BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT CAMP COURT ABBOTTABAD.

Service Appeal No. 1229/2018

Date of Institution ...

04.10.2018

Date of Decision

23.09.2021

Raja Imtiaz Ahmed Conservator of Forest (Retired), KPK Forest Department R/O Kaghan Colony, Abbottabad.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, Peshawar through Chief Secretary, Peshawar and three others. ... (Respondents)

MR. ZULFIQAR AHMED Advocate

For Appellant

MR. RIAZ AHMED PAINDAKHEL, Assistant Advocate General

For Respondents

MR. SALAH-UD-DIN MR. ATIQ-UR-REHMAN WAZIR MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

that the appellant while serving as Conservator of Forests (BPS-18) was suspended from service vide order dated 27-01-2015. The appellant alongwith 15 others were recommended for registration of cases against them in anti-corruption establishment vide order dated 27-01-2015. Feeling aggrieved, the appellant filed a writ petition No. 335-P/2015 in the honorable High Court Peshawar and the honorable High court suspended the order dated 27-01-2015 vide judgment dated 03-02-2015, but the respondents did not take further action against the appellant till completion of the suspension period, which ended on 27-07-2015. In the meanwhile promotion case of the appellant came under consideration of PSB, but his case was not considered for promotion due to his suspension from service. His promotion case was again placed before Provincial

Selection Board (PSB) in August, 2015, but was again deferred due to his suspension as well as shortage in required length of his service. During the course, the appellant stood retired from service on 07-10-2015, but before retirement, he filed writ petition No. 902/2015 against his deferment from promotion and the honorable Peshawar High Court directed the respondents to decide the petitioner case pending before them in accordance with law vide judgment dated 05-12-2017, but the respondents rejected his case vide order dated 16-08-2018, received by the appellant on 07-09-2018. Feeling aggrieved, the appellant filed the instant service appeal with prayers for his notional promotion from BPS-18 to 19 with effect from 24-08-2015, the date when promotion case of the appellant was not considered and was deferred.

2. Learned counsel for the appellant has contended that the appellant was suspended from service on 27-01-2015 and such suspension ended on 27-07-2015; that after 27-07-2015 till meeting of the PSB held on 24-08-2015, neither the appellant was suspended again nor any disciplinary action was pending against him, thus the appellant was malafiedly not considered for promotion to BPS-19 by PSB in its meeting dated 24-08-2015; that under the government instructions, no civil servant can be deprived from his right of promotion mere on the pendency of disciplinary proceedings against him; that all the accused alongwith the appellant were exonerated of the charges vide order dated 07-12-2016, hence nothing was left against the appellant for deferment of his case of promotion; that the appellant length of service was malafiedly and illegally termed as short by 12 years in BPS-17 & above, which however was more than 12 years at that time; that as per promotion policy, 2009, where the first appointment of a person other than a person covered under proviso-II was made to government service in BPS-16 or below, one half of the service in BPS-16 and 1/4th in grade 15 and below may be counted as service in BPS-17 for the purpose of promotion only; that the appellant served for more than 25 years service in BPS-16 and in accordance with provisions of the promotion policy, the service of the appellant in BPS-17 comes to more than 20 years; that the appellant was unjustly not considered for promotion to BPS-19; that deputy conservators of Forests namely Naseem Hijazi and peer Qaim shah were badge mates of the appellant and the date of appointment of the officers is the same as of the appellant, both the officers retired on 04-02-2015 and 26-02-2015 respectively, but they were notionally promoted to BPS-19 on 13-08-2015 without any objection on their length of service, while discrimination was done at the time when working paper for promotion of the appellant was prepared and

he was ignored as against the officers mentioned above were promoted without any objection; that discriminatory order with regard to not considering the appellant is not tenable under the law and needs to be reversed as prayed for.

- Learned counsel for the respondents has contended that the appellant 3. was suspended from service on account of colossal forest damage occurred in Massar Reserved Forests, for which he was also recommended for registration of FIR against him in Anti-corruption Establishment; that the appellant was appointed to the post of ACF/SDFO(BPS-17) on acting charge basis w.e.f 21-07-2003 which was regularized w.e.f 01-07-2006; that later on the appellant was promoted to the post of DFO/DCF(BPS-18) on regular basis w.e.f 05-09-2009, thus the petitioner completed 11 years service from the date of his appointment against the post of ACF/SDFO on acting charge basis, while 8 years length of service on regular basis instead of 12 years service prescribed for promotion to BPS-19; that disciplinary proceedings were pending against the appellant, therefore the appellant was not considered for promotion to BPS-19 and his case was deferred in the PSB meeting held on 28-08-2015; that in the meanwhile the appellant retired form service on attaining the age of superannuation on 07-10-2015; that upon the orders of the honorable High Court, dated 05-12-2017, the competent authority has considered his case of promotion and rejected being not based on facts/ground realities, communicated to him vide order dated 16-08-2018 and Chief Conservator letter dated 31-08-2018; that the appeal being not based on facts may be rejected.
- 4. We have heard learned counsel for the parties and have perused the record. Record reveals that promotion case of the appellant was twice considered by PSB, but was deferred due to the reason that he was under suspension and his required length of service was short by one year. However it was noted that during 2nd meeting of PSB held on 24-08-2015, the appellant was not under suspension, nor any proceedings were pending against him. It was also noted that as per provisions contained in promotion policy, the appellant length of service in BPS-17 and above was more than 20 years, by calculating one half of his service in BPS-16, where the appellant served in BPS-16 for more than 25 years. We have observed that the appellant was fit for promotion on 24-08-2015, when his case was deferred for his suspension and shortage in length of service. It has been held in various judgments of the apex court that disciplinary proceedings pending against a civil servant cannot deprive him of his right of promotion. It was also noted that required length of service of the

appellant was also more than 12 years, but he was deprived of his right of promotion malafiedly.

In view of the foregoing discussion, the instant appeal is accepted and the appellant stands entitled for notional promotion to BPS-19 w.e.f 24-08-2015 with all consequential benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED 23.09.2021

(SALAH-U-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

(ATIQ UR REHMAN WAZIR)

MEMBER (EXECUTIVE)

CAMP COURT ABBOTTABAD

ORDER 23.09.2021

Appellant alongwith his counsel Mr. Zulfiqar Ahmed, Advocate, for the appellant present. Mr. Waseem Abbas, SDFO alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted and the appellant stands entitled for notional promotion to BPS-19 w.e.f 24-08-2015 with all consequential benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED 23.09.2021

(SALAH-U-DIN) MEMBER (JUDICIAL) CAMP COURT ABBOTTABAD (ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT ABBOTTABAD

22.09.2021

Mr. Zulfiqar Ahmed, Advocate, for the appellant present. Mr. Waseem Abbas, SDFO alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

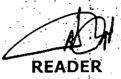
Partial arguments heard. To come up for remaining arguments on 23.09.2021 before the D.B at Camp Court Abbottabad.

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT ABBOTTABAD

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

21.01.2021

Due to COVID-19, the case is adjourned for the same on \6.02.2021 before D.B.



16.02.2021

Learned counsel for the appellant present.

Noor Zaman, learned District Attorney for respondents present.

Former made a request for adjournment as he wants to produce relevant documents; allowed. To come up for production of relevant record and arguments on 19.05.2021 before D.B at Camp Court Abbottabad.

(Atiq ur Rehman Wazir) Member (E)

Member (E)
Camp Court, Abbottabad

(Rozina Rehman)

Member (J)

Camp Court, Abbattabad

19-5-21

Due to covid 19, the case is Adjourne to 80-9-2021 For the same

2 ender

17.11.2020

Appellant is present in person. Mr. Usman Ghani, District Attorney alongwith Mr. Kamran, Forester for respondents is present.

Appellant requests for adjournment as his learned counsel is not available today.

Adjourned to 21.01.2021 on which date to come up for arguments before D.B at camp court Abbottabad.

(Mian Muhammad)

Member(E)

(Muhammad Jamal Khan)

Member(J)

Camp Court Abbottabad

Due to covid ,19 case to come up for the same on / at camp court abbottabad.

Reader

Due to summer vacation case to come up for the same on $\sqrt{20}$ at camp court abbottabad.

14.09.2020

Mr. Zulfiqar Ahmad, Advocate for appellant is present. Mr. Usman Ghani, District Attorney for the respondents is also present. Learned counsel for appellant is seeking time for preparing the brief. Time is allowed. File to come up for arguments on 17.11.2020 before D.B at Camp Court Abbottabad.

(Mian Muhammad)

Member (Executive)

Camp Court Abbottabad

(Muhammad Jamal Khan) Member (Judicial) Camp Court Abbottabad 19.11.2019

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Kamran, FPP for respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 18.12.2019 before D.B at Camp Court, Abbottabad.

Member

Camp Court Abbottabad

18.12.2019

None present on behalf of the appellant. Mr. Ziaullah, Deputy District Attorney for the respondents present. Notice be issued to appellant to attend the court on the next date positively and also produce his counsel for arguments on 17.02.2020 before D.B at Camp Court Abbottabad.

(Hussain Shah) Member Camp Court Abbottabad (M. Amin Khan Kundi) Member Camp Court Abbottabad 21.05.2019

Appellant in person and Mr. Masood-ur-Rehman, SDFO alongwith Mr. Muhammad Bilal, Deputy District Attorney for the respondents present. Written reply on behalf of respondents not submitted. Representative of the department requested for further adjournment. Adjourned to 08.07.2019 for written reply/comments before S.B at Camp Court Abbottabad.

Carlo Carlo

(Muhammad Amin Khan Kundi) Member Camp Court Abbottabad

08.07.2019

Counsel for the appellant and Mr. Jawad Ahmad, SDFO alongwith Mr. Muhammad Bilal Khan, Deputy District Attorney for the respondents present. Representative of the department submitted written reply on behalf of respondents No. 1 to 5. Case to come up, for rejoinder and arguments on 16.09.2019 before D.B at Camp Court Abbottabad.

(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

16.09.2019

Appellant alongwith counsel and Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Jawad Ahmad, SDFO for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 19.11.2019 for rejoinder and arguments before D.B at Camp Court Abbottabad.

(Hussain Shah)

Member

Camp Court Abbottabad

(Muhammad Amin Khan Kundi)

Member

Camp Court Abbottabad

21.12.2018

Counsel for the appellant present.

Contends that in working paper dated 24.06.2015 for recommendation of promotion of officials the case of appellant was dropped on the sole ground that he was under suspension at the relevant time. The said ground though was not a valid one in view of Recruitment, Appointment, Seniority and Promotion, Rules, 1978. Further contended that in the impugned recommendations the period of service of appellant was wrongly recorded and was thereby reduced by about 12 years.

In view of the above, the instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Notices be issued to the respondents for submission of written reply/comments on 18.03.2019 before S.B at camp court Abbottabad.

Chairman Camp court, A/Abad

18.03.2019

Appellant in person present. Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Noman, Forest Guard for the respondents present. Written reply on behalf of respondents not submitted. Learned Deputy District Attorney requested for further adjournment. Adjourned. To come up for written reply/comments on 21.05.2019 before S.B at Camp Court Abbottabad.

(Muhammad Amin Khan Kundi)

Member

Camp Court Abbottabad

Form- A FORM OF ORDER SHEET

Court of		• •
Case No.	1229 /2018	

	Case No	1229 /2018	
S.No.	Date of order proceedings	Order or other proceedings with signature of judge	
1	2	3	
1-	08/10/2018	The appeal of Mr. Raja Imtiaz Ahmad resubmitted todar Mr. Zulfigar Ahmad Advocate may be entered in the Institu Register and put up to the Worthy Chairman for proper order please.	ıtior
		REGISTRAR 2/10	
2-		This case is entrusted to touring S. Bench at A.Abad preliminary hearing to be put up there on $21-12-2018$.	to
•		preliminary hearing to be put up there on	
		CHAIRMAN	÷
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The appeal of Mr. Raja Imtiaz Ahmad Conservator of Forest (Retired) received today i.e. on 04.10.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Copy of order Hon'ble High Court mentioned in para-9 of the memo of appeal (Annexure-I) is not attached with the appeal which may be placed on it.

2- Two more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. / C / S.T,
Dt. / 2018.

REGISTRAR 4/10/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Zulfigar Ahmad Adv. A.Abad.

Meddel done. File At Pages 37 A 4

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BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR No. 122

Raja Imtiaz Ahmed

... APPELLANT

VERSUS

Government of KPK through Chief Secretary, Peshawar & Others.

...RESPONDENTS

WRIT PETITION

INDEX.

