

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 850/2018

Date of institution ... 08.02.2018

Date of judgment ... 03.12.2019

Gul Bar S/o Sadbar Khan,
C.T GMS, Hakim Abad,
Tehsil Palass, District Kohistan

... (Appellant)

VERSUS

1. District Education Officer (Male), Kohistan.
2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
... (Respondents)

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 FOR REINSTATEMENT OF THE
APPELLANT, ILLEGALLY REMOVED FROM SERVICE VIDE
ORDER DATED 19.05.2016.**

Mr. Muhammad Isa Khan Khalil, Advocate

.. For appellant.

Mr. Kabirullah Khattak, Additional Advocate General

.. For respondents.

MR. HAMID FAROOQ DURRANI

.. CHAIRMAN

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant and Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Education Department as Certified Teacher. He was imposed major penalty of removal from service vide order dated 19.02.2016 by the competent authority on the allegation of long absence from duty without permission of the competent authority. The appellant filed departmental appeal on 08.03.2017 which was rejected vide order dated 29.09.2017 hence, the present service appeal on 08.02.2018.

*AC/Amir
3.12.2019*

3. Respondents were summoned who contested the service appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was appointed as Certified Teacher in the year 1999. It was further contended that the appellant was performing his duty regularly. It was further contended that the appellant applied for extraordinary leave with effect from 01.02.2013 to 01.02.2014 which was sanctioned however, after expiry of said extraordinary leave, the appellant could not join duty due to some unavoidable circumstances and moved request for extension of already granted extraordinary leave without pay but no response was communicated to the appellant. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 19.02.2016, therefore, on getting knowledge he filed departmental appeal on 08.03.2017 but the same was also rejected vide order dated 29.09.2017. It was further contended that neither any charge sheet, statement of allegation was served upon the appellant nor regular inquiry was conducted nor any show-cause notice was issued to the appellant at his home address nor any absence notice was advertised/published in newspaper therefore, the impugned order is illegal and liable to be set-aside. It was further contended that after filing departmental appeal, fact finding inquiry was initiated on the direction of departmental authority wherein the inquiry officer also recommended that no show-cause notice etc was issued to the appellant before passing the impugned order, therefore, submitted inquiry report in favour of the appellant but the same was not considered. It was further contended that the appellant was having thirteen years service in his credit but the same was also not considered by the respondent-department while imposing the major penalty of removal from service. It was prayed that the appeal may be accepted, the impugned order be set-aside, the appellant be reinstated in service with back

M. Anwar
3.12.2019

benefits or in the alternative the major penalty of removal from service may be converted into major penalty of compulsory retirement.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving as Certified Teacher in Education Department. It was further contended that the appellant submitted application for leave without pay with effect from 01.02.2013 to 01.02.2014 but the same was not sanctioned. It was further contended that the appellant had gone abroad on 21.09.2012 via Flight No. SV-887 from Benazir Bhutto International Airport Islamabad to Jeddah and then returned back to Pakistan on 17.02.2017 through Flight No. GF-786 at Peshawar Airport, therefore, the appellant remained abroad/absent for a period of four years seven months and four days without sanctioned of any kind of leave by the competent authority. It was further contended that the respondent-department has furnished the copy of travel history of the appellant and the same is available on the record which shows that the appellant remained abroad/absent from duty with effect from 21st September 2012 to 17th February 2017. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 19.02.2016 on the allegation of long absence from duty, therefore, the appellant was required to file departmental appeal within one month but he has filed departmental appeal on 08.03.2017 after a delay of more than one year. It was further contended that the departmental appeal was also rejected vide order dated 29.09.2017, therefore, the appellant was required to file service appeal within one month but he has filed service appeal on 08.02.2018 after a delay of more than five months, therefore, it was vehemently contended that the departmental appeal as well as service appeal are badly time barred and prayed for dismissal of appeal.

M. Anwar
3.12.2019

6. Perusal of the record reveals that the appellant was serving as Certified Teacher in Education Department. He was imposed major penalty of removal from service vide order dated 19.02.2016 on the allegation of long absence from duty. The record further reveals that as per copy of travail history of the appellant available on record, the appellant remained abroad with effect from 21st September 2012 to 17th February 2017 for more than a period of four years without sanctioned of any leave or permission of the competent authority. The record further reveals that the appellant was required to file departmental appeal against the impugned removal order dated 19.02.2016 within one month but he has filed departmental appeal on 08.03.2017 after a delay of more than one year. Same way, the departmental appeal was rejected by the departmental authority on 29.09.2017 and the appellant was required to file service appeal within one month after rejection of his departmental appeal but the appellant has filed service appeal on 08.02.2018 after a delay of more than five months and no condonation of delay application has been filed for explaining such delay, therefore, without touching the merit of the case, the present service appeal is not maintainable being time barred. Hence, the same is dismissed with no order as to costs. File be consigned to the record room.

ANNOUNCED
03.12.2019



(HAMID FAROOQ DURRANI)
CHAIRMAN


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

03.12.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed on file, without touching the merit of the case, the present service appeal is not maintainable being time barred. Hence, the same is dismissed with no order as to costs. File be consigned to the record room.

ANNOUNCED

03.12.2019



(HAMID FAROOQ DURRANI)
CHAIRMAN


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

04.07.2019


Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 30.08.2019 before D.B.



