 attached as Annexure....."G").

- 14- That, the appellant in compliance to above summon/ letter appeared before inquiry committee and was communicated/served on the spot with a statement of allegations **"inquiry order"** vide dated 15-04-2024, through the committee *ibid*. That, giving a bird view to the **"inquiry order"** at the time of its service during the course of the proceedings; it was revealed to the appellant that its contents & subject is totally similar and identical to that very much **"void inquiry"**, hence the appellant impugned the instant **"inquiry order"** in the light of rule **"5" (1)** of **"E & D Rules"**. (**"impugned inquiry order dated 15-04-2024"**).
(Copy of the "impugned inquiry order dated 15-04-2024", attached as annexure....."H").

- 15- That, in addition to above, it was also observed by the appellant that the **"respondent No.5"** who had been an inquiry officer of the **"void inquiry"** was also sitting over there whimsically during the proceedings of the instant formal inquiry and also in the other sessions of proceedings of the inquiry *ibid* as reflected in letter dated 28-04-2024, while performing the statutory duties of Departmental Representative/prosecutor without proper authorization/ appointment of **"Competent Authority"** under rule **"10" (1) (c)** of the **"E & D Rules"**.
(Copy of the letter dated 28-04-2024 attached as Annexure....."I").

- 16- That, the appellant raised serious objections in the light of rule **"10" (1) (c)** of **"E & D Rules"** on the unauthorized & biased presence of **"respondent No.5"** as Departmental Representative/ Prosecutor (**"Biased Departmental Representative"**) and the severity & gravity of the same was also well perceived by the inquiry committee. Eventually, the inquiry committee applied their judicious mind while communicating at the very outset the matter under reference with the quarter concerned vide summon/letter dated 15-04-2024, at last Para of the aforesaid communication which is reproduced for ready reference as under,

It is further requested that a Departmental Representative, nominated as per rule 10 (c) of the Khyber Pakhtunkhwa Government Servant Efficiency & Discipline Rule, 2011, may be deputed to attend the proceedings along with all relevant record as per date time venue mentioned above, please. (Copy of the letter dated 15-04-2024 attached as Annexure....."J").

17- That, according to the reported judgment rendered in "**2011 S C M R 99**", while providing the mechanism to the civil servants of redressal their grievances aggrieved by any order, it has been held vide its citation (b) as that, "**According to provisions of Section 22 (2) of Civil Servant Act, 1973, a civil servant aggrieved of any order contemplated, where no appeal or review was provided in law could validly maintain a representation before the authority next higher to that which had passed the order.**" (Copy of the cited judgment attached as Annexure....."K").

18- That, in pursuance to the letter of the inquiry committee dated 15-04-2024 R/W above reported judgment as well as feeling aggrieved by the biased, unilateral, partial, unlawful, illegal, punitive, fanciful, tainted with malafide intentions, malicious, whimsical & Coram non iudice mode & manner of the "**Competent Authority**", the appellant filed an appeal vide dated 16-04-2024, against the "**impugned inquiry order dated 15-04-2024**" & "**Biased Departmental Representative**" before the respondent No.1 i.e appellate authority regarding directing the "**Competent Authority**" to act strictly with in accordance with law in respect of "**void inquiry**" & "**Biased Departmental Representative**" but the same was not replied/ communicated till date in spite the expiry of statutory period of ninety days so far till date. (Copy of the appeal dated 16-04-2024 attached as Annexure....."L").

19- That, the appellant feeling aggrieved by inaction of public functionary, having no efficacious remedy other than to prefer the instant Service Appeal on the following grounds amongst the others, hence the appellant is before this August Tribunal.

GROUND:

A- That, the "**impugned inquiry order dated 15-04-2024**", passed by the "**Competent Authority**" is against the law, facts, norms of natural justice, materials on the record and unconstitutional, hence not tenable and liable to be set aside.

- B- That, the "impugned inquiry order dated 15-04-2024", passed by "Competent Authority" is in arbitrary & malafide manner, hence not tenable and liable to be set aside to the extent of the appellant.
- C- That, the "impugned inquiry order dated 15-04-2024", passed by the "Competent Authority" is totally based on discrimination, favoritism and nepotism, hence not tenable in the eye of law.
- D- That, the "impugned inquiry order dated 15-04-2024", passed by the "Competent Authority", has neither been in the interest of public nor in the exigency of service, hence not tenable and liable to be struck down.
- E- That, the "impugned inquiry order dated 15-04-2024", passed by the "Competent Authority" is nothing but just to harass the appellant and to pressurize for not sustaining against the wrong doing.
- F- That, the "impugned inquiry order dated 15-04-2024", passed by the "Competent Authority" is basically in utter violation of the reported Judgment rendered in "P L D 2022 S C 119" regarding the interpretation of basic order being void, the Apex Court has held vide citation (p) in its judgment as that, "When the basic order is without lawful authority (void), then the entire superstructure built on it falls on to the ground automatically.
(Copy of the cited judgment attached as Annexure.. "M").
- G- That, according to the reported judgment of the Apex Court rendered in "1981 S C M R 1160", regarding performing the duties of Fact Finding/Preliminary Inquiry Officer and subsequently giving the recommendation for the favour of initiating the Formal Inquiry, it has been held as that, "Contention that Officer conducting preliminary inquiry could not be appointed Inquiry Officer to hold formal inquiry as he had made up his mind during course of preliminary inquiry and could not be treated as an unbiased person, held, Submission based on misunderstanding that Inquiry Officer holding preliminary inquiry has to give a finding.
Such Officer not required to give a findings but required only to take down evidence connected with the charge and forward it to competent authority and such authority has to decide whether on the basis of evidence so recorded, a formal inquiry and a charge sheet called for or not.
(Copy of the cited judgment attached as Annexure.. "N").

H- That, the report of the "void inquiry" has also not been supplied to the appellant and thus he was kept totally ignorant of the same which is a prejudice act on the part of "Biased Departmental Representative". That in this regard the Honorable Apex Court has laid down the dictum in a reported judgment rendered in "2007 S C M R 1643", vide citation (b) as that,
"Copy of report of preliminary inquiry had not been made available to civil servant, due to which he remained ignorant of exact nature of accusation and incriminating material relied upon therein.
 (Copy of the cited judgment attached as Annexure....."O").

I- That, the "impugned inquiry order dated 15-04-2024", passed by the "Competent Authority" is also in defiance of the reported judgments of the Apex Court cited as "P L D 2022 S C 119", "1981 S C M R 1160", "2007 S C M R 1643" R/W "letter dated 11-12-2023" R/W "5" (1) of the "E & D Rules".

J- That, performing the duties of prosecutor by "respondent No.5" in the formal inquiry without proper authorization/appointment under rule "10" (1) (c) of the "E & D Rules" while giving the perception of a "Biased Departmental Representative" due to performing duties simultaneously and in the succession even after being an inquiry officer in the "void inquiry" is against the canon of well-established principle of law, violation of natural justice and is basically in utter violation of the Article 10-A of Constitution of Pakistan R/W reported Judgment rendered in "P L J 2017 Lahore 462" in which the Honorable Lahore High Court has held as that,
"Inquiry was neither just nor fair and inquiry officer has performed duties of prosecutor as well as of a judge at the same time which is against the well-established principle of law that no one can be a judge in his own cause, or in a case in which he is personally interested, not because his decision must invariably be in his own favour but on principle that justice must not only be done but seen to be done and however right judge deciding a cause in his own favour may be, neither public nor aggrieved party will be satisfied with adjudication and its result will be vacated by Court of appeal at instance of dissatisfied party.
 (Copy of the cited judgment attached as Annexure....."P").

K- That, performing the statutory duties by "respondent No.5" in the formal inquiry as a "Biased Departmental Representative" is also in violation of judgment of this August Tribunal passed in a Service Appeal vide dated 28-02-2024, and thus is against the law, facts and norms of natural justice, materials on the record, in conflict of interest, unconstitutional and without lawful authority.
 (Copy of the judgment dated 28-02-2024 attached as Annexure....."Q").

- L- That, as per dictum laid down by the Honorable Supreme Court of Pakistan in the case cited as "PLD 2011 SC 927", the Honorable Supreme Court of Pakistan has dilated upon the principle of administration of justice in the following words,
"When a procedure has been provided for doing a thing in a particular manner that thing should be done in that manner and in no other way or it should not be done at all; indeed it impliedly prohibits doing Of thing in any other manner; the compliance of such thing in no way could be either ignored or dispensed with. If the act complained of is without jurisdiction or is in excess of authority conferred by statute or there is abuse or misuse of power, court can interfere".
- M- That, as per dictum laid down by the Honorable Supreme Court of Pakistan in the case cited as "PLD 2010 SC 483", the Honorable Supreme Court of Pakistan as follow;
"When the Supreme Court deliberately and with intention of setting the law, pronounces the question, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 of the Constitution and is binding on all Courts in Pakistan. It cannot be treated as mere obiter dictum.
- N- That, the appellant has not been treated by the "Competent Authority" and respondents No.4 & 5 in accordance with law, rules and cited judgment of the Apex Court on the matter concerned and as such the aforesaid respondents violated the Articles 4, 10A, 25, 189 & 190 of the Constitution of the Islamic Republic of Pakistan, 1973.
- O- That, the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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


Appellant
ZIA ULLAH

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT.

