

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

Appeal No. 721/2018

Date of Institution ... 25.05.2018

Date of Decision ... 05.08.2021

Sahibzada son of Umar Khan (Ex-PST Government Primary School Surkh-Dheri Mardan) R/O Baghi Aram (Koragh) District Mardan

... (Appellant)

Versus

1. The Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

-----  
Mr. Adam Khan,  
Advocate

... For appellant

Mr. Kabirullah Khattak,  
Additional Advocate General

... For respondents

-----  
MR. AHMAD SULTAN TAREEN,  
MR. ATIQ-UR-REHMAN WAZIR

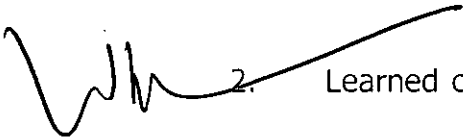
... Chairman  
... Member (Executive)

JUDGMENT

ATIQ-UR-REHMAN WAZIR, MEMBER (EXECUTIVE).-

Brief facts of the case are that the appellant was appointed as Primary School Teacher on 16-10-2004. While posted in a Primary School, an FIR No 1014 dated 12-09-2012 U/Ss 302/324/34 PPC was registered against him, which compelled him to stay in hiding. The appellant remained fugitive from law for four years, until he was arrested in July, 2016, who remained in jail until his acquittal vide judgment dated

03-01-2018. On the other hand, respondents initiated disciplinary proceedings against the appellant under Rule-9 of E&D Rules, 2011 by sending absence notice at his home address as well as publication of such notice in two leading newspapers. A fact finding inquiry was also conducted and after issuance of show cause notice, the appellant was removed from service vide order dated 09-01-2015 with effect from the date of his absence i.e. 13-09-2011. The appellant after acquittal, aspired to join his duty in the said school, but to his utter dismay, impugned order of his removal from service dated 09-01-2015 was handed over to the appellant, against which the appellant filed departmental appeal dated 29-01-2018, which was rejected vide order dated 14-05-2018, hence the instant service appeal instituted on 25-05-2018 with prayers that the appellant may be re-instated in service with all back benefits.

 2. Learned counsel for the appellant has contended that the appellant was mala fide charged in a criminal case vide FIR No 1014 dated 12-09-2012 U/Ss 302/324/34 PPC; that the appellant was tried in the court of session judge and acquitted on 03-01-2018; that absence of the appellant was not willful but due to compelling circumstances, which were beyond control of the appellant; that the appellant was not served with show cause notice, charge sheet/statement of allegations and has been condemned unheard. That the appellant has not been treated in accordance with law, as the appellant was not afforded any opportunity of defense. The learned counsel prayed that the appellant has been granted acquittal from the charge, hence he may be re-instated in service with all back benefits.

3. Learned Additional Advocate General appearing on behalf of respondents has contended that the instant appeal is badly time barred, as the impugned order was issued on 09-01-2015, whereas the appellant filed departmental appeal on 29-01-2018 with delay of more than three years and when departmental appeal is barred by time, the service appeal before this Tribunal is not competent; that the appellant remained absconder from law and as well as from duty for almost four years; that the appellant was proceeded against under the law and rule, but since he was absconder, hence he did not respond either to the absence notices sent at his home or to the publication of such notices in two leading newspaper; that an inquiry to this effect was also conducted and show cause notice was also served upon him, but he did not respond as he was absconder. He further argued that the august Supreme Court have held that even where a person is innocent, absconsion amounts to showing mistrust in the judicial system; that to seek condonation of absence during absconsion would amount to putting premium on such act; that when the appellant himself is not available for personal hearing, no rule of natural justice or requirement of law regarding notice or hearing or about regular inquiry had been infringed. Reliance was placed on 2017 SCMR 965, 2006 SCMR 453, 2007 SCMR 513, 2011 SCMR 1429 and 2021 SCMR 144.

4. We have heard learned counsel for the parties and have perused the record. Admittedly, the appellant remained absconder for almost four years with effect from 12-09-2012 until he was arrested on 26-07-2016. The respondents as per law and rule were required to issue suspension order of the appellant and wait for final decision of the trial court, which


however was not done in case of the appellant in violation of article 194 of CSR. Record reveals that respondents were well aware of the fact that FIR was registered against the appellant, but the respondents ignored such important factor and only focused on his absence, which was contrary to the norms of natural justice, as main reason of his absence was registration of a criminal case against the appellant. The appellant was proceeded against in his absence and removed from service, without affording any opportunity of defense. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service. We are also mindful of the question of limitation, as the appellant filed departmental appeal after earning acquittal from the charges leveled against him. To this effect, the Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880.

5. We are of the opinion that absence of the appellant was not willful as nothing is available on record to show that the appellant was either habitual absentee or less efficient and as per stance of the appellant, he went in hiding as his life was at stake, though he was arrested and in due

course and was honorably acquitted but the respondents did not consider his case and rejected his departmental appeal. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460.

6. In view of the foregoing the instant appeal is accepted and the appellant is re-instated in service. The period of absconsion w.e.f 12-09-2012 to 26-06-2016 is excluded from his service and the period he remained in jail with effect from 27-06-2016 to 03-01-2018 is treated as extra ordinary leave without pay, whereas the period from 04-01-2018 until his arrival into his post is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
05.08.2021


  
(ATIQ-UR-REHMAN WAZIR)  
Member (E)

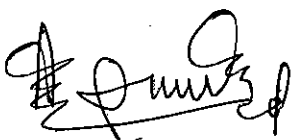
  
(AHMAD SULTAN TAREEN)  
Chairman

05.08.2021 Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present. Argument heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted and the appellant is re-instated in service. The period of absconsion w.e.f 12-09-2012 to 26-06-2016 is excluded from his service and the period he remained in jail with effect from 27-06-2016 to 03-01-2018 is treated as extra ordinary leave without pay, whereas the period from 04-01-2018 until his arrival into his post is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
05.08.2021

  
(ATIQ-UR-REHMAN WAZIR)  
Member (E)

  
(AHMAD SULTAN TAREEN)  
Chairman

23.11.2020

Due to non-availability of D.B, the case is adjourned to 03.02.2021 for the same as before.




Reader

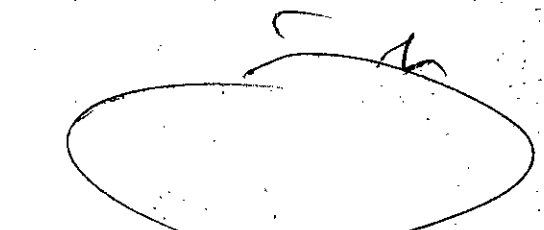
03.02.2021

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Sajid, ADEO (Litigation) for the respondents are also present.

The bare perusal of the impugned order dated 09.01.2015 would reveal that the impugned order has been made efficacious retrospectively and since the issue of retrospectivity is pending adjudication before the Larger Bench of this Tribunal, therefore, we are unable to proceed till adjudication of the appeal. Adjourned to 16.04.2021 on which date file to come up for further proceedings before D.B.



(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)



(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

16.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 05.08.2021 for the same as before.

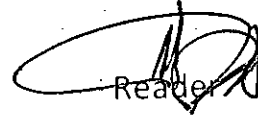


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11.5.2020

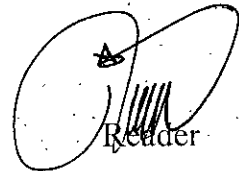
Due to COVID19, the case is adjourned to

4/8/2020 for the same as before.

  
Reader

04.08.2020

Due to summer vacation case is adjourned to 05.10.2020  
before D.B for the same.

  
Reader


05.10.2020


Junior counsel for appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate  
General alongwith Sajid, ADO for respondents present.

Former requests for adjournment as senior counsel is  
busy before District Courts at Mardan.

Adjourned to ~~23~~ 11.2020 arguments before D.B.

  
(Atiq ur Rehman Wazir)  
Member (E)

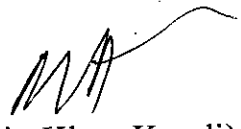
  
(Rozina Rehman)  
Member (J)



22.01.2020


Due to general strike on the call of the Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Adjourned to 11.03.2020 for further proceedings/arguments before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

11.03.2020

Counsel for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Sajid Khan, ADEO for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 11.05.2020 before D.B.

