

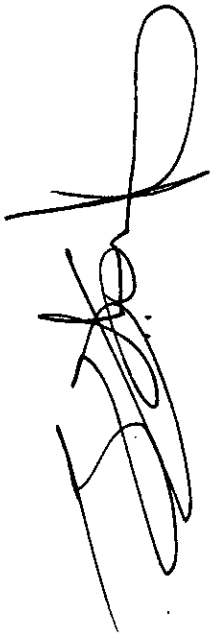
PESHAWAR HIGH COUR, PESHAWAR

Dated Peshawar, the 11th October, 2018

Notification

No, 240 -J, Whereas, in consequence of disciplinary proceedings against Mr. Muhammad Azim Khan Afridi, District & Sessions Judge/OSD (Under Suspension) conducted within meaning of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority not agreeing with the recommendation of Inquiry Officer was pleased to pass the following order:-

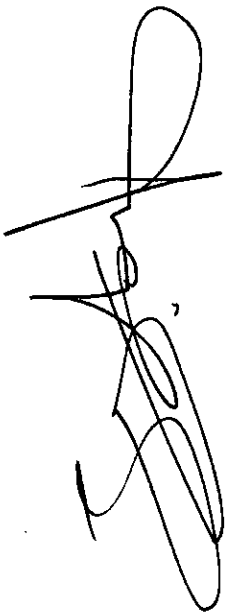
1. A complaint dated 12.06.2013 was filed by one Saif-ur-Rehman, resident of House No. 26, Sector H-2, Phase-II, Hayatabad Peshawar against Mr. Muhammad Azim Khan Afridi, District & Sessions Judge then posted as Judge Special Court (CNS), Peshawar presently OSD (Under Suspension). On receipt of said complaint in this Court through Human Rights Directorate of the Supreme Court of Pakistan, the proceedings started by calling for comments of the accused/officer regarding the complaint. After several reminders, the accused/officer filed the comments and it was deemed appropriate to summon the complainant in office of the Registrar of this Court for recording his statement on oath before proceeding further in the matter. The statement of complainant was recorded on 31.07.2013 and in the course of recording of his statement; he was shown the reply of accused/officer and the documents consisting of 24 volumes including a CD. Consequently, the complainant came up with a request either to provide him with copies of the record submitted by accused/officer with his comments or a reasonable opportunity to go through it and thereafter to record his supplementary



statement. On the proposal submitted by office in pursuance to said request of the complainant, approval was given for providing copies of the said documents. The proceedings for sometime remained pending for recording supplementary statement of the complainant but ultimately he relied upon his already recorded statement dated 31.07.2013.

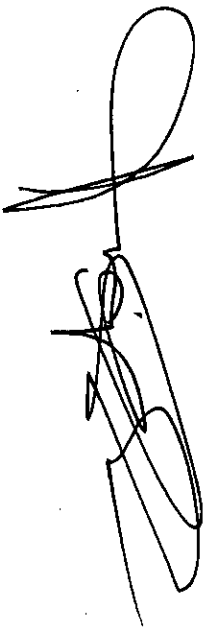
2. Moving forward, order was passed on 30.09.2013 for serving Statement of allegations and Charge Sheet upon the accused/officer. Mr. Justice Assadullah Khan Chamkani as then he was, appointed as Inquiry Officer. After filtering the allegations of complainant, a statement with the following allegations was formulated to disclose the grounds for disciplinary action:-

- i. That the accused/officer has aided & supported Malik Khana Gul S/O Akbar Shah who was wanted to Saudi Arabia in some cases and with his connivance and support he (Malik Khana Gul) has managed to escape his arrest by Interpol.
- ii. That with the active support and connivance of the accused officer, a case registered by FIA in Karachi against the above mentioned Malik Khana Gul for recovery of illegal amount of about 17,00 million from the staff of his company Money Link Exchange Company (Pvt) Ltd formerly Malik Exchange and KASB Bank, has been transferred to Peshawar.
- iii. That for the above mentioned support, favour & connivance of the accused officer, Ex-Senator Abdur Raziq, his father and Rehmat Shah Afridi have offered him a recently constructed new House No. 32, street No. 2, Sector E5, Phase-VII, Hayatabad Peshawar worth about 25.00 million rupees.