-10-


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL No. _____ /2024

ZIA ULLAH VS HEALTH DEPARTMENT

AFFIDAVIT.

I, ZIA ULLAH PROVINCIAL DRUG INSPECTOR (BS-17) C/O Directorate General Drug Control & Pharmacy, Old Fata Secretariat Services Warsak Road, Khyber Pakhtunkhwa Peshawar Health Department, do hereby solemnly affirm that the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court/Tribunal.


DEPONENT

41- "A"



**DIRECTORATE GENERAL DRUG CONTROL
& PHARMACY SERVICES**

DG DC & PS Phone No. 091-9222824
MCC Phone/ Fax No. 091-9211702

No. 1061-68 /DGDC&PS/2023
Date. 29/11/2023

Mr. Zia Ullah
Drug Inspector Bannu.

**Subject: FACT FINDING INQUIRY INTO THE COMPLAINT OF M/S FRONTIER
DEXTROSE LIMITED AGAINST MR. ZIA ULLAH DRUG INSPECTOR ON ACCOUNT OF
ALLEGED CORRUPTION IN PROCUREMENT OF MCC TENDER FY 2023-24**

In continuation to this office letter 1056-63/DGDC&PS/2023 dated 29-11-2023 as entrusted by the competent authority.

You are hereby directed to appear in person before the inquiry committee, in accordance with rule 05 of the Khyber Pakhtunkhwa Government Servants E&D Rules read with Cabinet Sectt: Estab: Divn. Islamabad letter No.11/5/2000-D-1, Dated 27.3.2000 & S&GAD letter No. SOR-II(S&GAD)5(29)/99/Vol-III, dated 21.4.2000, on (Thursday) 30th November, 2023 at 12:00 PM in the office of the undersigned along with your order/nomination as member MCC FY 2023-24 physical inspection committee and report of the physical inspection of M/S Frontier Dextrose Limited, Hattar/Haripur Khyber Pakhtunkhwa submitted by the inspection committee, to proceed further into the matter.

This letter shall be treated as a final order and failing this a report shall be submitted to the competent authority as desired.


(DR. INAM UL HAQ)

Member Fact Finding Committee/Deputy Director

End. No & Date Even.

Copy for information to:

1. Member Fact Finding Inquiry Committee.
2. Chief Drug Inspector (Bannu) DG DC& PS, Khyber Pakhtunkhwa.
3. Section Officer (Drugs), Health Department, Govt. of Khyber Pakhtunkhwa.
4. PS to Secretary Health Govt. of Khyber Pakhtunkhwa.
5. PA to Special Secretary Health Govt. of Khyber Pakhtunkhwa.
6. PA to Deputy Secretary (Drugs) Health Govt. of Khyber Pakhtunkhwa.
7. PA to the DG Drug Control & Pharmacy Services Khyber Pakhtunkhwa.

(DR. INAM UL HAQ)

Member Fact Finding Committee/Deputy Director

PS/Secy E&AD KP

Diary No. 99/8

FTS No. _____

Date: 5-11-23

"B" -12-12342
05-1

Dated: 30/11/2023 23

To,

The Dr. INAM UL HAQ Member,
Fact Finding Inquiry Committee/ Deputy Director, Khyber
Pakhtunkhwa Peshawar.

Subject: **REPLY TO THE IMPUGNED FACT FINDING INQUIRY
INTO THE COMPLAINT OF M/S FRONTIER DEXTROSE
LIMITED.**

Respected Sir,

Kindly refer to your office letter No1061-68/DG DC & PS dated 29-11-2023, the undersigned submits as under.

- 1) That, according to the above mentioned letter, it was desired finally by your good self, regarding the provision of nomination letter & provision of inspection report while incorporating the reference of the **"Cabinet Sectt: Est: Divn. Islamabad letter No.11/5/2000-D-1, Dated 27-3-2000 & S&GAD letter No.SOR-II (S&GAD)5(29)/99/Vol-III, Dated 21-04-2000, of E & D Rules, 1973 read with rule "5" Khyber Pakhtunkhwa Government Servant E & D rules"**.
(Copy of letter dated 29-11-2023 attached for ready reference as Annexure..... "A").
- 2) That, it is pertinent to mention here that the **"reference"** made by your good self in the above mentioned letter pertains to the **"E & D Rules, 1973"**, while the instant case does not fall in the purview/ domain of the same to hold the field.
(Copy of the reference attached as Annexure..... "B").
- 3) That, the undersigned in case of any discrepancy, is currently governed by the **"E & D Rules, 2011"**, while the referred **"E & D Rules, 1973"**, for the favor of proceeding in the aforementioned letter read with the **"Cabinet Sectt: Est: Divn. Islamabad letter No.11/5/2000-D-1, Dated 27-3-2000 & S&GAD letter No.SOR-II (S&GAD)5(29)/99/Vol-III, Dated 21-04-2000, of E & D Rules, 1973 read with rule "5" Khyber Pakhtunkhwa Government Servant E & D rules"** do not hold the field and has been already repealed vide Rule **"23"** of **"E & D Rules, 2011"**.
(Copy of the referred rule attached as Annexure..... "C").
- 4) That, the undersigned has already requested your good office vide dated 23-11-2023 (**To which nomination letter dated 15-08-2023 & request for provision of inspection report dated 23-11-2023 were enclosed**), regarding the consideration of submissions under **Articles 4 & 10A of the**

Constitution of Pakistan read with the judgment of the Apex Court rendered in "PLD 2022 SC 119" regarding adopting the due process of Law, in response of which only the copy of the complaint has been provided by the office of your good self to the undersigned without the enclosures/proofs regarding the alleged corruption.

(Copy of letter dated 23-11-2023 attached as Annexure..... "D").

5) That, vide letter dated 27-11-2027, it was also again requested by the undersigned to provide the valid notification regarding your nomination as a personal hearing officer which is still awaited and has not been replied so far till date.

(Copy of letter dated 27-11-2023 attached as Annexure..... "E").

6) That, the undersigned submitted reply vide dated 29-11-2023, regarding the validity of the subject matter & impugned proceedings, and also re-requested for consideration of submissions. Astonishingly instead of redressal of the grievances & re consideration of submissions, on the same day another impugned letter was issued based on malafide intentions, which has been already mentioned in Para 1. & 2 respectively. **(enclosed as Annexure "A").**

7) That, under rule "14 (6A)" of "E & D Rules, 2011", the "Competent Authority" may proceed against the inquiry officer/committee as the case may be, if it is determined that the omission or commission has been committed by them while not adopting the due process of law/rules.

(Copy of the referred rule attached as Annexure..... "F").

8) That, the instant whimsical matter dealt by the inquiry officer pertains to the issue of alleged corruption while mentioning the rule "5" E & D Rules, with the "Cabinet Sectt: Est: Divn. Islamabad letter No.11/5/2000-D-1, Dated 27-3-2000 & S&GAD letter No.SOR-II (S&GAD)5(29)/99/Vol-III, Dated 21-04-2000, of E & D Rules, 1973 read with rule "5" Khyber Pakhtunkhwa Government Servant E & D rules. of E & D Rules, 1973", hence it is pertinent to mention here with the respect that under rule "8(1)(b)" of "E & D Rules, 2011", it is mandatory for "Competent Authority" to proceed against government servant under rule "5" where he has been convicted of charges other than corruption or moral turpitude. So it is crystal clear that the instant forum has no competency to proceed whimsically.

(Copy of the referred rule attached as Annexure..... "G").

-14-

Keeping in view entire of the above, it is finally humbly prayed, that in case of any discrepancies, to kindly proceed against the undersigned on the subject matter under the "E & D Rules, 2011", which hold the field and also as required under "Articles 4 & 10A of the Constitution of Pakistan" read with the judgment of the Apex Court rendered in "PLD 2022 SC 119", hence needs to adopt the due process of law, while not a whimsical mode & manner under those rules which have been already repealed and are no more in the field, so as to avoid the perception of Coram Non Judice, non-maintainable as well as to avoid carrying out of futile exercise and oblige please.

Zia Ullah,

Drug Inspector (BS-17)/ Co-Opted Member of KP inspection
Committee Health Department Khyber Pakhtunkhwa.

Copy to:-

1) PS to Chief Secretary Khyber Pakhtunkhwa Peshawar.

3-12-23
2) PS to Secretary Establishment with the request to kindly certify the reference made in the letter dated 29-11-2023, under E & D Rules, 1973 (enclosed as Annexure "A"), issued by inquiry member that either the reference holds the field or otherwise.

05-12-23
2/11/23
3) PS to Secretary Law, Human Rights & Parliamentary Affairs also with the request for similar action, of seeking opinion regarding the validity of the reference made in the letter dated 29-11-2023, under E & D Rules, 1973 (enclosed as Annexure "A"), issued by the inquiry member.