(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

30.08.2019

Junior to counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 16.10.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

16.10.2019

Appellant in person present. Asst: AG for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourned. To come up for arguments on 03.12.2019 before D.B.



Member


Member

30.01.2019

None present on behalf of the appellant. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Shah Wali Ullah, ADO (Litigation) for the respondents present and submitted written reply. The appeal is assigned to D.B-II for rejoinder and arguments for 09.04.2019. Notice be also issued to appellant and his counsel for attendance for the date fixed.


Date fixed
for
22/2


(Muhammad Amin Khan Kundi)
Member

09.04.2019

Appellant in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. Case to come up for rejoinder and arguments on 22.05.2019 before D.B.


(AHMAD HASSAN)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

22.05.2019

Counsel for the appellant and Addl. AG alongwith Nadar Khan, Superintendent for the respondents present.

Learned counsel for the appellant requests for adjournment as he could not prepare the brief due to over occupation. Adjourned to 04.07.2019 for arguments before the D.B.


Member


Chairman

16.08.2018

Clerk to counsel for the appellant present. Kabirullah Khattak, Addl: AG for respondents present. Written reply on behalf of the respondents not submitted. The learned AAG sought some time to submit the same. Case to come up for written reply/comments on 25.09.2018 before S.B.


Chairman

25.09.2018

Mr. Gulbar, appellant in person present. Mr. Kabirullah Khattak, Addl, AG for the respondents present. Written reply not submitted. Requested for adjournment. Granted. To come up for written reply on 12.11.2018 before S.B.


Chairman

12.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 28.12.2018. Written reply not received. Mr. Hameed Ur Rehman AD representative of respondents absent.


Reader

28.12.2018

Clerk to counsel for the appellant present. Shah Wali Ullah KPO representative of the respondent department present and seeks time to furnish written reply. Granted. To come up for written reply on 30.01.2019 before S.B.


Member

03.05.2018 The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 28.06.2018 before S.B.



Reader

28.06.2018

Counsel for the appellant Gul Bar present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Education Department as Certified Teacher and he was imposed major penalty of removal from service vide order dated 19.02.2016. The appellant filed departmental appeal but the same was rejected on 29.08.2017 and thereafter filed the present service appeal. It was further contended that neither charge sheet/statement of allegation was served upon the appellant nor regular inquiry was conducted nor any show-cause notice was issued to the appellant and the appellant was condemned unheard therefore, the impugned order is illegal.

The contention raised by learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject limitation and all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 16.08.2018 before S.B.



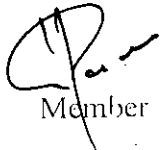
Appellant Deposited
Security & Process Fee


(Muhammad Amin Khan Kundi)
Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 850 /2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26/02/2018	<p>As per direction of the Worthy Chairman this case is submitted to the S. Bench for decision on office objection. To be put up there on <u>05/03/18.</u></p> <p style="text-align: right;"> REGISTRAR</p>
	05.03.2018	<p>Clerk of the counsel for appellant present and seeks adjournment as his senior counsel is not available today. To come up for arguments on office objection on 03.04.2018 before S.B.</p> <p style="text-align: right;"> (Gul Zeb Khan) Member</p>
	03.04.2018	<p>Clerk of the counsel for appellant present and seeks adjournment as his senior counsel is not available today. To come up for arguments on office objection on 03.04.2018 before S.B.</p> <p style="text-align: right;"> Member</p>

The appeal of Mr. Gul Bar son of Sadbar Khan C.T, GMS Hakim Abad Kohistan received today i.e. on 07.02.2018 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Copy of leave sanction order mentioned in para-2 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Copy of impugned order dated 19.05.2016 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.

No. 311 /S.T,

Dt. 09/02 /2018


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

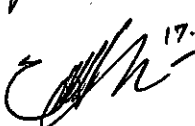
Mr.M. Issa Khan Adv. Pesh.

Sir,

1. It is undisputed that leave was sanctioned, which finds mention in Form III at page 4 of the memo of Appeal, duly verified and endorsed by DDEO. The sanction order pertaining to 1999 is misplaced.

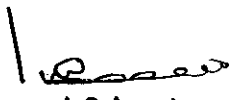
2. para 3 of the memo of Appeal clearly mentions that the impugned order of Removal was never communicated to the appellatant.

Kindly, the appeal may be posted for hearing before the bench.

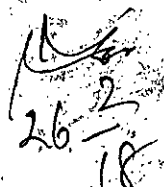
 17.2.2018

Sir,

The objections of the Tribunal/office and reply of counsel for the appellatant is sub-itted for order please.


19/2/18

The chairman.

