

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 30/2012

Date of Institution. ... 11.1.2012
Date of Decision ... 12.4.2013

Muhammad Idrees, Subject Specialist, History-cum-Civics,
Government Higher Secondary School, Khairabad, Nowshera. (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa E&SE, Peshawar.
3. Director, E&SE, Khyber Pakhtunkhwa, Peshawar.
4. Special Secretary, E&SE, Khyber Pakhtunkhwa, Peshawar.
5. Chief Minister, Khyber Pakhtunkhwa, Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 26.10.2011 PASSED BY RESPONDENT NO.1 WHEREBY THE APPELLANT WAS AWARDED THE PENALTY OF STOPPAGE OF TWO INCREMENTS AND HIS DEPARTMENTAL APPEAL AGAINST IMPUGNED ORDER WAS REJECTED BY RESPONDENT NO.5 VIDE ORDER DATED 24.12.2011.

SHAHZADA IRFAN ZIA,
Advocate

...

For appellant

MR. ARSHAD ALAM,
Addl. Government Pleader

...

For respondents.

MR. SULTAN MAHMOOD KHATTAK,
MR. FAREEDULLAH KHAN,

MEMBER
MEMBER

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER.- This appeal has been filed by Muhammad Idrees, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the impugned order dated 26.10.2011 passed by respondent No. 1 whereby the appellant was awarded the penalty of stoppage of two increments and his departmental appeal against the impugned order was rejected by respondent No. 5 vide order dated 24.12.2011. It has been prayed that on acceptance of the appeal, the impugned orders may be set aside and to restore the increments to the appellant with all back benefits.

2. Brief facts of the case as narrated in the memo: of appeal are that the appellant is serving as Subject Specialist in the Education Department. The appellant was posted as Subject Specialist in GHSS Khairabad during the relevant

days. In order to finalize annual result, Staff Meeting was convened on 30.3.2011 under the auspicious of Incharge Principal of the School. During the meeting it was decided to announce annual result and also celebrate Prize Distribution Function on 31.3.2011. Since there was no examination hall in the school and most of the class rooms were engaged to accommodate the candidates of SSC Annual Examination 2011, it was decided to change the school timings to 9.00 A.M on 31.3.2011. All the teachers were directed by the Incharge Principal to attend the school at 9.00 A.M on that particular day. On 31.3.2011, the Special Secretary, E&SE (respondent No.4) paid surprise visit to educational Institutions in District Nowshera. He also visited GHSS Khairabad at 8.45 A.M and remained there for only 10 minutes. Unfortunately the respondent No.4 found the appellant and other staff absent from duty and suggested disciplinary action against them. A Show Cause Notice was issued/served upon the appellant wherein the allegation of absence from duty on 31.3.2011 was alleged against him. The appellant submitted his reply to the show cause notice and explained his position. Vide impugned order dated 26.10.2011, the competent authority imposed the penalty of stoppage of two increments upon the appellant. Feeling aggrieved, he filed departmental appeal/representation on 11.11.2011, which was rejected on 24.12.2011, hence the present appeal on 11.1.2012 before this Tribunal.

3. The appeal was admitted to regular hearing on 12.4.2012 and notices were issued to the respondents. Respondent No. 3 failed to file written reply, hence placed ex-parte on 7.6.2012 and respondent No. 5 being proforma was deleted on the request of the counsel for the appellant on 7.6.2012. Written reply of respondent No. 2 received on 10.10.2012 and on the request of the learned AAG, it was also considered for other respondents. Rejoinder duly supported with affidavit was also filed in rebuttal.

4. Arguments heard and record perused.

5. At the very outset attention of the Government Pleader was invited to the preliminary objections raised in the written reply by the respondents. He could not provide satisfactory answer except to S.No. 6 "that the appeal is liable to be dismissed for non-joinder/mis-joinder of necessary parties". The appellant has made the Chief Minister Khyber Pakhtunkhwa as respondent No. 5 which was not required to be so and the "respondent No. 1" that is government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar was sufficient. However, the respondent No. 5 has been deleted vide order dated 7.6.2012. Moreover, the appellant was supposed to implead the Principal as well

as the Incharge Principal of the school on that day. Since all the remaining preliminary objections needed proper explanation, therefore, the counsel for the appellant allowed to argue the case on merit and the Government Pleader would response on his turn.

6. The learned counsel for the appellant argued that the appellant has not been treated in accordance with the law. A staff meeting was held on 30.3.2011 in the school in connection with announcement of Annual Examination. It was decided that the result will be announced on 31.3.2011 and 9.00 A.M was fixed for attendance in the school vide order No. 95 dated 30.3.2011 by I/C Government Higher Secondary School Khairabad (Annexure-A) page 6 of the appeal. On 31.3.2011, Special Secretary, Government of Khyber Pakhtunkhwa, E&SE(respondent No. 4) paid a surprise visit in the school at 8.45 A.M. The appellant alongwith other staff members according to him were found absent and directive was issued to the Directress (E&SE), EDO (E&SE) Nowshera, Section Officer (Schools) E&SE that disciplinary acton under Removal from Service (Special Powers) Ordinance 2000 by issuing them show cause notices by Competent Authority be initiated. Show cause notice was issued to the appellant. The only charge levelled against the appellant in the show cause notice was that during surprise visit of the Special Secretary E&SE Department on 31.3.2011, the appellant was absent from duty wilfully and without any authorization. The appellant replied to the show cause notice and denied the charge that he was not actually absent on 31.3.2011 but rather in pursuance to the order No. 95 dated 30.3.2011 from Incharge of the school, the appellant reached the school at 8:55 AM well before the time fixed for attendance in the school on that day. The appellant was not absent at all, hence the qusion of wilful and unauthorized absence does not arise. The Competent Authority without looking into the facts and circumstances of the case, decided the case unilaterally which is quite illegal and based on malafide that:-

- (a) no charge sheet, statement of allegations issued at all,
- (b) no enquiry officer/committee was constituted,
- (c) no proper enquiry conducted hence violative of Section 5(1) of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance that the Competent Authority shall before passing an order, appoint an Inquiry Officer/Committee,
- (d) requirements of Section 5(4) of the Ordinance ibid have not been fulfilled. Niether sufficient documentary evidence has been proved nor reasons are given for dispensing with the conduction of enquiry through Inquiry Officer/Committee,