Zia Ullah,

Drug Inspector (BS-17)/ Co-Opted Member of KP inspection
Committee Health Department Khyber Pakhtunkhwa.

Cell # 0333-2586980

CNIC # 16102-23017677

"C" -15-



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(Regulation Wing)

NO. SOR-II (E&AD) 1-135/2023
Dated the 11th December, 2023

To,

The Secretary to Govt. of Khyber Pakhtunkhwa,
Health Department

8444
11/12/23

Subject: - REPLY TO THE IMPUGNED FACT FINDING INQUIRY INTO THE COMPLAINT OF M/S FRONTIER DEXTROSE LIMITED.

Dear Sir,

I am directed to refer to the captioned subject and to enclose herewith a copy of application alongwith its enclosures (in original) received from Mr. Zia Ullah, Drug Inspector (BS-17)/Co-Opted Member of Khyber Pakhtunkhwa Inspection Committee Health Department Khyber Pakhtunkhwa, which is self-explanatory, for further necessary action at your end.

2. I am, further directed to state that the reference (i.e. SOR-II(S&GAD)5(29)/99/Vol-III dated 21.04.2000 mentioned in letter dated 29.11.2023 is no more in the field for the reason that the Khyber Pakhtunkhwa Govt. Servants (E&D) Rules 1973 and all policy instructions/clarifications issued there-under, stand repealed under Rule-23 of Khyber Pakhtunkhwa Govt. Servants (E&D) Rules 2011.

Yours faithfully,

Encl. as above


(ABDUL AHAD)

SECTION OFFICER (R-II)
Phone # 9211785

Asst

Send to DGDCPS
for info. / na, pls

So-III
20/12

"D"

-16-



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

No. SOH-III/7-262/2024 (Mr. Zia Ullah/D.I)
Dated the Peshawar 02nd January, 2024

To

**The Director General,
Drug Control & Pharmacy Services,
Khyber Pakhtunkhwa, Peshawar.**

Main Diary No. 30/
Date 08/01/24
Directorate General Health Services,
Khyber Pakhtunkhwa

**SUBJECT: REPLY TO THE IMPUGNED FACT FINDING INQUIRY INTO THE
COMPLAINT OF M/S FRONTIER DEXTROSE LIMITED.**

I am directed to refer to the subject noted above and to enclose herewith copy of letter No. SOR-II(E&AD)1-135/2023, dated 11-12-2023 & other relevant documents in respect of Mr. Zia Ullah, Drug Inspector (BS-17) received from Section Officer (R-II), Govt. of Khyber Pakhtunkhwa, Establishment & Administration Department (Regulation Wing) for further necessary action, please.

Encl: As above.

Naseer Ahmad
(Naseer Ahmad)
Section Officer-III

Endst: of even no & date.

Copy forwarded to the PS to Secretary Health, Khyber Pakhtunkhwa.

MCC Serdar
P. O. Serdar
ADG Adm
10/1/24

Naseer Ahmad
Section Officer-III

Zia Ullah
Drug Inspector
BOMH

Provided that dismissal in these cases shall be with ²[.....] effect from the date of conviction by a court of law; and

- (b) proceed against the Government servant under rule 5, where he has been convicted of charges other than corruption or moral turpitude.

9. **Procedure in case of wilful absence.**—Notwithstanding anything to the contrary contained in these rules, in case of wilful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant.

10. **Procedure to be followed by competent authority where inquiry is necessary.**—

(1) If the competent authority decides that it is necessary to hold an inquiry against the accused under rule 5, it shall pass an order of inquiry in writing, which shall include—

- (a) appointment of an inquiry officer or an inquiry committee, provided that the inquiry officer or the inquiry committee, as the case may be, shall be of a rank senior to the accused and where two or more accused are proceeded against jointly, the inquiry officer or the convener of the inquiry committee shall be of a rank senior to the senior most accused;
- (b) the grounds for proceeding, clearly specifying the charges along with apportionment of responsibility;
- (c) appointment of the departmental representative by designation; and
- (d) direction to the accused to submit written defense to the inquiry officer or the inquiry committee, as the case may be, within reasonable time which shall not be less than seven days and more than fifteen days of the date of receipt of orders.

(2) The record of the case and the list of witnesses, if any, shall be communicated to the inquiry officer or the inquiry committee, as the case may be, along with the orders of inquiry.

(3) In a case where preliminary or fact finding inquiry was conducted, and the competent authority decides to hold formal inquiry, the inquiry officer or the inquiry committee for the purpose of conducting formal inquiry shall be different from the inquiry officer or the inquiry committee which conducted the preliminary.

11. **Procedure to be followed by inquiry officer or inquiry committee.**—(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry *ex-parte*.

(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

(4) Statements of witnesses and departmental representative(s), if possible, will be recorded in the presence of accused and vice versa.

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be

² Deleted by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.

16 F" -18-

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:

- ¹(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 10:

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

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

IMMEDIATE



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT**

"G" 19-

Dated Peshawar, the 04/04/2024

To

The Secretary to Govt; of Khyber Pakhtunkhwa,
Health Department.

Subject:-

**DISCIPLINARY ACTION AGAINST MR. ZIA ULLAH, DRUG
INSPECTOR (BS-17) BANNU, MR. HAMID ULLAH, DRUG INSPECTOR
(BS-17) KARAK AND DR. SAFI ULLAH, MEDICAL OFFICER (BS-17)
ATTACHED TO DHO MARDAN.**

Dear Sir,

I am directed to refer to this department letter No. PA(AS)/HED/2023/Inquiry4790-95, Dated 28/03/2023 on the subject noted above whereby it was requested to direct the accused officers to present themselves before the inquiry committee on 03/04/2024 besides nominating a Departmental Representative to assist the inquiry proceedings.

This is to intimate that the main accused Mr. Zia Ullah, Drug Inspector (Bs -17) Bannu did not appear before the inquiry committee while the rest of the two accused i.e. Mr. Hamid Ullah, Drug Inspector (Bs-17) Karak and Dr. Safiullah, Medical Officer (Bs-17), attached to DHO Mardan did appear before the committee but did not submit their respective replies to the charge sheet and statement of allegations on the ground that they have not received any charge sheet and statement of allegations. Nonetheless, a copy of the charge sheet and statement of allegations was provided to them in the course of proceedings.

Given the above, it is once again requested to direct all the accused to appear before the inquiry committee on 15th April at 10:00 AM in the office of the Additional Secretary Higher Education Archives and Libraries Department besides submitting their replies to the charge sheets and statement of allegations to the inquiry committee on or before the given date.

Besides, Mr. Khalid Iqbal, Plant Manager MS FDL may also be informed to appear before the committee and present evidence (if any) in connection with the inquiry, please.

PA to Addl: Secretary
Higher Education Archive and
Libraries Department.

Encls: No. & Date even.

Copy forwarded to the:-

1. Dr. Shiraz Qayyum (BS-20) Director (E&A) Health Department with the request to attend the proceedings on above mentioned date, time and venue, Peshawar.
2. Dr. Inam-ul-Haq Deputy Director Pharmacy Services, Departmental Representative, with the request to attend the proceedings on the date time and venue
3. Director General Drug control & pharmacy Services Khyber Pakhtunkhwa.
4. Section Officer-III, Government of Khyber Pakhtunkhwa, Health Department.
5. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.
6. PS to Special Secretary (E&A), Health Department.

PA to Addl: Secretary
Higher Education Archive and
Libraries Department.

14
"H" - 20 -

DISCIPLINARY ACTION

1. **Nadeem Aslam Chaudhary**, Chief Secretary, Khyber Pakhtunkhwa, as the Competent Authority, am of the opinion that **Zia Ullah**, Drug Inspector (BPS-17), currently posted as Drug Inspector at District Bannu, has rendered himself liable to be proceeded against, as he has committed the following acts/omissions when he was posted as Drug Inspector (BPS-17) at Distt Bannu, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

1. Zia Ullah, Drug Inspector was not member of the inspection team, meant for inspection of KP based firms for MCC tender but he carried out unauthorized inspection under the guise of member MCC inspection team that led to the disqualification of the complainant firm.
2. Despite carrying unauthorized inspection of the firm, Zia Ullah, Drug Inspector involved / invited a number of unauthorized personnel for the said purpose to play a leading role in the inspection of M/s FDL.
3. The inspection was conducted on 30-08-2023 and Zia Ullah, Drug Inspector called Mr. Khalid Iqbal Plant Manager on 02-09-2023 and narrated a false story that the firm M/S FDL has been disqualified and M/S Unisa has been recommended in MCC meeting but on contrary no meeting of the MCC was held between 30-08-2023 to 02-09-2023.
4. Zia Ullah, Drug Inspector conveyed a false report of disqualification of M/S FDL to Mr. Khalid Iqbal Plant Manager of the said firm to invite his attention and have further deliberation on the matter for modification of the said report as per his wish.
5. Zia Ullah, Drug Inspector demanded for percentage share per product from Mr. Khalid Iqbal that amounts in millions of rupees, for the submission of report of his choice.
6. Zia Ullah, Drug Inspector called Mr. Khalid Iqbal and invited him to Peshawar and later on to his home town, Sher Garh, District Mardan on 04-09-2023 for disclosing the report of M/s FDL and was compelling him to talk to the company for illicit demand.