  
Member

  
Member

16.09.2019

Clerk to counsel for the appellant present. Addl: AG for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike of the bar. Adjourn. To come up for arguments on 18.10.2019 before D.B.

  
Member

  
Member

18.10.2019

Junior to counsel for the appellant present. Asst: AG for respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not available today. Adjourned. To come up for arguments on 02.12.2019 before D.B.

  
Member

  
Member

02.12.2019

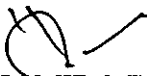
Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 22.01.2020 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

06.03.2019

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant submitted rejoinder and seeks adjournment for arguments. Adjourn. To come up for arguments on 11.04.2019 before D.B.

  
(M. HAMID MUGHAL)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

11.04.2019

Due to strike <sup>on the call</sup> of Pakistan Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned. To come up for arguments on 30.05.2019 before D.B.

  
(AHMAD HASSAN)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

30.05.2019


Appellant in person and Mr. Muhammad Bilal, Head Constable alongwith Mr. Kabirullah Khattak, Additional AG for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned to 24.07.2019 for arguments before D.B.


  
(HUSSAIN SHAH)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

24.07.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 16.09.2019 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

Service Appeal No. 722/2018

27.08.2018

Appellant in person present. Mr. Kabirullah Khattak, Additional AG for the respondents present and made a request for adjournment. Granted. To come up for written reply/comments on 26.09.2018 before S.B.



(Ahmad Hassan)  
Member

26.09.2018

Mr. Naveed Iqbal, Junior to counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for the respondents present and requested for adjournment. Granted. To come up for written reply/comments on 14.11.2018 before S.B.

14.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 31.12.2018. Written reply not received. Mr. Hamēd Ur Rehman AD representative of respondents absent.



READER

31.12.2018

Appellant in person present. Mr. Muhammad Sajid, ADO (Litigation) alongwith Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents submitted. The appeal is assigned to D.B-II for rejoinder and arguments for 06.03.2019.



Muhammad Amin Khan Kundi  
Member

08.06.2018

Junior to counsel for the appellant present and seeks adjournment as senior counsel for the appellant is not available. Adjourned. To come up for preliminary hearing on 09.07.2018 before S.B.

  
Member

09.07.2018

Appellant Sahibzada in person alongwith his counsel Mr. Adam Khan, Advocate present and heard on preliminary.

Contends that the appellant has been removed from service on the ground of absence whereas he was charged in criminal case and later on, he was acquitted from the charges by the competent court of law and that the appellant has been discharge from service but without adopting the legal and codal formalities.



Points raised need consideration. The appeal is admitted to full hearing, subject to all legal objections including limitation, if raised by the respondents. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. Case to come up for written reply/comments on 27.08.2018 before S.B.

Appellant Deposited  
Security & Process Fee

  
Chairman

Form-A  
FORM OF ORDERSHEET

Court of \_\_\_\_\_  
Case No. 721 /2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25/05/2018	<p>The appeal of Mr. Sahibzada presented today by Mr. Muhammad Adam Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 25/05/18</p>
2-	29/05/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>08/06/18.</u></p> <p> CHAIRMAN</p>

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 721 /2018

**Sahibzada VS The Secretary, etc;**

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Total:- 22

Dated:-24.05.2018

APPELLANT

  
(Sahibzada)

Through;

  
Muhammad Adam Khan  
Advocate Mardan

Before The Service Tribunal KPK Peshawar.

Service Appeal No. 721 / 2018.

Sahibzada S/o Umar Khan (Ex-PST Govt; Pry; School Surkh-Dheri Mardan) Resident of Baghi Aram (Koragh) District Mardan.

Appellant.

Khyber Pakhtukhwa  
Service Tribunal

Versus

Diary No. 976

Dated 25/5/2018

1. The Secretary, Elementary & Secondary Education Deptt; KPK Peshawar.
2. The District Education Officer (Male) Mardan.
3. The Director Elementary & Secondary Education Deppt; KPK Peshawar.

Respondents.

-----

Appeal under Section-4 of the Service Tribunal Act, 1974, against the order of The DEO/ Respondent No.2 contained in Letter No.202 Dated 09/01/2015, upon the Appellant imposing the penalty of removal from service, W.E.F 13.09.2011, upon the Appellant and the departmental Appeal thereagainst is rejected by the Director/Respondent NO.3. Vide Endorsement No.2388-19 dated 14/05/2018.

Filed to-day

Registrar  
25/5/18

1. that the Appellant was appointed as P.S.T on 16.10.2004, in The Elementary and Secondary Education Department.



2. that while posted at Govt; Primary School SurkhDheriMardan, the Appellant was imposed with the penalty of "removal from service" w.e.f 13-09-2011 by the E.D.O/Respondent No.2 vide Endorsement No.202/G dated 09-01-2015, on the alleged grounds of absence from duty w.e.f 13-09-2011.

(Copy Annexure:- "A").

3. that the Appellant was malafidely charged in a Criminal case vide FIR No.1014/12/09/2012 of Police Station city, Mardan U/S-302/324/34 PPC.

(Copy Annexure:- "B").

4. that the Appellant was tried in the Court of the Session Judge/OSD, Mardan vide case No.11/SC and acquitted on 03/01/2018.

(Copy Annexure-"C").

5. that the Appellant visited the School on 29.01.2015 for resumption of duty. But, there he learnt that he is awarded the punishment of "Removal from service", on the grounds of alleged absence from duty, which was not communicated to Appellant.

(Copy Annexure-"D").

6. that after procuring the copy of the impugned order i.e; Endorsement No. 202 dated 09.01.2015, the Appellant preferred Departmental appeal to the Director/ Respondent No.2 there and then i.e; on 29-01-2015.

(Copies Annexure "D"&"E").

7. that the Departmental Appeal was rejected by The

Director/Respondent No.3 vide Endorsement No.2388-91 dated 14-05-2018.

(Copy Annexure:- "F").

GROUNDS : -

The impugned orders are incorrect, illegal, void and against the principles of natural justice and the same are liable to be set-aside, on the following amongst many other grounds:-

(i). that the impugned order is void as

The Appellant is condemned unheard.

(ii). That the Appellant was not issued even the charge Sheet, statement of allegations as well as Show Cause notice.

(iii). that the Appellant had not absented himself from duty willfully. But, having been charged in criminal case and being in judicial custody, the absence from duty was beyond his control.

(iv). that the malice on the part of complainant party was on account of previous blood shed enmity between the parties.

(v). That Appellant was falsely charged with the intention to compel his family for compromise in the previous case, related to the murder case of MrSaqib, the cousin of Appellant, where-in M/s Nawab Khan etc; sons of Yousaf Khan

were charged vide F.I.R No. 1134 / 16-08-2011 of P.s City, Mardan U/S-302 P.P.c, as evident from the contents of F.I.R No. 1014 (Annexure-"A", above) and the copy of Judgment (Annexure-"B"), above.

(vi). that the Appellant was on casual Leave on 12-09-2012.

(Copy Annexure:-"G").

(vii). that The Head Teacher of the relevant school had informed the Department viz The A.D.O circle about the lodging of criminal case against the Appellant vide Letter dated 13.09.2012.

(Copy Annexure:-"H").


(xi). that the Appellant is jobless since the date of the impugned order.


(xii). that the Appellant reserves the right to claim further grounds deemed necessary.

It is prayed that on acceptance of this Appeal, the Appellant may be ordered to be reinstated into service with back service benifites along with any other relief, deemed appropriate by this Hon'ble Tribunal.

The cost of this appeal may be awarded in favour of Appellant against Respondents.

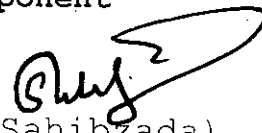
Dated: - 24.05.2018.


Appellant  
  
(Sahibzada)

Through: -   
Muhammad Adam Khan  
Advocate, Mardan.