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iv. That the accused/officer has written ridiculous articles against the Hon'ble Judges of superior courts which are available on his website "www.azimafridi.com".

3. The above allegations making four heads were set in the Charge Sheet against the accused/officer with assessment that such acts/conduct on his part are unbecoming of a Government Servant, against the code of conduct for judicial officers and also against the service discipline; and for their reason, he appears to be guilty of misconduct and corruption rendering him liable to any of the penalties specified in Rule 4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.
4. Before appointment of Mr. Justice Lal Jan Khattak as Inquiry Officer on 16.12.2016, the Inquiry Officers one after the other requested for withdrawal of their name and no progress in proceedings took place except miscellaneous proceedings conducted in office of the Registrar for amicable settlement between the complainant and the accused/officer.
5. Even after appointment of the last Inquiry Officer, proceedings remained dormant mainly due to retirement of departmental representative namely Mr. Ayman Zia, the then District & Sessions Judge. He was substituted with Mr. Muhammad Feroz Khan Assistant Registrar (General) of this Court by order dated 19.08.2017 to act as Departmental Representative. However, the inquiry proceedings were kept at back burner by the Inquiry Officer until the accused/officer was suspended on 04.04.2018 and the Inquiry Officer on receiving order of the suspension fixed a date for hearing by order dated 07.04.2018. It was directed to issue notice to the accused/officer and the departmental representative for 14.04.2018; and also to the complainant, Housing Officer PDA, Hayatabad, Peshawar and Assistant Registrar (Confidential) of this Court. In the course of inquiry, statements of following witnesses were recorded:-



PW-1 : Mr. Ilyas Khan, Assistant Registrar (Confidential)

PW-2: Mr. Tilla Muhammad, Housing Officer, PDA, Hayatabad, Peshawar.

PW-3: Syed Mazhar Shah, Chief Draftsman, Building Control Agency, PDA, Hayatabad, Peshawar.

PW-1: Malik Saif-ur-Rehman S/O Haji Gul Bahadur, presently residing at Hayatabad, Peshawar.

RW-4: Haseeb Javed, Senior Investigator Cyber Crime, FIA, Peshawar

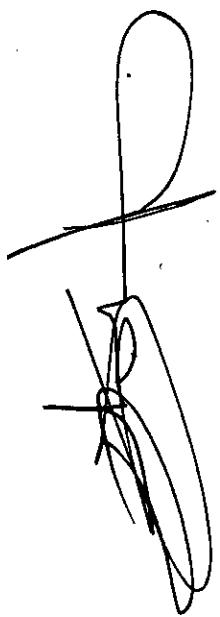
(It appears that 4th and 5th witness out of the above listed witnesses were inadvertently numbered as PW-1 and RW-4 respectively instead of numbering them as PW-4 and PW-5 who hereinafter shall be referred accordingly)

6. It is noteworthy that the accused/officer did not submit his written defense at all which he was required to submit to the Inquiry Officer within 07 days of the receipt of Charge Sheet. As indicated in the charge sheet, such omission amounts to presumption of his having no defense to put and thereby making ground for ex-parte action against him. Despite this fact, he was allowed by the Inquiry Officer to join the proceedings and to have right of hearing, which he availed by cross-examining PWs in defense. Thereafter, he opted to stay away from the inquiry proceedings with the plea of no confidence in the Inquiry Officer and refused to join the proceedings against him. So, having been left with no option, the learned Inquiry Officer had to proceed with the inquiry in absence of the accused/officer, as evident from order sheet dated 06.08.2018. So, there is no evidence on behalf of the accused/officer to rebut the charge sheet against him.
7. The Inquiry Report was submitted on 14.09.2018. The Charge Sheet against the accused/officer includes four grounds for disciplinary action based on the statement of allegations already copied herein above. Said report gives clearance to the accused/officer on first three heads of the Charge Sheet while on