Nadeem Aslam

ordered & issued by
inquiry committee & recorded

[Signature]
15/04/24

7. Zia Ullah, Drug Inspector submitted a false report of M/s FDL, containing adverse findings for signature by those members who did not inspect the firm, against the original report submitted by a notified member, Mr. Ballin Ishaq Drug Inspector, D/Lower.
8. The unauthorized report signed by Zia Ullah, Drug Inspector, has neither fulfilled the provisions as mandated in Section V(10)(A) of the Bid Solicitation documents framed for MCC (PY 2023-24) nor any evidence has been furnished to substantiate his report.
9. Zia Ullah, Drug Inspector made a call from the Cell Phone of Mr. Khudat Iqbal, Plant Manager FDL to Mr. Akhtar Saeed, GM, M/s FDL, posing himself as the sole authority to settle issues for the recommendation of the said firm against speed money in the shape of product wise percentage share, besides other modalities as conveyed in the audio call as reported in the inquiry.
10. Zia Ullah, Drug Inspector misigned the prestigious office of DONS and attempted to drag it for illicit agenda in the shape of deal for product wise percentage share.
11. Zia Ullah, Drug Inspector conducted unauthorized inspection of M/S FDL for making illicit deal which led to disqualification of the firm and huge financial loss to the government exchequer.
12. The loss to the govt against unauthorized inspection, demand for speed money and subsequent disqualification of M/S FDL by Zia Ullah, Drug Inspector is alarming/in millions, if the quoted prices of the complainant firm are compared with the approved prices of the competitor firm.

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 I bid rules.

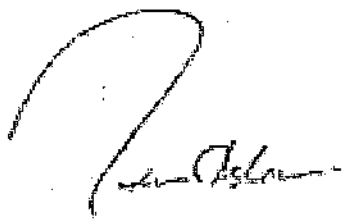
- a. Mr. Inayat Ullah (M.S. 13) Dtd. Secy. H.F.D.
- b. Dr. Shrey Gajjwar (B-20) Dtd. (E.S.O.) / Mr. H. Ref.

3. The Inquiry Officer/ Inquiry Committee shall, in accordance with the provision of the I bid rules, provides reasonable opportunity of hearing to the accused, record its findings and make, within 60-days of the receipt of this order.

[Handwritten Signature]

Recommendations as to punishment or other appropriate action against the accused.

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



(NADEEM ASLAM CHAUDHARY),
Chief Secretary,
Khyber Pakhtunkhwa.

"I" -23-

IMMEDIATE



**GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT**

No. PA/(AS)/HED/2023/ Inquiry
Dated Peshawar, the 28/04/2024.

To

The Secretary Health Department,
Khyber Pakhtunkhwa

Subject: DISCIPLINARY ACTION AGAINST MR. ZIA ULLAH DRUG INSPECTOR (BS-17) BANNU, MR. HAMID ULLAH, DRUG INSPECTOR (BS-17) KARAK AND DR. SAFFI ULLAH, MEDICAL OFFICER (BS-17) ATTACHED TO DHO MARDAN

I am directed to refer to the subject noted above and intimate that the next proceedings in the subject inquiry are scheduled on 02-05-2024 (Thursday) at 09:30 AM in the office of the Additional Secretary Higher Education Department under his chairmanship. The following documents/explanations are needed for further proceedings in the matter:

- i. All the notifications issued by the DGHS Khyber Pakhtunkhwa regarding the constitution of Inspection committees (with justifications) subsequent to Health Department notification No. SOG/HD/1-35/Gen. Notification/2023 dated 28/04/2023.
 - ii. Compliance with the composition of inspection committees as per Health Department Notification vide No: SOG/HD/1-35/Gen. Notification/2023 dated 28-04-2023.
 - iii. Correspondence with bidders and other stakeholders about the notifications issued during the MCC 2023-24 procurement process.
 - iv. Schedule and detail of the hoisting/sharing of all procurement-relevant information with the participant bidders in the MCC procurement process.
 - v. Criteria for the nomination of co-opted member in the Inspection team.
 - vi. Minutes of the reports presentation by the notified inspection committee who visited the firms for inspections, along with all checklists of the KP-based firms and approval of the SRCC Committee.
 - vii. Minutes of MCC meetings held on/between 30-08-2023 to 02-09-2023.
2. Given the above, it is requested that the DGHS be directed to provide the above-mentioned records and all other records pertinent to the facts of the matter and attend the proceedings either in person or through well conversant representative to assist the inquiry proceedings before the inquiry committee on the given date, time and venue. Please.
3. Besides, Mr. Khalid Iqbal Plant Manager FDL may be informed to appear before the committee and present evidence (if any) in connection to this inquiry, and the accused may also be informed, who may join the proceedings if so desire.

PA to Addl: Secretary
Higher Education Archive and
Libraries Department.

Encls: No. & Date even.

Copy forwarded to the:-

1. Dr. Shiraz Qayyum (BS-20) Director (E&A) Health Department with the request to attend the proceedings on above mentioned date, time and venue, Peshawar.
2. Dr. Inam-ul-Haq Deputy Director Pharmacy Services, Departmental Representative, with the request to attend the proceedings on the date time and venue
3. Director General Drug control & pharmacy Services Khyber Pakhtunkhwa,
4. Section Officer-III, Government of Khyber Pakhtunkhwa, Health Department.
5. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.
6. PS to Special Secretary (E&A), Health Department.

PA to Addl: Secretary
Higher Education Archive and
Libraries Department.



GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES
& LIBRARIES DEPARTMENT

"J" -24-

No. PA (AS)/HED/2023/Inquiry
Dated Peshawar, the 15/04/2024

To

The Secretary to Govt; of Khyber Pakhtunkhwa,
Health Department.

Subject:-

DISCIPLINARY ACTION AGAINST MR. ZIA ULLAH, DRUG INSPECTOR (BS-17) BANNU, MR. HAMID ULLAH, DRUG INSPECTOR (BS-17) KARAK AND DR. SAFI ULLAH, MEDICAL OFFICER (BS-17) ATTACHED TO DHO MARDAN.

Dear Sir,

I am directed to refer to this department letter No. PA(AS)/HED/2023/Inquiry 5242-48, Dated 04/04/2023 on the subject noted above whereby it was requested to inform the accused officers to present themselves before the inquiry committee on 03/04/2024 besides nominating a Departmental Representative to assist the inquiry proceedings.

It is intimated that the next hearing date in the subject inquiry has been scheduled for 26th April, 2024 at 10:00 AM in the office of the Additional Secretary, Higher Education Archives and Libraries Department.

It is therefore requested to direct the accused to present themselves before the inquiry committee on the date time and venue as mentioned. Besides, Mr. Khalid Iqbal, Plant Manager MS FDL may also be informed to appear before the committee and present evidence (if any) in connection with the inquiry.

It is further requested that a Departmental Representative, nominated as per rule 10(c) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, may be deputed to attend the proceedings along with all relevant records as per date time and venue mentioned above, please.

PA to Addl: Secretary
Higher Education Archive and
Libraries Department.

Encls: No. & Date even.

Copy forwarded to the:-

1. Dr. Shiraz Qayyum (BS-20) Director (E&A) Health Department with the request to attend the proceedings on above mentioned date, time and venue, Peshawar.
2. Director General Drug control & pharmacy Services Khyber Pakhtunkhwa.
3. Section Officer-III, Government of Khyber Pakhtunkhwa, Health Department.
4. PS to Secretary Health, Khyber Pakhtunkhwa, Peshawar.
5. PS to Special Secretary (E&A), Health Department.

PA to Addl: Secretary
Higher Education Archive and
Libraries Department.

K^d - 25-

2011 S C M R 99

{Supreme Court of Pakistan}

Present: Mian Shakirullah Jan, Mahmood Akhtar Shahid Siddiqui and Mian Saqib Nisar, JJ

Capt. (Retd.) KHALID ZAMAN---Appellant

Versus

GOVERNMENT OF PAKISTAN through Secretary, Establishment Division and others---Respondents

Civil Appeal No. 1868 of 2007, decided on 6th October, 2010.

(On appeal from the judgment dated 29-6-2007 of the Federal Service Tribunal, Islamabad passed in Appeal No. 168(R)(CS) of 2004).

Civil Servants (Seniority) Rules, 1993--

---R.5---General Clauses Act (X of 1897), S.21---Constitution of Pakistan, Art. 212 (3)--- Leave to appeal was granted by Supreme Court to consider; whether service rendered by petitioner in Pakistan Army was not countable towards his service in Postal Group in the light of law laid down by Supreme Court; and whether notwithstanding re-fixation of seniority, promotion once given to petitioner in accordance with his entitlement under law, could be withdrawn in the light of principle of locus poenitentiae.