AFFIDAVIT

I, Sahibzada S/o Umar khan /the Appellant, do hereby state on solemn affirmation that the contents of this appeal are true and correct to the best of my knowledge and belief.

Deponent  
  
(Sahibzada)

  
**ATTESTED**  
Muhammad Parvez Khan Advocate  
& Oath Commissioner Mardan  
24/5/2018

Before The Service Tribunal Peshawar.

Appeal No. /2018.

**Said Shah v/s The Education Deptt; etc;**


Application for condonation of delay:-

1. That the impugned orders were not communicated to Appellant. The moment, he learnt about the impugned order, he preferred the Representation and similar is the case of Appellate order.
2. That the Departmental Appeal is decided on merits without objection as to the limitation. Hence, the delay is deemed to have been condoned.
3. That the appellant is condemned unheard, unto he was not issued the charged sheet, statement of allegation and even the show cause notice. Hence, the impugned order is void one and limitation does not run against the void order.
4. That Valuable rights of Appellant are involved in the captioned Appeal, which needs adjudication on merits.

It is prayed that in case, the Captioned Appeal is considered, to be time barred, the delay, so occurred may kindly be condoned in favour of Appellant.

Dated:- . . .

Appellant  
  
 (Sahibzada)

Through:-   
 Muhammad Adam Khan  
 Advocate Mardan

Before The Service Tribunal Peshawar.

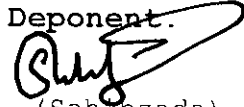
Appeal No. /2018.

Said Shah v/s The Education Deptt; etc;

AFFIDAVIT:-

I, Said Shah alias Said Ahmad Shah S/o Mian Muhammad Shahdo hereby state on solemn affirmation that the contents of this application are true and correct to the best of my knowledge and belief.

Deponent.

  
(Sahibzada)

  
**ATTESTED**  
Muhammad Parvez Khan Advocate  
& Oath Commissioner Mardan

24/5/2018



P-8

ANNEXURE

A<sup>7</sup>

OFFICE OF THE DISTRICT EDUCATION OFFICER (M)  
MARDAN

ATTESTED  
ADAM KHAN

OFFICE ORDER

Whereas Mr. Sahib Zada PST GPS Surkh Dheri Nowshera Road Mardan remained absent from duty wef 13.9.2012 till to date without any permission/information.

Whereas the authorized officer sent an absence notice through registered cover on your home address for the resumption of your duty but came back un-delivered as you were not present.

Whereas for the sake of vide publication of show cause of absence the undersigned further published notices for your duty resumption in daily The MASHRIQ dated 19-12-2014 and daily The AAJ dated 20-12-2014, but you neither resumed your duty nor replied the show cause and not attended this office for personal hearing as well in the prescribed time.

Now, therefore, the undersigned being the competent authority in exercise of powers conferred in the Efficiency and Disciplinary Rules 1973 revised in 2011, has been pleased to impose the major penalty i.e. Removal from Service upon you Mr. Sahib Zada PST GPS Surkh Dheri Nowshera Road Mardan with effect from the date of your absence i.e. 13.9.2011.

( HANIFULLAH FAROOQI )  
DISTRICT EDUCATION OFFICER  
(MALE) MARDAN.

Endst.No. 2212 / PF Sahib Zada PST.

Dated 9/11 /2015.

Copy forwarded to the :-

1. P.S. to Secreary E & S Education Khyber Pukhtoon Khwa Peshawar.
2. P.A. to Director E & S Education Khyber Pukhtoon Khwa Peshawar.
3. District Comptroller of Accounts Mardan.
4. Sub Divisional Education Officer (Male) Mardan with the remarks to submit his service book for removal from service entry.
5. Mr. Sahib Zada PST C/O Head Teacher GPS Surkh Dheri Mardan.

DISTRICT EDUCATION OFFICER  
(MALE) MARDAN

### ابتدائی اطلاعاتی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۳ مجموعہ ضابطہ فوجداری

ضلع و حوالہ	سٹی
تاریخ 12/9/50	10/4

وقت 12:35	وقت 12:15
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مقام اطلاع دیندہ مستفیث  
 یوسف خان ولد خان جیل خرم احمدی کوٹہ لاکھ پور ضلع باغیچہ خرم  
 نسبت جرم (مدرغہ) حال اگر کچھ لیا گیا ہو۔  
 302-324-34

لئے وقت حاصل تھا نہ سے اور مت  
 محترم ریٹائر و فنانس ڈیپارٹمنٹ  
 ایڈووکیٹ لڑم

گاردیوں کی پیش کی گئی اگر اطلاع درج کرنے میں توقف آتا تو وجہ بیان کریں  
 صاحبزادہ محمد سعید صاحب

مقام سے روانگی کی تاریخ و وقت  
 سٹی جیل باغیچہ

ابتدائی اطلاع نیچے درج کروا کر صاحب طاہر شاہ جاں ASI اچھا سٹی جیل باغیچہ خرم  
 بدست کمانڈر سید 2541 وصول ہو کر درج ذیل ہے۔ خدمت سٹی صاحب تمنا سٹی  
 یوسف خان ولد خان جیل خرم احمدی کوٹہ لاکھ پور ضلع باغیچہ خرم  
 لیسٹس کی جیل میں ڈال کر پورٹ صدر کے لئے لے گیا۔ آج میں، جیل  
 محمد آواز برادر ام رحیم خان لاکھ پور ضلع باغیچہ خرم  
 جانتے ہوئے بہت سے گھبراہٹ ہوئی ہے۔ اس لئے صاحب طاہر شاہ  
 کو روک کر تھاپا کر لیا جا رہا ہے۔ حال وہ لاکھ پور ضلع باغیچہ خرم  
 لاکھ پور میں پیر بہ ارادہ قتل جیل میں ہے۔ فائرنگ شروع ہونے سے پہلے  
 لاکھ پور تک نہیں گئے۔ جو چھوڑ دیر بعد جاں بحق ہوا۔ جیل کے جیل خانوں میں  
 مابقہ قتل خانی میں سے خدیج صاحبان کا خیمہ ہے جس میں لاکھ پور قتل  
 خیمہ لاکھ پور بہ ارادہ قتل خانی میں ہے۔ گاہک حلف قہقہوں کا ہوا ہے۔ جیل میں  
 رحیم خان ولد خان جیل خرم احمدی کوٹہ لاکھ پور ضلع باغیچہ خرم نے ماسٹری لاکھ پور  
 لاکھ پور ضلع باغیچہ خرم میں رہ کر لاکھ پور ضلع باغیچہ خرم میں رہ کر  
 لاکھ پور ضلع باغیچہ خرم میں رہ کر لاکھ پور ضلع باغیچہ خرم میں رہ کر  
 لاکھ پور ضلع باغیچہ خرم میں رہ کر لاکھ پور ضلع باغیچہ خرم میں رہ کر  
 لاکھ پور ضلع باغیچہ خرم میں رہ کر لاکھ پور ضلع باغیچہ خرم میں رہ کر  
 لاکھ پور ضلع باغیچہ خرم میں رہ کر لاکھ پور ضلع باغیچہ خرم میں رہ کر

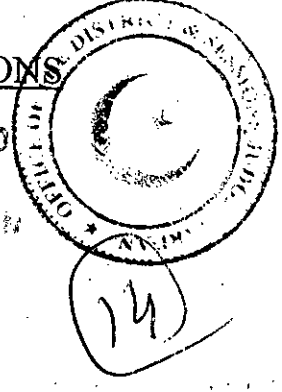


P-10

C

ANNEXURE

IN THE COURT OF FARAH JAMSHED DISTRICT & SESSIONS  
JUDGE/OSD, MARDAN



ATTESTED  
*Adam Khan*  
ADAM KHAN

Case No : 11/SC  
Dated of Original Institution : 27.08.2016  
Date of institution in this court : 08.11.2017  
Dated of Decision : 03.01.2018

*Date of Consigned* : 08-01-18

State..... Versus ... Sahib Zada S/O Umar Khan  
Bagh-e-Ram Mardan

Case FIR No.1014 dated 12.09.2012 u/s 302/324/34 PPC at police station City, Mardan

ORDER

Case FIR in hand was registered on the report of complainant Yousaf Khan whereby he charged Sahib Zada, Shahid and Khalid for committing murder of his son Muhammad Ayaz by firing at him. According to the complainant he alongwith Raheem Khan and Gul Nabi also witnessed the alleged occurrence being present at the spot at the relevant time alongwith deceased Muhammad Ayaz. Motive behind the occurrence has been explained as previous blood feud. The report of complainant was registered in the shape of FIR mentioned above. All the accused named above went absconding, hence, after completion of investigation challan was put in court against all the absconding accused.