the fourth head of charge, the learned Inquiry Officer has made a case for belief as to disproof of this head of charge too but not with clear mind of his own. This is because the learned inquiry officer despite believing into disproof of fourth ground of charge observed that the accused/officer had got himself engaged in some social media campaign and activities which were uncalled for and recommended for issuing of strict warning to him (accused/officer) to be careful in future and observe discipline in the department. Thus, the inquiry report in respect of fourth ground of charge is random with no clue either to clear the accused/officer from this charge or to hold him guilty for it in explicit terms.

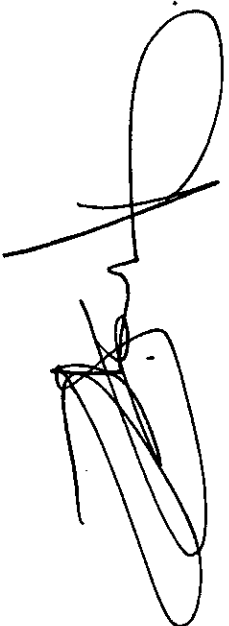
8. If, the inquiry report pertaining to first three heads of charge sheet is kept untouched with the presumption of its being well reasoned, yet there appears no cause for concurrence with the report on fourth head of charge for the reasons to follow hereinafter.
9. It is significant to emphasize that there were different requirements of evidence for proof of first three grounds of charge and for fourth ground of charge. The evidence for proof of first three grounds of charge sheet was required from the complainant and in view of the learned Inquiry Officer, he failed to produce sufficient evidence for proof of said three charges. No doubt, the matter of the fourth head of charge was also taken from the complaint of Saif-ur-Rehman (Complainant) but it was required to be proved departmentally. The learned Inquiry Officer in discussion about fourth ground of charge observed that in order to prove the aforesaid allegation, no worth reliable material has been produced by the department. Here, the learned Inquiry Officer ignored the failure of the accused/officer in submission of written defense as well as absence of defense evidence. Moreover, the departmental file containing the complaint and

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record of preliminary proceedings before order of formal inquiry under E&D Rules, was at hand of the learned Inquiry Officer as part of inquiry proceedings. Whether, before coming to the conclusion as to failure of department in production of reliable material, the learned Inquiry Officer had gone through the said record or not; but comments of the accused/officer regarding the complaint under inquiry are there on the main file. The said comments were required officially from the accused/officer while posted as Judge Special Court (CNS), Peshawar vide letter of this Court duly referred by him in beginning of his comments. The part of the comments of accused/officer relevant to fourth head of the charge is copied below for ready reference:-

“Website www.azimkhanafri.com is not the subject of Mr. Saif ur Rehman, a drug baron. The undersigned do not feel mandated to submit any comments in response to a complaint of tutored drug baron in respect of the said website. The undersigned do not accept the commanding position of Mr. Saif ur Rehman and determined to chase him and his family members and associates in the corridors of Superior Judiciary till the undersigned bring them to face the Courts and law penned down in the law books of Islamic Republic of Pakistan.”

10. The general issue underlying in the fourth head of charge was ridiculing the Hon'ble Judges of higher judiciary through articles which was particularized with reference to website of the accused/officer. The approach of the learned Inquiry Officer to the issue may be like that requiring proof of existence of the website in view of statement of PW-4 as referred by him; and so he was not convinced about existence of the website mentioned in the charge. Firstly, no need was left for more material to prove the fourth head of charge after the comments of accused/officer in his official capacity as copied above, had those comments been read by the learned Inquiry Officer in appraisal of record. Even otherwise, there was a lot of material in the inquiry file at his hand to prove said charge if approached from right angle in