- (e) the order dated 26.10.2011 is in violation of Rule 7 of the Government of Khyber Pakhtunkhwa Rules of Business 1985, it has not been properly authenticated by the competent authority,
- (f) no personal hearing afforded as required under the principles of audi alteram partem,
- (g) violative of FR 29 and violative of Rule 4. (i)(ii) of the Khyber Pakhtunkhwa Government Servants (E&D) Rules 1973, that withholding of increments will be for certain period which have not been mentioned as provided in Section 3(1) of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000,
- (h) no judicial mind used that the Competent Authority shall first determine after such further enquiry or calling for such information and record or giving the appellant an opportunity of being heard that as to-
 - i. whether the facts have been established,
 - ii. whether facts established afford sufficient ground for taking action; and
 - iii. whether all legal options have properly been exercised.
- (i) enquiry was conducted in case of some teachers and lower staff and minor penalty imposed for the similar charge. The enquiry officer while concluding his enquiry report recommend that "in the light of evidence and documentary proof on record the undersigned reached to the conclusion that the worthy Special Secretary E&SE Department Khyber Pakhtunkhwa visited GHSS Khair Abad on 31.3.2011 i.e. result announcement day @8:45 AM and remained their only for 10 minutes while according to decision made in staff meeting, all the staff members were directed with the consultation of Principal concerned to reach the school @ 9.00 AM on 31.3.2011 and announce the jschool result @ 9:30 AM just to avoid disturbance of 10th Class students who were engaged in SSC (A) Exam: 2011 and seating arrangement was made in class rooms. The Institution has already been inspected by EDO E&SE Deptt: concerned twice and found no irregularity. The previous SSC result of the school which is 90% is the shine of the day."

The learned counsel for the appellant further stated that no reason whatsoever given while rejecting departmental appeal/representation of the appellant as Section 24-A of General Clauses Act 1897. The punishment awarded is rather harsh keeping in view the nature of charge levelled against the appellant. The appellant has been discriminated by awarding withholding of increment as the others have simply been awarded "censure". He requested that the appeal may be accepted as prayed for.

7. The learned Government Pleader argued that on 31.3.2011, during surprise visit of Special Secretary, S&SE Department to GHSS, Khairabad, the

appellant was found absent from duty without any prior permission of superiors. Proper enquiry conducted into the matter and statement of the appellant recorded but he failed to prove his innocence. He further argued that no proper order produced before the enquiry officer regarding change of time at 9.00 AM for attendance on the relevant day. He requested that the appeal may be dismissed.

8. After hearing to the arguments put forth by the parties and perusal of record, this Tribunal is of the view that the impugned order dated 24.12.2011 is in violation of law. No reasons have been given as required under Section 24-A of the General Clauses Act 1897 and that under F.R 29 as well as under Rule 4(1) (ii) of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 1973 increments can be withheld for a specific period. Similarly while imposing any penalty under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000 it is obligatory to hold proper enquiry as prescribed under Section 3(1) of the Ordinance *ibid*. If at all the requirement of conducting enquiry is to be dispensed then reasons to be given/recorded with sufficient documentary proof has to be given as has been prescribed under Section 5(4) of the Ordinance *ibid* and that as would also appear from the show cause notice, opportunity of personal hearing has not been afforded to the appellant. As argued by the counsel for the appellant and not properly defended by the learned Government Pleader, the appellant has not been treated in accordance with the law and made out a good case for indulgence of this Tribunal.

9. In view of the above, the appeal is accepted, the impugned order dated 24.12.2011 is modified to the extent that the increments withheld vide original order dated 26.10.2011 ~~are~~ restored ab-initio with all back benefits. The appellant is also entitled for the cost of litigation. File be consigned to the record.

10. This judgment will also dispose of other 5 connected appeals No. 31/2012 Ishtiaq Ahmad, No. 36/2012 Shafiqun Nabi, No. 37/2012 Zari Aman, No. 66/2012 Naseem Muhammad, and No. 72/2012 Azmat Alam in the same manner.

ANNOUNCED
12.4.2013


(FAREEDULLAH KHAN)
MEMBER


(SULTAN MAHMOOD KHATTAK)
MEMBER

27.11.2012

Counsel for the appellant and Mr. Sherafgan Khattak, AAG with Abbas Ali, S.O and Mashal Khan AD for the respondents present. Rejoinder received and placed on file. Copy handed over to the learned AAG. To come up for arguments on 12.4.2013.

MEMBER

MEMBER

12.04.2013

Counsel for the appellant and Mr. Arshad Alam, G.P with Mosam Khan, AD for the respondents present. Arguments heard and record perused. Vide our detailed judgment of to-day and placed on file, this appeal is accepted as per detailed judgment. The appellant is entitled for the cost of litigation. File be consigned to the record.

ANNOUNCED
12.4.2013.

Member

Member

FORM "A"

FORM OF ORDER SHEET

Court of.....

Case No.....of.....

Serial No. of Order or Proceedings ①	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary 3
<p>303-11</p> <p>303</p> <p>Show cause - P-9.</p> <p>Reply to P-10</p> <p>Impounded order — 11 26 Oct.</p> <p>AMM → 11-11-2011 26-10-2011</p> <p>Reported on 24-12-11</p> <p>(= 5)</p> <p>grounds 16 →</p> <p>① No absence</p> <p>② No charge sheet No St. All No enquiry</p> <p>③ Show cause → Yes No PH</p> <p>④ 24-A → No reasons given Clause Act: without any reason.</p> <p>⑤ FR 29 Rejoinder also filed</p> <p>⑥ absent from duty No charge/Statement Enquiry → Show cause.</p>	<p>11 26 Oct.</p> <p>11-11-2011 26-10-2011</p> <p>24-12-11</p> <p>16 →</p> <p>①</p> <p>②</p> <p>③</p> <p>④</p> <p>⑤</p> <p>⑥</p>	<p>Has dispense with enquiry →</p> <p>Facts enquiry</p> <p>accepted with cost.</p> <p>where as the order</p>

5

Show cause - P-9.

Reply to P-10

Impounded order — 11 26 Oct.
AMM → 11-11-2011 26-10-2011
Reported on 24-12-11
(= 5)

grounds 16 →

① No absence
② No charge sheet
No St. All
No enquiry

Has dispense with enquiry →

Facts enquiry

③ Show cause → Yes
No PH

④ 24-A → No reasons given
Clause Act: without any reason.

⑤ FR 29 Rejoinder also filed

accepted with cost.

⑥ absent from duty
No charge/Statement
Enquiry →
Show cause.
where as the order

Proof →
FR 29 legal order - Department agreed reject
24-A followed

7.6.2012.