*Gul*  
31/1/18

District & Sessions Judge  
O.S.D., Mardan

Subsequently after the arrest of accused Sahib Zada supplementary challan was put in court. Accused was summoned, who put his appearance in custody. Provision of Section 265-C Cr.P.C were complied with and formal charge was framed against him u/s 302/324/34 PPC to which he claimed trial.

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EXAMINER  
Copying Department  
Mardan District & Sessions Judge  
23-1-18

Prosecution produced its evidence and eleven (11) witnesses were examined.

*Pw-1:-* Zahir Khan ASI recorded the report of complainant in shape of murasila Ex.PA/1.

*Pw-2:-* Riaz FC No.1230 escorted the dead body of the deceased Muhammad Ayaz.

*Pw-3:-* Ijaz FC No. 928, is marginal witness to pointation memo Ex.Pw-3/1. In his presence accused Sahib Zada made pointation of the spot of the occurrence.

*Pw-4:-* Dr. Haq Nawaz, SMO, examined the dead body of the deceased Muhammad Ayaz on 12.09.2012. The post mortem report is Ex.Pw-4/1 while inquest report and injury sheet are Ex.Pw-4/2 and Ex.Pw-4/3 respectively.

*Pw-5:-* Muhammad Riaz Khan, DSP, submitted complete challan against all the absconding accused on 25.09.2012.

*Pw-6:-* Ashiq Hussain Khan, ASI, arrested the accused facing trial Sahib Zada and prepared his card of arrest Ex.Pw- 6/1. He also made an entry in daily diary No. 49 dated 26.07.2016, copy of which is placed on file and is Ex.Pw-6/2. Subsequently he also submitted supplementary challan against accused facing trial.

*Pw-7:-* Gun Munir Khan, DFC No. 2766, complied with all the formalities in respect of warrant u/s 204 Cr.P.C and proclamation notice u/s 87 Cr.P.C and submitted his reports which are Ex.Pw-7/1 to Ex.Pw-7/6 respectively.

3/1/18.  
District & Sessions Judge  
O.S.D., Mardan

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Copying Department  
Sessions Court Mardan

23-1-18

Pw-8:- Mukhtiar Ali identified the dead body of the deceased Muhammad Ayaz before the police and doctor at the time of post mortem examination.

Pw-9:- Momin Khan produced accused facing trial before Judicial Magistrate for obtaining his police custody, wherein two days custody was granted. He also prepared pointation memo Ex.Pw-3/1. He also produced the accused facing trial before the Judicial Magistrate vide his application Ex.Pw-9/2 for recording his confession statement but he refused, hence, he was remanded to judicial lockup.

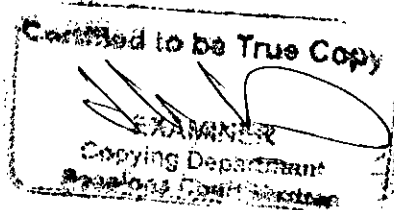
Pw-10:- Jalil Khan s/o Munaras Khan is marginal witness to recovery memo Ex.Pw-10/1 vide which the I.O took into possession some blood stained earth from the place of deceased Muhammad Ayaz. He is also marginal witness to recovery memo Ex.Pw-10/2 vide which I.O took into possession three (3) empties of 30 bore. Similarly he is also marginal witness to recovery memo Ex.Pw-10/3 through which the I.O took into possession blood stained clothes of the deceased.

Pw-11:- Yousaf Khan S/O Khan Khel is complainant of the case FIR and supported his report.

Thereafter learned counsel for the accused filed an application u/s 265-K Cr.P.C for acquittal of accused facing trial.

I have heard the arguments and perused the record available before the court.

As per the version of complainant narrated in FIR, he himself alongwith Muhammad Ayaz and two eyewitnesses Raheem Khan and Gul



Nabi, was coming back home after attending the court when in the meanwhile accused Shahid, Khalid and Sahibzada, fully armed with weapons <sup>came</sup> and opened fire at them. As a result of said firing Muhammad Ayaz was hit and died shortly while they all escaped unhurt.

(17)

While giving the motive as previous blood feud, complainant charged all the three accused for murder of his son.

This same story was narrated by him in his court statement recorded as Pw-11, however, during the cross examination he contradicted his own stance and status as that of eyewitness of the occurrence. He categorically stated that neither he himself nor other two Pw's Raheem Khan and Gul Nabi were present alongwith deceased Muhammad Ayaz at the relevant time of alleged occurrence; that, he heard from inhabitants of the locality about the alleged occurrence and murder of his son by some unknown persons where upon he charged present accused to settle the score due to their previous enmity

3/1/18  
District & Sessions Judge  
Q.S.D., Mardan

At the same time, he again took another stance by stating that accused has also satisfied him about his innocence by taking oath.

The above disclosure of complainant are evident of the fact that he is not interested in the conviction of accused facing trial. The presence of eyewitnesses of the occurrence have also been made doubtful by the complainant. APP for the state assisted by counsel for the complainant has also abandoned said eyewitness in the light of statement of complainant, hence, presently the murder of deceased Muhammad Ayaz in the mode and manner as reported in the shape of FIR has become highly doubtful.

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EXAMINER  
Copying Department  
Sessions Court Mardan  
23.1.18

No doubt, other Pw's including I.O is yet to be examined, however, in the light of above statement of star witness/complainant (pw-11), I am of the view that same will be a futile exercise. Complainant/Pw-11 has given a totally new version to the alleged occurrence by completely dis-associating himself as well as eyewitness from the alleged spot of occurrence, on one hand, and on the other hand he himself disclosed that accused facing trial was charged after deliberation and consultation due to already existing enmity. (18)

In the circumstances it is clear from the record that no evidence is available to connect the accused facing trial with commission of the offence. Nothing incriminating has been recovered from the accused nor had he recorded any confessional statement in respect of commission of the offence. The case in hand is therefore, suitable to invoke provision of Section 265-K Cr.P.C.

Hence, keeping in view the above noted facts and record, there seems no probability of conviction of accused, and proceeding further with the instant case would be nothing but a futile exercise amounting to abuse of process of court and miscarriage of justice.

As such, accused facing trial Sahib Zada is hereby acquitted of the charges while invoking section 265-K Cr.PC. He is in custody, hence, he is directed to be released forthwith, if not required in any other case.

So far as case against the absconding accused Shahid and Khalid are concerned, they have already been declared as proclaimed offender vide order dated 10.06.2013.

3/1/18  
District & Sessions Judge  
O.S.D., Mardan

Examined to be True Copy  
EXAMINER  
Copying Department  
Sessions Court Mardan

23-1-18

Case property be kept intact till arrest and trial of proclaimed offender named above.

File be consigned to record room after its necessary completion and compilation.

Announced:  
03.01.2018

29

*[Signature]*  
Farah Jamshed  
District & Sessions Judge/OSD  
Mardan.  
District & Sessions Judge  
O.S.D., Mardan

**CERTIFICATE**

Certified that this order consists of six (06) pages. Each and every page has been signed by me after making necessary correction with initials therein.

*[Signature]*  
Farah Jamshed  
District & Sessions Judge/OSD  
Mardan.  
31/1/18  
District & Sessions Judge  
O.S.D., Mardan

*وہاں پر اس کی تصدیق ہے*

Application No	673
Date of Presentation of Application	18-1-18
Date on which copy Prepared	23-1-18
Date on which copy Examined	23-1-18
Pages of order	9
Court Fee / Compensation	P
Urgent fee	
Signed of copy	<i>[Signature]</i>
Date of delivery	23-1-18

Certified to be True Copy  
*[Signature]*  
EXAMINER  
Copying Department  
Sessions Court Mardan  
23-1-18

To,

The Director,  
E.S.E Department,  
k.P Peshawar.