Hameed Akhtar Niazi v. Secretary Establishment Division, Government of Pakistan and another 1996 SCMR 1185 ref.

(b) Civil Servants Act (LXXI of 1973)---

---S.22---Civil Servants (Seniority) Rules, 1993, R.5---Compulsory Service (Armed Forces) Ordinance (XXXI of 1971), S. 9-A---Seniority---Pervious service of Army---Civil servant was serving in Pakistan Army and from there he joined Civil Service and was inducted in Postal Service Group---Chairman Pakistan Postal Services Management Board counted period of civil servant served in Army and fixed his service accordingly---Federal Government reversed the decision of Chairman, which order was maintained by Service Tribunal---Plea raised by civil servant was that Secretary Communication Division of Government of Pakistan, had no jurisdiction to pass such order---Validity---Pakistan Postal Service Management Board was an attached department of Communication Division of Government of Pakistan, the Secretary was head of that Division and according to provisions of S. 22(2) of Civil Servants Act, 1973, a civil servant aggrieved of any order contemplated, where no appeal or review was provided in law could validly maintain a representation before the authority next higher to that which had passed the order---Irrespective of the grade of Chairman Pakistan Postal Services Management Board and that of Secretary Communication being equal, under the Rules of Business the Secretary being in-charge of concerned division for all intents and purposes was an authority higher than the Chairman and, therefore, competent to entertain and decide representation of respondents, therefore, the objection of appellant could not sustain and was repelled---Supreme Court declined to interfere in the judgment passed by Service Tribunal---Appeal was dismissed.

Capt. (Retd.) Abdul Qayyum v. Government of Punjab through Chief Secretary and 81 others 2003 PLC (C.S.) 1008; Hameed Akhtar Niazi v. Secretary Establishment Division, Government of Pakistan and another 1996 SCMR 1185; Muhammad Iqbal Khokhar and 3 others v. The Government of The Punjab through the Secretary to Government of the Punjab Lahore and 2 others PLD 1991 SC 35; Capt. (Retd.) Abdul Qayyum, Executive Engineer v. Muhammad Iqbal Khokhar and 4 others PLD 1992 SC 184 and PLD 1997 SC 351 distinguished.

Offices of the PSCM
Diary No. 255
Dated.....16-04-2024

"L" 26-

To,

Dated; 16/04/2024.

The Chief Minister,
through Principal Secretary,
Chief Minister Secretariat, Khyber Pakhtunkhwa Peshawar.

**Subject: APPEAL FOR JUSTICE AGAINST THE IMPUGNED INQUIRY
ORDER COMMUNICATED/SERVED VIDE DATED 15-04-2024.**

R/Sir:

ON FACTS:

1- That, the undersigned was communicated with a letter vide dated 29-11-2023, which was self-explanatory, hence the same was subsequently impugned by the undersigned for the two reasons. The first reason was about the legal status/validity of the fact finding inquiry while the second one was about the provision of the prescribed "**MODUS OPERANDI**" & "**JURISDICTION**" of the "**Competent Authority**" to proceed & take action against an accused Civil Servant in case of alleged corruption & its subsequent conviction.

(Copy of the referred letter attached as Annexure....."A").

2- That, the first reason which was regarding the legal status/validity of the fact finding inquiry, has been already clarified at the very outset by the "**Competent Authority**" through regulation wing of the Establishment Department & was endorsed thereof to the quarter concerned vide letter dated 11-12-2023.

(Copy of the referred letter attached as Annexure....."B").

3- That, the second reason in the above referred letter was regarding the provision of clarification on the prescribed "**MODUS OPERANDI**" & "**JURISDICTION**" to be assumed by the "**Competent Authority**" in case of conviction of an accused on corruption charges by Court of law, which is still awaited and might have been inadvertently over sighted/ overlooked.

4- That, in this context the undersigned also filed an appeal vide dated 24-01-2024, to the "**Competent Authority**" (Chief Secretary) regarding the provision of prescribed "**MODUS OPERANDI**" & "**JURISDICTION**" to the extent of proceeding in case of corruption charges under Efficiency & Discipline Rules, 2011 (hereinafter to be called "**E & D Rules**") which is still awaited and has not been replied so far till date.

(Copy of the referred letter attached as Annexure....."C").

5- That, instead of deciding the above referred appeal on merit, the "**Competent Authority**" communicated/served an impugned statement of allegations enclosed to Charge Sheet vide dated 15-04-2024 (hereinafter to be called "**impugned inquiry order dated 15-04-2024**") upon the appellant, while assuming the whimsical jurisdiction of probing the corruption charges among the other which have not proved from any Court of law on the account of conviction as required under the prevailing rules.

(Copies of the referred impugned documents attached as Annexure....."D").

6- That, it is pertinent to mention here with the respect, that under "**clause (ii)**" of proviso appended to rule "**5(1) (a)**" R/W rule "**8 (a)**" and its appended proviso of the "**E & D Rules**", the "**Competent Authority**" shall dismiss directly the accused in case of conviction on the corruption charges by the court of law with the sentence of fine or imprisonment which shall be with effect from the date of conviction by a court of law and no chance of personal hearing or showing cause notice will be provided.

(Copy of the referred rules attached as Annexure....."E").

7- That, the Honorable Peshawar High Court has also held in a reported judgment cited as "**2014 PLC (C.S) 590**" vide citation (a) as that, "**Corruption charge could not be leveled unless proved by cogent and sufficient evidence**". It has been further held in the aforementioned titled judgment vide citation (c) that,

"Charge must be proved on firm evidence"

(Copy of the referred judgment attached as Annexure... "F").

8- That, the **"impugned inquiry order dated 15-04-2024"** also includes the whimsical charge of misuse of authority which has no legal coverage/force under the rule **"3"** of **"E & D Rules"** and the rule *ibid* is alien to the aforementioned whimsical penalty.

(Copy of the referred rule attached as Annexure..... "G").

9- That, the charge of misconduct framed in the impugned charge sheet enclosed with the statement of allegations also does not fall in the ambit of Khyber Pakhtunkhwa Government Servant (Conduct) Rules, 1987, thus this very charge also cannot be termed as the legal one.

(Copy of the referred rules attached as Annexure..... "H").

10- That, under rule **"10"** of the **"E & D Rules"** which holds the Title of **"Procedure to be followed by the competent authority where inquiry is necessary"**, the **"Competent Authority"** is required to pass an inquiry order in this regard, if he desires so. The **"Competent Authority"** shall appoint the inquiry Officer or inquiry committee as the case may be, in the inquiry order under rule 10(1) (a) of the **"E & D Rules"**. In the Inquiry order, the **"Competent Authority"** is also required under rule 10(1)(c) of the **"E & D Rules"** to appoint a departmental representative by designation when it is necessary to hold an inquiry while in the instant case the latter rule has been utterly violated and the impugned statement of allegations enclosed with charge sheet is bereft of this merit, as this very issue has been already raised vide letter dated 15-04-2024.

(Copy of the referred rule & letter dated 15-04-2024 attached as Annexure..... "I").

11- That, pertinent to mention here that it has been also observed that a person **(Mr. Inam Ul Haq)** representing himself as departmental representative vide dated 15-04-2023, during the inquiry proceedings who has never even been appointed as departmental representative by designation under 10 (1)(c) of the **"E**

& D Rules". In addition to this, the aforementioned person has also been the inquiry officer in the impugned fact finding inquiry of the undersigned which has been already declared unlawful by the Establishment department vide dated 11-12-2023 (already enclosed as Annexure "B"). This phenomenon makes the profile of the proceeding highly doubtful and is against the golden principle of natural justice & legal maxim that a "Judge cannot sit on his own judgment."

So keeping in view of the above, the appellant being aggrieved by the unauthorized, unlawful, unilateral, illegal, partial, punitive, fanciful, tainted with malafide intentions, malicious, whimsical, void ab initio, Coram non iudice, ex-parte and biased proceedings/actions of the "Competent Authority" having no other alternate, adequate, speedy and efficacious remedy other than to file the instant appeal on the basis of following grounds inter alia by impugning the very vires of the subject charge sheet enclosed with statement of allegations.

GROUND:

- A- That, the "impugned inquiry order dated 15-04-2024", issued by the "Competent Authority" is against the law, facts, norms of natural justice, materials on the record and unconstitutional, hence not tenable and liable to be set aside.
- B- That, the "impugned inquiry order dated 15-04-2024", issued by the "Competent Authority" under the garb of probing of such kind of charges for which the constituted committee is not entitled/ competent is in arbitrary, malafide manner and is violative of the prevailing law & rules, hence not tenable and liable to be set aside.
- C- That, the "impugned inquiry order dated 15-04-2024", issued by the "Competent Authority", is totally based on discrimination, favoritism and nepotism, hence not tenable in the eye of law.
- D- That, the "impugned inquiry order dated 15-04-2024", issued by the "Competent Authority", has neither been in the

interest of public nor in the exigency of service, hence non-viable and liable to be set aside.