Counsel for the appellant and Mr. Arshad Alam, AGP with Mashal Khan, Litigation Officer for respondents No. 1, 2 and 4 present and requested for time. Counsel for the appellant stated that respondent No. 5 being proforma respondents may be deleted from the list of respondents. Request is accepted and respondent No. 5 is deleted from the list of respondents. None is available on behalf of respondent No. 3 despite of proper service, hence placed ex-parte. To come up for written reply of respondents No. 1, 2 and 4 on 4.9.2012 positively.

Member

Member

4.9.2012.

Counsel for the appellant and Mr. Sherafgan Khattak with Mosam Khan, AD appeared on behalf of respondent No. 2 and requested for adjournment. Notices be issued to other respondents. To come up for written reply by way of last chance on 10.10.2012.

MEMBER

MEMBER

10.10.2012

Counsel for the petitioner and Mr. Sherafgan Khattak, AAG with Abas Ali S.O for the respondents present. Written reply of Secretary, E&SE received. Copy handed over to counsel for the appellant. The learned AAG stated that written reply submitted may be considered for all the respondents. To come up for rejoinder on 27.11.2012.

MEMBER

MEMBER

19.3.2012

Counsel for the appellant present. On the previous date of hearing, he had requested for adjournment either to correct or amend the appeal. To-day, he did not file any correction/amended appeal, but stated that he has already made a request to the Hon'ble Chairman for certain clarification regarding the order dated 20.2.2012 in the instant case. This case be put up to the Worthy Chairman for further orders.


To come up for PH on 12-4-2012.

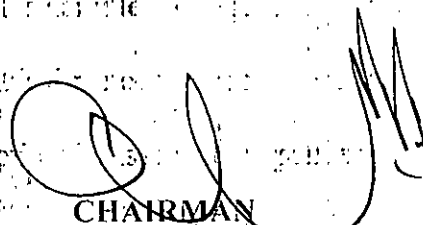
MEMBER 

12.4.12 Counsel for the appeal present and heard that the appellant has been awarded the impugned penalty of stoppage Two increments without sub filling the legal recruitments in similar cases a number of teachers have been awarded the penalty censure but in the case of appellant, the penalty of stoppage of Four increments has been imposed up on him, which is discriminately attitude. points raised need consideration. The appeal is admitted to regular hearing, Subject to all legal objections. The appellant is directed to deposit security and process fee with in Ten days. There after, notices be issued to respondent for submission of written reply on 7-6-2012

*Appellant Deposited
Process fee & Security
Rs. 1320/- Bank Receipt
attached with file.*


MEMBER

12-4-2012 This case be put-up before the final Bench  for further proceedings.



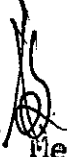

CHAIRMAN

FORM "A"

FORM OF ORDER SHEET

Court of.....

Case No. 30 of 2012

Serial No. of Order or Proceedings 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary 3
1-	11/01/2012	<p>The appeal of Mr. Muhammad Idrees presented to-day by Shahzada Irfan Lia Adv. may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	17-1-2012	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>20-2-2012</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3.	20.2.2012	<p>Counsel for the appellant present and partly heard. During the course of arguments, learned counsel for the appellant requested for adjournment in order to correct/amend the appeal due to some legal flaws. To come up for amended appeal on 19.3.2012.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 30 / of 2012

Muhammad Idrees.

... Appellant

VERSUS

Government of Khyber Pakhtunkhwa, through
Chief Secretary KPK and others... ..

... Respondents

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Muhammad Idrees

Appellant

Through:

Shahzada Irfan Zia

Dated: 10 .01.2012

(Shahzada Irfan Zia)
Advocate, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 30 / of 2012

K.P.S. Peshawar
Service Tribunal
No. 35
dated 11-01-12

*Muhammad Idrees, Subject Specialist History-cum-Civics,
Government Higher Secondary School, Khairabad,
Nowshera.*

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department Peshawar.
3. Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. Special Secretary, Elementary and Secondary Education Department, Peshawar.
5. Chief Minister Khyber Pakhtunkhwa, Peshawar...

Respondents

APPEAL UNDER SECTION 4 OF NWFP SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 26.10.2011 PASSED BY RESPONDENT NO.1 WHEREBY THE APPELLANT WAS AWARDED THE PENALTY OF STOPPAGE OF TWO INCREMENTS AND HIS DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER WAS REJECTED BY RESPONDENT NO.5 VIDE ORDER DATED 24.12.2011.

FACTS OF THE CASE

Respectfully Sheweth:

1. That the appellant is a regular member of Provincial Civil Service of Education Department holding the post of *Subject Specialist*, and his entire service career is spotless.

*EX-partle
7-6-2012*

*deleted
7-6-2012*

11/1/12

2. That on 30.3.2011 Staff Meeting was convened under the auspicious of Incharge Principal of Government Higher Secondary School (G.H.S.S) Khairabad Nowshera, in order to finalize the annual result. During the meeting it was decided that to announce the result and also celebrate Prize Distribution Function on 31st March 2011. As there is no examination hall in the school and most of the class rooms were engaged to accommodate the candidates of Secondary School Certificate (SSC) Annual Examination 2011, it was decided to change the school timings to 9.00 a.m on that respective day (31.3.2011). All the teachers were directed by the Incharge Principal to attend the school at 9.00 a.m on 31.3.2011. (Annex: A).
3. That on 31.3.2011 the Special Secretary E&SE (respondent No.4) paid surprise visit to educational Institutions at District Nowshera. He also visited G.H.S.S Khairabad at 8.45 a.m and remained there only for 10minutes. Unfortunately the respondent No.4 found the appellant and other staff absent from duty and suggested disciplinary action against them, despite of the fact that the appellant and other staff was not absent and they attended the school at 9.00 a.m as directed by Incharge Principal G.H.S.S Khairabad on 30.3.2011. (Annex: B).
4. That a Show Cause Notice was issued/served upon the appellant wherein the allegation of absence from duty on 31.3.2011 was alleged against the appellant. The appellant submitted his reply to the show cause notice and explained the real facts and vindicated his plea and position. (Annex: C&D).
5. That the reply of the appellant to the Show Cause Notice was well founded, reasonable and based on real facts, but the same was not considered and respondent No.1 passed the impugned order dated 26.10.2011 in arbitrary manner and imposed the penalty of "Stoppage of Two Increments" upon the appellant. (Annex: E).
6. That feeling aggrieved from the impugned order dated 26.10.2011, the appellant filed his departmental appeal and again explained the factual

position in detail but to his utter dismay that his departmental appeal was rejected by respondent No.5 without any cogent reasons (Annex: F&G), hence the present appeal is being filed inter alia on the following grounds:-

GROUND:

- a. That the impugned order dated 26.10.2011 is illegal, void and unjustified because the appellant was not absent on 31.3.2011 and he alongwith other staff attended the school at 9.00 a.m as directed by his Incharge Principal and performed his statutory duties as usual on that day.
- b. That in the similar cases Mr. Noor Hassan Marwat Principal G.H.S.S Kheshgi Payan Nowshera was appointed as Inquiry Officer and in his Inquiry Report he highlighted the true picture of the case and reached to the conclusion that the staff was present in the school and attended the school at 9.00 a.m on 31.3.2011. He also pointed out that the Institution has already been inspected by EDO, E&SE Department Nowshera twice and found no irregularity. The Inquiry Officer, therefore, suggested that E.D.O Nowshera has already imposed penalties of "Censure" upon these teachers/officials, therefore, the enquiry is required to be filed. It is worth to mention that in similar cases penalty of censure was imposed upon number of Teachers/Officials but in the case of the appellant penalty of "Stoppage of two Increments" was imposed which is a discriminatory attitude and against the Constitutional protections. (Annex: H&I).
- c. That no chance of personal hearing was afforded to the appellant at any stage and the impugned order dated 26.10.2011 was passed without hearing the appellant and his departmental appeal was rejected by respondent No.5 without giving him an opportunity of hearing, hence he was condemned unheard.

d. That as per Section 24-A of General Clauses Act 1957 the Authority is bound to give reasons before passing any order. The Appellate Authority (respondent No.5) rejected the departmental appeal of the appellant in a haphazard manner, without giving reasons and without considering the factual position of the case. Thus action of the Appellate Authority is against the law and dictum laid down by the Honourable Supreme Court of Pakistan in the judgments reported as listed below:-

- i). PLJ 1999 Supreme Court – 1105.
- ii). 1998 SCMR - 2268.
- iii). 1998 SCMR – 2419.
- iv). 1999 SCJ – 254.

e. That the respondents adopted the Summary Procedure and passed the impugned order after issuing a Show Cause Notice without conducting regular inquiry. There is no cavil to the proposition that summary procedure would be followed in a case in which no factual controversy was involved or facts were admitted, otherwise dispensation with regular inquiry would amount to deprive Civil Servant from right of defence. Reliance can be placed on the Judgment reported as 2006 SCMR Page 846.

f. That on 30.3.2011 staff meeting was convened and the Incharge Principal during the meeting directed all the staff to attend the school at 9.00 a.m on 31.3.2011 in order to announce the result and also celebrate Prize Distribution Function. Most of the class rooms were engaged to accommodate the candidates of SSC (A) Examination 2011. To avoid disturbance the school timing was changed to 9.00 a.m on that respective day., Appellant alongwith all other staff attended the school at 9.00 a.m as directed by the Incharge Principal, therefore, the allegation absence from duty on 31.3.2011 is absolutely

incorrect and based on some misunderstanding. It is worth mentioning that the appellant always earned commendation from his superior officers and his performance was appreciated by his officers. (Annex: J).

- g. That the appellant seeks permission to raise more legal points at the time of arguments.

In view of the aforesaid facts and circumstances of the case, it is humbly prayed that the impugned order dated 26.10.2011, passed by respondent No.1 and Final Order dated 24.12.2011 passed by respondent No.5 may graciously be set aside being illegal and void, directing the respondents to restore the increments of the appellant with all back benefits.

Any other relief though not specifically asked for to which the appellant is found entitled in the circumstances of the case may also be granted to the appellant.

Muhammad Idrees

Appellant

Through:

Dated: .01.2012

(Shahzada Irfan Zia)

(Shahzada Irfan Zia)
Advocate, Peshawar.

CERTIFICATE:

Certified that as per instructions of my client, no such Service Appeal on behalf of the appellant has earlier been filed in this Honourable Tribunal.

Advocate.

(Shahzada Irfan Zia)

تذکرہ اساتذہ کرام

95

Date 130/3/11

پرنسپل جناب ریاض لہر صاحب کی ہدایت سے مطابق آج بروز 30/3/2011 کو بروز صبح

کے جلسے نماز کی دستبرد منظور ہوئی۔ یہ جلسے پانچ بجے تک الٹا لٹا کر 3/3 کو جمعہ (9.30) سے

بچوں کے تعلیمی سال کا نتیجہ سنایا جائے گا۔ لہذا تمام اساتذہ کرام سے گزارش ہے کہ اس وقت اپنی کاروں

سے برائے پانچ بجے گرامر میں بیٹھے رہنا ہوں گے۔ کیونکہ سکول صبح 7 بجے اور 9 بجے کے

ساتھ ہی بند ہو جائے گا۔ اس لئے اس وقت تک یہاں پہنچنا چاہیے۔ لہذا آپ سب سے

التماس ہے کہ جمعہ 9 بجے اس وقت تک یہاں بیٹھے رہیں۔ بچوں کو سکولوں میں دس بجے پہنچانے

کو 9.30 بجے پہنچانے کو کہہ دیں۔ ساتھ ہی یہ بتائیں کہ 4/4 تک موسم بھاری کی وجہ سے

سکول بند اور باقاعدہ سکول 8/4 کو معمول کے مطابق جمعہ 7.30 بجے بند ہے۔ لہذا ہر نظام دار کو درستی

یا باقاعدہ ہر نظام دار سے اس وقت کو کہہ دیں۔ کہ اس وقت تک یہاں سے اور کاپیاں خود خرید کر تیار

سکول آنے کو کہہ دیں۔ کتابوں کا شیڈول عبدالغفار صاحب سے لیں گے۔

شکر ہے

انچارج سکول حجاز

30/4/11

Johar Ali C.T

8) Zahir Ali C.T

Mohammad Asid C.T

9) Tehseenullah A.T.

Saeed-ud-din S.E.T

10) Taskeenullah Shah P.E.T

Mohammed Rasim C.T

11) Sabir Rehman T.T.

Abdul Wahab C.T on duty SSC

12) Aminul Haq (Qari)

7) Arif Khattak C.T

13) Waqar Ahmed (L.A.)

Abdul Ghafar C.T on duty SSC

14) Reham Zeb (L.A.)

