

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
C.P.NO.D-1548 OF 2016

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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1. For orders on office objection.
2. For katcha peshi.
3. For orders as to non-prosecution.

27.09.2017

Syed Muhammad Saulat Rizvi, Advocate for petitioner.  
Mr. Muhammad Arshad S. Pathan, Advocate for respondents/HESCO  
Mr. Aurangzeb Talpur, Assistant Attorney General.

**ORDER**

**MUHAMMAD SHAFI SIDDIQUI, J:-** The petitioner being aggrieved of the concurrent reasoning and findings of two forums below has filed this petition.

2. Brief facts of the case are that letter of explanation was issued on 10.06.2015 on two following basis:-

- “(a) It has been noticed that you replaced 63 No. 3-phase meters in the month of 01/2015 without CP-90 payment of DN & charging of detections.
- (b) You were directed to send the above 63 meters to M&T for checking but only 53 were sent to M&T wherein following discrepancies were found:-

Units Pending (484594)	Burnt	Display Washout
15 meters	22 meters	16 meters”

3. The letter of explanation was replied promptly on 10.06.2015, however, despite a detailed reply, a show-cause notice was issued which again was replied on 11.09.2015. The grievance of the petitioner was that since he is not a Line Superintendent nor works in the field but only supervised as Sub-Divisional Officer, the allegations of replacing 63 3-phase meters in the month of January, 2015 without payment and without charging the detections is uncalled for and that out

of 63 meters, 53 were sent to M&T Department, wherein some discrepancies were found as mentioned in the letter of explanation dated 10.06.2015. In the same letter while the letter of explanation was issued, without having a reply of petitioner, the authority was pleased to dispense with the regular inquiry on the basis of self claimed documentary evidence.

4. Mr. Muhammad Arshad Pathan, learned Counsel for the respondents has filed a parawise reply and has categorically stated about the allegations in Paras-3 and 4 of the comments and has conceded to some extent and procedure adopted, he however is unable to show any documentary evidence as claimed in show-cause notice while dispensing with the inquiry.

5. We have heard the learned counsel for the parties and perused the record.

6. In so far as, the replacement of 63 3-phase meters claimed to be burnt were concerned, the demand notice for the cost of new meters have been paid by the consumers as admitted, which were installed for burnt meters. Mr. Pathan also agreed that infact it was Line Superintendent to whom the letter was issued by Sub-Divisional Officer, who is responsible for the purported allegations raised in the letter of explanation issued to the petitioner. The allegations as stated in the letter of explanation are explained categorically in the first reply of 10.06.2015. The meters were replaced by the Line Superintendent and so far as the charges for the replacement of meters are concerned, that was admittedly recovered from the consumers and hence the allegations are of no consequence. In so far as the charges of detection for the issuance of detection bill is concerned, neither the Line

Superintendent nor Sub-Divisional Officer is responsible to determine such detection charges. In terms of Section 26(6) of the Electricity Act, if any discrepancy, fault, error found in the measuring apparatus, such as these burnt meters, it becomes the responsibility of the Electric Inspector to determine the charges in respect of consumption of the electricity through burnt or defective meter. Section 26(6) of the Electricity Act reads as under: -

*“Section 26(6) Where any difference or dispute arises between a licensee and a consumer as to whether any meter, maximum demand indicator or other measuring apparatus is nor is not correct the matter shall be decided, upon the application of either party, by an Electric Inspector, within a period of ninety days from the date of receipt of such application, after affording the parties and opportunity of being heard, and where the meter, maximum demand indicator or other measuring apparatus has, in the opinion of an Electric Inspector, ceased to be correct, the Electric Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter, indicator or apparatus has not, in the opinion of the Electric Inspector, been correct, and where the Electric Inspector, fails to decide the matter of difference or dispute within the said period or where either the licensee or the consumer decline to accept the decision of the Electric Inspector, the matter shall be referred to the Provincial Government whose decision shall be final.”*

7. Therefore, the allegation of charging of detection is also of no consequence. Out of 63 meters, 53 were sent to M&T Department and 10 were missing regarding which the letter was issued by the petitioner being Sub-Divisional Officer at Page-21 Annexure “C”. This too is not to be questioned from the petitioner. Though he being a Sub-Divisional Officer may have been responsible for the return of these burnt meters but through Line Superintendent regarding which a letter dated 04.04.2014 was available justifying his prompt action before the issuance of letter of explanation. The dispensation of the inquiry is thus a premature decision which was made surprisingly before a reply of the first explanation could be made. Even otherwise the allegations are of

the nature which could not have been decided without an inquiry. The sufficient documentary evidence which is mentioned in the explanation letter is also not available either with the order imposing major penalty or with the comments filed by the respondents/HESCO. Even at this stage of arguments, no documentary evidence is available justifying their order of imposing major penalty without inquiry. Although, this appears to be a clear case in respect of an arbitrary decision of the authority imposing major penalty, the learned Counsel for petitioner submits that he would be satisfied if this matter is sent to the authority concerned to re-visit the order under Rule 12 of Pakistan Wapda Employees (E&D) Rules, 1978, as he has now stood retired from service and the question of inquiry cannot be considered in terms of the judgment of *ABDUL WALI V/S. WAPDA* reported in *2004 SCMR 678*. The petition is allowed to the extent that the two orders dated 20.10.2015 and 26.05.2016 are set-aside and the reference/case is remanded to the concerned authority in terms of Rule 12 of the *ibid* Rule, 1978.

JUDGE

JUDGE