To be filed before SB for $5 \frac{3}{18}$ 
26-2-18

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 850 /2018

Gul BarAppellant

Versus

District Education Officer (Male), Kohistan and others... Respondents

I N D E X

S.No.	Description of documents.	Annex	Pages.
1.	Service Appeal with affidavit		1-3
2.	Copy of sanction letter regarding leave one year w.e.f 01.02.2013 to 01.02.2014	A	4
3.	Copy of departmental appeal to respondent No.2 dated 08.03.2017	B	5
4.	Copy of report	C	6-7
5.	Copy of letter dated 16.08.2017	D	8
6.	Copy of Report of EDO dated 29.08.2013	E	9
7.	Copy of Appeal/ application to respondent No.2 dated 01.01.2018 and reply dated 03.01.2018	F	10
8.	Notification dated 20.09.2017	G	11
9.	Wakalatnama		12


Appellant

Through


Muhammad Isa Khan Khalil
Advocate, Peshawar

Off: 6-B, Haroon Manstion
Khyber Bazar Peshawar

Cell: 0300-5949173

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 850 /2018

Gul Bar S/o Sadbar Khan,
C.T, GMS, Hakim Abad,
Tehsil Palass, District Kohistan

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 182

Dated 08-2-2018

.....Appellant

Versus

- 1) District Education Officer (Male), Kohistan
- 2) Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar

..... Respondents

***APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974 FOR REINSTATEMENT OF THE
APPELLANT, ILLEGALLY REMOVED FROM
SERVICE VIDE ORDER DATED 19.5.2016***

Sheweth;

The appellant submits as under:-

- 1) That the appellant was appointed as C.T in the year 1999 and appointed at GMS, Shisal Kiyal, wherefrom he was transferred to GMS, Hakim Abad, Palass, Kohistan, where he served upto 2016.
- 2) That on dire need basis, the appellant applied for extraordinary leave, which was initially sanctioned for one year w.e.f 01.02.2013 to 01.02.2014 (Annex "A"). However, the appellant could not joint due to some unavoidable circumstances and moved request for extension of the already granted extraordinary leave without pay, but no response as to its acceptance or refusal was communicated to him.

Filed to-day
Registrar

8/2/18

- 3) That on approaching the respondent No.1, the appellant got the information that he was awarded the major punishment of **“Removal from Service”** vide an order dated 19.05.2016, which was never communicated to him.
- 4) That on getting knowledge as to his removal, the appellant immediately filed a departmental appeal to respondent No.2 on 08.03.2017 (Annex “B”), who was pleased to conduct an inquiry in that behalf. The Inquiry Officer, after a thorough probe, found that the legal formalities within the contemplation of E&D Rules were not fulfilled and he fairly opined in his report (Annex “C”) that no personal notice was served on the appellant.
- 5) That the enquiry report, ibid, was sent to DEO vide memo; dated 16.08.2017 (Annex “D”) for comments and to see whether the codal formalities were adhered to before the order of Removal was passed. The worthy EDO was pleased to confirm and ratify that neither any show cause notice was issued to the appellant nor was any inquiry conducted before the impugned order of Removal was made. (Report of EDO dated 29.08.2013 is Annex “E”)
- 6) That finding no clue as to fate of enquiry, as also nothing was communicated to the appellant, he made yet another Appeal/ application to respondent No.2 on 01.01.2018, which was responded on 03.01.2018 (Annex “F”), received to appellant on 02.02.2018, thereby conveying the message that his appeal was already rejected vide a Notification dated 20.09.2017 (Annex“G”), and the latter order was also endorsed with the communication dated 03.01.2018. Hence, the instant appeal on the following:-

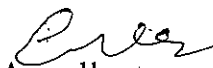

GROUND

- a. That the impugned order of removal from service is void, being made against the E&D Rules.
- b. That no major penalty can be awarded in absence of a formal enquiry.

- c. That the impugned order has been made at the back of the appellant.
- d. That the appellant is condemned unheard.
- e. That the order in appeal was not communicated to the appellant, against the mandate of law.
- f. That it is mandated by law, that what is required to be done in a manner has to be done in that manner otherwise it would be illegal.
- g. That appellant seeks leave to urge further grounds, after the stance of the respondents becomes known to him.

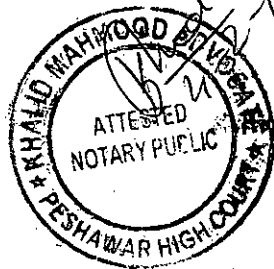
For the foregoing, it is, therefore, prayed that on acceptance of this appeal, the impugned order of Removal from Service may graciously be set-aside and the appellant be reinstated in service with all the allowable back benefits.

Any other remedy to which the appellant is found fit in law, justice and equity may also be allowed.


 Appellant
 Through

Muhammad Isa Khan Khalil
 Advocate Supreme Court
 &
Akhter Ilyas
 Advocate, High Court

AFFIDAVIT

I, Gul Bar S/o Sadbar Khan, C.T, GMS, Hakim Abad, Tehsil Palass, District Kohistan do hereby solemnly affirm and declare on Oath that the contents of accompanying Appeal are true and correct to the best to my knowledge and belief and nothing has been concealed from this hon'ble court.




 DEPONENT

W

FORM OF LEAVE ACCOUNT UNDER THE REVISED LEAVE RULES, 1981.

Leave Account of Mr./Miss./Mrs. Gul Boy Khan

Date of Commencement of service..... 06-04-1999

Date of attaining the age of superannuation..... (N.B.—Instruction for filing in the form are printed on reverse).