E- That, according the golden principle of consistency when one of the charge is declined, the other charge also loose it efficacy & maintainability as mandated under Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973.

F- That, the Honorable Supreme Court of Pakistan has held in the judgment cited as "PLD 2008 SC 663" regarding the basic order being void,

"When the basic orders is without lawful/statutory authority and void ab initio, then the entire superstructure raised thereon falls on the ground automatically.

G- That, as per dictum laid down by the Honorable Supreme Court of Pakistan in the case cited as "PLD 2011 SC 927", the Honorable Supreme Court of Pakistan has dilated upon the principle of administration of justice as under,

"when a procedure has been provided for doing a thing in a particular manner that thing should be done in that manner and in no other way or it should not be done at all;

H- That, the appellant has not been treated by the "Competent Authority" in accordance with law, rules and cited judgment of the Apex Court on the subject matter and as such has utterly violated the Articles 4,10A & 25 of the Constitution of the Islamic Republic of Pakistan, 1973.

Keeping in view entire of the above, it is humbly prayed to kindly direct the "Competent Authority" as follow that either,

- 1) To kindly produce to the appellant, (a) the latest amendments made in "E & D Rules" to the extent of rule "3", which provide legal coverage to the penalty of Misuse of Authority by specifying it in the rule ibid, (b) the latest amendments made in "E & D Rules" to the extent of "clause (ii)" of proviso appended to rule "5(1)(a)" R/W rule "8(a)" and its appended proviso, prescribing the "MODUS OPERANDI" & "JURISDICTION" of the "Competent Authority" which empower the concerned

authority to initiate disciplinary proceedings and consequently to take legal action while mandating the chance of personal hearing or serving charge sheet/statement of allegations/ show cause notice as the case may, to the accused without conviction from Court of law, (c) the latest amendments made in the Khyber Pakhtunkhwa Government Servant (Conduct) Rules, 1987, to take cognizance of the instant case as misconduct and (d) the latest amendments made in "E & D Rules" to the extent of rule 10(1)(c) while nominating anonymously any person from the health as departmental representative without disclosing his name & designation or to issue a competent order regarding appointment of departmental representative by designation through proper channel under the rule ibid by providing legal coverage to the defective composition of inquiry committee.

OR

2) In case of otherwise, it is humbly requested to kindly accept the instant appeal by directing the Chief Secretary [**"Competent Authority"**] to kindly withdraw the "impugned inquiry order dated 15-04-2024" while passing a speaking appellate order through establishment department to the extent of whimsical charges framed under the garb of Corruption, Misuse of authority, misconduct and also dispensing with appointment of the departmental representative by designation as "ineffective upon the rights of appellant", "without mandate of law", "Coram Non Judice", "illegal", "unlawful", "unconstitutional", "impracticable", "invalid" and "void ab intio" in light of the existing facts, grounds, prevailing laws & rules and cited judgment of the Apex Court, so as to avoid further unnecessary rounds of litigation and oblige please.


ZIA ULLAH,

Provincial Drug Inspector (BS-17),
District Bannu.
0333-2586980.

"M" -32-

P L D 2022 Supreme Court 119

Present: Umar Ata Bandial, Maqbool Baqar, Manzoor Ahmad Malik, Mazhar Alam Khan Miankhel, Sajjad Ali Shah, Syed Mansoor Ali Shah, Munib Akhtar, Yahya Afridi, Qazi Muhammad Amin Ahmed and Amin-ud-Din Khan, JJ

Justice QAZI FAEZ ISA and others---Petitioners

Versus

PRESIDENT OF PAKISTAN and others---Respondents

Civil Review Petitions Nos.296 to 301, 308, 309 and 509 of 2020 and C.M.A. No. 4533 of 2020, decided on 29th January, 2022.

(Against the short order dated 19.06.2020 and the detailed judgment dated 23.10.2020 passed by this court in Const. Petition. 17 of 2019, etc.)

Per Maqbool Baqar, Mazhar Alam Khan Miankhel, Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ; Manzoor Ahmed Malik, J. agreeing; Yahya Afridi, J. also agreeing but with his own reasons; Umar Ata Bandial, Sajjad Ali Shah, Munib Akhtar and Qazi Muhammad Amin Ahmed, JJ. dissenting.

(a) Constitution of Pakistan---

---Art. 4(1)---Right to be dealt with in accordance with law---Scope---No one, including a Judge of the highest court in the land, is above the law---At the same time, no one, including a Judge of the highest court in the land, can be denied his right to be dealt with in accordance with law; it matters little if the citizen happens to hold a high public office, he is equally subject to and entitled to the protection of law.

(b) Supreme Court Rules, 1980---

---O.XXVI, R. 8---Civil Procedure Code (V of 1908), O. XLVII, R.1---Constitution of Pakistan, Art. 188---Review petition, hearing of---Constitution of Bench---Scope---Judicial power to be exercised by the dissenting Judges in review jurisdiction---Dissenting Judges on the Bench that heard the case, subject to their availability, are necessary members of the Bench constituted to hear review petition filed against the majority judgment, i.e., judgment of the Court, in particular, when the Bench that first heard the case was a specially constituted Bench for hearing that case---Dissenting Judges, subject to their availability, being necessary members of the review Bench possess the same judicial power as that of the other members of the Bench.

As the judgment of the Court is considered to be the judgment of all the members of that Bench, irrespective of its being majority judgment or unanimous judgment, there can be no difference in judicial powers of the members who earlier delivered the majority or minority judgment while hearing the review petition, under Article 188 of the Constitution, against the judgment of the Court, i.e., the majority judgment. This is because the judgment of the Court is under review and not the view of the majority judges. There is nothing in the Constitution or the Supreme Court Rules, 1980 that restricts the judicial power of dissenting Judges in review jurisdiction in comparison to that of the Judges who delivered the majority judgment. The dissenting Judges, subject to their availability, being necessary members of the review Bench possess the same judicial power as that of the other members of the Bench. The Judge whose opinion remained the minority view in the main case is as empowered to review the judgment of the Court, as can a Judge who delivered the majority opinion. This is because under the review jurisdiction the Judges enjoy the flexibility to change their view, they might continue to hold or reverse their earlier view and thus subscribe to either the earlier majority or minority view. Adjudication is a deliberative process and the power of review, within its limited scope, allows the Judge to reconsider his earlier opinion.

Zulfikar Ali Bhutto v. State PLD 1979 SC 741 ref.

Justice Qazi Faez Isa v. President of Pakistan PLD 2021 SC 639 and Cherat Cement Co. v. Federation PLD 2021 SC 327 endorsed.

In case of review of its own judgment by a Bench of the Supreme Court, the review Bench with the same Judges, if available, and with the same numeric strength can review, within the scope of its review jurisdiction, any part of its judgment including any principle of law enunciated therein.

(c) Supreme Court Rules, 1980---

---O.XXVI, R. 1---Constitution of Pakistan, Art. 188---Split decision of Supreme Court in its review jurisdiction---Majority and minority judgments---Scope---In case of a split decision (where there is dissent by one or more members of the Bench), the majority judgment is the judgment of the Supreme Court in terms of Art.

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---Scope---Where an authority has no jurisdiction in the matter under the law, jurisdiction cannot be conferred on that authority by an order of the Court.

Badshah Begum v. Additional Commissioner 2003 SCMR 629 ref.

(k) Constitution of Pakistan---

---Art. 209(8)---Code of Conduct for Judges of the Supreme Court and High Courts ('the Code of Conduct')---Spouses and children of Judges---No law or clause in the Code of Conduct prescribed for Judges of superior Courts makes the Judges liable to account for the alleged tax-evasion (if any) by his or her independent spouse---Nothing is present in any law or in the Code of Conduct which could possibly be stretched to hold a Judge liable for the conduct of his spouse and children, or for that matter of anybody else, without there being any evidence to connect him with, and hold him responsible for such conduct.

Messrs Avia International v. Assistant Collector of Customs 2004 PTD 997 ref.

(l) Supreme Court Rules, 1980---

---O.XXVI, R. 1---Civil Procedure Code (V of 1908), O. XLVII, R.1---Constitution of Pakistan, Art. 188---Review jurisdiction of the Supreme Court---Expression 'error apparent on the face of the record'---Meaning---Said expression cannot be defined with precision or exhaustiveness, and there would always remain an element of indefiniteness inherent in its very nature---Meaning of said expression is to be determined in each case on the basis of its own peculiar facts.

Anwar Husain v. Province of East Pakistan PLD 1961 Dacca 155 ref.

(m) Constitution of Pakistan---

---Art. 10A---Right to fair trial and due process---Scope---After recognition of the right to fair trial and due process as a fundamental right by insertion of Art. 10A in the Constitution, violation of the principles of natural justice, which are the necessary components of the right to fair trial and due process, is now to be taken as a violation of the said fundamental right as well.