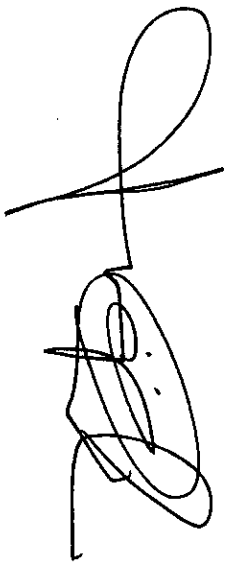
appreciation of evidence. Let us start from cross-examination of the Saif-ur-Rehman (Complainant) i.e. PW-5 (inadvertently numbered as PW-1) conducted in presence of learned Inquiry Officer. The cross-examination of said witness as conducted by the accused/officer very obviously contains some questions/suggestions tending to purport contemptible image of the Hon'ble judges of the Superior Judiciary. The relevant portion thereof is copied below:-

"It is incorrect to suggest that factum of purchase of computers and laptops was in my notice as I was associated with the proceedings of the Judicial Commission led by the Hon'ble Justice Iftikhar Muhammad Chaudhary, Chief Justice of Pakistan, Hon'ble Mr. Justice Muhammad Anwar Khan Kansi and Mr. Attiq-ur-Rehman, the then Registrar of Islamabad High Court."

"It is also incorrect to suggest that my brother Dr. Sham-ur-Rehman, Abid-ur-Rehman and my nephew Asim Rehman used to post defamatory statements in their names against Muhammad Azim Khan Afridi. I do not know that said defamatory statements posted on the website were in notice of this Hon'ble High Court as well as august Supreme Court of Pakistan but due to my close association with the Hon'ble Judges including the then Hon'ble Chief Justice of Pakistan I was spared for my activities."

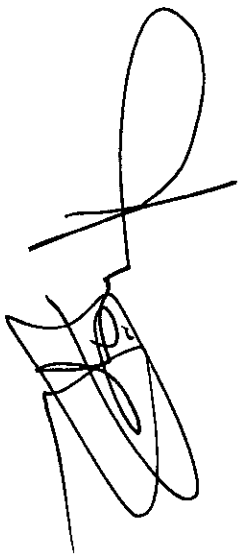
"It is incorrect to suggest that due to my influence as a businessman, the accused was pre-maturely repatriated/transferred and posted as OSD at Peshawar High Court."

11. Many other reasons can be stated about random approach of learned Inquiry Officer in appreciation of the material available for proof of guilt of the accused/officer but being precise with the foregoing reasons, it is not possible to agree with the recommendation in the inquiry report for issuing of strict warning to the accused/officer. Rather he has made him liable for one of the major penalty prescribed under the Rules. Therefore, final show cause notice as prescribed under the Rules has been given to the accused/officer and reply of said notice has been filed by

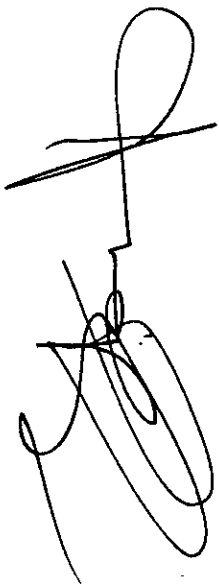


him. The personal hearing of the accused/officer has also taken place on 06.10.2018 with record produced by the departmental representative. The reasons for holding the accused/officer liable for major penalty hereinafter follow:-

12. The accused/officer was elevated as Additional Judge of Islamabad High Court while serving as District & Sessions Judge but he was not confirmed as such and on return, he was accommodated to hold his original post under control of Peshawar High Court. On his non-confirmation as Judge of Islamabad High Court, he believed that it happened as a matter of strategy made successful with role of an individual he named him as Saif-ur-Rehman with character of a drug master and money launderer etc. Soon after his non-confirmation as Judge of Islamabad High Court, he started a campaign through uploading information on social media as well as by sending/filing different petitions alleging nexus between the then Chairman of Judicial Commission and the above-named Saif-ur-Rehman. In his entire correspondence whether published online or printed, the underlying point remains the same that Saif-ur-Rehman and his brothers are hands-in-glove with the Judges of Superior Judiciary. He and above named Saif-ur-Rehman belong to the same locality i.e. Darra Adam Khail and they both were/are fully known to each other. Somewhere in the past, he was in good terms with Saif-ur-Rehman and his brothers. Without intending to give any advantage to afore-named Saif-ur-Rehman, there is nothing on record anywhere that the accused/officer in his Judicial Career before non-confirmation as Judge of the High Court, ever wrote against Saif-ur-Rehman and his illegal activities to expose him like now he is doing. So, a presumption is apt to arise that the accused/officer developed hostility towards Saif-ur-Rehman after his non-confirmation as Judge of Islamabad High Court believing that it happened due to some role played by the latter.