1	2	3	4	5	6	7	LEAVE TAKEN (From Column 8 to 20)														22	23	
							PERIOD OF DUTY		PERIOD	Leave on full pay without medical certificate subject to maximum of 120 days & 365 days in case of L.P.R.	Leave on full pay on medical certificate subject to maximum of 180 days	Leave on full pay on medical certificate subject to maximum of 365 days in entire service	LEAVE ON HALF PAY		Recreation leave of 15 days in a year but 10 days to debited.	LEAVE NOT DUE		ABSENCE		Total leave (Columns 10+11+12+14+15+17+19)			Balance on 1-7-1978/1978; from leave (Columns 7-20)
							From	To					Y.M.D.	Full Calendar month		Days	Days	From	To				

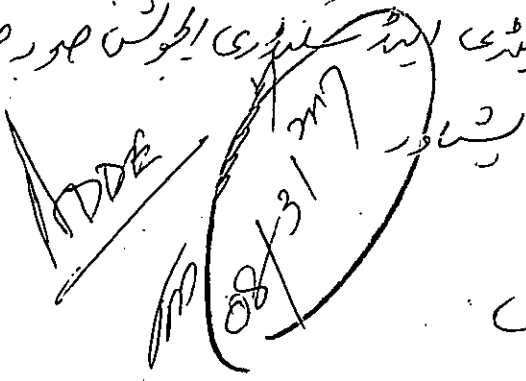
7-1999

18-2-2013 = 13 years: 8 months 12 days = leave without pay w.e.f. 18-2-2013 to 1-2-2014 (one year)

[Handwritten signature]

Deputy District Education Officer
Islamabad

خدمتِ خدا - ڈاکٹر ریڈیولاب المہدیہ ایف اے گنوری ایجوکیشن فورور صدر کونون فورواہ



Annex - B (5)

ہیوان اپیل ملبرڈ صلازمت بحالی

صنا بحالی! گزارش ہے کہ فدوی ٹورنٹیک منڈل سکول حکم آباد پارس کوشن

میں بطور سی ٹی فدریس انیا خرائض مصلی انجام دے رہا تھا۔ تیس

تھو گھر گھر مسائیل کی ذمہ داری ختم کی درخواست اپنے تعلق آفس

میں جمع کرایا تھا۔ ختمی کی مدت ختم ہونے کے بعد فدوی نے دوبارہ ختمی کی درخواست

جمع کرائی۔ فدوی کی پندرہ گھرے باہر تھا اور گھونٹا بہت افراد

ان پر وہ نہیں نہ بہت خاندان میں کوئی اخبار لے رہے والا اور نہ کوئی

دیورا ختمی ختمی رہنے والا

فدوی جب دوبارہ دفتر آیا تو معلوم ہوا کہ حکم تقسیم کوشن کے

بچے نواری سے بنا دیا گیا ہے

نہیں امر ہے نہ آ۔ بہا بہ بہا ہی کرتے ہیں 15 پتہ سولہ سال کی

صلازمت بحالی کرتے ہیں دوبارہ حکم تقسیم میں بحیثیت سے کہ ٹیکہ بحالی

میں نوازشہ پوری

الفاظ: عین
گرفتن سے کہ حکم آباد پارس کوشن

Handwritten signature

Subject: INQUIRY REPORT IN RESPECT OF GUL BAR KHAN EX-CT GMS HAKAM ABAD (KOHISTAN).

Annex - C
⑥

Respectively shewth,

1. That undersigned is interested through letter No.3123-25/F.No.1035/A-15/KC (25) from Director E&SE KPK Peshawar, the copy of which is annexed as annexure A.
2. The back summarized history of the above mentioned case is as follow.
 - i) That one Gul Bar Khan Ex-CT GMS Hakam Abad (Kohistan) instituted an appeal on 08.03.2017 with the request that he may be reinstated in service.
 - ii) That after the submission of appeal of the petitioner the said authority appointed me as inquiry officer through letter No.3123-25 dated 14.07.2017. The copy of appeal of the appellant, letter No.2522 dated 30.03.2017 of DEO(M) Kohistan are annexed as annexure B&C respectively.
3. After the receipt letter of the said letter I informed both the parties i.e DEO (Male) Kohistan and the appellant for inquiry.
4. That the undersigned fixed date 27.07.2017 for the proceeding at DEO (Male) office Kohistan at 10AM.
5. That the undersigned went to the office of the DEO (Male) Kohistan on fixed date and time. Both the parties were present.



6. After the due process of law initiated the ordered inquiry and reached at the following conclusions.

- i) First of all I inspected the removal file conducted by the DEO (M) Kohistan, in which no notice has been found of showcause and similarly there is no final notice is available on the file which indicates the innocence of the appellant/petitioner.
- ii) Similarly from the perusal of above mentioned termination file no personal service has conducted by the appellant. It means that no personal service of the showcause notice has been made on petitioner.
- iii) That on the plea of service of notice and knowledge of the petitioner about showcause notice and removal, there is no rebuttal against the petitioner from concerned officer.
- iv) That on the other side (Petitioner) the leave application for the target/disputed period is also not available on the file but the petitioner sworn on Holy Quran that I have submitted application for leave, through which petitioner seems to be true.

7. That as for as the limitation and condonation in between 02.02.2014 after **the expiry of one year leave** till the submission of appeal on 08.03.2017, this duration is not the part and parcel of the inquiry, so this point needs consideration by the honorable chair as a full authority, so I have no concerned with this plea.

OPINION

In my opinion and after perusal of the record and the statements of the parties I have reached at the conclusion that according to service rules and E&D rules, the prior two notices, personal service of notices before removal from service are mandatory, so in my opinion and on humanitarian grounds if the petitioner's removal order by DEO (M) Kohistan is to be converted into compulsory retirement through above mentioned reasons and grounds, so this inquiry report is signed by the undersigned as a suggestion for further proceeding and order.