.S.#	Description	Page Nos.	Annexure
1 .	Appeal with affidavit	1 To 9	
2	Copies of notification dated 27/1/15 and letter dated 27/1/15	10 To 11	"A" & "B"
3	Copy of order of Honourable High court	12	"C"
4	Copy of exonerated officers letter	13	"D"
5	Copy of impugned order / working paper and government instructions	14 To 19	"E" & "F"
6	Copies of working paper and representation of appellant	20 To 23	"G" & "H"
.7	Copy of order in W.P # 902/15	24 To 37	"I"
8	Copy of order passed by respondent # 1 while conveyed the same to the appellant through conservator of forests, lower Hazara forests circle, Abbottabad and receipt	38 To 40	"J", "K" & "L"
9	Copy of promotion order of officers	41	"M"
10	Wakalatnama	42	"N"

Through

Dated: 02/10/2018

Abbottabad

(ZULFIQAR AHMAD)
Advocate High Court
Abbottabad

Raja Imtiaz Ahmed Conservator of Forest (Retired), KPK Forest Department R/O Kaghan Colony, Abbottabad.

... APPELLANTkutukhwa Service Tribunat

VERSUS

Diary No. 1450 1. Govt. of KPK, Peshawar through Chief Secretary, Peshawar

2. Provincial Selection Board through its Chairman / Chief Secretary Khyber Pakhtunkhwa Peshawar.

3. Secretary to Government Khyber Pakhtunkhwa Forestry. Environment & wildlife Department, Peshawar.

4. Chief Conservative of Forest, Central Southern region-I, KPK, Peshawar.

...RESPONDENTS

APPEAL UNDER SECTION 4 OF THE SERVICES TRIBUNAL ACT AGAINST THE ORDER / WORKING PAPER PREPARED BY OF RESPONDENT NO. 4 DATED 24/06/2015. WHEREBY THE APPELLANT WAS NOT CONSIDERED FOR PROMOTION AND THE DISMISSAL / REJECTION OF REPRESENTATION BY RESPONDENT NO. 1 THAT IS ILLEGAL, BASED ON MALA FIDE AND AGAINST THE SETTLED NORMS OF JUSTICE AND IS NOT TENABLE UNDER THE LAW.

Respectfully Sheweth; -

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Re-submitted to -day and filed.

1. That the petitioner being officer of BPS-18 (now retired) while serving as conservator of Forest Lower Hazara Circle Abbottabad along with others was suspended from service through a Notification dated 27.01.2015. All that happened due to malafide of respondent No. 4. The respondent No. 4 without any justification had also moved to the man at the top of hill of KPK Government for the initiation of Anti Corruption case against the petitioner



and others. (Copies of notification dated 27.01.2015 and letter dated 27.01.2015 are annexed as annexure "A" & "B').

- the relevant time was the Chief Conservator of Forests Region-II, Abbottabad being aggrieved from their unjustified and mala fidely suspension from service and the move of initiation of Anti-Corruption case on the instance of respondent No.4 invoked the constitutional jurisdiction of Honourable High court through W.P. No. 335-P of 2015 and the Honourable court suspended letter dated 27.01.2015 and comments were called from the respondents. (Copy of the order of Honourable High court is annexed as annexure "C").
- 3. That, it is pertinent to mention that the officers / officials involved in the alleged corruption case were exonerated from the charges leveled against them on 14/12/2016.
 (Copy attached as annexure "D"), therefore, the very charge of corruption, suspension and inquiry also remained no more on surface, hence the impugned orders needs to be reversed.
- 4. That the mala fide against the petitioner was obvious from the conduct of respondents as despite his suspension of six months, maximum time of suspension under the rules, was not served with any charge sheet proving that there was nothing against the petitioner for the action taken against him.
- 5. That petitioner's promotion from BPS-18 to BPS-19 was due in the month of January 2015. But, his working paper

for promotion from BPS-18 to BPS-19 were prepared in such a way by the respondent No. 4 due to which his name could not be considered for promotion from BPS-18 to BPS-19. As it was stated that petitioner is not eligible fit for promotion on account of alleged suspension dated 27.01.2015, which was not followed by any charge sheet, The provincial selection Board did not consider the case of petitioner from BPS-18 to BPS-19 for that reason the name of the Petitioner was not considered for promotion. The provincial Selection Board did not consider the case of petitioner from BPS-18 to BPS-19 only on the point that his service was suspended. Whereas, there are clear instructions and decisions of Government that the mere pendency of disciplinary action against the civil servant cannot deprive him from the right of promotion. (Copy of impugned order / working paper is annexed as annexure and government instructions annexure "F").

legally stood terminated has come to know that respondents in view of the seniority of the officer of Forest Department of BPS-18 had sent working papers for their promotion in BPS-19 to Provincial Selection Board against the four posts, which included the name of petitioner as well. He obtained the copy of that working paper in the month of August 2015. He after obtaining the copy of said working paper had made representation against the same since in it, he was still shown as suspended from service and illegally termed that his

length of service is short for the purpose of consideration for his promotion from BPS-18 to BPS-19, so he was not considered eligible for his promotion. (Copies of working papers and representation of petitioner are annexed as annexure "G" & "H').

- That, later the appellant had come to know that provincial selection Board in his meeting held on 28th August 2015 in which two officers namely Dr. Faiz ul Bari and Shabbir Hussain were promoted to BPS-19 is also impugned as on the basis of impugned working paper whereby the appellant was ignored, they were promoted to BPS-19. It is pertinent to mention here that Faiz ul Bari who was promoted in BPS-19 stood retired on 09.09.2015. He on account of short of one year ACR was not eligible to be promoted in BPS-19 since he joined the service some where in the mid of year 2014 after availing more than five years on deputation.
- 8. That, it is also not out of context to mention here that petitioner has been retired but due to malafide acts of respondents No. 3 & 4 provincial selection Board did not consider him for promotion in BPS-19 despite of his eligibility.
- Oher option, but to seek the indulgence of Honourable High court, in the matter of un-just and un-fair preparation of working papers on the part of respondents against the appellant and up holding the same by Provincial Selection board as a result whereof he has been deprived from his right to be considered for promotion by the Provincial

(5)

Selection Board on merits, through writ petition # 902/15. Therefore it was preferred in the Honorable High Court with the result that it was ordered that the "in view of the above occurrence of learned counsel for the petitioner and the learned Assistant Advocate General, this petition stands disposed of in terms that the worthy chief Secretary to the Government of KPK, Peshawar, shall decide the petitioner's case, pending before him, in accordance with law. It will be appreciated, if the needful is done at the earliest" representation of the appellant be decided and disposed off. (Copy of the order is annexure "I").

10. That the representation of the appellant has now been rejected by respondent # 1, conveyed to the appellant through Conservator of forests, lower Hazara forests circle, Abbottabad on 07/09/2018. (Copy of the order passed by respondent # 1 is attached as annexure "J", while conveyed the same to the appellant through conservator of forests, lower Hazara forests circle, Abbottabad is annexure "K" and the receipt to this effect is annexure "L").

That feeling aggrieved from the impugned order the appeal is preferred inter alia on the following grounds:-

GROUNDS:-

a. That, after 27.07.2015 there was no suspension of petitioner under the law of KPK Government Servant (E & D) Rules, 2011. The competent authority can suspend the service of civil servant for six months only. Initially for three months and thereafter, if need be for further three

months. After 27.07.2015 till the meeting of Provincial Selection Board dated 24th August 2015 neither petitioner was suspended from service nor any disciplinary proceeding was pending against him, thus, petitioner was mala fidely and un-justly not considered on merits for his promotion in BPS-19 by the Provincial Selection Board in its meeting dated 24th August 2015.

- b. That, petitioner's length of service was illegally and mala fidely termed as short of 12 years in BPS-17. Whereas, under the relevant rules he had qualifying length of service on the basis of which he could be considered for promotion in BPS-19. As such, the Provincial Selection Board mere on the wrong, malafide and illegal advice of respondents was not justified to not consider the appellant for his promotion on merits since at the relevant time he was not suspended from service, nor disciplinary proceedings were pending against him and he was having qualifying length of service under the relevant rules and was eligible for promotion.
- That, respondents No. 3 & 4 despite being aware of the fact that appellant's un-just and malafide suspension came to an end on 27.07.2015 and under the rules petitioner was having the qualifying length of service for his promotion in BPS-19 has mala fidely neither was reinstated him in service nor he had informed the provincial selection Board about the true facts respecting the appellant. As such petitioner due to mala fide act of respondents have not been considered for his promotion in BPS-19 and as such

- the said act of respondent No. 3 & 4 is amenable in the constitutional jurisdiction of this Honourable tribunal.
- d. That, this Honourable tribunal in view of the facts of the case of appellant gets every right for its interference, so that his right for consideration for promotion by the Provincial Selection Board be saved from being defeated and prejudiced.
- e. That under the Government instructions and decisions no civil servant can be deprived from his right of promotion mere on the pendency of disciplinary proceeding against him.
- f. That under the instructions of Government where first appointment of a person other then a person covered under proviso-II was made to Government service in BPS-16 or below, one half of the service in BPS-16 and 1/4th in grade 15 and below may be counted as service in grade-17 for the purpose of promotion only. As the petitioner has originally joined the service of Forest Department in the capacity of Range Officer in BPS-16. That length of petitioner's service which spread over 25 years in terms of said rules was qualifying him to be considered for the promotion in BPS-19. In view of this position, appellant was un-justly not considered against the post of BPS-19.
- g. That Deputy conservators of forests namely Mr. Naseem Hijazi and Peer Qaim Shah were the badge mates of the appellant and the date of appointment of the officers was the same as of the appellant. Both the officers retired on 4/2/2015 and 26/2/15 respectively but they were promoted

to BPS-19 on 13/08/2015 to BPS-19. I may mention here that being the colleagues in service and recruitment both the officers were promoted with out any objection of their length of service while discrimination was done at the time when the working paper for promotion of the appellant was prepared and he was ignored as against the officers mentioned above were promoted with out any objection. The discriminatory order with regard to the not considering the name of appellant is tenable under the law and needs to be reversed as prayed. (Copy of the order of promotion of above mentioned officers is annexure "N").

h. That further points and law will be submitted at the time of arguments.

PRAYER:-

It is, therefore, most humbly prayed that this Honourable tribunal may graciously be pleased to direct that the impugned working paper / order of respondent No. 4 as well as the order of respondent # 1 rejecting the representation may graciously be set aside and they be directed for convening the meeting of Provincial Selection Board for consideration of the promotion of appellant from BPS-18 to BPS-19 on merit and he be promoted w.e.f 24th August 2015 on which date the appellant was not considered on merits for his promotion in BPS-19 due to malafide, unjust and illegal act of respondents No. 3 & 4, in order to meet the

Dated 02/10/2018

ends of justice.

..APPELSANT

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(ZULFIQAR ATMAT ADV)

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Raja Imtiaz Ahmed Conservative of Forest (Retired), KPK Forest Department R/O Kaghan Colony, Abbottabad

... APPELLANT

VERSUS

Government of KPK through Chief Secretary, Peshawar & Others.

...RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, Raja Imtiaz Ahmed Conservator of Forest (Retired), KPK Forest Department R/O Kaghan Colony, Abbottabad, , do hereby solemnly affirm and declare on oath that the contents of foregoing service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed.

Dated: - 2/10/2018

Identified by: -

ZULETQAR AHMAD)
Advocate High Court
Abbottabad

03/10/18

िटल :CARBAN SEQUERTRATION PROJECT P FAX NO. :0919218378 28 Jan. 2015 2:05PM P1



28 Jan. 2015 16:31FM



GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

Dated Peshawar, the January 27, 2015

NOTIFICATION

SO(E-DESAD/9-112/2015, In items) of Rule-6 of the Kryber Pakhtunkhwa, Government Servants Efficiency & Discipline Rules, 2011. the competent authority is pleased to place under suspension the following officers/officials of Forestry, Environment and Wildlife Department, with immediate effect:- .