Rezd/AD . P-16

ANNEXURE

ATTESTED  
ADAM KHAN

**Through:- Proper Channel**

**Subject:-** Appeal against The order of The D.E.O (Male), E.S.E Mardan  
contained in Endst No.202/G//PF Sahib zada Pst dated 09.01.2015.

Sir,

With reference to the captioned order, whereby I am removed from service on the grounds of alleged absence.

It is submitted that I had never been absent wilfully. In fact, I was charged in a false criminal case and detained in District jail Mardan vide FIR No.1014 / 12.9.2012. of P.S City Mardan.

Yet, on conclusion of the said case on 03.01.2018, being incorrect, I was acquitted there-from.

Thus, it was beyond my control to attend my duties, being in lock-up.

I was condemned unheard, as I was not provided any chance of defence under the (E&D) Rules.

I was not communicated the impugned order till I collected the same privately on 05.01.2018.

**It is requested that setting aside the impugned order,**

**I may be re-instated into service with back service benefits.**

Dated: 29.01.2018.

Your's obediently,

  
(Sahib Zada)

Ex P.S.T, G.P.S Surkh Dheri  
Nowshera Road Mardan  
Residence: Bagh Aram (Koragh),  
Mardan.

P-17

D/1

ATTESTED

*Am*  
ADAM KHAN

No. 975

For Insurance Notices see reverse.  
Stamps affixed except in case of  
uninsured letters of not more than  
the initial weight prescribed in the  
Post Office Guide or on which no  
acknowledgement is due.

Rs. Ps.  
38/-

Received a registered  
addressed to Director

Date-Stamp  
31

\*Write here "letter", "postcard", "packet" or "parcel"  
Initials of Receiving Officer with the word "insured" before it when necessary.

If insured.

Insured for Rs. (in figures) Rs. 100/- (in words) One Hundred Rupees

Weight 100gms Kilo 0.1 Grams

Insurance fee Rs. 10/- Ps. 00 (in words) Ten Rupees

Name and address of sender Director 31/07/18



P-18

ANNEXURE

'E'

Registered.  
**DIRECTORATE OF ELEMENTARY AND SECONDARY**  
**EDUCATION KHYBER PAKHTUNKHWA**

ACCEPTED  
ADAM MARDAN

**NOTIFICATION.**

1. WHEREAS, Mr. Sahib Zada PST GPS Surkh Dheri Mardan District Mardan proceeded under the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 for charges, absence from official duty wef 13.09.2012 till the termination from service.
2. AND WHEREAS, the DEO (M) Mardan conducted enquiry through ASDEO Circle Rustam. The enquiry officer submitted his report and recommended sent absenteeism notice to teacher concerned vide letter No.4502 dated 20.05.2014. Due to no response of absence notice. The DEO(M)Mardan Head Master GHS Hoti Landaki conduct formal enquiry through against the teacher concerned.
3. AND WHEREAS, the enquiry officer submitted his enquiry report and recommended that "proceeding against Mr.Sahib Zada PST should be initiated for removal from service.
4. AND WHERE AS, the DEO(M)Mardan being competent authority issued absence notice in two daily newspapers vide No.12030 dated 06.12.2014. After publishing absent notice the teacher concerned did not report for his duty. The DEO(M)Mardan being competent authority after codal formalities imposed major penalty of Removal from Service till fulfilling Endst:No.202 dated 09.01.2015.
5. AND WHEREAS, the above named teacher submitted an appeal to this office vide dated 02.02.2018, the same appeal was sent to DEO (M) Mardan for comments vide this office letter NO.241 dated 01.03.2018. The DEO (M) concerned submitted his comments to this office vide his letter No.2094 dated 12.03.2018.
6. AND WHERE AS, the appellate authority call the teacher concerned call for personal hearing on dated 12.0.2018. The teacher concerned attended this office on same date and time but failed to satisfy the competent authority.
7. AND WHEREAS, the competent authority, Director Elementary and Secondary Education Khyber Pakhtunkhwa) after, having considered the charges and evidence on record, is of the view that charges against accused teacher have been proved true
8. NOW THEREFORE, in exercise of powers conferred under Khyber Pakhtunkhwa Servants (Efficiency & Discipline) Rules-2011 the appellate authority has decided to "Reject" the appeal of Mr. Sahib Zada PST GPS Surkh Dheri Mardan on the above mentioned grounds.

**DIRECTOR.**

Endst: No. 2388 /F No. 162/Vol: XI/KC/Appeal of PST(M)General Dated Peshawar the 14/5/18 2018.

Copy forwarded for information and necessary action to the:-

1. District Education Officer(M)Mardan w/r to his No.20921 dated 12.03.2018.
2. District Accounts Officer Mardan.
3. Mr.Sahib Zada Ex+PST GPS Surkh Dheri District Mardan.
4. P.A to Director Elementary and Secondary Education local office.
5. Master File.

14/5/18  
Deputy Director (Estb :)  
Elementary & Secondary Edu.  
Khyber Pakhtunkhwa Peshawar.

21/5/18

ابتدائی اطلاع کے مطابق 25/45 درج ذیل شخصیت کا نام ہے...

اسعدی علی ریپورٹ 13

نام (فائل) - ابتدائی اطلاع نسبت لزم شامل دست اندازی کی رپورٹ شدہ درج ذیل 154 مجلہ سناٹو جلداری

تاریخ وقت رپورٹ 16/11/80 19:05 بجے

تاریخ وقت اطلاع دہندہ مستفیض شاہد رضا بن ولد حبیب علی خوجہ اعجاز لیجر 32/33 سال سکڑ کورج

تعمیر کیفیت برم (معدنہ) سال اگر کہہ لیا گیا اور

جائے وقوعہ فاصلہ قحمان سے اور دست

نام و نسبت لزم (1) لوزا سہ (2) سر دار خان (3) سکڑ لیجان پرست (4) اسماعیل ولد رحیم سالکان باغ از

کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج ذیل سرپرستی حرامہ خوجہ نام لکھا جا رہے

قحمان سے روانگی کی تاریخ و وقت بطور سنیل ریپورٹ

ابتدائی اطلاع کے مطابق 25/45 درج ذیل شخصیت کا نام ہے...

اسعدی علی ریپورٹ 13

نام (فائل) - ابتدائی اطلاع نسبت لزم شامل دست اندازی کی رپورٹ شدہ درج ذیل 154 مجلہ سناٹو جلداری

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جائے وقوعہ فاصلہ قحمان سے اور دست

نام و نسبت لزم (1) لوزا سہ (2) سر دار خان (3) سکڑ لیجان پرست (4) اسماعیل ولد رحیم سالکان باغ از

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قحمان سے روانگی کی تاریخ و وقت بطور سنیل ریپورٹ

انکھت  
M/S ASI-PS-2011  
76-8-2011

P-20

App No: 1

Date: 12-9-2012

9

گزارش ہذا۔۔۔ DD مبالغہ میل پر مبنی

عنوان و درخواست کے بعد Leave

ANNEXURE

APPROVED  
ADDITIONAL

جناب عالی! گزارش ہے کہ سائل کو ایک ہینڈری تمام

پیشی ہوا ہے۔ حکمی رقم سے سکول آئے سے

تامل ہے۔ اسلئے آپ صاحبان کو مہربانی کہتے سائل

کو آج مورخہ 9/9/2012 پر رفلکٹ الفائنہ دیکر

شکر فرمادیں۔

عین گزارش ہوئی!

مورخہ 12-09-2012

الطاف

آپ صاحبان کا تابع زمانہ نائب مدرسہ ہائرہ PST

کھل نغذا

C/Leave-

Forwarded To ADO Circle

Mareham Khos.