Annex -D

8



DIRECTORATE ELEMENTARY & SECONDARY EDUCATION

Khyber Pakhtunkhwa, Peshawar.

No 3052 / F. No: 1035/A-15/KC(25) Dated Peshawar the 16/8 /2017

To

The District Education Officer
(M) Kohistan

Subject:-

ENQUIRY REPORT IN RESPECT OF GUL BAR KHAN EX-CT GHS HAKIM ABAD DISTRICT KOHISTAN.

Memo:

I am directed to enclose herewith a copy of enquiry report against Gul Bar Khan Ex-CT GMS Hakim Abad District Kohistan & to ask you to submit comments/report to this office & also provide all the detail of codal formalities initiated before the removal of Ex-CT on priority basis.

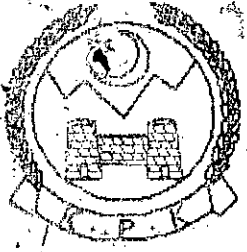
[Handwritten Signature]
Deputy Director (Estab:)
E&SE Department, Khyber
Pakhtunkhwa, Peshawar

Endst: No: _____

Copy forwarded to PA to Director, local Directorate.

Deputy Director (Estab:)
E&SE Department, Khyber
Pakhtunkhwa, Peshawar.

[Handwritten Signature]



OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) KOHISTAN

Annex - E

9

Phone & Fax No. 0998-407128
Email. emiskohistan@yahoo.com

No. Enquiry/ 794B /DEO(M) KH) Dated Dassu the 29/08/ /2017
To

The Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.

Subject:- **ENQUIRY REPORT IN RESPECT OF MR. GUL BAR KHAN EX-CT
G.M.S. HAKIM ABAD DISTRICT KOHISTAN**

Memo:-
Kindly reference your letter No. 3052/F.No.1035/A-15/KC(25)
dated 16-08-2017 on the subject cited above.

It is submitted that Mr. Gul Bar Khan appointed as CT and was posted at GMS Hakim Abad in the year 1999, his salary has been drawn upto 31-12-2012, later on he applied for extra ordinary leave without pay as he stated in his statement and provided only leave account form which is signed by then Deputy District Education Officer (M) Kohistan (DDO) w.e.f. 1-2-2013 to 1-2-2014 (one year) but the leave has not been sanctioned, no record has been found/traced in this office record as well as in Middle Branch in service record of the above named Ex-Teacher.

Whereas he lifted his duty station without any permission/leave and absconding w.e.f. 01-02-2013 to 18-02-2016, and then District Education Officer (M) Kohistan issued Removal Order vide this office Endst: No. 2268-71 dated 19-02-2016, there is no show cause notice/enquiry report against the teacher has been traced in this office record as well as Middle Branch.

Hence the report is submitted for your kind information that the final decision may please be initiate against the Teacher in the light of enquiry report conducted by Head Master GHS Ahl Mansehra vide his No.146 dated 04.08.2017.

Recd one Letter
Approved
31/8/17

29/08/17
DISTRICT EDUCATION OFFICER
(MALE) KOHISTAN

Annex - F

10



DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION KHYBER
PAKHTUNKHWA PESHAWAR.

No. 1076 /F. No. 1035/A-15 KC (25).

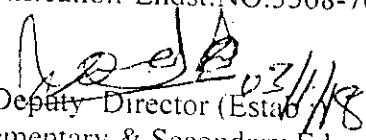
Dated Peshawar the 03/01 /2018.

To,

Mr. Gul Bar Ex-CT
GMS Hakim Abad.
District Kohistan.

Subject: - APPEAL.

I am directed to refer to your appeal dated 01.01.2018 on the subject noted above and to state that your appeal has already been rejected vide this office Notification Endst: NO.3568-70 dated 20.09.2017 for your kind information (copy attached).


Deputy Director (Estab :)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.
03/01/18

Endst: No. _____

Copy forwarded to the:-

1. P.A to Director Elementary and Secondary Education local office.

Deputy Director (Estab :)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.





Annex - 6

11

DIRECTORATE OF ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA

NOTIFICATION.

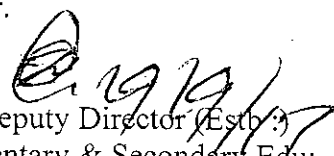
1. WHERE AS Mr. Gul Bar CT GMS Hakim Abad was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of absence and to leave official duty without permission and absconding w.e.f 01.02.2013 to 18.02.2016.
2. AND WHEREAS, the DEO (M) Kohistan issued three show cause notice and conducted enquiry.
3. AND WHEREAS, the DEO (M) Kohistan being competent authority imposed major penalty "**Removal From Service**" vide his Endst:No.2268-71 dated 19.02.2016.
4. AND WHEREAS. The above named teacher submitted an appeal to appellate authority on 08.03.2017 and the same was sent to DEO(M) Kohistan for comments vide letter No.7948 dated 29.08.2017.
5. AND WHEREAS, the competent authority, Director (Elementary and Secondary Education) Khyber Pakhtunkhwa after having considered the charges and evidence on record, is of the view that charges against accused teacher have been proved.
9. NOW THEREFORE, in exercise of powers conferred under Khyber Pakhtunkhwa Servants (Efficiency & Discipline) Rules-2011 the appellate authority has decided to reject the appeal Mr.Gul Bar Khan CT GMS Hakim Abad Kohistan being badly time barred as well as on the above mentioned grounds.