1	Sr,#	NAMES OF	PRESENT POST
. (OFFICERS/OFFICIALS	
1	1	Sardar Muhammad	Chief Conservator of Forests Region-II,
į		Sultan	Abbottabad:
/	2.	Raja Imtaiz,	Conservator of Forests, Lower Hazara
		<u> </u>	Circle: Abbottabad.
	3.	Mr. Amjad Samand	DFO, Siran Forest Division.
	4	Mr. Mian Tahir	SDFO, Forester Hilkot.
	5	Mr. Muhammad Faroog	SDFO, Deputy Ranger.
	6.	Mr. Muhammad Sulaman	SDFO, Upper Siran.
	7:	Mr. Dilawar Khan	Forester, Block Officer, Jabon
	₿.	Mr. Muhammad Rustam	Forest Guard, Block Officer, Battal.
-		Кhал	
	9,	Mr. Muhammad Yousuf	Forest Guard, Beat Block, Battal Block,
	10.	Mr. Nlaz Ali.	Forest Guard/Block Officer, Shinklarl Block.
	- 11.	Mr. Muhammad Javed	Forest Guard/Beat Guard, Shinkian Block.
•		Mr. Tanir Ayub:	Forest Guard/Block Officer, Dadar Block
٠		Mr. Rustam Khan,	Forest Guard/Block Officer, Ahl Block
			Forest Guard, Beat Guard Ahl Block.
į	15.	Mr. Muhammad Asif.	Forest Guard, Beat Guard,
			THE COUNTY OF THE PARTY A FIRE

CHIEF'SECRETARY GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst. of even No. & date of

Copy forwarded to the:-

- 1. Principal Secretary to Governor, Khyber Pakhtunknwa.
- Principal Sacretary to Chief Minister, Khyber Pakhtunkhwa;
- Secretary to Govt of Khyber Pakhfunkhwe, Forestry, Environment and Wildlife Department.
- Divisional Commissioners, Malekand, Hazara and Poshawar.
- Accountant General, Khyber Pakotunkhwa.
- Chief Conservator of Forests Malakand, Forest Region-III, Swat
- Chief Conservator of Forests Region-! Central and Southern Forest Region-!
- Peshawar:

 8. Chief Conservator of Forests, Northern Forest Region-II, Abbottabad.

 9. Conservator of Forest/PD Watershed Management, Abbottabad.

 10. Conservator of Forests, Upper Hazara Circle Marisehra.

 11. Conservator of Forests, Lower Hazara.

 12. District Accounts Officers concerned.

12. District Accounts Officers concerned
13. PS to Chief Secretary, Khyber Pakhtonkhwa:
14. PS to Secretary Establishment:
15. All Officers/officials concerned:
16. Manageri Gövi: Printing Press Peshawar.
17. MUHAMWAD JAVED SIDDICITY SECTION OFFICER (ESTT. I)



01/02 2015

23:29 09213776 CUNTAPERITEDAM

DIRECTOR B&A ENVI



#6873 P. 001



GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

NO. SO(E-I)E&AD/9-112/2015 Dated Peshawar, the January 27,2015

Τo

The Director, Anti-Corruption Establishment, Khyber Pakhtunkhwa

SUBJECT: - REGISTRATION OF CASE AGAINT OFFICERS/OFFICIALS OF KHYBER PAKHTUNKHWA FOREST DEPARTMENT INVOLVED IN ILLICIT CUTTING OF MASAR FOREST OF SIRAN FOREST DIVISION.

Dear Sir,

I am directed to refer to the subject cited above and to state that the competent authority has approved to register/investigate the subject by the Anti-Corruption Establishment, Khyber Pakhtunkhwa.

2. It is requested to proceed further in the matter, under the Anti-Corruption Law, under intimation to all concerned. A copy of the suspension order of the officers/officials of Forestry, Environment and Wildlife Department is enclosed.

Eve As a Smil.

Yours faithfully,

SECIJON OFFICER (ESTT. I)

Endst. No. & date even

Copy is forwarded to Secretary to Government of Khyber - Pakhtunkhwa, Forestry, Environment and Wildlife Department.

SECTION OFFICER (ESTT. I) PHONE & FAX # 091-9210529



PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET

ATTESTED

LULFTQAR AHMETO
Advocate High Court Abbottabad

	G A
Date of Order of Proceedings	Order of other Proceedings with Signifuge distance.
<u>1</u>	2 (0)
03.02.2015	W.P.No.335-P/2015.
	Present: M/s Fazal-e-Haq Abbassi and Abdul Shakoo Khan, Advocates for the petitioners.

Since no Division Bench was working at Abbottabad, therefore, this petition, being an urgent matter, was filed at the Principal Seat at Peshawar and was accordingly fixed.

However, after hearing the learned counsel for the petitioners, we deem it appropriate that comments of respondents 1, 3 and 4 be called for so as to reach the Court within a fortnight.

Being a case talling within the territorial jurisdiction of Abbottabad Bench, so it be sent there for further proceedings.

Interim Relief.

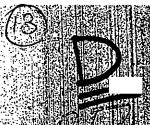
Notice. In the meanwhile, the operation of the letter dated 27.1.2015 regarding registration of FIR is suspended. In case, the FIR has been registered on the basis of the said letter, the petitioner should not be arrested till further orders.

Elf Maghar Alter Dand 16

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F.Jan */





GOVERNMENT OF KHYBER PAKHTUNKHWA ENVIRONMENT DEPARTMENT

Dated Peshawar the, 07th December, 2016

MOTTFICATION

No: SO(Estt)/FE&WD/1-31/2015/Siran: WHEREAS, the officers/officials, mentioned below, were proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 for the charges as mentioned in the Charge Sheets and Statement of Allegations, served upon them:-

- Mr. Amjad Samad, Sub Divisional Forest Officer (BS-17);
- Mr. Muhammad Suleman, Sub Divisional Forest Officer (BS-17);
- Mr. Tahir Ayub, Forest Guard (BS-07);
- Mr. Muhammad Asif, Forest Guard (85-07);
- Mr. Muhammad Yousaf, Forest Guard (BS-07); Mr. Muhammad Farooq, Deputy Ranger (BS-11);
- (vii) Mian Tahir Hussain Shah, Forester (BS-09)
- (viii) Mr. Niaz Ahmad Shah, Forest Guard (BS-07);
- (ix) Mr. Rustam Khan, Forest Guard (BS-07);
- (x)
- Mr. Muhammad Javed, Forest Guard (BS-07); (xi)
- Mr. Muhammad Altaf, Forest Guard (BS-07).

AND WHEREAS, Enquiry Committee, comprising of Mr. Mukhtiar Ahmad (PCS SG CS-19), Additional Secretary, Zakat & Ushr Department, Khyber Pakhtunkhwa ahd Mr. Huhammad Siddique Khattak, Conservator of Forests (BS-19); serving as Chief Conservator of Forests-II, Abburtabad was constituted to conduct the inquiry against the said accused.

AND WHEREAS, the Enquiry Committee, after having examined the charges, evidence on record and explanation of the accused officials/officers, submitted its report. wherein the charges against the officers/officials named at Sr. No: (i) to (v) above have not been proved whereas the charges against the officials at Sr. No: (vi) to (xi) being of serious nature have been established beyond reasonable doubt.

AND WHEREAS, the Competent Authority, after considering the Inquiry Report and other related documents, of the case, served a Show Cause Notices upon the said officials at Sr. No: (vi) to (xi) to which they replied, and provided them opportunity of personal hearing.

AND WHEREAS, the Competent Authority, after having considered the charges, revidence on record, findings of the Enquiry Committee, the explanation of the accused offices, officials, and hearing them in person and exercising his powers under Rule-14 (5) of the farmer. Pakhtunki a Government Servant (Efficiency & Discipline) Rules, 2011 has been surfaced to "EXONERATE" all the above mentioned officers/officials from the charges levelled against them in the respective Statement of Allegations.

> Chief Minister Khyber Pakhtunkhwa

findst: No. 50 (Esit)/FE&WD/1-31/2015/Siran: Dated Peshawar the, 07th December, 2016 Copy is forwarded to:-

- . Frincipal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- PSO to Chief Serretary. Khyber Pakhtunkhwa. Chief Conservator of Forests, Central Southern Forest Region-I, Peshawar.
- Chief Conservator of Forests, Northern Forest Region-II, Civil Line Forest Offices, Alipoitabad/Mansehra.

- Andotrabady mansenra.
 Conservators of Forests, Lower & Upper Hazara Forest Circles Abbottabad.
 Is islonal Fore: Officer, Siran Forest Division, Siran.
 Ushours officials concerned C/O Chief Conservator of Forests, Central Southern Forest Region-1,

The accretary. Forestry, Environment & Wildlife Department, Khyber Pakhtunkhwa.

Of the order file. D-No-110

(Syed Kazim Hussain Shah) Section Officer (F)

Dated Peshawar the

Copy forwarded for information and necessary action to the:-

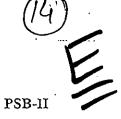
Chief Conservator of Forests Northern Forest Region-II Abbottabad. Copies of the notification meant for officer/officials listed as per II to XI are also enclosed

Project Director BTAP Peshawar. Copy of the notification meant for Mr. Amjad Sarhad SDFQ is enclosed.

Check inservator of Forests Coursel Southern | prest Region | khyber Pakhtunthiya Peshawar

AND -E





PANEL OF OFFICERS FOR CONSIDERATION

S.No	Name of officers with Academic Qualification	Remarks*
1.	Dr. Faizul Bari, B.Sc.Forestry M. Sc Forestry. M.Sc.(Range !Management) Ph. D (USA)	Eligible for promotion against available regular post. After arrival from long leave on 17.03.2014, the officer earned ACR for the period from 17.03.2014 to 31.12.2014 and 1.1.2015 to 31.3.2015 (special report) as per para 5 of the instruction available in the letter of Government of Pakistan Cabinet Secretariat Establishment Divisision Islamabad letter No.1/1/2001-CP-II dated 14.5.2009(copy attached).Performance Evualuation Report for both the periods are in category of very good. His quantification score is 62 and completed twelve years length of service prescribed for promotion to BPS-19 as well as passed the Departmental Examination.
	B.Sc Forestry M.Sc Forestry	discussed in the PSB meeting held on 30-01-2015. He was cleared by the PSB in its meeting held on 30.01.2015, and recommended for promotion on acting charge basis. He has completed twelve years length of service prescribed for promotion to BPS-19 and also passed the Departmental Examination. His quantification score is 61.
3.	Raja Imtiaz Ahmad, B.Sc.Forestry	Due to suspension the officer is not eligible for promotion, however, the officer was appointed to the post of Forest Ranger BPS-16 on 19.11.1979 through Public Service Commission and promoted to the post of Assistant Conservator of Forests /SDFO BPS-17 on acting charge basis with effect from 21.7.2003 and regularized with effect from 1.7.2006. The officer was promoted to the post of Deputy Conservator of Forests BPS-18 w-e-f 5.9.2009. The officer has completed over 11 years service from the date of his appointment to the post of ACF/SDFO on acting charge basis while eight years length of service in BPS-17 on regular basis instead of twelve years prescribed for promotion to BPS-19. The officer passed the Departmental Examination and his quantification score 57.
4.	Mr. Shakeel Ahmad B.Sc. Forestry MBA	Not eligible for promotion. The officer was appointed to the post of Forest Ranger BPS-16 on 19.11.1979 through Public Service Commission and promoted to the post of SDFO BPS-17 on 1.7.2006. The officer was promoted to the post of Deputy Conservator of Forests

THE AK Abbres

Promotion of the services

refire me

BPS-18 w-e-f 9.2.2011. The officer has completed eight years length of service in BPS-17 and above instead of twelve years prescribed for promotion to BPS-19. The officer passed the Departmental Examination and his quantification score is 49.

CERTIFICATE

- (1) Certified that the officers are eligible in all respects and possess the requisite length of service required for promotion except the officers listed at S.No. 3 and 4.
- (2) Also certified that no disciplinary action/proceedings or criminal charges in any court of law are pending against the officers except the officer listed at S.No. 3.
- (3) Also certified that the officers had passed the Departmental Examination.

Signature:

Designation: Chief Conservator of Forests Khyber Pakhtunkhwa Peshawar

Date 36- 2015



Recruitment/Appointments Seniority and Promotion

made in the Recruitment Rules for posts in Grade 16 under them.

[Authority.-O.M. No. F 1/15/69-F. II. dated 2-3-1970.]

Promotion of Grade I and 2 employees as L.D.C

St. No. 260

It has been decided that:-

- (a) A maximum of 10% vacancies in the posts of LDC under the Federal Government (i.e. Ministries Divisions, their Attached Departments and subordinate offices) may be filled by promotion of Grade 1 and 2 employees who have passed Matriculation examination. For this purpose Grade-1 and 2 employees of the Federal Government who possess the requisite qualification, will be regarded as eligible for promotion against (he 10% quota.
- (b) Where the condition of knowing typewriting is essential for appointment as LDC. the person to be promoted should satisfy this condition before he is appointed.
- 2. All concerned under the Ministries/Divisions may please be informed of the

(Authority.—Estt Division's O.M. No 18 I 76-F. II dalcd 23-6-1976.)

Instances have come to notice that some Ministries/Divisions are not aware of the existence of instructions contained in the Establishment Division's O.M. No. 18/1/76-F. II, dated the 23rd June, 1976 (SI. No. 200.) It is stated for the information of all Ministries/Divisions concerned that these instructions are still in force and should be allowed invariably while making appointment/recruitment to the post of LDC.

[Authority—Estt. Division O.M. No. 18-I-76-F.II (R.6) dated 5-5-1985.]