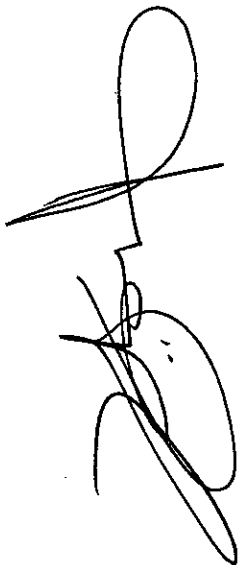
13. On his return from Islamabad High Court, the accused/officer was given posting as Judge, Special Court (CNS), Peshawar. The accused/officer did not provide any proof with his comments during preliminary proceedings that when he took over the charge as Judge, Special Court (CNS), Peshawar, any inquiry was pending in the said court to dig out the involvement of Saif-ur-Rehman and his brothers in keeping fictitious bank accounts for concealment of drug money. It is an admitted position on record by the accused/officer that he exercised his jurisdiction as Judge of said Special Court to make out a case of keeping fictitious bank accounts by Saif-ur-Rehman and his brothers and thereby he ordered for criminal action against them. Consequently, case FIR No. 512 dated 07.08.2013 was registered in Police Station University Town, Peshawar. He undeniably carried forward imaginary information online as well as printed to disseminate the impression that in the matter of petitions filed in Peshawar High Court to challenge his afore-mentioned action, the Judges seized with the matter granted relief to the petitioners against his action to save the drug masters, money launderers and terrorist. While publishing such information, he even did not spare the Judges of this Court from maligning in different ways and particularly by pressing upon their connections with Saif-ur-Rehman. It is a matter of fact that on declining of his confirmation as a Judge of the High Court by Judicial Commission of Pakistan, he appeared to have developed hard feelings against the then Chief Justice of Pakistan (Chairman Judicial Commission) and Hon'ble Chief Justice Islamabad High Court Mr. Muhammad Anwar Khan Kansi with particular allegation of their connections with Saif-ur-Rehman deeming Saif-ur-Rehman as foe in case of his non-confirmation as Judge of the High Court.



14. The present complaint against the accused/officer was filed by Saif-ur-Rehman whom he calls as drug master, money launderer

and terrorist and in his capacity as Judge, Special Court (CNS), Peshawar he exercised his judicial jurisdiction to fix him in a criminal charge on account of his personal grudge towards him. The act of the accused/officer in judicial capacity is in violation of the cardinal principle of justice that no one should act as judge in his own cause.

15. It is a matter of record that a preliminary show cause notice was issued to accused/officer in the matter of complaint of Saif-ur-Rehman against him. Despite many reminders issued requiring him to submit reply of show cause notice, he instead of filing reply moved different applications with many allegations meant to scandalize judges of Superior Courts in background of a self-styled theory about his non-confirmation as Judge of the High Court. Even the comments finally submitted in compliance with letters of this Court were coated to include the impression of protection of complainant by the superior judiciary.
16. Obviously, he was not confirmed as Judge of the High Court and on his repatriation he was not denied his original position as District & Sessions Judge and was accordingly accommodated with further posting as Judge, Special Court (CNS), Peshawar followed by his posting as District & Sessions Judge, Haripur and the Chairman, Khyber Pakhtunkhwa Service Tribunal. His grievances having arisen out of his non-confirmation as Judge of the High Court have no nexus with his service as District & Sessions Judge. It cannot be denied that he with his position as District & Sessions Judge is subordinate to Peshawar High Court, Peshawar. Being subordinate to this Court, he is under obligation to abide by the terms and conditions of his service including the code of conduct prescribed for civil servants and additionally by the Peshawar High Court; and both the codes of conduct are in place for compliance. A District & Sessions Judge like any other member of District Judiciary, on account of insubordination and misconduct, is