51

12-9-2012

ع

کریڈٹ ADو کے لئے سٹریٹس ماردان خان میں پورے

ATTESTED

ADAR KHAN

آج کے دن! 13/9/2012  
کریڈٹ کے لئے سٹریٹس ماردان خان میں پورے  
میں مقررہ ہے۔ کہ سٹریٹس ماردان خان میں پورے

13.9.2012 کو مقررہ ہے سٹریٹس ماردان خان میں پورے

کریڈٹ کے لئے سٹریٹس ماردان خان میں پورے

Forwarded to P.S. Mardam Khaz Mardam.  
For more information and necessary action please

Forwarded to A.D.O Circle Mardam Khaz Mardam.

SL. No. 123  
HEAD MASTER  
Q.P.S. S.P. MARDAM  
MARDAM

Encl. No: 133  
Date: 13.9.2012

14/9/12

Handwritten marks/signatures at the bottom right corner.

# VAKALAT NAMA

In the Court of K.P.K Service Tribunal Peshawar

Appeal No. \_\_\_\_\_ of 2018

*Sahibzada*

(Petitioner)

(Plaintiff)

(Appellant)

**VERSUS**

*The Secretary, etc;*

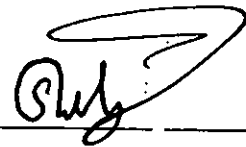
(Respondent)

(Defendant)

I/We Sahibzada the  
above noted Petitioner do

hereby appoint and constitute **Muhammad Adam Khan, Advocate Mardan** as  
Counsel in subject proceedings and authorize him to appear, plead etc., compromise, withdraw or  
refer to arbitration for me/us, as my/our Advocate in the above noted matter, without any liability  
for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our  
behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated: 23.05.2018



(Signature of Client)



Accepted

**MUHAMMAD ADAM KHAN**

**B.A.LL.B Advocate**

**High Court Mardan**

**MUHAMMAD ADAM KHAN**

**ADAM KHAN**

Secretary's Signature

No. BC-09-0600

Name: **BAASHA GUL**  
Address: **VILLAGE ARIC, DISTRICT MARDAN**  
Office: **1931/2013**  
Enrollment No: **1931/2013**  
Enrollment Date: **17/05/2013**  
Place of Birth: **MARDAN**  
Date of Birth: **01/01/1981**  
Blood Group: **A**  
Religion: **Islam**  
Nationality: **Pakistani**  
Date of Issue: **17/05/2013**  
Date of Validity: **Indefinite**  
In Witness Whereof

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 721/2018

Sahib Zada S/O Umar Khan Ex-PST GPS Surkh Dheri Mardan R/O Bagh e Iram ( Kuragh)  
District Mardan ..... Petitioner

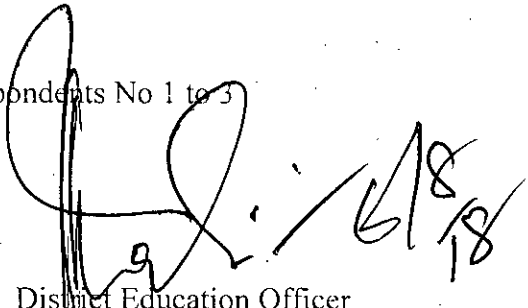
Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others  
..... Respondents

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1.	Para wise comments along with affidavit & Reply to condonation of Delay		01	04
2.	Copy of order of Removal	"A"	05	--
3.	Copies of enquiry	"B"	06	10
4.	Copy of show cause notice	"C"	11	--
4.	Copy of publication	"D"	12	--

Respondents No 1 to 3

  
District Education Officer  
(Male) Mardan

Dated: \_\_\_\_\_

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 721/2018

Sahib Zada S/O Umar Khan Ex-PST GPS Surkh Dheri Mardan R/O Bagh e Iram ( Koragh)  
District Mardan ..... Petitioner

Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others  
..... Respondents

Para Wise Comments on Behalf of Respondents No 1 to 3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
2. That the instant appeal is incompetent in its present form, hence the appeal is liable to be dismissed.
3. That the instant appeal is badly time barred.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appellant is estopped by his own conduct.
7. That the appellant has concealed the material facts from this Honorable Tribunal hence the appeal is liable to be dismissed.
8. That the instant appeal is based on malafide intention, hence the appeal is liable to be dismissed.
9. That the instant appeal is against the prevailing law and rules.
10. That the appellant has been treated as per law & rules.
11. That after fulfillment of all the codal formalities the appellant was removed from service vide order Endst No 202/G dated 09-01-2015 in accordance with law. (Copy of order of Removal is attached as **Annex-"A"**)

FACT:

1. Para No 1 pertains to record, hence need no comments.
2. Para No 2 pertains to record, hence need no comments.
3. Para No 3 No comments, however the answering respondent conducted an Enquiry in respect of the appellant and the appellant has been proceeded for his willful absence from lawful duty. (Copy of enquiry, as Annex "B")
4. Para No 4 pertains to record, hence need no comments.

5. Para No 5 is incorrect baseless against facts, as the proper show cause notice and publication of the removal of the appellant from service was made to the appellant, hence denied. (Copy of the show cause notice and publication is as Annex "C" & "D").
6. Para No 6 pertains to record, hence need no comments.
7. Para No 7 pertains to record, hence need no comments.

GROUND:

- I. Para No I is incorrect baseless against facts & law, the answering respondent acted in accordance with law, despite notices the appellant badly failed to explain his position and did not appear before the answering respondent.
- II. Para No II is incorrect, baseless as proper show cause notice as well as publication was made in respect of the appellant, hence denied. ( Copy of the show cause notice and publication is as Annex "C" & "D" )
- III. Para No III pertains to personal record, hence need no comments.
- IV. Para No IV pertains to personal record, hence need no comments.
- V. Para No V pertains to personal record, hence need no comments.
- VI. Para No VI pertains to record, hence need no comments.
- VII. Para No VII pertains to record, hence need no comments.
- VIII. Para No XI pertains to his personal matters, hence need no comments.
- IX. That the respondent seek permission to raise additional grounds at the time of arguments.

It is therefore humbly prayed that in the light of above facts, the appeal may please be dismissed with cost.

Respondent No 2

District Education Officer  
(Male) Mardan

Respondent No.3

The Director E & S E  
Peshawar

Respondent No.1

The Secretary E & S E  
KPK Peshawar.



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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No: 721/2018

Sahib Zada S/O Umar Khan Ex-PST GPS Surkh Dheri Mardan R/O Bagh e Iram ( Kuragh)  
District Mardan ..... Petitioner

Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others  
..... Respondents

Reply to Application for condonation of delay.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

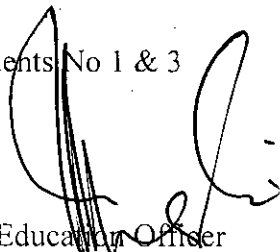
1. That the petitioner has got no cause of action & locus standi to file the instant application.
2. That the application in hand is not maintainable in its present form.
3. That the appellant has not come to this Honorable Tribunal with clean hand.
4. That the delay has not been justified by the petitioner.
5. That the appellant is estopped by his own conduct.
6. That the appellant has concealed the material facts from this Honorable Tribunal hence liable to be dismissed.

ON FACTS:

1. Para No 1 is incorrect, as the same was conveyed to the appellant of his address.
2. Para No 2 is incorrect as the departmental appeal is decided after all codal formalities, hence denied.
3. Para No 3 is incorrect, baseless as proper show cause notice as well as publication was made in respect of the appellant, hence denied. ( Copy of the show cause notice and publication is as Annex "C" & "D" )
4. Para No 4 pertains to personal record, hence need no comments.

Therefore it is humbly prayed that keeping in view the above mentioned fact, the instant application along with appeal may kindly be dismissed with cost.

Respondents No 1 & 3  
Through

  
District Education Officer  
(Male) Mardan

6/18/18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 721/2018


Sahib Zada S/O Umar Khan Ex-PST GPS Surkh Dheri Mardan R/O Bagh e Iram ( Kuragh)  
District Mardan. .... Petitioner

Versus

The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others  
..... Respondents

AFFIDAVIT

I, Mr. Sajid Khan Litigation Officer Education Department Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted on behalf of respondents are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

  
Deponent  
Sajid Khan  
16101-6005318-5

(A) (5)

**OFFICE OF THE DISTRICT EDUCATION OFFICER (M)  
MARDAN**

**OFFICE ORDER**

Whereas Mr.Sahib Zada PST GPS Surkh Dheri Nowshera Road Mardan remained absent from duty wef 13.9.2012 till to date without any permission/information.