Minimum length of service for eligibility for promotion for various

Sl. No. 262:

Minimum length of service for eligibility in promotion of officers.—In pursuance of rule 8-A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and in supersession of the instructions laid down in the Establishment Division's Office. Memorandum No. 1/9/80-R. II(A), dated the 12th January, 1981, (Annexure-I), the President is pleased to decide that the minimum length of service for promotion to arious grades shall be as follows:

For grade 18 5 years in grade 17

For grade 19 12 years in grade 17 and above.

For grade 20 17 years in grade 17 and above.

For grade 21 22 years in grade 17 and above.

Ch.II

Provided that :-

(i) Where initial appointment of a person not being a person in government service takes place in a post in grade 18, 19 or 20, the length of service specified in this office memorandum shall be reduced by the following periods;

first appointment in	Reduced by
Grade-18	5 years
Grade-19	12 years
Grade-20	17 years

- (ii) Where initial appointment of a person already in government service takes place, on recommendations of the Federal Public Service Commission, in a post in grade 18, 19 or 20, the length of service specified in this office memorandum shall be reduced by the periods specified in proviso (i);
- (iii) Where first appointment of a person other than a person covered by proviso (ii) was made to government service in grade 16 or below, one-half of the service in grade 16 and one-fourth in grade 15 and below may be counted as service in grade 17 for computing length of service for the purpose of promotion only.

Authority.—Esst. Division. O.M. NO. 1/9/80-R. 2 dated 2nd June. 1983.)

ANNEXURE (For information)

Copy of O.M. No. 1/9/80-R-II (A), dated 12th January. 1981.

Reference Establishment Division O.M. No. 3/7/74-AR. II. dated 20th May, 1974. 27th August, 1974 and 6th February. 1975. in supersession of the instructions laid down in the a fore-mentioned O.M. the President is pleased to decide that the minimum length of service for promotion to various grades shall be as follows:—

For Grade 18	5 years in Grade 17.
For Grade 19	12. years in Grade 17 and above.
For Grade 20	17 years in Grade 17 and above.
For Grade 21	22 year? in Grade 17 and above.

Provided that where initial appointment takes place in Grades 18. 19 and 20, the length of service for promotion to higher Grades shall be as follows, namely:—

For Grade 19 7 years in Grade 18.

For Grade 20 12 years in Grade 18 and above OR 5 years in Grade 19.

For Grade 21 17 years in Grade 18 and above OR 5 years in Grade 20.



responsibility in comparison with duties of his post in Government service, be allowed the same remunerations as he would have received, from time to time, in Government service but for his transfer to foreign service. It follows from these orders that if a Government servant who is on deputations to foreign service is promoted in his parent cadre, he should, if he continues to remain in foreign service, be allowed the remuneration which he would have received in the higher post in Government service to which he is promoted. The higher remuneration would, of course, be payable by the foreign employer.

[Authority.—O.M. No. F. 6(4)-R-2/65, dated the 9th February. 1966.]

Sl. No. 275

Promotion of officers deputed for training abroad.—According to para (ii) of the Finance Division O.M. No. F. 8(2)/R/II (II)/58, dated the 31st October, 1958 officers proceeding abroad for training are entitled to the pay which would have been admissible to them in Pakistan but for their deputation abroad. It has been brought to the notice of this Ministry that in some cases the officers while under training abroad are considered and approved for promotion to higher posts in Pakistan. In this connection, a question has arisen as to what extent the benefit of such promotion should be given to such officers. The matter has been considered and it has been decided that if an officer on training abroad and his turn for promotion arrives in his parent department or cadre in Pakistan, he should be considered for promotion along with other officers, and if he is approved for promotion in accordance with the relevant rules, he should be appointed formally (not actually) to the post in the higher grade. This would enable him to occupy on his return to Pakistan the position which he would have occupied had he not gone abroad on training. No financial benefit of the 'next below rule' should be allowed to him in respect of his promotion. He should be allowed to count seniority and increment from the date of such promotion, but the actual pay of the higher post should be given to him only when he resumes the duties of the higher post on his return from training.

[Authority—Finance Division O.M. No. 361-R 4/65, dated the 25th March 1965) Note—For promotions in absentia admissible to temporary Government servants who have joined Pakistan Army, Navy or Air Force Reserves, please see Government orders in Chapter IX, Establishment Manual, Vol. I.

SI. No. 276:

Bar against promotion of ad-Hoc appointees.—The following further instructions are issued for regulating ad-hoc appointments:—

- (i) Persons appointed on ad-hoc basis should possess the required qualifications and experience prescribed for posts;
- (ii) Persons appointed on an ad-hoc basis should not be promoted to higher posts.

[Authority—O.M. No. 3/29/70-D. III, dated the 7th January, 1971.]

Bar against mentioning of unfinalized departmental proceedings in Confidential Reports

SI.No.277:

It has been noticed that in some-annual confidential reports, of officers received from various Ministries that a reference is made over to departmental proceedings which are still in progress against the officers concerned.



Ch.II

2. The Establishment Division feel that until and unless the result of such proceedings has been known and final orders, awarding punishment if any, have been passed by the competent authority, it would not be correct to make any such reference as may have the effect of creating doubts about the conduct and character of the officers concerned, it can hardly be controverted that such a reference, although factually correct, if inadvertently made cannot fail to damage the officer's record even if in the long run he is completely exonerated.

3. In the circumstances it is requested that, in the case of an officer against whom departmental proceedings are in progress, no mention whatsoever should be made about it in their annual confidential reports. Only when such proceedings have been finalized, and the punishment if any has been awarded, should a mention about it be made in his confidential report. In such a case a complete copy of the final order may be placed, as is usually done, on his character roll.

[Authority-- Establishment Secretary's D.O. letter No. 9(1)/58-S.E. HI, dated the 8th May, 1958 SI. No 278:

Promotion of an officer to a higher post during pendency of investigations against him.—A reference is invited to the Establishment Divisions O.M. No. 9/1/58-SE-III, dated the 8th May. 1958 (Sl. No. 215) according to which no mention should be made in the confidential report of a government servant, of the departmental proceedings which may be in progress against him, unless such proceedings have been finalized, and the punishment, if any, has been awarded. There is no bar to a government servant being considered for promotion during the pendency of departmental proceedings against him. However, in such-cases, a copy of each of the charge sheet and the statement of allegations should be placed before the Central Selection Board or the Departmental Promotion Committee as the case may be, vide Establishment Division's O.M. No. 2/20/67-D. I, dated the 13th November, 1967 (Sl. No. 218).

- 2. A case has recently been brought to the notice of the Establishment Division where copies of the charge sheet and the statement of allegations were not put up to the Departmental Promotion Committee and a government servant, against whom departmental proceedings were pending, was promoted, although as a result of the disciplinary proceedings, he was awarded a minor punishment. Thus, the government instructions referred to in the last sentence of para 1 above were not observed.
- 3. It is the responsibility of the departmental representatives who attend the meetings of the Departmental Promotion Committee/Central Selection Board to apprise the Committee/Board whether or not any departmental proceedings are pending against the Government servants whose cases are being considered by the Committee/Board. A serious view should be taken if the departmental representatives do not give this information to the Committee/Board and if later comes to notice that a Government servant was promoted notwithstanding the fact that disciplinary proceedings were pending against him. The Ministries/Divisions are requested to strongly impress upon the officers who save as members of Departmental Promotion Committees or who attend meetings of the Central Selection Board as departmental representatives, to scrupulously observe these instructions.

27.02.2020

27-2-2020

Appellant in person present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Appellant sought withdrawal of the present service appeal. Consequently the present service appeal is hereby dismissed as withdrawn. No order as to costs. File be consigned to the record room.

(Hussain Shah) Member

(Muhammad Hamid Mughal) Member

ANNOUNCED. 27.02.2020

26.08.2019

Appellant in person present. Addl: AG for respondents present. Appellant seeks adjournment due to general strike on the call of Peshawar Bar Association. Adjourn. To come up for arguments on 30.09.2019 before D.B.

Member

Member

30.09.2019

Due to general strike of the bar, the case is adjourned to 10.12.2019 before D.B.

Member

Member

10.12.2019

Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 24.12.2019 before D.B.

Member

Member

24.12.2019

Junior to counsel for the appellant and Mr. Munammad Jan learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 27.02.2020 before D.B.

Member

Member

23.05.2019

Appellant with counsel present. Appellant stated that he is since retired from service and the impugned order has had an adverse effect towards his pensionary benefits. Reply of official respondents is still awaited. None present on behalf of official respondents. Fresh notice be issued to the respondent to furnish reply/parawise comments. To come up for reply/comments on 14.06.2019 before S.B.

Member

14.06.2019

None present on behalf of the appellant. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Tauseef, ADEO (Litigation) for official respondents No. 1 & 2 present and submitted written reply. Private respondent No. 3 has already been proceeded ex-parte vide order sheet dated 10.05.2019. Adjourned to 10.07.2019 for rejoinder and arguments before D.B. Notice be also issued to appellant for attendance for the date fixed.

(MUHAMMAD AMIN KHAN KUNDI) MEMBER

*.//K

10.07.2019

Appellant with counsel and Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 26.08.2019 before D.B

Member

Member

21.03.2019

Appellant in person present. Mr. Kabirullah Khattak learned Addl; AG for the respondents present. None present on behalf of the respondents. Notice be issued to the respondents for written reply/comments on 23.04.2019 before S.B.

Member

23.04.2019 Appellant in person present. Addl: AG for respondents present. Written reply/comments not submitted. Requested for adjournment. Adjourned but as a last chance. Case to come up for written reply of respondents on 10.05.2019 before S.B.

(Ahmad Hassan) Member

10.05.2019

Counsel for the appellant and Mr. Usman Ghani, District Attorney for official respondents No. 1 & 2 present. On the previous date last chance was given to Additional Advocate General for written reply but today Learned District Attorney appeared on behalf of official respondents and again requested for time to file written reply. He is strictly directed to submit written reply on the next date positively. Official respondents are also directed to direct the representative to attend the court. Private respondent No. 4 Muhammad Sadaqat is not present despite issuance of notice therefore, he is proceeded ex-parte. To come up for written reply/comments of official respondents no. 1 & 2 on 24.05.2019 before S.B.

(MUHAMMAD AMIN KHAN KUNDI) MEMBER

Service Appeal No. 1135/2018

14.12.2018

Appellant Deposited
Security Flocess Fee

Appellant in person present. Security and process fee have not been deposited. Appellant is directed to deposit the security and process fee within 7 days, thereafter, notice be issued to the respondents for written reply/comments for 04.02.2019 before S.B.

Muhammad Amin Khan Kundi Member

04.2.2019

Appellant alongwith counsel and Addl. AG for the respondents present.

Learned AAG states that he has not been contacted by representative of respondents regarding preparation of requisite reply, therefore, requests for adjournment. Adjourned to 26.02.2019 before S.B.

Chairman

26.02.2019

Appellant with counsel and Mr. Kabirullah Khattak Addl; AG for the respondents present. None present on behalf of the respondents. Notices be issued to the respondents for written reply/comments on 21.03.2019 before S.B

(Ahmed Hassan) Member

Wiff

Form- A

FORM OF ORDER SHEET

Court of	
Case No	1135/2018

٠.,

	Case No	1135/2018
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/09/2018	The appeal of Mr. Manzoor Ilahi presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the
2-	13-9-2018	Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR 11/9/18 This case is entrusted to S. Bench for preliminary hearing to be put up there on
		CHAIRMAN
16	Buckey	in to relicement of clines on the solution of the comment of the c
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	<u>.</u> .	

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that vide order dated 18.08.2017 he was transferred from GPS Debegran to GPS Kamlorian on disciplinary ground. This order was assailed in this Tribunal through service appeal no. 1363/17 decided on 20.03.2018. As judgment of this Tribunal was not implemented so execution petition was filed by the appellant which was disposed of on 03.08.2018. During the pendency of execution petition impugned order dated 22.05.2018 was passed by the respondents. Impugned order has been issued in violation of Postings/Transfers Policy. A separate application for suspension of impugned order dated 22.05.2018 has also been submitted.

11/1/10 = 2

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 30.10.2018 before S.B. Notice of stay application be also issued to the respondents for the date fixed.

(AHMAD HASSAN) MEMBER

30-16-18

The To Retirement of Honorable
therefore the lase is adjourned to come
up for the Same on 14-12-18
Security fee not deposited

I des

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 135 /2018

MANZOOR ELAHI

V/S

EDUCATION DEPTT

INDEX

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8.	Judgment	F	14- 15.
9.	Notification	G	16.
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11.	Vakalat nama	*********	25.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO	135 /2018	Khyber Pakhtukhwa Service Tribunal Biary No. 1425
Mr. Manzoor Elahi, PSHT (BPS-15), GPS Daibgran, District Mansehra.		Date 11-9-2018
, ,		APPFILANT

VERSUS

1- The Director of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

The District Education Officer Male, District Mansehra

Mr. Muhammad Sadaqat, PSHT, GPS Kiamal, District Mansehra

Under transfer to GPS Daibgran, District Mansehra.

..... RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINT THE IMPUGNED ORDER DATED 22-5-2018 WHEREBY THE APPELLANT WAS RECOMMENDED AND REPORTED TO DISTRICT EDUCATION OFFICER MALE FOR COMPULSORY LEAVE AND POSTED THE PRIVATE RESPONDENT NO.3 AGAINST THE POST OF APPELLANT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY OERIOD OF NINETY DAYS

PRAYERS:

That on acceptance of this appeal the impugned order dated 22-5-2018 may please be set aside and the appellant may not transfer from GPS Daibgran. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH: ON FACTS:

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

- (1) That is the employee of the respondent department and is serving as PSHT (BPS-15) quite efficiently and up to the entire satisfaction of his superiors.
- (2) That the appellant was lastly posted as PSHT (BPS-15) at GPS Deibgran. That before completion of his normal tenure the appellant was transferred from GPS Deibgran to GPS Kamlorian on

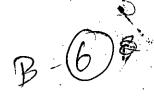
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the t	oasis	of	adminis	trative	ground	vide	9	rder	dated	18	3-08-2017.

- (6)That on 09-06-2018 a Notification was issued by the respondents whereby the appellant was directed to proceed on E/leave on full pay for 120 days on the basis of baseless allegation of absenteeism for two days i.e. on 30-11-2017 and 11-08-2017, though the appellant was present on the mentioned dates, the same is evident from the daily attendance register of the school concerned. Copies of the notification and daily attendance register with other record are attached as annexure ------- G & H.
- (7) That felling aggrieved and having no other remedy the appellant preferred the instant appeal on the following grounds amongst ht others.

GROUNDS:

4

- A- That the impugned order dated 22/05/2018 issued by the respondents is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.



wa Service

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT ABBOTTABAD

Service Appeal No. 1363/2017

Date of Institution... 11.12.2017

Date of decision... 20.03.2018

Manzoor Ellahi son of Gohar Rehman resident of Mohallah Channai, Abbottabad road, Tehsil and District Mansehra. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar and 6 others. (Respondents)

MR. DILDAR AHMAD KHAN LUGHMANI.

Advocate ... For appellant.

MR, USMAN GHANI,

District Attorney ... For respondents.

MR NIAZ MUHAMMAD KHAN, ... CHAIRMAN

MR. AHMAD HASSAN, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was transferred from GPS Debgran to GPS Kamlorian on 18.08.2017. Against which he filed departmental appeal on 21.08.2017 which was not responded to and thereafter he filed the present service appeal on 11.12.2017.

ARGUMENTS

The learned counsel for the appellant argued that in the remarks column of the transfer order it was clearly written that the transfer was made on the disciplinary ground.

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That this ground was held by the Superior Courts in many judgments not to be a valid ground.

4. On the other hand, the learned District Attorney argued that the transfer was made in the public interest by the competent authority. That under Section-10 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 a civil servant is liable to be transferred anywhere in the province.

CONCLUSION.

- This Tribunal in a number of cases has decided that Section-10 mentioned above does not give unfettered powers to executive to transfer a civil servant at their whims and choices. It has been held that such powers is a controlled powers under different policies and instructions, and also under the settled principles. Since the transfer on the basis of disciplinary ground has been held to be illegal in many judgments of the Superior Courts, the present transfer order cannot be sustained in the eyes of law. Though the words "public service" have been used in the body of the order but in the remarks column the ground for transfer was disciplinary. Both are contradictory to each other. In this regard a judgment reported as PLC (C.S) 187 is also clear. This Tribunal has already decided similar points in many appeals. One of such appeal—is service appeal no. 1011/2016 entitled "Adil Shehzad-vs-the Secretary and 7 others" decided on 22.11.2017.
 - 6. In view of the above, this appeal is accepted. Parties are left to bear their own costs.

 File be consigned to the record room.

(Miaz Muhammad Khan)
Chairman
Camp Court, A/Abad

(Ahmad Hassan)

Membership of Presentation of Application 14-04-20/8

<u>ANNOUNCED</u> 20.03.2018

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OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER (MALE) MANSEHRA

ADJUSTMENT ON NEED BASIS.

As approved by the competent authority, the adjustment in r/o following PSHT/SPST/PST are hereby adjusted against vacant post, on need basis, on his own pay and grade in the interest of public service.

S.No	Name of Teacher From	To * 'Remarks
1	Muhammad Sadagat PSHT GPS Kiamal	GPS Daibgran Mr. Manzoor Elahi PSHT_GPS
		Daibgran is Recommended & reported to DEO (M) for Compulsory leave as per rule.
2	Syed Dildar Hussian Shah PSHT GPS Chakil Bala	GPS Kiamal Vice No 1

Note

- 1. No TA/DA is allowed.
- 2. Charge report should be submitted to all concerned.

Su/-DISTRICT EDUCATION OFFICER (MALE) MANSEHRA

Endst: No 476-79 Dated 22-05-/2018

Copy for information to the:

- 1. District Accounts Officer Mansehra.
- 2. District Monitoring Officer Mansehra.
- 3. ASDEO (M) Circle Concerned.
- 4. Office order file.

SUB DIVISIONAL EDUCATION OFFICER (MALE) MANSEHRA

ATTESTED

A

THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL **PESHAWAR**

Implementation	Petition	No.	/2018
•		L-140***	,

In Appeal No.1363/2017

Mr. Manzoor Elahi, PSHT (BPS-15),	
GPS Debgran Mansehra, District Mansehra	PETITIONER

VERSUS

- 1-The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2-The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3-The District Education Officer (M), District Mansehra.
- The Sub Divisional Education Officer (M), District Mansehra.

***************************************	RESPONDENTS
	MEDI CHDENIS

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENTS TO OBEY THE JUDGMENT DATED 20.3.2018 PASSED IN APPEAL NO.1363/2017 IN LETTER AND SPIRIT

R/SHEWETH:

- 1- That petitioner filed appeal bearing No.1363/2017 before this august Tribunal against the impugned order dated 18.8.2017 whereby petitioner was transferred from GPS Debgran to GPS Kamlorian, Mansehra on administrative reason.
- 2- That the appeal of the petitioner was finally heard by the august Tribunal on 20.3.2018 and decided the appeal in favor of the petitioner. The operative part of the judgment is reproduced as below:-

"In view of the above the appeal of the appellant ATTESTED is accepted and the impugned order dated 18.8.2017 is set aside. Copy of the judgment is attached as annexure A.

> 3- That after obtaining copy of the judgment the petitioner applied to the respondent Department for his claim but the respondents instead of implementing the judgment of this august Tribunal issued another order dated 22.5.2018 whereby the petitioner was again transferred on the previous allegation

4- That petitioner has no other efficacious remedy but to file the instant implementation petition.

It is therefore most humbly prayed that on acceptance of this implementation petition the respondents may be directed to implement the judgment dated 20.3.2018 passed in appeal No.1363/2017 in letter and spirit. Any other remedy which this august Tribunal deems fit may also be awarded in favor of the petitioner.

Dated: 28.6.2018

PETITIONER.

MANZOOR ELAHI

THROUGH:

NOOR MOHAMMAD KHATTAK

MOHAMMAD MAAZ MADRI ADVOCATES

ATTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation Petition No._____/2018

In Appeal No.1363/2017

MANZOOR ELAHI

VS

EDUCATION DEPTT:

AFFIDAVIT

I Noor Mohammad Khattak Advocate on the instructions and on behalf of the petitioner do hereby solemnly affirm that the contents of this implementation petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

> NOOR MOHAMMAD KHATTTAK ADVOCATE

ATTESTED

BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL PESHAWAR

C.M NO	/2018	
	IN	
IN implementation	NO/2018	

MANZOOR ELAHI

VS

EDUCATION DEPTT:

APPLICATION FOR SUSPENSION OF OPERATION OF IMPUGNED ORDERS DATED 22.5.2018 TILL THE DISPOSAL OF THE INSTANT IMPLEMENTATION PETITION

R/SHEWETH:

- 1- That the petitioner filed above mentioned implementation petition before this august service Tribunal in which no date is fixed for hearing.
- 1- That petitioner filed the above mentioned implementation petition against the inaction of the respondents by not implementing the judgment of this august Tribunal dated 20.3.2018 passed in appeal No.1363/2017 and against the impugned order dated 22.5.2018 whereby the petitioner was against transferred on administrative reason.
- 2- That all the three ingredients necessary for the stay is in favor of the petitioner.
- 3- That the impugned order dated 22.05.2018 has been issued by the respondents in utter disregard of law and prevailing Rules.

It is therefore most humbly prayed that on acceptance of this application the operation of the impugned order dated 22.05.2018 may kindly be suspended till the disposal of the above mentioned implementation petition.

PETITIONER

ATTESTED

MANZOOR ELAHI

THROUGH:

NOOR MOHAMMAD KHATTAK

MOHAMMAD MAAZ MADNI ADVOCATES

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THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL **PESHAWAR**

Implementation Petition No. $\frac{2-o^{0}}{2}$

In Appeal No.1363/2017

Mr. Manzoor Elahi, PSHT (BPS-15), .X. PBITIENONER GPS Debgran Mansehra, District Mansehra...

VERSUS

The Secretary (E&SE) Department, Khyber Pakhtunkhwa,

The Director (E&SE) Department, Khyber Pakhtunkhwa, 2-Peshawar.

The District Education Officer (M), District Mansehra. 3-

The Sub Divisional Education Officer (M), District Mansehra. 4-

.. RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENTS TO OBEY THE JUDGMENT DATED 20.3.2018 PASSED IN APPEAL NO.1363/2017 IN LETTER AND SPIRIT

R/SHEWETH:

- 1- That petitioner filed appeal bearing No.1363/2017 before this august Tribunal against the impugned order dated 18.8.2017 whereby petitioner was transferred from GPS Debgran to GPS Kamlorian, Mansehra on administrative reason.
- 2- That the appeal of the petitioner was finally heard by the august Tribunal on 20.3.2018 and decided the appeal in favor of the petitioner. The operative part of the judgment is ATTESTED reproduced as below:-

EXAMINER Khyber Pakhtunkhwa Service Tribunal. Peshawar

"In view of the above the appeal of the appellant is accepted and the impugned order dated 18.8.2017 is set aside. Copy of the judgment is attached as annexure A.

3- That after obtaining copy of the judgment the petitioner applied the respondent Department for his claim but the respondents instead of implementing the judgment of this august Tribunal issued another order dated 22.5.2018 whereby the petitioner was again transferred on the previous allegation



03.08.2018

Certifica tabe

The Arbunal

Petitioner Manzoor Elahi in person alongwith Mr. Noor Muhammad Khattak, Advocate present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

The petitioner through instant petition is seeking the implementation of the judgment of this Tribunal passed on 20.03.2018 in service appeal no. 1363/17 by asking this Tribunal to set aside the subsequent transfer order of the petitioner passed on 22.05.2018. However, the leaned Addl: AG raised objection by arguing that previous posting order has been set aside by this Tribunal and subsequent order passed by the respondents cannot be set aside through instant execution petition as it gave a new cause of action to the petitioner.

In the light of arguments addressed by the learnedcounsel for the parties, available record was perused and found that the contentions raised by the learned Adl: AG are forceful and legal as well. For instance, previous appeal of the petitioner was allowed on the ground that in the previous transfer order of the petitioner, it was mentioned in the interest of public service but it was passed on disciplinary ground. Subsequently, on 22.05.2018 some officials were transferred and in the column of remarks it was recommended that the petitioner Manzoor Hahi will report to the DEO(M) (for compulsory leave as per rules). In short, this subsequent order dated 22.05.2018 was neither impugned before the appellate authority nor before this Tribunal. Similarly, in the previous appeal no remarks or observations have been passed which shall debar the respondents from transferring the petitioner from his present position.

In the circumstances, the petitioner could not claim implementation of judgment of this Tribunal in respect of officer order passed by the authority which was not the subject matter of the previous appeal before this Tribunal. With the above observations the execution petition is disposed off accordingly. In the circumstances, parties are left to bear their own costs. File be consigned to the record room.

Chairman

Announced: 03.08.2018

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OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MANSEHRA

NOTIFICATION

Whereas Mr. Manzoor Elahi PSHT GPS Dabgran Circle Shahila found as habitually absent from duties and not welling worker.

Whereas it is noticed with great concern by the authorities that after his promotion as Head Teacher and posting in GPS Dabgran w.e.f 2013 the enrolment of the school is decreasing day by day and school is reached at the verge of closure / nonfunctional.

During the Monitoring visit of DMO Mansehra on 09/08/2017, it has been found that not a single student was present and school was declared as closed" you are again found absent on 30/11/2017 during DMO visit".