(n) Supreme Court Rules, 1980---

---O.XXVI, R. 1---Civil Procedure Code (V of 1908), O. XLVII, R.1---Constitution of Pakistan, Art. 188---Review jurisdiction of the Supreme Court---Expression 'error apparent on the face of the record'---Scope---Any judgment pronounced or order made without advertent to, and in contravention of, the relevant provisions of law or Constitution is to be treated as an error apparent on the face of the record that warrants the review of that judgment or order.

Muhammad Amir v. Controller of Estate Duty PLD 1962 SC 335; Zulfikar Ali Bhutto v. State PLD 1979 SC 741; Suba v. Fatima Bibi 1996 SCMR 158 and Abdul Ghaffar v. Asghar Ali PLD 1998 SC 363 ref.

(o) Supreme Court Rules, 1980---

---O.XXVI, R. 1---Civil Procedure Code (V of 1908), O. XLVII, R. 1---Constitution of Pakistan, Art. 188---Review jurisdiction of the Supreme Court---Scope---Whenever Judges of the Supreme Court find that their judgment or order of which review is sought was pronounced or made without advertent to, and in contravention of, any provision of law or the Constitution, they must correct the error considering it their inviolable constitutional obligation and duty, not a favour or concession to the party seeking review---Judge, therefore, should not hesitate to review his/her decision if it is established not to be right.

(p) Administration of justice---

---When the basic order is without lawful authority, then the entire superstructure built on it falls on to the ground automatically.

Yousaf Ali v. Muhammad Aslam PLD 1958 SC 104; Executive District Officer v. Muhammad Younas 2007 SCMR 1835; Atta-ur-Rehman v. Umar Farooq PLD 2008 SC 663 and Province of Punjab v. Border Area Committee PLD 2011 SC 550 ref.

(q) Constitution of Pakistan---

---Art.4---Right to be dealt with in accordance with law---Scope---Constitutional guarantee of the right to be dealt with in accordance with law, under Art. 4 of the Constitution, is available not only to every citizen of the country but also to every other person for the time being within Pakistan---Said constitutional guarantee cannot be curtailed or limited in the case or matter of any person whosoever he may be and whatever the allegations against him may be.

Naveed Asghar v. State PLD 2021 SC 600 ref.

(r) Constitution of Pakistan---

---Arts. 209(5) & 209(6) & Preamble---'Independence of judiciary' and 'rule of law' importance of---Rule of law---Scope---Edifice of the judicial independence rests on the assumption that every Judge besides being fair and impartial is fiercely independent and is free to uphold his judicial views---Such judicial freedom is fundamental to the concept of the rule of law---Any attempt to muffle judicial independence or to stifle dissent shakes the foundation of a free and impartial judicial system, thus eroding public confidence on which the entire edifice of judicature stands---Judge whose decisions are dictated not by the fidelity to the letter and spirit of the law but based on what he deems to be palatable to the Government would cause irretrievable damage to the public confidence in the judiciary, and consequently jeopardize its credibility and moral authority---Rule of law and the independence of judiciary are conceptually interwoven---Without an independent judiciary, expecting the rule of law is a sheer farce---Rule of law and the independence of the judiciary are the only guarantee to the maintenance and preservation of a thriving democracy.

Per Yahya Afridi, J.;agreeing with the Majority view but with his own reasons [Majority view]

(s) Supreme Court Rules, 1980---

---O.XXVI, R. 1---Civil Procedure Code (V of 1908), O. XLVII, R.1---Constitution of Pakistan, Art. 188---Review jurisdiction of the Supreme Court---Expression 'error apparent on the face of the record'---Scope---Judgment passed on an erroneous assumption of material facts, or without advertng to a provision of law or Constitution, or without noticing an undisputed construction of law and Constitution amounts to an error apparent on the face of the record, and thus justifies positive exercise of the review jurisdiction.

Muhammad Boota v. Member (Revenue) BOR 2010 SCMR 1049 ref.

(t) Constitution of Pakistan---

---Art. 209(5)---Supreme Judicial Council ('the Council'), powers of---Expression 'information from any source' used in Art. 209(5) of the Constitution---Scope---Clause (5) of Art. 209 of the Constitution, clearly provides that "information from any source" can form the basis of an inquiry by the Council against a Judge of the Superior judiciary---Legal significance and practical implication of the insertion of the word "any" prefixing the word "source" in clause (5) of Art. 209 of the Constitution has, in fact, expanded the pool from which the Council may obtain "information" to initiate an inquiry into the conduct or capacity of a Judge of the Superior judiciary---To interpret the word "any" used in clause (5) of Art. 209 of the Constitution in a manner that would dilute the

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1981.S C M R 1160

Present: Mushtaq Hussain and Shfi-ur-Rehman, JJ

BASHIRUL HUSSAIN-Petitioner

Versus

SECRETARY, MINISTRY OF DEFENCE, GOVERNMENT OF PAKISTAN,
RAWALPINDI

AND ANOTHE-Respondents

Civil Petition for Special Leave to Appeal No. 243 of 1978, decided on 24th November, 1980.

(On appeal against the judgment dated 3rd January 1978 of the Service Tribunal Islamabad in Appeal No. 170(R)/76).

Government Servants (Efficiency and Discipline) Rules, 1960

R.6 and Service Tribunals Act (LXX of 1973), S. 4-Contention that Officer conducting preliminary inquiry could not be appointed Inquiry Officer to hold formal inquiry as he had made up his mind during course of preliminary inquiry and could not be treated as an unbiased person-Held: Submission based on misunder a standing that Inquiry Officer holding preliminary inquiry has to give a finding-Such Officer not required to give a finding but required only to take down evidence connected with charge and forward it to competent authority and such authority to decide whether on basis of evidence so recorded a formal inquiry and a charge-sheet called for or not-Constitution of Pakistan (1973),

Ch. Muhammad Hasan, Advocate Supreme Court and Rana Maqbool Ahmad Qadri, Advocate-on-Record for Petitioner.
Ncmo for Respondents.

Date of hearing : 24th November 1980.

ORDER

MUSHTAQ HUSSAIN, J.-The petitioner an employee of the Military Accounts Department was promoted as Superintendent in the year, 1965. A preliminary inquiry was held against him on three allegations and on the basis of the report the competent authority decided to hold a formal inquiry under rule 6-A of the Government Servants (Efficiency & Discipline) Rules, 1960.He was served with a charge-sheet on 18-5-72 and Mr. M. A. Jabbar P. M. A. S. was appointed the Inquiry Officer. The petitioner contested the charge and Mr. S. H. Haqqi, J. C. M. A. proceeded to hold the inquiry having been appointed in succession to Mr. M. A. Jabbar. The Inquiry Office found the charge of inefficiency and misconduct proved against the petitioner and he was ordered to be removed from service on 26-5-76.

2.The petitioner filed an appeal which not having been disposed of he was obliged to move the Service Tribunal, Islamabad under section 4 of the Service Tribunals Act of 1973.

3.While this appeal was pending action was taken on the appeal submitted by him earlier to the Secretary, Ministry of Defence, and the removal was converted into compulsory retirement from service. The Service Tribunal rejected his appeal on 3-1-1978. Hence this civil petition for special. Leave to appeal.

4. Learned counsel submits that since Mr. S. H. Haqqi had conducted the preliminary inquiry he could not be appointed Inquiry Officer to hold the formal inquiry against him. We asked the learned counsel to place before us the law on which he based this submission. He was not able to do so and he only submitted that Mr. Haqqi had made up his mind during to the course of the preliminary inquiry and he could not be treated as an unbiased person - and could,

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2007 S C M R 1643

[Supreme Court of Pakistan]

Present: Javed Iqbal, Actg. C.J. and Sardar Muhammad Raza Khan, J

Syed SAJJAD HAIDER KAZMI—Appellant

Versus

DIRECTOR-GENERAL (S&GAD) WAPDA and another—Respondents

Civil Appeal No.2745 of 2006, decided on 31st May, 2007.

(On appeal from the judgment, dated 12-10-2006 in Appeal No.228(L)(C.S.) of 2003 passed by Federal Service Tribunal, Islamabad).

(a) Punjab Removal from Service (Special Powers) Ordinance (IV of 2000)—

—Ss. 3, 5 & 10—Constitution of Pakistan (1973), Art.212(3)—Compulsory retirement from service—Negligence, charge of—Retirement of civil servant from service w.e.f. 9-10-2006 on attaining age of superannuation—Judgment of Service Tribunal, dated 12-10-2006 directing holding of de novo inquiry against civil servant—Validity—Supreme Court granted leave to appeal to consider, inter alia, contention of civil servant that after his retirement from service, Service Tribunal was not justified in directing holding of de novo inquiry against him.

Abdul Wali v. WAPDA 2004 SCMR 67 ref.