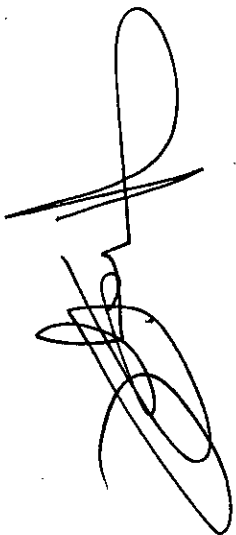


amenable to disciplinary action under Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011.

17. After his non-confirmation as Judge of the Islamabad High Court, any other District & Sessions Judge from Khyber Pakhtunkhwa District Judiciary was not appointed as Judge of said High Court. If not, whether any District & Sessions Judge can claim as matter of right to become judge of said Court. Undeniably many individuals having been appointed as Additional Judges of High Courts including Peshawar High Court were not confirmed by the Judicial Commission may be with valid reasons or not, none of them like the accused/officer embarked upon a malicious campaign against the Chief Justice of Pakistan and other Judges but they honorably accepted their fate. What is exceptional in case of the accused/officer that he is unceasingly busy in his campaign not at all caring that he is bound under the service laws to observe the discipline.

18. He has boycotted the inquiry proceedings in their way and that too with flimsy reasons disclosed by him in applications filed subsequent to boycott wherein he again and again ridiculed the Judges of Superior Judiciary with unfounded allegations. He would hardly be able to cite any provision of service laws to allow him boycott the ongoing inquiry proceedings against him being conducted on orders of the Competent Authority.

19. The procedural course provided for inquiry officer or inquiry committee under Rule 11 of the KPK Government Servants (E&D) Rules, 2011 does not include the power for such officer or committee to determine whether the charge or charges have been proved against the accused or not; and similarly, the said rule does not give any power to the inquiry officer or inquiry committee to recommend the extent of penalty to be imposed. Sub Rule (2) of Rule 14 of the KPK Government Servants (E&D) Rules, 2011 provides that if the competent authority is satisfied



that inquiry has been conducted in accordance with provisions of these rules, it shall further determine whether the charge or charges have been proved against the accused or not.

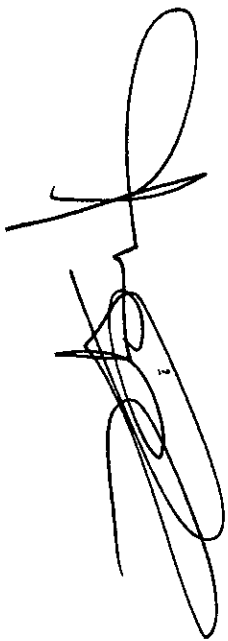
20. The inquiry officer regarding allegation No. 4 concluded as follows: ***"Though the allegation No. 4 has not been proved in accordance with the established rules but it reveals from the record that the accused-officer had got himself engaged in some social media campaign and activities which were uncalled for, therefore, a strict warning be issued to him to be careful in future and observe discipline in the department."*** The accused/officer in his reply dated 01.10.2018 of Show Cause Notice has also reproduced the said conclusion under paragraph 24 of the said reply with explanation to the extent of recommended warning but without challenging the factual part of the said conclusion. So, he principally has agreed with the factual part of said conclusion of the inquiry officer. By paragraph-V under the heading "Legal Objections" in his above mentioned reply, he has written as follows: ***"The subject notice is aimed at punishing me the accused officer for the guilt(s) committed by the Hon'ble Competent Authority and his Hon'ble colleagues serving or ever serving as Hon'ble Judges of the Supreme Court of Pakistan, Hon'ble Peshawar High Court besides those formulating the Rules of the Judicial Commission of Pakistan for evading transparency and merit in process of nominations and including those appointing Hon'ble Judges of the Constitutional Court in a manner subversive to Constitution and contemptuous to the judgment of the apex Court aimed at ensuring transparency and merit in the process of selection by such forums, entities or authorities."*** The said view of accused/officer about the Superior Judiciary underlies his grievances related to his non-confirmation as Judge of Islamabad High Court. It is a matter of fact that there was no role of the Peshawar High Court in his