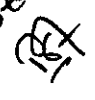
P.T.O.

attested

Azmat Akbar
SS English

- (18) Shamul Bajeen s/c, urdu
- (16) Asghar Siddiqui (D.M.)
- (17) Ishtiaq Ahmad S.S
- (18) Toj wari Lab. Assst. Jafar Ali
- (19) Saifullah Khan Lab. Assst. S.F
- (20) Shehryar Nabi S.S
- (21) Nasir Muhammad S.S
- (22) Zari Anwar S.S
- (23) Faraz Mehsod CI
- (24) Muhammad Idrees SS History-cum-civics


 J. Ceer
 30/03/2011

attested




GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
BLOCK "A" CIVIL SECRETARIAT PESHAWAR

Annex. B

7

IMMEDIATE

SUBJECT: SURPRISE VISIT OF THE SPECIAL SECRETARY ELEMENTARY AND SECONDARY EDUCATION TO EDUCATIONAL INSTITUTIONS.

Special Secretary paid surprise visit to the following educational institutions on 31.03.2011 at District Nowshera. Observations along with requisite action to be taken is also noted against each institution:-

SNo.	Name of Institution	Deficiencies/Observations	Required action	Action by
1.	Government Higher secondary School Khairabad at 8.45 AM.	Following teachers were found absent. 1. Saeed-ud-Din SET (Science) 2. Johar Ali CT 3. Zakir Ali CT 4. Mohammad Abid CT. 5. Fazal Mehbood CT 6. Tehseenullah AT. 7. Mohammad Azghar DM. 8. Saifullah Lab Assistant. 9. Hidayatullah J/C 10. Rahim zeb Lab Asslt. 11. Shafiq un Nabi SS Biology 12. Ishtiaq Ahmed SS Chemistry 13. Mohammad Naseem SS Physics. 14. Zari Aman SS economics 15. Mohammad Idrees SS History-cum-Civics. 16. Azmat Alam SS English.	Disciplinary action under Removal from Service (Special Powers) Ordinance 2000 by issuing them show cause Notices by Competent Authority be initiated.	1. Directress E&SE 2. EDO (E&SE) Nowshera 3. Section Officer (Schools/M) (E&SE)

Disciplinary action under Ordinance 2000 against above teachers

attested

2.	Govt Girls Higher Secondary school District Khairabad at 09.00 AM.	Following female teachers were found absent. 1. Zebi shonaz SET(General) ✓ 2. Akhtar Naheed SS Chemistry ✓ 3. Arifa Salim DPE ✓ 4. Naila Gul SS Pak studies ✓ 5. Musarat SS Islamiat ✓ 6. Nusrat SS Mall ✓ 7. Sobia Bano SS English ✓ 8. Uzra Jamil Khan SS Biology ✓ 9. Mehreen Javed SS History-cum-Civic	Disciplinary action under Removal from Service (Special Powers) Ordinance 2000 by issuing them show cause Notices by Competent Authority be initiated.	1. Directress E&SE 2. EDO (E&SE) <i>Nowshera</i> 3. Section Officer (Schools/F) E&SED
3.	Govt Primary School for boys Kund. at 08.20 AM.	All teachers were found absent except Mohammad Saeed PTC.	Disciplinary action under Removal from Service (Special Powers) Ordinance 2000 by issuing them show cause Notices by Competent Authority be initiated.	1. Directress E&SE 2. EDO (E&SE) Nowshera.

Muhammad Fareed Qureshi
 (MUHAMMAD FAREED QURESHI)
 Special Secretary

No.PS/SS/E&SED/1-1/Inspection/2011 dated April 01, 2011

Copy to:-

1. Directress (E&SED).
2. Executive District Officer (E&SED) Nowshera
3. Section Officer (Schools/M) (E&SED)
4. Section Officer (Schools/F) (E&SED)
5. PS to Minister (E&SED).
6. PS to Secretary (E&SED).

attested
IF

Muhammad Fareed Qureshi
 (MUHAMMAD FAREED QURESHI)
 Special Secretary

Registered

Annex C

9

SHOW CAUSE NOTICE

I, Ghulam Dastgir Akhtar, Chief Secretary, Khyber Pakhtunkhwa the Competent Authority under the NWFP Removal from Service (Special Powers) Ordinance 2000, do hereby serve upon you Mr. Mohammad Idrees, Subject Specialist History-cum-Civics (BS-17) GHSS Khairabad District Nowshera as follows:

i) During surprise visit of the Special Secretary E&SE Department on 31/03/2011 you were absent from duty willfully and without any authorization.

2. I am satisfied that you have committed the following acts/omissions specified in Section-3 of the said ordinance:-

3 (1) (a):- inefficient being guilty of habitually absenting himself from duty without prior approval of leave.

3. As a result thereof, I, as Competent Authority have tentatively decided to impose upon you the penalty of Stoppage of pay increment under Section -3 of the said ordinance.

4. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven days of its delivery, it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

(GHULAM DASTGIR AKHTAR)
CHIEF SECRETARY KHYBER PAKHTUNKHWA
COMPETENT AUTHORITY

REGISTERED

PESHAWAR SECRETARIAT
PESHAWAR

Mr. Mohammad Idrees, Subject Specialist History-cum-Civics (BS-17),
GHSS Khairabad District Nowshera.



attested
B.F.

1447

(Annex: D)

10

OFFICE OF THE PRINCIPAL,
GHSS KHAIRABAD,
DISTRICT NOWSHERA.

No: 4279 Dated: 21/05/2011

To,

The Chief Secretary,
Government of KPK,
Peshawar.

Subject: REPLY TO SHOW CAUSE NOTICE.

Memo: Ref: your Endst No: nil Dated: nil received on: 20/05/2011

Sir,

My submissions are as under:

That the undersigned was not actually absent on 31st March, 2011, because the staff meeting was convened by the incharge Principal on 30th March, 2011 in order to finalize the annual result. During the meeting it was decided to announce the result and also celebrate prize distribution function which is in vogue in this school.

As there is no examination hall in the school and most of classrooms were engaged to accommodate the candidates of SSC (A) examination 2011. To avoid disturbance, it was decided to change the school timings to 9:00 am on that respective day.

So all the teachers attended the school accordingly as decided.

Sir, the EDO (E & S E) Nowshera paid surprise visits Dated: 09 /04/2011 and 26/04/2011.

He pen pictured the satisfactory atmosphere and the record of his remarks & observation is attached with the reply. It speaks itself about my devotion & dedication for the job & institution.

Moreover my sincerity towards my school & job can better be adjudged from our Board's results. More over the remarks of the principal of the school also commend my honest & Zealous efforts and his remarks are attached with the reply.

But the unhealthy picture that presented itself on that day was not based on ill will; the remarks of the principal are enough to prove my dedications & punctuality.

Therefore, my explanation may please be considered.

Sincerely yours

Muhammad Idrees

Muhammad Idrees
21/05/2011

SS History-Cum-Civics

GHSS Khairabad, Nowshera.

attested
107

REGISTERED

(Annex: E)

11



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar the October 26, 2011

NOTIFICATION

NO.SO(S/M)E&SED/4-17/2011/Surprise visits(M. Idrees): WHEREAS Mr. Mohammad Idrees, Subject Specialist History cum-Civics (BS-17) GHSS Khairabad District Nowshera proceeded against under the NWFP Removal from Service (Special Powers) Ordinance, 2000 on account of his willful and unauthorized absence from duty on 31-03-2011 during the surprise visit of Special Secretary, Elementary & Secondary Education Department on 31-03-2011.

2. AND WHEREAS a show cause notice was served upon the accused officer on 19-05-2011.

3. AND WHEREAS the Competent Authority (Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges and evidence on record, explanation of the accused officer in response to the Show Cause Notice, is of the view that the charges against the accused officer have been proved.

4. NOW, THEREFORE, in exercise of the powers conferred under section-3 of NWFP, Removal from Service (Special Powers) Ordinance, 2000, the Competent Authority (Chief Secretary, Khyber Pakhtunkhwa) is pleased to impose minor penalty of "Stoppage of two increments" upon Mr. Mohammad Idrees, Subject Specialist History cum-Civics (BS-17) GHSS Khairabad District Nowshera.

SECRETARY

Endst: of Even No. & Date:

Copy forwarded to the: -

- 1- Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2- Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3- Executive District Officer E&SE Nowshera.
- 4- District Accounts Officer, Nowshera.
- 5- PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 6- PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
- 7- Mr. Mohammad Idrees, Subject Specialist History cum-Civics (BS-17) GHSS Khairabad Nowshera.
- 8- Office order file.

attested
187

(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

To:

The Honourable Chief Minister,
Khyber Pakhtunkhwa.

Subject: RECEIVED ON OCTOBER 31, 2011 APPEAL FOR THE IMPUGNED ORDER NO. SO (S/M) E&SED/4-17/2011/SURPRISE VISITS(M.IDREES) DATED OCTOBER 26,2011 IMPOSING THE PENALTY OF STOPPAGE OF TWO CONSECUTIVE INCREMENTS IMPOSED ON ACCOUNT OF ALLEGED ABSENCE OF DUTY ON MARCH 31, 2011 AT 0845 PST

Brief history and nature of the case

The appellant is serving as Subject Specialist History-cum -Civics BPS-17 at GHSS Khairabad, District Nowshera; he was proceeded against under the NWFP Removal from Service (Special Powers) Ordinance 2000 on the allegation of absence from duty on March 31, 2011. During the surprise visit of Special Secretary (E&SE) Department and consequently minor penalty of stoppage of two increments consecutively was imposed upon him by the Chief Secretary Khyber Pakhtunkhwa.

That the impugned penalty is ab-initio unjust on the following legal reasons:

- That on March 30, 2011, the Principal of this institution Mr. Riaz Ahmed Haqqani, who was assigned duties in the SSC Annual Examination 2011 and was not present in the school at the time of surprise visit of the Special Secretary (E&SE) Department whereas Mr Ahmed Din was deputed to be as in charge for a specific period till completion of SSC Annual Examination 2011. It is pertinent to mention here that according to the directions of the Principal, the in charge of the institution decided that on March 31, 2011 which was the day of result declaration of the whole school and directed all the staff to attend the school on 0900 PST (the timing was changed due to hue and cry of the students on this momentous occasion. Furthermore the High and Higher Secondary blocks were both in same portion where the SSC Annual Examination 2011 was also being held).

(Photocopy of the Order number 95 Dated March 30, 2011 is attached as Annexure B)

- That the Special Secretary (E&SE) Department Government of Khyber Pakhtunkhwa paid a short visit on 0845PST on March 31, 2011, spent only five minutes, recorded the absence of the concerned staff members and left the school at 0850 PST on the same day. It is worthy to note that the Honourable Special Secretary without inquiry recorded the staff members as absent and went back. So the act of the Special Secretary (E&SE) is against the rules of

Attested
187

Inspection remarks. Secondly, the EDO E&SE Deptt: Nowshera again visited GHSS Khair Abad Nowshera on 26-04-2011 and reported the whole position of the school as satisfactorily(Copy enclosed as Annex).

The General result of the school during SSC (A) Exam:2010 was declared 90 % which is also appreciable and shows the best performance of teaching staff and Administration of local institution (copy enclosed as Annex).

The EDO E&SE Deptt: Nowshera has already served minor penalties of censure upon these teachers/Officials vide EDO E&SE Deptt: Nowshera letter No _____, dated _____ and the case has been finalized.

Conclusion.

In the light of evidence and documentary proof on record the undersigned reached to the conclusion that the worthy Special Secretary E&SE Deptt: Khyber Pakhtunkhwa visited GHSS Khair Abad on 31-03-2011 i.e result announcement day @ 8.45 AM and remained their only for 10 minutes while according to decision made in staff meeting, all the staff members were directed with the consultation of Principal concerned to reach the school @ 9.00 AM on 31-03-2011 and announce the school result @ 9.30 AM just to avoid disturbance of 10th class students who were engaged in SSC(A) Exam:2011 and seating arrangement was made in class rooms. The Institution has already been inspected by EDO E&SE Deptt: concerned twice and found no irregularity. The previous SSC result of the school which is 90 % is the shine of the day.

Recommendation.

The EDO E&SE Deptt: Nowshera has already imposed minor penalties of Censure upon these teachers/Officials. It is therefore suggested that the enquiry may please be filed.

(MR. NOOR KASSAN KHAN)
Principal/Enquiry Officer.
GHSS Kheshgi-Payal Nowshera

attested
ST

(Annex I)

18

OFFICE OF THE EXECUTIVE DISTRICT OFFICER
ELEMENTARY AND SECONDARY EDU; NOWSHERA

No. 1802 / Dated 10-6 / 2011

To

Mr. Johar Ali CT GHSS, Khairabad
Mr. Zakir Ali CT -do-
Mr. Muhammad Abid CT -do-
Mr. Fazli Mabood CT -do-
Mr. Tahseenullah AT -do-
Mr. Muhammad Asghar DM -do-

Subject: - Penalty of Censure.

Memo:

Whereas you were absent from your duty during surprise visit of Special Secretary E/S Education Khyber Pakhtunkhwa Peshawar on 31-03-2011.

And whereas a show cause notice were served upon you under special powers ordinance 2000 amended in 2002. And your replies were received in these offices which were not satisfactory.

Now therefore, I Mr. Muhammad Uzair Ali EDO E/SE Nowshera being competent authority hereby impose upon you the minor penalty of censure, With strict warning to remain very careful in future otherwise very harsh action would be taken under the relevant laws.

[Signature] 10/6/11

(MUHAMMAD UZAIR ALI)
EXECUTIVE DISTRICT OFFICER
E/S EDUCATION NOWSHERA

Endst. No. _____ / Dated _____ / 2011

Copy forwarded for information and n/action to the:-

1. Special Secretary E/S Education Khyber Pakhtunkhwa Peshawar
2. PS-TO sectary elementary and secondary Edu:Peshawar
3. Directress (E&SE) PESAWAR
4. DCO NOWSHERA
5. Principal GHSS, Khairabad Nowshera for similar action.
6. Official concerned

EXECUTIVE DISTRICT OFFICER
E/S EDUCATION NOWSHERA

attested
[Signature]

(Annex: 5)
20

From

The Office of the Principal,
GHSS khairabad ,
District Nowshera.

Subject: REMARKS IN RESPECT OF SCHOOL STAFF.

Respected Sir,

With humble submission this is requested in your honour that the reply of Muhammad Idrees, SS History-Cum-Civics is based on facts. I appreciate his efforts in the curricular and co-curricular activities in the school. His joint efforts and interest made the school grow towards uplift.



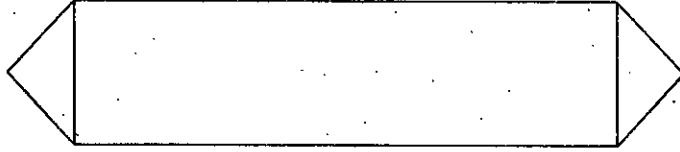
PRINCIPAL

GHSS Khairabad.

attested
18/7

Before the K.P.K Service Tribunal, Pesh.

بعدالت



Muhammad Idrees
Govt of K.P.K etc

10 - 01 - 12

Muhammad Idrees

Service Appeal

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام Peshawar کیلئے Shahzada Inzam Zia Adv

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی 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 باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ 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 لکھ دیا کہ سندر ہے۔

Accepted
Inzam

Muhammad Idrees

المرقوم 10th Jan 2012

الع د گ الع

مقام Peshawar کے لئے منظور ہے۔

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To: **The Learned Chairman
Khyber Pakhtunkhwa Service Tribunal.
Peshawar**

Respected Sir,

A necessity has arisen to invite your kind attention to a disputed legal question which needs to be resolved by your goodself.

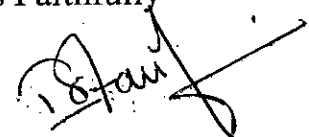
On 20.2.2012, I appeared before the learned Member Mr. Sultan Mehmood Khattak in Appeal No. 30/2012 titled; "Muhammad Idrees Versus Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa etc" and 5 other connected cases, for purpose of preliminary hearing. The learned Member applying Section 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 and insisted that the phrase "Impugned Order dated 26.10.2011 passed by respondent No.1 and final Order dated 24.12.2011 passed by respondent No.5 may graciously be set aside", is not relevant. His contention was either original or final order both cannot be challenged before the Tribunal as and when the final rejection order is in the field.

This contention is erroneous and both the orders are required to be challenged and set aside. Despite my best efforts the learned Member did not agree by my contention and insisted for amendment of the appeal by deleting the original impugned order dated 26.10.2011.

It is worth mentioning in case the contention of the learned Member is accepted, on decision of the case the departmental authorities will not be bound to accept the decision as the original impugned order will remain in the field, and as such it will give a cause to the new chapter of prolong litigation, which will adversely affect the career of appellants.

Accordingly I seek your intervention in the matter to apply your wisdom in the interest of justice and the appellants who are at the helm of affairs at the moment.

Your's Faithfully



(Shahzada Irfan Zia)
Advocate, Peshawar.

Dated: 22.02.2012

*Dismissed with - the
learned member. The
cases be placed before
the other learned member
presiding over the primary bench*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 30/2012.

Muhammad Idress SS District Nowshera..... **Appellant**

VERSUS

Secretary Elementary & Secondary Education Peshawar & others..... **Respondents**

Written reply/ Para wise comments for & on behalf of Respondents.

**Respectfully Sheweth,
Preliminary Objections:-**

- X 1. The appellant has no cause of action/ locus standi.
- X 2. The instant appeal is badly time barred.
- X 3. The appellant has concealed the material facts from this Hon 'able Tribunal, hence liable to be dismissed.
- X 4. The appellant has not come to this Hon 'able court with clean hands.
- X 5. The appellant has filed the instant appeal just to pressurize the Respondents.
- ✓ X 6. The present appeal is liable to be dismissed for non joinder / misjoinder of necessary parties.
- X 7. The appellant has filed the instant appeal on malafide motives.
- X 8. The instant appeal is against the prevailing law and rules.
- X 9. The appellant is estopped by his own conduct to file the instant appeal.
- X 10. The instant appeal is not maintainable in the present form and also in the present circumstances of the issue.
- X 11. That the instant appeal does not fall within the ambit of Section -4 of Service Tribunal Act, 1974.

FACTS.

1. This para pertains to the service record of the appellant, while the claim of the appellant that his entire service career is spotless is incorrect.
2. Incorrect and not admitted. The fiction story as stated/narrated in this para is concocted/ manufactured after the surprise visit of Special Secretary E&SE Department to GHSS Khairabad. It is pertinent to mention here that why the Annexure-A of the appeal or school log-book was not brought to the notice of ~~worthy~~ Special Secretary at the time of visit or at the spot. Hence the whole para is denied. Moreover, it is also pertinent to mention here that there are two different dates i.e. 30-03-2011 on the top right corner and 30-04-2011 below the signature of incharge of the school, which prove the Annexure-A of the appeal is dubious, fake and after through and there is no mention of time change to 9:00 AM on that respective day i.e 31-03-2011. Hence denied.
3. Correct to the extent that during surprise visit of the Special Secretary E&SE Department on 31-03-2011 the appellant was absent from duty willfully and without any authorization and proved inefficient being guilty of habitually absenting himself from duty without prior approval. Moreover, there were no

direction of the I/C Principal for the school staff to come to school on 9:00 AM. Hence this part of the para is baseless, falls, against the facts and manufactured one.

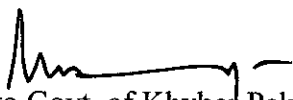
4. Correct to extent that a show cause notice was issued/ served upon the appellant according to rules wherein the allegation of willfull absence from duty on 31-03-2011 was alleged against the appellant. While the reply/ explanation of appellant was not satisfactory having any valid ground / justification.
5. Incorrect. The reply/ explanation to the show cause notice was founded on concocted fiction, against the facts and record, hence the appellant was imposed the penalty of stoppage of 2 increment in accordance with law, rules, policy and norm of justice.
6. The appeal of the appellant is rejected by the competent authority having no valid ground/ justification. Hence the present appeal is liable to be dismissed inter alia on the following grounds:-

ON GROUNDS.

- A. Incorrect and not admitted. The order dated 26-10-2011 is legal, lawful and justified. The appellant was willfully absent from his duty. There was no direction by the incharge Principal to come late to school on 31-03-2011.
- B. The mention^{ed} enquiry report divulges that the appellant was habitually absenting himself from duty. The minor penalty of censure has already been imposed on the appellant by the Director (E&SE) Khyber Pakhtunkhwa Peshawar, while the appellant has not change^d the habit of absentee.
- C. Incorrect and denied. Show cause notice was issued to the appellant and opportunity of hearing was given to appellant hence the present appeal is based on malafide motives.
- D. This para pertains to court record, hence no comments.
- E. It is pertinent to mention here that the appellant was found absent during the surprise visit of the Special Secretary E&SE Department, alongwith other teachers. Hence the show cause notice is in accordance with law and rules.
- F. Incorrect and not admitted. The statement of the appellant in this para is concocted fiction, baseless against the facts. There is no word of change of time in the Annexure-A of the appeal, neither the same proceedings of the meeting was presented before the Special Secretary E&SE Department during the visit of said school. Moreover, the Annexure-A having two different dates is not reliable and fake one. Hence the allegation of absence against the appellant from duty on 31-03-2011 is absolutely correct and based on facts. Hence denied.

G. The respondent seeks permission of this Honourable Tribunal to adduce more grounds, proofs and legal points at the time of arguments.

In view of the above made submissions, it is requested that Honourable Court may very graciously be pleased to dismiss the present appeal with cost in favour of the Respondents.


Secretary to Govt. of Khyber Pakhtunkhwa
Elementary & Secondary Education Department.

Appeal NO. 30 /2012.

Muhammad Idrees Versus... Province of KPK etc.

REJOINDER OF THE APPELLANT.

Respectfully Sheweth:-

REPLY OF OBJECTIONS.

1. The appellant has legal cause of action and valid locus standi.
2. The appeal is within time.
- 3-4. The appellant appeared before the Court with clean hands and he has not concealed any material facts from the Court.
5. The Objection is futile and untenable.
6. All the parties are properly been impleaded, hence objection is untenable.
- 7-8. The appellant has filed this appeal with bonafide claim which is according to law and rules.
9. As replied in reply of Objection NO.3 & 4 above.
10. The appeal of the appellant is maintainable.
11. The Objection is baseless, futile, hence untenable.

ON FACTS.

Para-1 incorrect. The appellant has unblemished service record.

Para-II Incorrect. The averment of the appeal is correct. The facts provided in this Para also confirmed from the findings of the report of I.O. Mr. Noor Hassan Marwat, thus the statement of respondents is mis-leading and based on malafid the question of dates is immaterial, being a clerical mistake.

Para-III. Incorrect. The appellant & other staff was not absent and they attended the School at 9 A.M. as directed by Incharge Principal, GHSS Khairabad on 30.3.11

Para-IV. Incorrect. The reply of the Show Cause Notice submitted by appellant was well founded & reasonable but went un-heeded.

Para-V. Incorrect. As replied in reply of Pra NO. IV above.

Para NO. VI. Incorrect. The Departmental appeal of the appellant was not considered by the authorities and rejected the same without reasons.

GROUND'S.

A to G. The reply offered by the respondents to the grounds of appeal are irrelevant and not correct. The grounds were not attended by respondents properly and their replies are baseless, irrelevant, incorrect and not according to law. The penalty of censure was imposed upon some other teachers and not on appellant, neither any chance of personal hearing was afforded to the appellant nor proper chance of defence was given to the appellant. The impugned order is illegal and void.

It is, therefore, humbly requested that relief may kindly be granted as prayed for in the appeal.

Dated 27.11.2012.

Affidavit.

I, the appellant do hereby declare on Oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.

27 NOV 2012

ATTESTED



M. Idrees
Appellant.
[Signature]
Through:- Shahzada Irfan, Zia
Advocate, Peshawar.

M. Idrees
Deponent.

Appeal NO.

30 /2012.

MUhammad Idrees Versus... Province of KPK etc.

REJOINDER OF THE APPELLANT.

Respectfully Sheweth:-

REPLY OF OBJECTIONS.

1. The appellant has legal cause of action and valid locus standi.
2. The appeal is within time.
- 3-4. The appellant appeared before the Court with clean hands and he has not concealed any material facts from the Court.
5. The Objection is futile and untenable.
6. All the parties are properly been impleaded, hence objection is untenable.
- 7-8. The appellant has filed this appeal with bonafide claim which is according to law and rules.
9. As replied in reply of Objection NO.3 & 4 above.
10. The appeal of the appellant is maintainable.
11. The Objection is baseless, futile, hence untenable.

ON FACTS.

Para-1 incorrect. The appellant has unblemished service record.

Para-II Incorrect. The averment of the appeal is correct. The facts provided in this Para also confirmed from the findings of the report of I.O. Mr. Noor Hassan Marwat, thus the statement of respondents is mis-leading and based on mala fide the question of dates is immaterial.

Para-III. Incorrect. The appellant & other staff was not absent and they attended the School at 9 A.M. as directed by Incharge Principal, GHSS Khairabad on 30.3.11

Para-IV. Incorrect. The reply of the Show Cause Notice submitted by appellant was well founded & reasonable but went un-heeded.

Para-V. Incorrect. As replied in reply of Pra NO. IV above.

Para NO. VI. Incorrect. The Departmental appeal of the appellant was not considered by the authorities and rejected the same without reasons.

GROUND'S.

A to G. The reply offered by the respondents to the grounds of appeal are irrelevant and not correct. The grounds were not attended by respondents properly and their replies are baseless, irrelevant, incorrect and not according to law. The penalty of censure was imposed upon some other teachers and not on appellant, neither any chance of personal hearing was afforded to the appellant nor proper chance of defence was given to the appellant. The impugned order is illegal and void.

It is, therefore, humbly requested that relief may kindly be granted as prayed for in the appeal.

Appellant.

Through:- Shahzada Irfan, Zia
Advocate, Peshawar.

Dated 27.11.2012.

Affidavit.

I, the appellant do hereby declare on Oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.

Deponent.