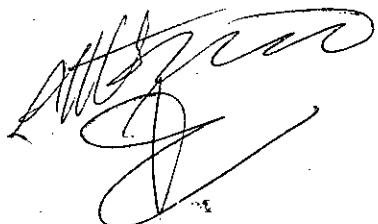
DIRECTOR.

Endst: No. 3568-70 /F No. 1035/A-15 KC (35) Dated Peshawar the 28/8 /2017.

Copy forwarded for information and necessary action to the:-

1. District Education Officer (M) Kohistan w/r to his No.7948 dated 29.08.2017.
2. Teacher concerned.
3. P/A to Director E&SE, Khyber Pakhtunkhwa, Peshawar.
4. Master.


Deputy Director (Estb.)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.



19/9/17

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO 850 OF 2018

Gulbar Khan Ex.CT -----

Appellant

VERSUS

1. District Education Officer (Male) Kohistan

2. Director Elementary & Secondary Education KPK Peshawar

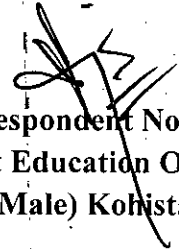
Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENT NO.1, 2.

INDEX

S#	Particulars of documents	Annexure	Pages
1	Comments along with affidavit		1-5
2	Copy of FIA Letter to DEO(M) Kohistan	"A"	6-7
3	Copy of Removal order	"B"	8
5	Copy of Rejection of appeal by Director E&SE	"C"	9
6	Parawise comments have been sent to the appellant No. dated-		

Dated 09-01-2019


**Respondent No. 1
District Education Officer,
(Male) Kohistan**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO 850 OF 2018

Gulbar Khan Ex.CT -----

Appellant

VERSUS

1. District Education Officer (Male) Kohistan

2. Director Elementary & Secondary Education KPK Peshawar

Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENT NO.1, 2.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS

- I. That the appeal has not come to this Honorable Service Tribunal with clean hands.
- II. That the appellant has got no cause of action /locus standi to file the Instant appeal
- III. That the appellant has been filed appeal to pressurize the respondents.
- IV. That the appellant is stopped to sue through his own conduct.
- V. That the present appeal is not maintainable due to mis-joinder and non-joinder of necessary parties.
- VI. That the appellant concealed the material facts from this Honorable Tribunal, hence appeal is liable to be dismissed without any further proceeding.
- VII. That the appellant has already been removed from Service after Completions of all codal formalities.



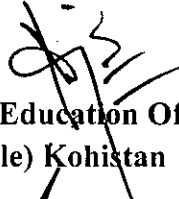
Factual Objections:

1. Para No.1 is correct to the extent that the appellant was a CT Teacher at GMS Hakim Abad Kohistan , while as per record of FIA he went abroad on 21-09-2012 via Flight No.SV-887 from Benazir Bhutto International Airport Islamabad to Jeddah and then return back to Pakistan on 17-02-2017 , through Flight No.GF-786 at Peshawar Airport, hence the appellant remained abroad for 4 Years 7 Months and 4 days without sanctioning of any kind of Ex-Pakistan leave ,hence the appellant cannot say that he served upto 2016. **(Copy of FIA Letter is annexed as annexure-A).**
2. Para No. 2 is incorrect, strongly denied with the facts that as per record provided by the appellant he has not applied for Extra Ordinary Leave without pay as he stated in his statement and provided only leave account form which is signed by the then acting Deputy District Education Officer (M) Kohistan w.e.f 01-02-2013 to 01-02-2014 (One Year) but the leave was not sanctioned by the competent authority because leave account is just a calculation of leave in credit of employee it is not a sanction. While as per record of FIA he went abroad on 21-09-2012 via Flight No.SV-887 from Benazir Bhutto International Airport Islamabad to Jeddah and then return back to Pakistan on 17-02-2017, through Flight No.GF-786 at Peshawar Airport, hence the appellant remained abroad for 4 Years 7 Months and 4 days without sanctioning of any kind of Ex-Pakistan leave by the competent authority. Hence it is proved that the appellant remained abroad w.e.f 21-09-2012 to 17-02-2017, hence the attendance of the appellant in school attendance register proved fake and bogus., whereas the District Education Officer (M) Kohistan issued removal order of the appellant vide DEO(M) Kohistan Endtt No. 2268-71 dated 19-02-2016. . **(Copy of removal order is annexed as annexure-B).**
3. Para No.3 is incorrect, strongly denied with the facts that the appellant left Pakistan on 21-09-2012 as stated in the above Para. As a result of the above mention facts the appellant was removed from service under Govt of Khyber Pakhtunkhwa Peshawar E&D rule 2011 by competent authority vide Endstt: No.2268-71 dated 19-02-2016, the removal order was dispatched to his home address.
4. Para No.4 is incorrect, strongly denied with the facts that the Departmental appeal of the appellant was rejected by Director Elementary & Secondary Education Peshawar Vide Endstt: No.3568-70 dated 21-09-2017.
5. Para No. 5 is incorrect, strongly denied with the facts that the appellant was willfully absented himself from his duty 4 years 7 months and 4 days, and the then DEO(M) Kohistan was sent inquiry report in respect of the appellant to Director elementary & Secondary Education Peshawar vide Endstt: No7948 dated 29-08-2017 and on the response of the inquiry report /comments submitted by the then DEO (M) Kohistan, the director Elementary & Secondary Education Peshawar rejected the appeal of the appellant. **(Copy of rejection appeal is annexed as annexure-C).**
6. Para No. 6 is incorrect, strongly denied with the facts that the appellant was willfully absented himself from his duty for 4 years 7 months and 4 days and the charges and evidence on record against the concerned teacher have been proved, and then the competent authority after fulfillment of all codal formalities removed the appellant from service vide Endstt: No.2268-71 dated 19-02-2016.