Whereas the authorized officer sent an absence notice through registered cover on your home address for the resumption of your duty but came back un-delivered as you were not present.

Whereas for the sake of vide publication of show cause of absence the undersigned further published notices for your duty resumption in daily The MASHRIQ dated 19-12-2014 and daily The AAJ dated 20-12-2014, but you neither resumed your duty nor replied the show cause and not attended this office for personal hearing as well in the prescribed time.

Now, therefore, the undersigned being the competent authority in exercise of powers conferred in the Efficiency and Disciplinary Rules 1973 revised in 2011, has been pleased to impose the major penalty i.e. Removal from Service upon you Mr.Sahib Zada PST GPS Surkh Dheri Nowshera Road Mardan with effect from the date of your absence i.e. 13.9.2011.

( HANIFULLAH FAROOQI )  
DISTRICT EDUCATION OFFICER  
(MALE) MARDAN.

Endst.No. 202/12 / PF Sahib Zada PST.

Dated 9/11 /2015.

Copy forwarded to the :-

1. P.S. to Secreary E & S Education Khyber Pukhtoon Khwa Peshawar.
2. P.A. to Director E & S Education Khyber Pukhtoon Khwa Peshawar.
3. District Comptroller of Accounts Mardan.
4. Sub Divisional Education Officer (Male) Mardan with the remarks to submit his service book for removal from service entry.
5. Mr.Sahib Zada PST C/O Head Teacher GPS Surkh Dheri Mardan.

DISTRICT EDUCATION OFFICER  
(MALE) MARDAN

7

208  
A

Inquiry report i/r of Sahib Zada PST GPS Surkh Dheri Mardan

No: 83

Dated: 26/11/2014

Inquiry Officer:-

Hamid Khan  
Head Master GHS Hoti (Landaki) Mardan

Dates of inquiry:-

08-11-2014  
10-11-2014  
15-11-2014

Venue :-

DEO (M) Mardan  
GPS Surkh Dheri Mardan  
SDEO (Male) Mardan

Subject :- Absent from duty case

Introduction

According to the DEO (M) Mardan office order vide Endst: No:10993-94 Dated: 29-10-2014, Hamid Khan Head Master GHS Hoti (Landaki) Mardan was appointed as inquiry officer to conduct inquiry in the absent from duty case of Mr Sahib Zada PST GPS Surkh Dheri Mardan.

Brief History:-

In light of the complaint filed by the ASDEO (M) Mardan khass, vide his office Endst: No: 49/A/L Dated: 15-10-2014 against Mr. Sahib zada PST GPS Surkh Dheri Mardan, reported as Absconder from 13-9-2012, the DEO (M) Mardan appointed the under signed as inquiry officer to investigate the case.

Procedure Adopted:-

The inquiry officer checked the personal file and all other relevant and available service record of the official at DEO (M) Mardan, SDEO (Male) Mardan offices and GPS Surkh Dheri Mardan. Head Teacher and Ex-Head Teacher GPS Surkh Dheri were interviewed and their written statements were taken. Where about and contact No: of Sahib zada PST was not available to take his statement.

Investigation:-

From thorough checking of personal file at the DEO (Male) Mardan and other available record at GPS Surkh Dheri and SDEO (Male) Mardan office, the following points are noted.

DEO / (D.A. (M))  
27/11/14  
Khan



Findings :-

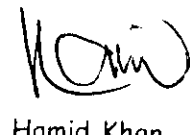
1. Mr. Sahib Zada PST GPS Surkh Dheri was absent on the inquiry day.
2. According to the attendance register of GPS Surkh Dheri, on 12-9-2012, Sahib zada PST was on casual leave with unsigned application.
3. The Head Teacher wrote a letter Endst; No: 133 dated: 13-9-2012, to the ASDEO circle, regarding information of murder case by Sahib zada which was forwarded to the DDO (Male) Primary Mardan.
4. The DDO stopped his pay vide his office No: 2536/ pay stop File dated: 19-9-2012.
5. An early inquiry has also been conducted by Mr. Wisal Muhammad ADO, in which Sahib zada was found absent.
6. As per the inquiry recommendations, Mr. Sahib zada has been issued absent notices vide: DEO (M) Mardan No: 4502 Dated: 20-5-2014, and vide: Mardan GPO Reg; No: 165 & 508, on the school and home addresses under registered cover but both were returned undelivered due to his non availability.
7. Director E&SE Khyber Pakhtunkhwa was requested for publishing absence notice in News papers vide: DEO (M) Mardan No: 7409 dated: 28-6-2014.
8. Director information Khyber Pakhtunkhwa was requested for publishing of absence notice to Sahib zada PST in two daily news papers vide: DEO (M) Mardan No: 8028 Dated: 6-8-2014.
9. Director E&SE was once again requested for publishing of absence notice to Sahib zada PST in news papers vide: DEO (M) Mardan No: 8344 dated 20-8-2014.
10. He has drawn pay for August 2012. His pay since September 2012 has not been drawn as per the accountant's record SDEO (M) primary Mardan.

Conclusion:-

After checking personal file of the official at DEO (M) Mardan, other service record at GPS Surkh Dheri Mardan and interview of the Head Teacher and Ex- Head Teacher GPS Surkh Dheri, it is clear that Mr. Sahib zada PST is absent since 13.9.2012 and is an absconder in a murder case.

Recommendations:-

1. Proceedings against Sahib zada PST should be initiated for removal from service, for being absconder, as per rules, regulations and policy.

  
26/11/14

Hamid Khan  
Head Master,  
GHS Hoti (Landaki) Mardan,  
(Inquiry Officer)

سوانامہ سربراہ عدالت عالیہ پاکستان اور عدالت عالیہ سندھ  
دائمی سیکرٹری سربراہ عدالت عالیہ سندھ

آپ کا نام مشرف حسین

29-3-2013 مسٹر عدالت عالیہ سندھ کی تاریخ

3) کیا آپ کو اس میں شامل کردہ نامی افراد موجود ہیں

4) مسٹر عدالت عالیہ سندھ کی تاریخ - 25-10-2004

5) ~~مسٹر عدالت عالیہ سندھ~~ کی تاریخ 13-9-2012

6) کیا وہ کسی کسی میں ملوث ہے - روزنامہ مشرق کی خبر سے مناسبت سے -  
روزنامہ کافی مسئلہ ہے -

7) اگر عدالت عالیہ سندھ کی تاریخ FIR، پولیس والوں نے نہیں بھیجی ہے

8) کیا اس کو FIR ملے گا - نہیں

9) کیا اس کو عدالت عالیہ سندھ کی تاریخ ایف آئی آر ملے گی  
تاریخ 25-10-2004

10) اگر وہ کسی میں ملوث ہے تو کیا وہ کسی میں ملوث ہے  
متنخواہ بند ہے

11) کیا اس میں متنخواہ بند ہے یا نہیں - دفتر کی طرف سے متنخواہ بند ہے  
حوالہ آرڈر نمبر 391-37-25

12) موجودہ عدالت میں اس کا کوئی مسئلہ ہے نہیں  
FIR No:

(13) ایک ہی اسکول میں -

(14) غیر ملکی و ہمسایہ اسکولوں کی کونسل یا شورا  
یا اعلیٰ سطح کی کونسل -

(15) اسکولوں کے مابین میں اسکولوں  
کوئی کونسل -

HEADMASTER 25.4.2014  
G.P.S SURKH D'HERI  
MARDAN

Amold  
88080  
25/4/14

SI - 7

رجسٹر حاضری مدرسین

15

بابت ماہ ستمبر															
ایم شفیق الرحمن				ایم نور محمد				ایم گلزارہ				مفتی رحمت اللہ			
NM		DST		NM		DST		NM		DST		NM		DST	
آدم	دستخط	رواگی	دستخط	آدم	دستخط	رواگی	دستخط	آدم	دستخط	رواگی	دستخط	آدم	دستخط	رواگی	دستخط
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3	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
4	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
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6	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
7	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
8	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
9	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
10	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
11	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
12	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
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16	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
17	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
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19	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
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21	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
22	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
23	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
24	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
25	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
26	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
27	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
28	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
29	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
30	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15
31	7/15	7/15	7/15	7/30	7/30	7/30	7/30	7/15	7/15	7/15	7/15	7/15	7/15	7/15	7/15