non-confirmation as Judge of Islamabad High Court. Notwithstanding his claim in reply dated 01.10.2018 as found in Paragraph-8 of said reply about tendering of resignation and its non-acceptance, how could he be able to rationalize his malicious campaign against the Superior Judiciary, with particular reference to code of conduct to be observed by him, while remaining in service as District & Sessions Judge. He has been afforded opportunity of hearing almost in light of the position discussed herein before from paragraph 12 onward. However, he failed to reasonably give explanation that how he is not liable for penalty as proposed in the final show cause notice.

21. With the foregoing reasons, it is held that accused/officer has become liable for imposition of major penalty.

22. Mr. Muhammad Azim Khan Afridi (Accused/Officer) though held liable for awarding of major penalty which should not be less than dismissal from service but there are reasons to take a lenient view. What he has so far done or is doing is not doable by a person of rational thinking. Drift from prudence of mind possibly could be the cause of either clinical depression or due to inflexible behavior towards some situations not expected to have ever happened. Obviously, the anxiety and sufferings of the accused/officer are understandable due to his moving down from an elevated position of a Judge of High Court. However, the conduct exhibited by him whether due to some clinical problem or inflexibility in behavior to deal with the reality of moving down to the position of judicial officer subordinate to the High Court; he is no more fit for retention in service to hold a judicial office. As he has on his credit pensionable service, therefore, with leniency in awarding him major penalty, his compulsory retirement from service will commensurate to the misconduct committed by the accused/officer. Office is directed to do the further needful in light of the operative part of this order.

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Now, therefore, it is notified that the accused/officer named above stands retired from service compulsorily within the meaning of Rule 4(1)(b)(ii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, with immediate effect.

By order of Hon'ble the Chief Justice



(Khawaja Wajih-ud-Din)
REGISTRAR

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Copy forwarded to;

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
4. The Secretary to Government of Khyber Pakhtunkhwa, Law Department, Peshawar.
5. The Secretary to Government of Khyber Pakhtunkhwa, Home Department, Peshawar.
6. The Secretary to Governor of Khyber Pakhtunkhwa, Peshawar.
7. The Member Inspection Team, Peshawar High Court, Peshawar.
8. All District & Sessions Judge/Zilla Qazis in the Khyber Pakhtunkhwa.
9. The Secretary to Hon'ble the Chief Justice, Peshawar High Court, Peshawar.
10. The Additional Registrars, Peshawar High Court, Abbotabad, D.I.Khan, Bannu and Mingora Benches.
11. The Private Secretary to Hon'ble the Chief Justice, Peshawar High Court, Peshawar.
12. The MIS, Computer Branch, Peshawar High Court, Peshawar.
13. All the Private Secretaries to Hon'ble Judges of this Court for placing the same before the Judges for their kind information.
14. The Manager, Govt: Printing and Stationery Department, Peshawar, for publication in the next official gazette.
15. The Director of Information, Govt: of Khyber Pakhtunkhwa, Peshawar.
16. The Assistant Registrar (General), Peshawar High Court, Peshawar.
17. The Deputy Registrar (Accounts), Peshawar High Court, Peshawar.
18. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
19. The District Accounts Officer concerned.
20. The Officer concerned by name.
21. Personal file of the Officer concerned.



(Khawaja Wajih-ud-Din)
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