(b) Punjab Removal from Service (Special Powers) Ordinance (IV of 2000)—

—Ss. 3, 5 & 10—Compulsory retirement from service—Breaking out fire in hospital—Civil servant was charged to be responsible for faulty functioning of Fire Alarm System in hospital—Imposition of such penalty after dispensing with regular inquiry—Retirement of civil servant from service w.e.f. 9-10-2006 on attaining age of superannuation—Service Tribunal on 12-10-2006 partly accepted appeal of civil servant directing holding of de novo inquiry against him—Validity—Copy of report of preliminary inquiry had not been made available to civil servant, due to which he remained ignorant of exact nature of accusation and incriminating material relied upon therein—Civil servant had not been provided personal opportunity of hearing—Preliminary inquiry could not be equated to that of a regular inquiry—Regular inquiry should not have been dispensed with in view of contentions and controversial issues raised by civil servant in reply to show-cause notice—Competent authority had not examined such reply with diligent application of mind—Civil servant had since been retired, holding of de novo inquiry against him in absence of any lawful justification, would be of no use—Supreme Court set aside impugned judgment in circumstances.

Abdul Wali v. WAPDA 2004 SCMR 67 ref.

Ghulam Muhammad Khan v. Prime Minister of Pakistan and others 1996 PLC (C.S.) 868; Nawaz Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others PLD 1994 SC 222; Basharat Ali v. Director Excise and Taxation Lahore 1997 SCMR 1543=1997 PLC (C.S.) 817; Syed Yaqoob Shah v. Xen PESCO (WAPDA) Peshawar PLD 2002 SC 667; Abdul Qayyum v. D.G. Project Manager Organization 2003 SCMR 1110 rel.

Mian Mahmood Hussain, Advocate Supreme Court for Appellant.

Ch. Muhammad Sharif, Advocate Supreme Court for Respondents Nos. 1 and 2.

Date of hearing: 31st May, 2007.

JUDGMENT

JAVED IQBAL, ACTG. C.J.— This appeal with leave of the Court is directed against the judgment dated

PLJ 2017 Lahore 462

Present: SHAHID MUBEEN, J.

PACKAGES LIMITED--Petitioner

versus

PUNJAB LABOUR APPELLATE TRIBUNAL, etc.--Respondents

W.P. No. 34216 of 2016, decided on 9.2.2017.

Constitution of Pakistan, 1973--

---Art. 199--Constitutional petition--Appointed as apprentice--Investigation--Show-cause notice--Dismissed from service--Registration of criminal case--Acquittal--Request to summon record as well chowkidar to verify fact--Production of chowkidar as witness to prove theft of motorcycle was necessary--Failed to do so inspite of request--Validity--Neither any question nor suggestion was put in cross-examination that motorcycle has been stolen by respondent--Inquiry was neither just nor fair and inquiry officer has performed duties of prosecutor as well as of a judge at same time which is against well established principle of law that no judge can be a judge in his own cause, or in a case in which he is personally interested, not because his decision must invariably be in his own favour but on principle that justice must not only be done but seen to be done and however right Judge deciding a cause in his own favour may be, neither public nor aggrieved party will be satisfied with adjudication and its result will be vacated by Court of appeal at instance of dissatisfied party. [Pp. 465 & 466] A & B

Honourable Acquittal--

---Scope of--It is a well settled principle of law that all acquittals are honourable acquittals. [P. 466] C

Industrial and Commercial Employment (Standing Orders) Ordinance, 1968--

---S.O. 15--Dismissal from service--Allegation regarding theft of motor-cycle--Workman could not have been dismissed when his act or omission does not fall within acts or omission listed in Standing Order 15 of Ordinance. [P. 467] D

Constitutional jurisdiction--

---High Court while exercising its constitutional jurisdiction is meant only for correction of jurisdictional error and material irregularities and in absence, thereof, concurrent findings of facts cannot be interfered. [P. 468] E

Appeal--

---High Court while exercising constitutional jurisdiction cannot sit over judgments of Labour Court as well as L.A.T. as a Court of appeal. [P. 469] F

Mr. Rafey Zeeshan Javed Altaf, Advocate for Petitioner.

Mr. M. A Hamid Awan, Advocate for Respondent No. 2.

Date of hearing: 9.2.2017.

ORDER

Through this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has challenged the vires of judgment dated 22.06.2016 passed by the learned Punjab Labour Appellate Tribunal, Lahore/ Respondent No. 1, whereby the judgment dated 14.04.2015 passed by the learned Punjab Labour Court No. 2, Lahore, was upheld.

2. Briefly stated the facts of this case are that Respondent No. 2 was appointed as Apprentice on 07.03.1991 and was engaged in shift work in the petitioner-Factory. A motorcycle of another employee was stolen from the premises of the factory and during investigation of a criminal case lodged against Respondent No. 2 by the owner of the motorcycle, motorcycle was recovered from him by the Police. A show-cause notice was issued to Respondent No. 2 and he submitted his reply thereto, which was found unsatisfactory. An inquiry was conducted against him as a result of which the Inquiry Officer of the petitioner-Factory, concluded that charge against Respondent No. 2 stood proved and consequently he was dismissed from service vide letter dated 08.02.1996. Respondent No. 2 issued a grievance notice to petitioner and then filed a grievance petition before the learned Punjab Labour Court No. 2 which was accepted vide judgment dated 14.04.2015. Being aggrieved by the said judgment of learned Labour Court, the petitioner preferred an appeal before the learned Punjab Labour Appellate Tribunal which was dismissed vide impugned judgment dated 22.06.2016. Hence, this writ petition.

3. Learned counsel for petitioner contends that the impugned judgments passed by the learned Punjab Labour Court as well as learned Punjab Labour Appellate Tribunal suffer from misreading and non-reading of oral as well as documentary evidence available on record. Learned counsel further contends that Respondent No. 2 was dismissed from service vide order dated 08.02.1996 after completing all codal formalities prescribed under the law.

4. Conversely, learned counsel for Respondent No. 2 supports the impugned judgments.

5. I have heard the arguments of learned counsel for the parties and have gone through the record with their assistance.

6. In order to prove the charges, the petitioner-company produced Muhammad Yaqoob Senior Officer Security/Gates as P.W-1 in the inquiry who in his examination-in-chief has stated that he received an application from Muhammad Ajmal FP Department for missing of his motorcycle. In cross-examination he has admitted that in the application no body was nominated. He further admitted that in the application of Bahadar Khan no person has been nominated about stealing of motorcycle. He further admitted in his cross-examination that the application dated 03.05.95 submitted by Bahadar Khan does not bear his signatures. He further admitted that Bahadar Khan has died. He further admitted that neither the motorcycle was recovered from Respondent No. 2 in his presence nor he had seen Respondent No. 2 while taking away the motorcycle. The petitioner-factory also produced Muhammad Ajmal Khan, Card No. 7058-FP as P.W-2 whose motorcycle was stolen. He admitted in his cross-examination that he had not shown any suspicion on any person. He further admitted that he had not seen anybody while taking away the motorcycle. He further admitted that he has not filed any complaint against Contractor who was responsible for the safe custody of the motorcycle.

7. From bare perusal of statements of above two witnesses it is crystal clear that none of the P.Ws has seen Respondent No. 2 while

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Service Appeal No.16202/2020 titled "Abdul Hadi Vs. Government
of Khyber Pakhtunkhwa"

ORDER

28th Feb. 2024 Kalim Arshad Khan, Chairman. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

2. Brief facts of the case are that appellant was serving as Junior PHC Technician (BPS-12). That vide order dated 27.07.2020, he was removed from service. Feeling aggrieved, he filed departmental appeal on 18.08.2020 but the same was not responded, hence, the instant service appeal.

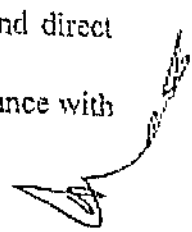
3. Arguments heard. Record perused.

4. Admittedly, the inquiry was conducted by the same person who had conducted fact finding inquiry which proceedings are in utter disregard of the provisions of Rule-10(3) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. The relevant Rule-10(3) is reproduced below:

"10. (3) In case where preliminary or fact finding inquiry was conducted, and the competent authority decides to hold formal inquiry, the inquiry officer or the inquiry committee for the purpose of conducting formal inquiry shall be different from the inquiry officer or the inquiry committee which conducted the preliminary enquiry."

Therefore, the punishment awarded on the basis of such inquiry cannot sustain.

5. In view of the above, on allowing this appeal, we set aside the impugned orders reinstate the appellant into service and direct that de-novo inquiry should be conducted strictly in accordance with



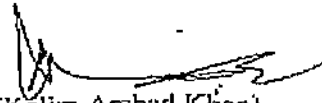
the above Rule, within 60 days. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

6. Pronounced in open Court at Abbottabad under our hands and seal of the Tribunal on this 28th day of February, 2024.



(Salah Ud Din)
Member(J)

Adnan Shah



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No 12024

Zia ullah

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS


Health Dept

(RESPONDENT)
(DEFENDANT)

I/We Zia ullah

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

Dated. / / 202


CLIENT

ACCEPTED

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**


WALEED ADNAN

UMAR FAROOQ MOHMAND


MAHMOOD JAN

&


**ABID ALI SHAH
ADVOCATES**