Whereas on the direction of D.S.C the DEO (M) Mansehra, SDEO (M) Mansehra and ASDEO Circle Mansehra paid surprise visit to your school and found all allegations true and correct. Moreover, you were again found absent on the eve of visit of SDEO (M) Mansehra on 11/08/2017,

Whereas the enrolment attendance gap of his school in previous and current academic year remained more than 40% which depict, that he is reporting continually fake enrolment to save his skin.

Whereas staff of his School often remains absent from duty during the admn visit of various officers of department and IMU. Moreover the attendance of staff was some times found marked in Attendance Register which was his connivance in misconduct.

Now, therefore, in exercise of powers conferred under Khyber Pakhtunkhwa E&D Rule 2011 the competent authority decided to initiate departmental proceedings against Mr. Manzoor Ehali PSHT GPS Dabgran and further decided in the light of reason recorded above as per provision of rule 6 of ibid Rules, Mr. Manzoor Elahi PSHT GPS Dabgran is hereby directed to proceed on E/Leave on full pay for 120 days, as admissible to him under the rules with immediate effect.

Sd/DISTRICT EDUCATION OFFICER
(MALE) MANSEHRA

Endst: No: 9/9-23. Dated 9/6/2018.

Copy forwarded to the:-

1. The Director E&S Edu: Deptt: Peshawar.

2. The Deputy Commissioner Mansehra.

3. The District Accounts Officer, Mansehra.

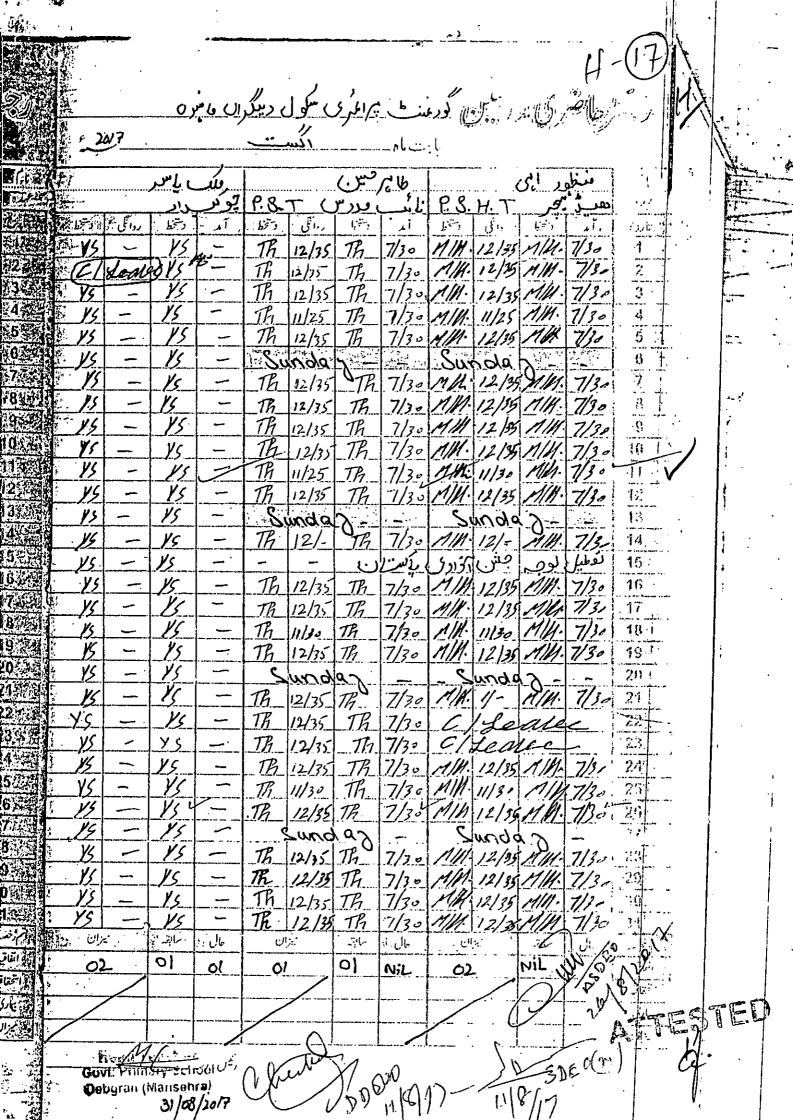
4. The District Monitoring Officer Mansehra.

5. The SDEO (M) Mansehra.

5. The Official Concerned.

DY: DISTRICT EDUCATION OFFICER
(MALE) MANSEHRA

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گورفان برایمری سلول ریبگران فاشهره مونی برایمری سلول ریبگران فاشهره مونی برایمروس ما بروسی 2017 بای*ک بودس* 15 TR 1/35 8/30 TR 1/35 11/11. 8/30 Уς 朋 1/35 Th 8/30 C/Leace 7% M/M. 12/3. M/M. 8/5. 8/30 12./3. The ĪЙ 1/35 Th 8/30 1/35 8/32 un da a 5 1/35 Th 8/30 1/35 Th 8/10 Th 1/35 8/30 1111. 8/35 Th MIH 1/35 Y5 Th 8/30 \mathcal{T}_{h} 1/35 1/35 1111.8/30 8 15 Th TA 1/35 8/30 1/35

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Head Teacher Govt: Primary School Debgran (Mansehra)

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Recieved Teacher Allendance Register
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to Started new register w.e.f
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ATTESTED

Wale) Mansehra

بخدمت جناب عزت مابسروس ريبيول فح صاحب بشاور

(20)

گڑارش ہے کہ منظور الہی ہیڈ ٹیچر گزشتہ تین سال سے یہاں گورنمنٹ برائمری سکول دیبگراں میں نہایت ایجھ طریقے سے اپنے فرائض سرانجام دے رہا ہے۔ اسٹیچر سے ہمین کوئی شکایت نہیں ہے لہذا ہیڈ ٹیچر منظور الہی صاحب کا تبادلہ منسوخ کیا جائے۔ اور انکی سسپنشن کومنسوخ کیا جائے۔ تا کہ بیا ہے فرائض دیبگراں میں دے سکے۔ آپ کی عین نوازش ہوگی۔

اہُل علاقہ اورممبران PTC کوسل دیبگراں مانسمرہ

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IN THE COURT OF KP Covering Tribunal Podenical

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BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Appeal No. 1135/2018

Manzoor ElahiAPPELLANT.

VERSUS

- 1. Director Elementary & Secondary Education KPK Peshawar.
- 2. District Education Officer (Male)

 Mansehra......RESPONDENTS.

PARAWISE COMMENTS / WRITTEN REPLY ON BEHALF OF RESPONDENTS NO 1 & 2.

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3	Copy of inquiry report	В	6-11
4	Copy of application	C	12
5	Copy of retirement order	D	13

ASSISTANT DISTRICT EDUCATION OFFICER (MALE) MANSEHRA

### BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

### Appeal No. <u>1135/2018</u>

Manzoor Elahi	۱P	PF.	Œ	L	1 N	ľ	`.
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#### **VERSUS**

- 1. Director Elementary & Secondary Education KPK Peshawar.
- 2. District Education Officer (Male)

### PARAWISE COMMENTS / WRITTEN REPLY ON BEHALF OF RESPONDENTS NO 1 & 2.

# 7

### **PREIMINARY OBJECTIONS:**

- 1. That the Appellant is not the "AGGRIEVED" person.
- 2. That the Appellant is estopped by his own conduct.
- 3. That the Appellant has not come to the Hon'ble Tribunal with clean hands.
- 4. That the Appellant has no cause of action/locus standi to file the instant appeal.
- 5. That instant Appeal is against the prevailing law and rules.
- 6. That the appeal is groundless and based on malafide, ulterior motive, hence the same is liable to be dismissed.
- 7. The instant appeal is not maintainable in the present form and also in the present circumstances of the issue.
- 8. That the demand of the appellant is against the law and facts hence the appellant is not entitled for any relief and appeal is liable to be dismissed on this score alone.
- 9. That the impugned passed by the respondent Department according with Law, hence appeal is liable to be dismissed.
- 10. That the appellant is disobedience, non cooperative and incompetent, hence the same is liable to be dismissed.

### **FACTUAL OBJECTIONS:-**

- 1. That Para No.01 needs no comments, being pertains to the Service Record of the Appellant.
- 2. Para No.02 is correct, Need No Comments.
- **3.** Para No.03 is correct, Need No Comments.
- 4. Para No.04 is incorrect and misleading, whereas in the light of judgment passed by Honourable service Tribunal Camp court Abbottabad vide dated 20-03-2018 in service appeal No.1363/2017, The competent authority implemented the order of the Honourable Tribunal with letter and spirit and withdraw the transfer order & suspension order of the appellant with even No & date vide dated 15-

05-2018. But the appellant does not take any interest in the Educational activity of the school due to which the school student strength gradually decreases on regular basis. The whole situation lead towards the dangerous situation for smooth running of educational activities for the betterment of the poor students, In the light of whole situation the competent authority constituted an inquiry committee to dig out the facts, the inquiry committee submitted his report vide dated 19-11-2018, as per report the inquiry committee recommended that "the actual enrollment of the school, the school may be merged into a nearby primary school (having heavy enrollment) and the staff may be transferred where needed, furthermore the teacher did not cooperate with the inquiry committee, hence it is recommended that he may be proceeded against misconduct under E&D rules 2011. In the mean while he submitted an application for retirement vide dated 28-02-2019, whereas the appellant has been retired vide Endst No. 4509-12 dated 22-03-2019 (Copy of withdrawl order ,Copy of inquiry report, copy of application & copy of retirement order are annexed as are annexed as annexure A,B,C & D)

- 5. Para No.05 is correct, Need No comments.
- 6. Para No.06 is correct to the extent that the appellant was disobedience, non cooperative, incompetent, careless, habitual absentee, habitual late comer, non punctual and poor relation with the community. Due to which the enrollment of the school is decreasing day by day, whereas the order passed by the respondent department as per Provision of rule-6 of ibid rules.
- 7. Para No.07 s incorrect that the appellant has no right to invoke the jurisdiction of this Hon'ble Tribunal whereas The Respondent also seek the permission of this Honorable Tribunal to adduce more grounds, proofs and Explanation at the time of arguments.

### **GROUNDS:-**

- a) Incorrect hence denied, appellant is disobedience, non cooperative, incompetent, careless, non punctual and poor relation with the community. The order issued is under the rule by the competent authority.
- b) Incorrect hence denied.
- c) Incorrect, hence denied.
- **d)** incorrect the appellant was a habitual late comer and absent teacher disobedience, non cooperative, incompetent, careless, non punctual and poor relation with the community. After the complete process the order is issued.

3

- e) Incorrect hence denied the The competent authority implement the order of the Honourable Tribunal with letter and spirit vide dated 15-05-2018.
- f) Needs no comments.
- g) Incorrect hence denied.
- h) No Comments.
- i) No Comments.
- j) The Respondents also seek the permission of this Honorable Tribunal to adduce more grounds, proofs and Explanation at the time of arguments.

### PRAYER:

It is therefore, humbly prayed that on acceptance of the above submissions, the instant appeal may very graciously be dismissed in the favour of the answering Respondents in the interest of the Justice.

Respondents.....

The Director,

Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

The District Education Officer, (Male) Mansehra

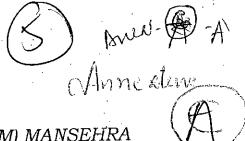
### **AFFIDAVIT**

I, Mr. Muhammad Touseef Assistant District Education officer on Behalf of District Education Officer (M) Mansehra do, hereby solemnly affirm and declare that the Para wise comments of the Service Appeal No.1135/2018 titled Manzoor Elahi versus Govt, is true to the best of my conviction and belief and nothing has been concealed from this Honourable Court.

**DEPONENT** 

ASSISTANT DISTRICT EDUCATION OFFICER (MALE) MANSEHRA.





### OFFICE OF THE DISTRICT EDUCATION OFFICER (M) MANSEHRA

### WITHDRAWN

In pursuance of Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar judgment announced dated 20-03-2018 under Service Appeal No.1363/2017, consequent upon the approval of the competent authority, the transfer order in respect of Mr. Manzoor Elahi PSHT GPS Debegran at Serial No 01 issued vide this office Endst No 14054-58 dated 18-08-2017 & Suspension order vide this office Endst: No 21227-31/File IMU/ADEO Ist /PST dated 09-12-2017 are hereby with drawn with effect from the date of issue in the interest of public service.

> DISTRICT EDUCATION OFFICER (MALE) MANSEHRA

7860-66 /File -IMU/ADEO Ist /PST Dated

Copy to the:-

- 1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar, with reference to his letter No.631/ST dated 20-03-2018.
- 2. Director E&SE Department Khyber Pakhtunkhwa Peshawar.
- 3. Deputy Commissioner Mansehra.
- 4. District Accounts Officer Mansehra
- 5. District Monitoring Officer Mansehra
- 6. Sub Divisional Education Officer (Male) Mansehra.
- 7. B & AO local office.
- 8. Office File.

DY: DISTRICT ÉDUCATION OFFICER (MALE) MANSEHRA

From:

The Inquiry Committee

The District Education Officer (M), Mansehra.

Subject:

INQUIRY AGAINST MR. MANZOOR ELLAHI PSHT GPS DAIBGRAN.

Memo:

Reference your office letter / charge sheet no. 13302-05 dated 17/09/2018, the inquiry report in detail is submitted for your kind perusal and further necessary action.

Dated: 19.11.2018

INQUIRY COMMITTEE

1. Sher Muhamma

Principal GHS Gandhian

2. Shabbir Ahmed S.D.E.O

Baffa

Now posted as Head Master

**GHS** Darband

### INQUIRY REPORT



#### **CAPTION OF INQUIRY:**

Inquiry in respect of Mr. Manzoor Ellahi PSHT GPS Daibgran Circle Shahelia.

#### **INQUIRY COMMITTEE:**

- 1. Sher Muhammad Principal GHS Gandhian.
- 2. Shabbir Ahmed S.D.E.O Baffa now posted as H.M GHS Darband.

#### **BRIEF HISTORY:**

- 1. The Committee visited GPS Daibgran twice i.e; on 03/11/2018 and 15/11/2018. All the three teachers and the class-iv were present in the school. A questionnaire was served on Mr. Manzoor Ellahi, but he did not respond saying that his case is under trial in the court. So, his service history is unknown to the committee. Mr. Manzoor Ellahi verbally told that he had been serving in that school for the last five years.
- **2.** The teacher was transferred on disciplinary grounds to GPS Kamlorian on 18/08/2017 vide letter no. 14054-58, but the teacher did not leave the station.

(Annexure-A)

- 3. On 09/12/2017, the teacher's services were suspended vide letter no. 21227-31, and on 26/12/2018, S.D.E.O Mansehra recommended the teacher for compulsory retirement. (Annexure-B)
- 4. The teacher proceeded to the Services Tribunal K.P.K against the transfer and suspension decisions of the department. Resultantly, the department withdrew the decisions on 15/05/2018 vide letter no. 7860-66. (Annexure-C)

#### **FINDINGS:**

The committee, during its two visits to GPS Daibgran, observed that:

- 1. Total strength of students was 18. Out of them, only six students were recorded in Admission Withdrawal Register, while rest of the students were on roll only in the attendance register.

  (Annexure-D)
- 2. Three teachers are posted in GPS Daibgran. One of them Mr. Rizwan PST when asked about the strength of the students told that when he joined the school on 03/05/2018, the strength of students was 5 to 7. However, he added that presently the strength was 35 to 40. He continued that the teacher Mr. Manzoor Ellahi had performed his duty regularly since then.

  (Annexure-E)
- 3. General outlook of the school was not good. It seemed that the school has not been white washed / painted for the last several years. The school flag was hoisted on a bamboo pole held up by the support of the boundary wall.
- 4. P.T.C grant was not utilized. The amount drawn was deposited without utilization.
- 5. The teacher refused to reply to the questionnaire.

(Annexure-F)

# (8)

### **RECOMMENDATIONS:**

On the basis of the above findings, it is clear that the actual enrollment of the school is very poor. There is no justification for the functioning of the school under these circumstances. Hence, the school may be merged into a nearby primary school (having heavy enrollment), and the staff may be transferred where needed.

Furthermore, the teacher did not cooperate with the inquiry committee. Hence, it is recommended that he may be proceeded against for misconduct under E&D rules 2011.

INQUIRY COMMITTEE

1. Sher Muhammad

Principal GHS Gandhian

2. Shabbir Ahmed S.D.E.C

Baffa

Now posted as Head Master GHS Darband

### **DISCIPLINARY ACTION**



1. I Zaffar Arbab Abbasi District Education Officer (Male) Mansehra, as competent authority am of the opinion that Mr. Manzoor Elahi PSHT has rendered himself liable to be proceeded against, as he committed following acts/ omissions, within the meaning of rules 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Which tantamount to.

a) Inefficiency.

b) Misconduct

c) Corruption

#### STATEMENT OF ALLEGATIONS

i) He is often not found present in the school during the visit of various officers of E&SE department and IMU even after making attendance in teacher attendance register.

ii) It is noticed with great concern by the authorities that after his promotion as PSHT teacher and posting in GPS Dabgran the enrollment of the school had been is decreasing day by day and school is at verge of closure / non functionality.

iii) During the Monitoring visit of DMO Mansehra on 09/08/2017 it has been found that not a single student was present and school was declared as closed, the teacher concerned was again found absent on 30/11/2017 during DMO visit as reported.

iv) On the direction of D.S.C the DEO (M) Mansehra and ASDEO Circle Mansehra paid visit to the school and found all allegation true and correct. Moreover, he was once again found absent on the eve of visit of SDEO (M) Mansehra on 11/08/2017.

v) The enrollment attendance gap of his school in previous and current academic year remained more than 40% which depict, that he has continuously been reporting fake.

vi) The staff of his school, especially Chowkidar often remained absent from duty during the admin visit of various officers of department and IMU. Moreover the attendance of staff was sometimes found marked in attendance register which was his connivance in misconduct.

vii) During previous month the school was visited twice on 25-04-2018 and 30-04-2018. His activities in the school were not according to code of conduct. Once both teacher were busy in gossips while on other visit Mr. Manzoor Elahi was found sleeping on the ground mate, (photo graph attached).

viii) Nothing in school was found in order, no timetable annual work plan, cleanliness, discipline or uniform. Enrollment is very low and attendance is 04 on 25-04-2018, while only 02 students on 30-04-2018 which shows decreasing trend in last few month.

ix) School record was not properly been maintained. The teacher mostly remained reluctant to show record on visit due to un knows reason on the place of states que from court and status que order were also not produced;

x) Despite clear instruction on the log book ASDEO Circle and also verbal direction. He reportedly drawn amount from PTC, A/C of the school kept cash in hard which illegal. Which is against the financial rules and guidelines and no work could be shown against this amount.

2. For the purpose of formal inquiry against the said accused with reference to the above allegations, an inquiry officer / inquiry committee, consisting of the following, is hereby constituted under rule 10(1)(a) of the ibid rules:

i) Mr. Sher Muhammad Principal GHS Ghandian.

Mr. Shabir Ahmed SDEO (M) Baffa.

3. The inquiry Officer / inquiry committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within 15 days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the inquiry officer / inquiry committee:

> 月候 DISTRICT EDUCATION OFFICER (MALE) MANSEHRA

### **CHARGE SHEET**



1. I Zaffar Arbab Abbasi District Education Officer (M) Mansehra, as competent authority hereby charge you Mr. Manzoor Elahi PSHT GPS Dabgran Circle Mansehra as follows:

That you, while posted as PSHT committed the following irregularities acts or omission

- You have often not been found present in the school during the visit of various officer of department and IMU even after making attendance in teacher attendance register.
- ii) It is noticed with great concern by the authorities that after your promotion as Head Teacher and posting in GPS Dabgran the enrollment of the school is decreasing day by day and school is reached at verge of the closure / non functionality.
- iii) During the Monitoring visit of DMO Mansehra on 09/08/2017 it has been found that not a single student was present and school was declared as closed, you are again found absent on 30/11/2017 during DMO visit as reported.
- iv) On the direction of D.S.C the DEO (M) Mansehra and ASDEO Circle Mansehra paid surprise visit to your school and found all allegation true and correct. Moreover, he is again found absent on the eve of visit of SDEO (M) Mansehra on 11/08/2017.
- v) The enrollment attendance gap of his school in previous and current academic year remained more than 40% which depict, that he is reporting continuously fake enrolment to save his skin.
- vi) The staff of his school, especially Chowkidar often remain absent from duty during the admin visit of various officers of department and IMU. Moreover the attendance of staff was sometimes found marked in attendance register which was your connivance in misconduct.
- vii) During previous month the school was visited twice on 25-04-2018 and 30-04-2018. Your activities in the school were not according to code of conduct. Once both teacher were busy in gossips while on other visit you were found sleeping on the ground mate, (photo graph attached).
- viii) Nothing in school was found in order, no timetable annual work plan, cleanliness, discipline or uniform. Enrollment is very low and attendance is 04 on 25-04-2018, while only 02 students on 30-04-2018 which shows decreasing trend in last few month.
- ix) School record is not properly been mentioned or there found fake entries in the record. The teacher mostly remained reluctant to show record on visit due to un knows reason on the place of states que from court and status que order were also not produced;
- x) Despite clear cut instruction on the log book ASDEO Circle and also verbal direction. He reportedly drawn amount from PTC, A/C of the school kept the money in his own pocket. Which is against the financial rules and guidelines and no work could be shown against this amount.
- 2. By reason of the above, you appear to be guilty of above which tantamount to,
- i) Inefficiency
- ii) Misconduct
- iii) Corruption

Under rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.

- 3. You are therefore, directed to submit your written defense within seven days of the receipt of this charge sheet to inquiry officer/inquiry committee, as the case may be.
- 4. Your written defense, if any, should reach the inquiry officer. Committee with in the specified period, failing which it shall be presumed that you have no defense to put in and in that exparty action shall be taken against you.
- 5. Intimate whether you desire to be heard in person.
- A statement of allegations is enclosed.

CB?



DISTRICT EDUCATION OFFICER (MALE) MANSEHRA

Endst:No _____/ASDEO (M) Estt: Dated Mansehra the _____/2018.

Copy forwarded for information to the:

1. The Director E&SE (M) Mansehra.

- 2. The District Account Officer Mansehra.
- 3. The Inquiry Concerned Officer.
- 4. The SDEO (M) Mansehra.
- 5. Mr. Manzoor Elahi PSHT GPS Dabgran,

DISTRICT EDUCATION OFFICER (MALE) MANSEHRA

The District Education Officer (Male) Mansehra.

SUBJECT:
RETIREMENT ORDER/SANCTION OF ENCASHMENT.

I am refer to subject above and enclosed please find herewith an original application forwarded by ASDEO Circle concerned along with following documents for the grant of retirement and sanction of encashment as per leave account please.

- 1. Attested copy of CNIC.
- 2. Its appointment order(attested copy)
- 3. Original Service Book with leave account complete in all respect.

### **DETAIL AS:-**

S.#	NAME/DESIG/SCHOOL	DO BIRTH	DO IST APPOINTMENT	DATE OF RETIREMENY	Qualifyin g Service	ENCASHME NT/LPR	REMARKS	1)
1.	Manzoor Elahi PSHT GPS Dabgran Circle Shahila '	15-03- 1962	28/01/1982	28-02-2019	37y01m (	365	On premature basis	

SUB DIVISIONAL EDUCATION OFFICER
(MALE) MANSEHRA

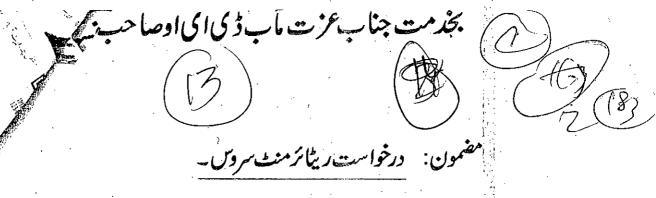
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SDEO (M) Mansehen Mosul

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إجناب عالى!

گزارش ہے کہ بین سمی منظور الہی ولدگو ہر رخمان مور خد 27.01.1982 آفس آرڈ رنمبر کرارش ہے کہ بین سمی منظور الہی ولدگو ہر رخمان میں بھرتی ہوا تھا۔ بین آج مور خد 2146-70 کے تحت گور نمنٹ پرائمری سکول دیبگر ان سے ریٹائر منٹ لینا چاہتا ہے۔ لہذا میری درخواست کو منظور فرما کرمیر اریٹائر منٹ آرڈر Full benefits کے ساتھ کیا جائے اور مجھے شکر یہ کا موقع دیں۔ بین نے جو بھی سروی اس محکمہ تعلیم میں کی ہے بڑی عزت کے ساتھ کی ہے اور میرے افسران بالا نے میرے ساتھ بھر پور تعاون کیا ہے جس کے لئے میں ان کاشکر گزار ہوں اور ان کے لئے دعا گوہوں۔

الرقوم 9 28.02.20

درخواست گزار منظورالهی گورنمنٹ پرائمری سکول دیبگراں بخصیل وضلع مانسہرہ

شاختى كارد نمبر 3-1303945-13503

Head Teacher Govt: Primary School Debgran (Mansahra)

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### OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MANSEHRA

### LEAVE ENCASHMENT/ RETIREMENT/ ORDER

Consequent upon the approval of the competent authority, under the provision of rule 20 of Govt of Khyber Pakhtunkhwa revised leave rules 1981. Sanction is hereby accorded to the grant of Encashment of Leave in lieu of LPR for 321 days in respect of Mr. Manzoor Elahi PSHT GPS Dabgran Circle Shahlia as he has been retired from service w.e.f 28-02-2019 (AN) on premature basis.

Necessary entry to this effect should be made in his service Book.

DISTRICT EDUCATION OFFICER
(MALE) MANSEHRA

Endst No 4) 1 - 1 F.No.5/Vol-I/Ret:/Enc:/PST Dated 32

Copy to the:-

1. SDEO (M) Mansehra.

2. District Accounts Officer Mansehra.

3. B&AO Local Office.

4. Official Concerned.

DY: DISTRICT EDUCATION OFFICER (MALE) MANSEHRA

Aux 1 D3

13/02/15

A.S.D.E.O (Male)
Circle Khaki Mansehro

## OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER (MALE) MANSEHRA

### ADJUSTMENT ON NEED BASIS.

Mr. Muhammad Sadaqat PSHT GPS Daibgran Circle Shahila is hereby adjusted on need basis at GPS Bhoraj Circle Shahila against vacant post due to return from Compulsory leave w.e.f 09/06/2018 to 09/09/2018 (120 days) vide Endst: No 9119-23 dated 09/06/2018 in r/o Mr. Manzoor Elahi PSHT GPS Daibgran, on his own pay and grade in the interest of public service.

### Note:

- 1. No TA/DA is allowed.
- 2. Charge report should be submitted to all concerned.

Sd/-SUB DIVISIONAL EDUCATION OFFICER (MALE) MANSEHRA

_____ Dated <u>OS- 11- /2018.</u>

Copy for information to the:

- 1. District Accounts Officer Mansehra.
- 2. District Monitoring Officer Mansehra.
- 3. ASDEO Circle Concerned.
- 4. Office order file.

SUB DIVISIONAL EDUCATION OFFICER (MALE) MANSEHRA

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کم کی دیبر کافری مدرسین کرجسٹر حاضری مدرسین 6 ÷ <u>20</u> وا بجده H ĪŻ تارئ روائلي وخط دخظ دستظ وسخط Ť 7/3° 15 ΥS 2 15 3 📂 7/30 4 15 7/30 5 730 6 7 Y5 8 15 15 12/35 9 15 15 10 7/30 15 11 × 7/30 75 17/35 12 × 75 Yς 13 15 14 7/30 **Y** 15 7/30 45 16 15 17× 12/35 18 45 45 12/35 19 ٠. 20 × 15 <u>14</u> 21 X 75 22 17/1 7/30 23 Y5 **124** 45 25 13 26 13 15 **27** . 15 27 28 7/30 29 7/30 30 31 مايقد. ميزان سابقه ميزان اتفاقه / إ التحقالي III 18/9/18. باري Money house Man DMO Head Teacher Govt: Primary School
Debgran (Mansehra) 29/09/2018 Califran Manseem

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رجسٹر حاضری مدرسین

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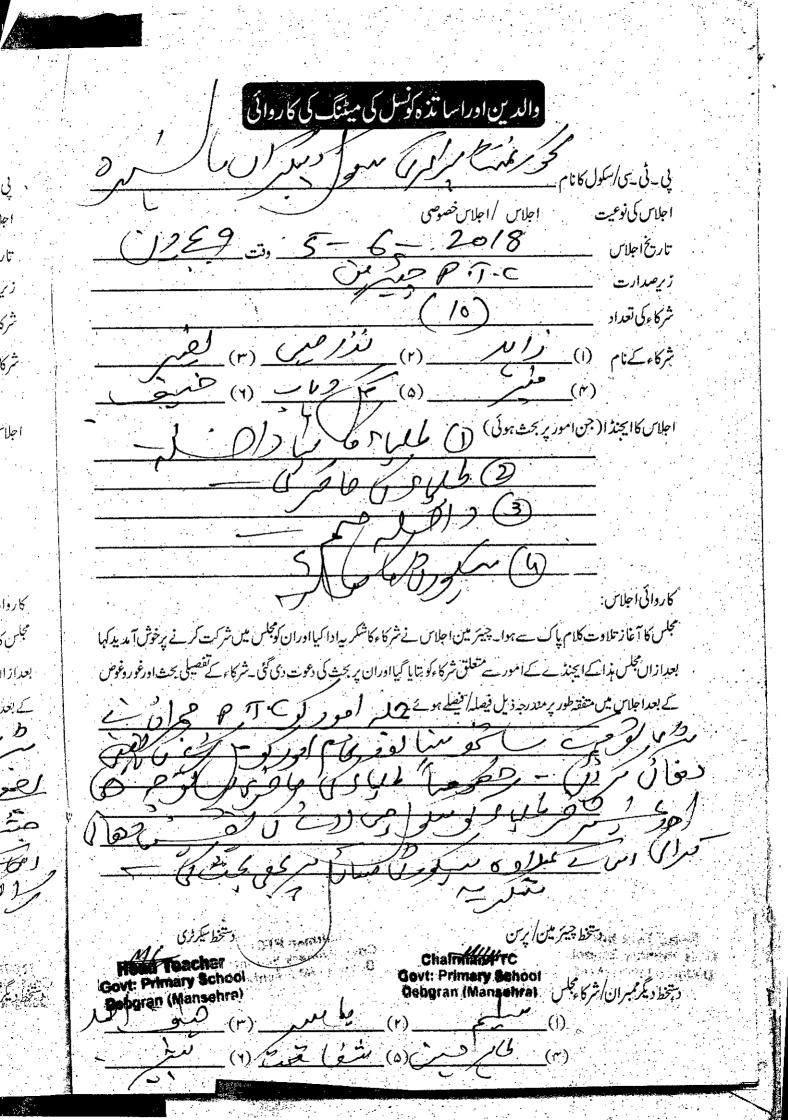
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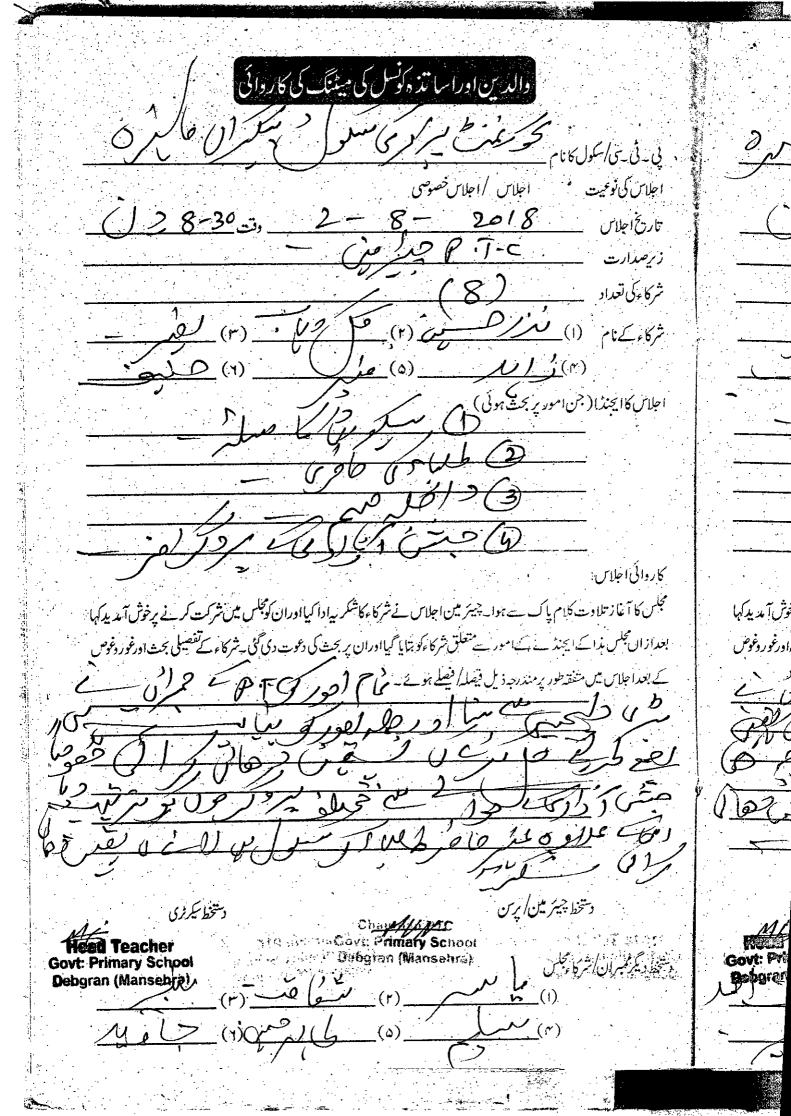
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والدین اوراسا تذہ کوسل کی میٹنگ کی کاروائی نی - فی - کاکول کانام محکور تمنظ میرایم سعی ( و میکر ان ما اجلاس کی نوعیت اجلاس /اجلاس خصوصی 0>29 is, 4-9-2018 تاریخ اجلاس PTE CON زبيصدادت (8) شركاء كى تعداد (r) 1) (r) 0 (r) (r) 0 (r) (r) 0 (r) 0 (r) اجلاس كا يجندُا (جن امور ير بحث بولى) معن و من ورار كا ومعمل الحال كاروائى أجلاس: مجلس کا آغاز تلاوت کلام یاک ہے ہوا۔ چیئر مین اجلال نے شرکاء کاشکریا داکیا اوران کو مجلس میں شرکت کرنے برخوش آمدید کہا بعدازاں مجلس مذاکے ایجنڈے کے امورے متعلق شرکاء کو بتایا گیااوران پر بحث کی دعوت دی گئی۔شرکاء کے تفصیلی بحث اورغور وغوص ے بعداجلاں میں متفقہ طور پرمندرجہ ذیل نیصلہ انقلے ہوئے۔ ۔ - Pi صرفر کو ور میممیا سے y i i je proping levison & com وستخط سيرزى وستخط چيئر مين/يرس Govt: Primary School Debgran (Mans/ehra) Govt: Primary School Debgran (Mansehre)

پی ۔ ٹی ۔ بی اسکا اجلاس کی نوعیہ تاریخ اجلاس زیر صدارت شرکاء کی تعداد شرکاء کے نام

كاروا في اجلاس:

اجلاب كاايحنزا

مجلس كا آغاز تلاو بعدازال مجلس بذا.

کے بعداحلاس میں

عی سے کار

وررجا (

وستخطأ ويكر فمبسران أبثر

والدین اوراسا تذہ کونسل کی میٹنگ کی کاروائی یی _ٹی _ی/سکول کا نام . اجلاس /اجلاس خصوصي اجلاس كى نوعيت تاريخ اجلاس ز برصدادت شركاء كى تعداد شرکاء کیام (۱) مدار میگر اجلاس كاليجند الجن امور ير بحث مولى) (٢٠٠٥ مى ما كول (4) vig كارواكى اجلاس مجلس كا آغاز تلاولت كلام پاك ، مواجير مين اجلاس في شركاء كاشكريدادا كيا اوران كوجلس مين شركت كرف برخوش آمديد كها بعدازال فجال بذا کے ایجنڈے کے امور ہے معلق شرکا موبتایا کیااوران میمؤنث کی دفوت دی گئی۔شرکا ، کے تفسیلی بحث اور فورونوس رے بعد اجلال میں منفقہ طور رمندرجہ ذیل فیصلہ انسلے ہوئے۔ ای می ای عرص حرفر می اعرامی وستخط سيرزى دستخط چیئر مین *ایرین* Govt: Primary School
Debgran (Mansehra)

# Leave Account of Mr. Miss. IMITS. IMITS. Flux Flux Flux Flux - 24 - 24 - 11 (3) - Rev. 1/78 dated 18-1-1879)

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# بخدمت جناب جج صاحب سروس ٹریبونل پشاور

جنابعالى:-

گذارش خدمت ہے کہ میں منظور الی سابقہ P.S.H.T ٹیچر گور نمنٹ پرائمری سکول دیبگرال سے ریٹار ٹرڈ ہو گیا ہوں۔ ریٹار نمنٹ بمور خد ریٹار نمنٹ بمور خد کیا ہوں۔ ریٹار نمنٹ بمور خد 28.02.2019 گور نمنٹ پرائمری سکول دیبگرال مانسہرہ۔

للذااپیل کوواپس کرے مشکور فرمائیں۔

شكربير

مور خه: 27 فروري 2020

العبر----العبر

نام: منظوراللي ولد گوهر رحمان سكنه مانسهره

شاختى كار د نمبر _ 3-13039-13503

فون نمبر_9445419