GROUNDS

- A. Incorrect, strongly denied. the appellant was removed from service after fulfilling all codal formalities as stated in Para No.1 and 2 of above factual objections.
- B. Incorrect, strongly denied, as stated in Para 1 and 2 of the above factual objection.
- C. Incorrect strongly denied that the appellant has been treated accordance with law, after fulfillment of all codal formalities as stated in Para 1 & 2 of the above factual objection.
- D. Incorrect strongly denied, that the appellant has been treated accordance with law ,after fulfillment of all codal formalities as stated in Para 1 & 2 of the above factual objection
Incorrect strongly denied on the grounds as stated in Para 6 of factual objections.
- E. Incorrect strongly denied, that the appellant remained abroad without any Ex. Pakistan Leave for 4 years 7 month and 4 days as stated in Para 1 of the above factual objection.
- F. Incorrect strongly denied, as stated in the Para No.1 & 2 of the above factual objection.
- G. Incorrect strongly denied that the respondents also will seek leave to urge further facts and grounds at the time of arguments.

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


**District Education Officer,
(Male) Kohistan**


DIRECTOR

**Elementary and Secondary Education Department
Khyber Pakhtunkhwa Peshawar**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO 850 OF 2018

Gulbar Khan Ex.CT -----

Appellant

VERSUS

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

Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENT NO.1, 2.

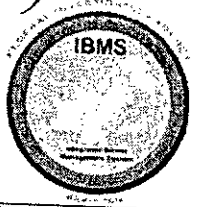
AFFIDAVIT

I, Mr.Khurshid Khan DEO (Male) Kohistan do hereby solemnly affirm and declare that the contents of Para wise reply in the above titled Case are true and correct to the best of my knowledge and belief, and that nothing, material has been suppressed from this Honorable court.


DERONENT

(6) OFFICE OF THE DIRECTOR / IBMS
FEDERAL INVESTIGATION AGENCY HEADQUARTERS)
ISLAMABAD

Tel: 051-9107219 Fax: 051-9262376



No. FIA/IBMS/Education/Query/ 9009

Dated: 24 December, 2018

SUBJECT: PROVISION AND VERIFICATION OF RECORD

Please refer to your letter No. 10124 dated 22-12-2018 and Addl. Dir/Dairy No.3047 dated 24-12-2018 regarding travel information of following person.

CNIC No: 1350306660469

2. As per PISCES / IBMS database, travel history on above mentioned particular is **found** in System, and R11 Form is attached for ready reference
3. This is a system generated Information based upon given particular.

(Aamir Gulzar)
Assistant Director Reporting
FIA (HQ), Islamabad

**DISTRICT EDUCATION OFFICER
(M) KOHISTAN**

ADDRESS:

OFFICE OF THE DISTRICT EDUCATION OFFICER (M)
KOHISTAN



7

FEDERAL INVESTIGATION AGENCY
 INTEGRATED BORDER MANAGEMENT SYSTEM
 FIAHQ G -9/4 PESHAWAR MOR, ISLAMABAD
 Fax No: 051-9262376, Tel-No: 051-9107219
R-11 (TRAVEL HISTORY)

(A)



TRAVEL HISTORY FOUND ON: 1350306660469
 Required By: DISTRICT EDUCATION OFFICER (M) Department: EDUCATION Diary No: 3047 24-12-2018
 Letter Number: 10124 Request Date: 22-Dec-2018 Query Date: 24-Dec-2018
 KOHISTAN

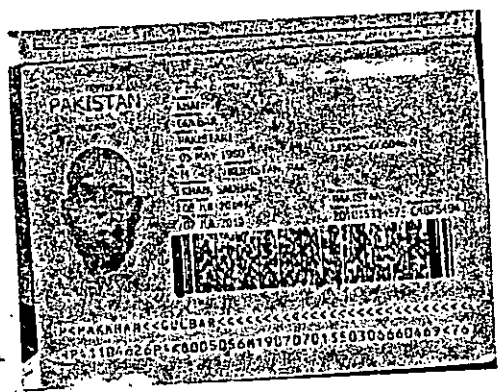
TRAVELER'S CNIC/NIC
 1350306660469

PERSONAL INFORMATION:
 NAME: GULBAR KHAN BIRTH DATE: 05-MAY-1980
 FATHER/HUSBAND NAME: SADBAR KHAN NATIONALITY: Pakistan



TRAVEL DETAILS:

S.NO	TRAVEL DATE	FLIGHT NO	TRAVEL STATUS	PASSPORT NO	SITENAME	DESTINATION
1	30-Jul-03 18:18:53	PK-741	Departing	KC005609	Islamabad International Airport	
2	18-Dec-03 12:45:49	EK600	Arriving	KC005609	KARACHI INTERNATIONAL AIRPORT	DOHA
3	10-Dec-07 5:55:31	QR-318	Arriving	KC005609	JINNAH INTERNATIONAL AIRPORT	MADINA
4	30-Jan-10 17:20:50	SV-709	Departing	HP4110461	JINNAH INTERNATIONAL AIRPORT	RIYADH
5	8-Feb-11 9:18:01	PK-754	Arriving	HP4110461	ISLAMABAD INTERNATIONAL AIRPORT	RIYADH
6	31-Jul-11 15:41:46	808	Departing	HP4110461	JINNAH INTERNATIONAL AIRPORT	RIYADH
7	8-Aug-12 11:11:19	SV724	arriving	HP4110461	Benazir Bhutto International Airport Islamabad	SAU - SAUDI ARABIA
8	21-Sep-12 9:58:39	SV887	departing	HP4110461	Benazir Bhutto International Airport Islamabad	SAU - SAUDI ARABIA
9	17-Feb-17 16:27:24	GF786	arriving	HP4110462	Peshawar International Airport	



CHECKED BY: *[Signature]*

(8)

(B)

(3)

(5)

OFFICE OF THE DISTRICT EDUCATION OFFICER
(M) KOHISTAN

NOTIFICATION.

Consequent upon the information received/collected and on the completion of departmental Enquiry, I Riasat Khan District Education Officer(Male) Kohistan being Competent Authority is fully satisfied to **remove** the following Teachers of Elementary & Secondary Education Department District Kohistan from service on with **Retrospective effects** the basis of Charges noted against their names.

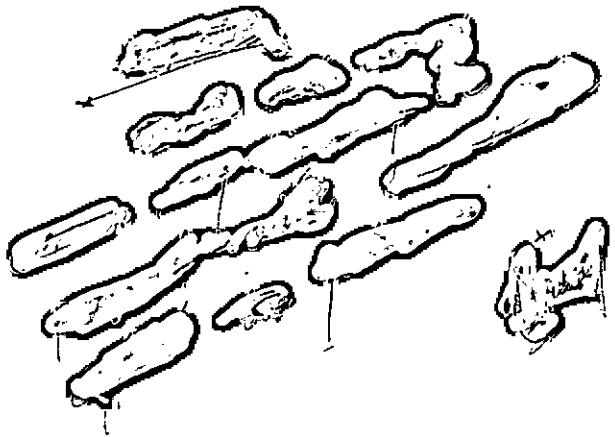
S#	Name of Official with Desig:	Name of School	Charge	Remarks
1	Nasirud Deen Chowkidar	GPS Nabi Abad	Willfull long absent	Removal from service
2	Gul Bar Khan CT	GMS Hukam abad	Willfull long absent	Removal from service

[Signature]
District Education Officer
(Male) Kohistan.

Endstr; /No./Estab: 2268-71 /dated Kohistan the 19-2 /2018:

Copy of the above is forwarded to the:

1. Director E&SE Khyber PkhtunkhuwaPeahswar.
2. Deputy Commissioner Kohistan Uper/Lower.
3. Deputy District Education Officer (M) Kohistan.
4. Sub Divisional Education Officer (M) Kohistan.



[Signature]
District Education Officer
(Male) Kohistan.



(C) (9)

Annex - 6

11

DIRECTORATE OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA

NOTIFICATION.

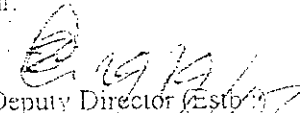
1. WHERE AS Mr. Gul Bar CT GMS Hakim Abad was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of absence and to leave official duty without permission and absconding w.e.f 01.02.2013 to 18.02.2016.
2. AND WHEREAS, the DEO (M) Kohistan issued three show cause notice and conducted enquiry.
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DIRECTOR.

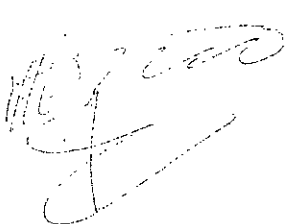
Endst: No. 3270 /F No. 1035/A-15 KC (35) Dated Peshawar the 28/8/2017.

Copy forwarded for information and necessary action to the:-

1. District Education Officer (M) Kohistan w/r to his No.7948 dated 29.08.2017.
2. Teacher concerned.
3. P/A to Director E&SE, Khyber Pakhtunkhwa, Peshawar.
4. Master.


Deputy Director (Estt)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.

19/9/17



بعدالت جواب کی درخواست

مورخہ 03/02/17 - گل سر
 مقدمہ - 2 مخائب گل سر
 دعویٰ - بنام
 رقم

SA باعث تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی کی وجواب وہی وکیل کارروائی متعلقہ آج
 آج کے مقام پر ~~مقدمہ مندرجہ عنوان بالا میں~~ کیلئے ~~مقدمہ مندرجہ عنوان بالا میں~~ کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر رسالت فیصلہ برحلف دیئے جواب وہی اور اقبال دعویٰ اور
 باسورت ڈگری کرنے اجراء اور وصولی چیک دروپیدہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برادگی اور منسوخی
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ
 پروا خیز منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

المرقوم 03 ماہ خرداد 2017

واہ العہد
 کے لئے منظور ہے۔
 بہ مقام