کامپوسٹنگی فریڈر روز خوردی آری سینا پی آری مارکت مردان  
فون 0931-71487

دستخط ہیڈ ماسٹر/ ایڈمنسٹریٹرس

نادرک مردان



نوٹس غیر حاضری

آپ درج ذیل اساتذہ اچوکیدار مختلف تاریخوں سے اپنی ڈیوٹیوں سے دانستہ طور پر مسلسل تاحال غیر حاضر ہیں۔ ہم پر آپ تمام کو بذریعہ اشتہار نوٹس ہذا اطلاع دی جاتی ہے کہ آپ سات دن کے اندر اندر اپنی ڈیوٹی پر حاضر ہو جائیں اور زبردستی کو اپنی غیر حاضری کا معقول وجہ بتائیں بصورت دیگر آپ کے E&D روز 2011 کے تحت یکم طرفہ کارروائی عمل میں لائی جائے گی جو آپ سب کی ملازمت سے برخاستگی پر منتج ہو سکتی ہے۔

سیریل نمبر	نام بمعہ سکول	تاریخ غیر حاضری تاحال
1	فیض رساں پی ایس ٹی جی پی ایس صادق آباد	31-01-2014
2	حبیب الحق پی ایس ٹی جی پی ایس محبت نمبر 1	09-09-2014
3	صاحب ذادہ پی ایس ٹی جی پی ایس سرخ ڈھیری	13-09-2012
4	محمد علی پی ایس ٹی جی پی ایس بہرام خان ککے	24-04-2014
5	پرویز خان چوکیدار جی پی ایس شیر پور	01-02-2014
6	یوسف شاہ پی ایس ٹی جی پی ایس محبت آباد	01-11-2014
7	محمد رحمان پی ایس ٹی جی پی ایس ریداون	01-08-2014
8	ملنگ جان ایس سی ٹی جی ایچ ایس سوکھی مردان	28-07-2014

ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ)  
مردان

D

12

5/1

91-9211853

091-9233624

MANAGING DIRECTOR  
KHYBER PAKHTUNKHWA SMALL INDUSTRIES  
DEVELOPMENT BOARD KOHAT ROAD  
PESHAWAR

Available on [www.khyberpakhtunkhwa.gov.pk](http://www.khyberpakhtunkhwa.gov.pk)

NP 836

### سوانح فیروز خاضری

آپ در ذیل اساتذہ چوکیداران دانشہ طور پر مسلسل تاحاتن آئی ایچی ڈی بیوں سے فیروز خاضری  
آپ تمام کو اطلاع دی گئی لیکن آپ نے نہ تو ڈی بی کے لئے رپورٹ کی اور نہ ہی دفتر ڈی بی کو خبر دی جو اس  
لہذا آپ کو ڈی بی ڈی بیوں پر مطلع کیا جاتا ہے کہ اس ڈی بیوں کے 15 دن کے اندر  
ڈی بیوں پر حاتمہ ہو جائیں اور ایچی ڈی بیوں کی حصول و جہت بھی بتائیں بصورت دیگر آپ کے خلاف  
حکومت ہریانہ (کارکنوں کی انصافی) قواعد مجریہ 2011 کے تحت یکطرفہ حکمانہ کارروائی عمل  
جائیگی جو آپ کو کسی سے برخواستگی پر منتج ہو سکتی ہے۔

تاریخ فیروز خاضری	نام پورہ سکول	سیریل نمبر
31-1-2014	پیشوا ڈی بیوں کی ایچی ڈی بیوں صادق آباد	1
9-9-2014	پیشوا ڈی بیوں کی ایچی ڈی بیوں	2
13-9-2012	پیشوا ڈی بیوں کی ایچی ڈی بیوں	3
24-04-2014	پیشوا ڈی بیوں کی ایچی ڈی بیوں	4
1-11-2014	پیشوا ڈی بیوں کی ایچی ڈی بیوں	5
1-11-2014	پیشوا ڈی بیوں کی ایچی ڈی بیوں	6
1-8-2014	پیشوا ڈی بیوں کی ایچی ڈی بیوں	7
28-7-2014	پیشوا ڈی بیوں کی ایچی ڈی بیوں	8
1-9-2014	پیشوا ڈی بیوں کی ایچی ڈی بیوں	9
14-4-2013	پیشوا ڈی بیوں کی ایچی ڈی بیوں	1
1-5-2013	پیشوا ڈی بیوں کی ایچی ڈی بیوں	1
19-03-2014	پیشوا ڈی بیوں کی ایچی ڈی بیوں	2

ایچی ڈی بیوں (مردانہ) سوانح

(NP/P) 4845 Also available on [www.khyberpakhtunkhwa.gov.pk](http://www.khyberpakhtunkhwa.gov.pk)

Original

Before The Service Tribunal, Peshawar.

Appeal no. 721/2018.

Hearing 06.03.2019

Sahibzada vs The Education Deptt etc.

Rejoinder:-

All the preliminary objections are incorrect, baseless and in contravention to the facts and the relevant rules. Denied. yet in spite of charge of absence, no letter was addressed at his home address in spite of his Facts:- arrest.

1 & 2 = Incorrect and based on malice on the part of the answering Respondents. Denied.

3. False & illegal. Denied. The Appellant was in judicial lock-up. He was neither informed about the holding the alleged enquiry nor he was contact for the purpose of enquiry. The inquiry was conducted in his absence and even the statement of my person <sup>not</sup> recorded. in spite of having knowledge of Appellant's arrest, the so called inquiry was conducted ex parte. Which is illegal & void.

4. Para-4 of Comments is based on malice & illegal. Denied.

5. Para-5 is false & incorrect. The copy of Show Cause notice is not attached with the Comments. While, the statements of alleged witnesses (though recorded ex parte, are in Question/Answer form, illegally.

6 & 7. False. Denied. The Record is in the custody of the Respondents.

Grounds:-

① Incorrect & false. Denied.

② Incorrect & false. Denied. There is no Show Cause notice. While, the press-cutting does not contain the home address of Appellant.

III to VIII. incorrect & false. Denied. The Record is  
/ Pro

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in the custody of Respondents.

VIII False & based on malice on the part of Respondents. Denied.

IX No objection.

It is prayed that on acceptance of the Captioned Appeal, the impugned order may be set aside and the Appellant may be re-instated into service with back service benefits with costs.

Dt 06.03.2019

Appellant

(Sahibzada)

Through:-

Aurang

(A. Adam Khan - Advocate)

Affidavit

I Sahibzada / the Appellant do hereby state on solemn affirmation that the contents of the memo of Appeal & the Captioned Rejoinder are true & correct to my knowledge and belief & that the objections raised in the Comments are incorrect & false.

Appellant/Deponent

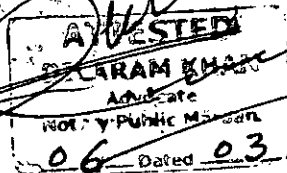
Sahib

(Sahibzada)

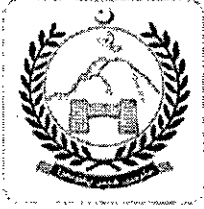
Identified by me

Aurang

MUHAMMAD ANAM KHAN  
B.A.LL.B Advocate  
High Court Mardan



2019



**KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

No. 1731 /ST

Dated: 01/09 /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

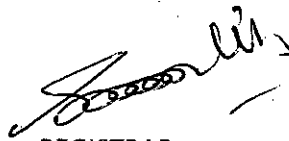
To

The District Education Officer Male,  
Government of Khyber Pakhtunkhwa  
Mardan.

Subject: JUDGMENT IN APPEAL NO. 721/2018 MR. SAHIB ZADA.

I am directed to forward herewith a certified copy of Judgement dated 05.08.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR