

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 in connected appeal No. 30/2012, titled "Muhammad Idrees Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar etc.", this appeal is also 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

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 and requested for further time. To come up for written reply positively on 27.11.2012.

MEMBER

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. Written reply of respondent No. 2 received and placed on file. Representatives of the respondents stated that Other respondents relied on the written reply of respondent No. 2. Copy handed over to counsel for the appellant. To come up for arguments on 12.4.2013. Rejoinder, if any, in the meantime.

MEMBER

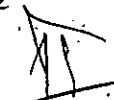
MEMBER

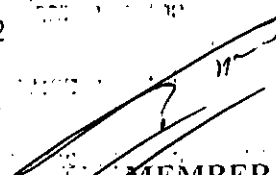

19.3.2012

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 P.H. on 2-4-2012.
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

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


MEMBER

CHAIRMAN

FORM "A"

FORM OF ORDER SHEET

Court of.....

Case No. 37 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-	12/01/2012	<p>The appeal of <u>Mr. Zari Aman</u> presented to-day by <u>Shahsada Irfan Lia Adv;</u> may be entered in the Institution Register and put up to the <u>Worthy Chairman</u> for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2-	<u>21-1-2012</u>	<p>This appeal is entrusted to <u>Primary Bench</u> for preliminary hearing to be put up there on <u>20-2-2012</u>.</p> <p style="text-align: right;"><i>[Signature]</i> 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;"><i>[Signature]</i> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No.

37 / of 2012

Zari Aman

Appellant

VERSUS

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

... Respondents

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Zari Aman

Appellant

Through:

(Signature)

Dated: 10 .01.2012

(Shahzada Irfan Zia)
Advocate, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 37 / of 2012

Zari Aman, Subject Specialist Economics,
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.

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 on30.3.2011. (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:-

GROUNDINGS:

- 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.

Zari Aman

Appellant

Through:

Dated: 10.01.2012

(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)*

تہلی اساتذہ کرام

95

Date: 30/3/2011

میں نے اپنے تمام اساتذہ کرام سے دعا کی ہے کہ ان کی بہادری سے وطن کو آج کی طرح برقرار رکھا جائے۔
 میں نے اپنے تمام اساتذہ کرام سے دعا کی ہے کہ ان کی بہادری سے وطن کو آج کی طرح برقرار رکھا جائے۔
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شکریہ

ایم ایچ سیکرٹری

30/4/11

D Jinnah Ali C.T

8) Zameer Ali C.T

Mohammad Asid C.T

9) Tehseenullah A.T

Saeed-ud-din SET

10) Taskeenullah Shah P.E.T

Mohammad Rabbia C.T

11) Sabir Rehman T.T

Abdul Wahab C.T on duty SSC

12) Aminul Haq (Bari)

Arif Khattak C.T

13) Waqar Ahmed (L.A)

Abdul Ghafar C.T on duty SSC

14) Reham Zub (L.A)

Azmat Ali
SS English

P.T.O.

attested
ST



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

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. Mohammed 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)

Handwritten notes:
1. Saeed-ud-Din under
2. Johar Ali under
3. Zakir Ali under
4. Mohammad Abid under
5. Fazal Mehbood under
6. Tehseenullah under
7. Mohammad Azghar under
8. Saifullah Lab Assistant under
9. Hidayatullah under
10. Rahim zeb under
11. Shafiq un Nabi under
12. Ishtiaq Ahmed under
13. Mohammad Naseem under
14. Zari Aman under
15. Mohammed Idrees under
16. Azmat Alam under

Handwritten signature:
Attested
[Signature]

2.	Govt Girls Higher Secondary school District Khairabad at 09.00 AM.	Following female teachers were found absent. 1. Zebrishahaz SET (General) ✓ 2. Akhtar Naheed SS Chemistry ✓ 3. Arifa Salim DPE ✓ 4. Naila Gul SS Pak studies ✓ 5. Musarat SS Islamiyat ✓ 6. Nusrat SS Math ✓ 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) <i>Nowshera</i>

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).

dested
RF

Muhammad Fareed Qureshi
 (MUHAMMAD FAREED QURESHI)
 Special Secretary

Registered

(Annex C)

9

SHOW CAUSE NOTICE

1. 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. Zari Aman, Subject Specialist Economics (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 two increments~~ 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.

G. Akhtar

(GHULAM DASTGIR AKHTAR)
CHIEF SECRETARY KHYBER PAKHTUNKHWA
COMPETENT AUTHORITY

REGISTERED

Mr. Zari Aman, Subject Specialist Economics (BS-17),
GHSS Khairabad District Nowshera.

attested
BA

O.P.S.S

14/3/11

RECEIVED
14/3/11

RECEIVED
14/3/11

REGISTERED/ AD



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

No. SO (S/M) E&SED/4-17/2011/Surprise Visit of SS
Dated Peshawar the May 19, 2011

To

Mr. Zari Aman.
Subject: Specialist Economics (BS-17).
GHSS Khairabad, District Nowshera.


Subject: - SHOW CAUSE NOTICE

I am directed to refer to the subject noted above and to enclose herewith a copy of the Show Cause Notice wherein the Competent Authority (Chief Secretary Khyber Pakhtunkhwa) has tentatively decided to impose the Minor Penalty of "Withholding of two annual increments with accumulative effect" under Section-3 of the NWFP Removal from Service (Special Power) Ordinance 2000 in connection with the charge leveled against you.

2. You are therefore directed to furnish your reply to the Show Cause Notice as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

3. Your reply should reach to this Department within Seven (07) days of the delivery of this letter otherwise ex-parte action shall be taken against you.

Encl: As Above:


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

attested
IF



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

SHOW CAUSE NOTICE

1. Ghulam Dasgir Akhtar, Chief Secretary, Khyber Pakhtunkhwa the Competent Authority under the NWFP Removal from Service (Special Powers) Ordinance 2000 do hereby serve upon you Mr. Zari Aman, Subject: Specialist (Economics) (BS-17) GHSS Khairabad District Nowshera as follows:-

During surprise visit of the Special Secretary Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa on 31/03/2011, you were found absent.

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

3 (1)(a)---inefficient.

3. As a result thereof, I, as Competent Authority have tentatively decided to impose upon you the penalty of *Stoppage of two increments* 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 exparte action shall be taken against you

(GHULAM DASTGIR AKHTAR)
CHIEF SECRETARY KHYBER PAKHTUNKHWA
COMPETENT AUTHORITY

Mr. Zari Aman
Subject Specialist (Economics) (BS-17),
GHSS Khairabad District Nowshera.

attested

OFFICE OF THE PRINCIPAL,
GHSS KHAIRABAD,
DISTRICT NOWSHERA.

No: 4278 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.

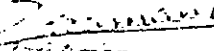
He pen pictured the satisfactory atmosphere and the record of his remarks & observation is attached with the reply. It speaks itself about my devotion & dedication for the job & institution.

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


Tariq Aman

SS Economics

GHSS Khairabad, Nowshera

attested
127

REGISTERED

(Annex: E)

13



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(Zari Aman): WHEREAS Mr. Zari Aman, Subject Specialist Economics (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. Zari Aman, Subject Specialist Economics (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. Zari Aman, Subject Specialist Economics (BS-17) GHSS Khairabad District Nowshera.
- 8- Office order file

attested
RF

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

To

The Honourable Chief Minister,
Khyber Pakhtunkhwa.

Subject: RECEIVED ON NOVEMBER 1, 2011 APPEAL FOR THE IMPUGNED ORDER NO. SO (S/M) E&SE/4-17/2011/SURPRISE VISITS(ZARI AMAN) 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 Economics BPS 17 at GHSS Khairabad, District Nowshera; he was proceeded against under the NMFEP 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

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natural justice. Thereafter the concerned staff members came well in time and signed the columns of attendance in Teachers' Attendance Register (i.e. 0850PST).

- That in fact all the staff members were very much in attendance in the institution and not absent from their duties as recorded by Special Secretary (E&SE) Department Government of Khyber Pakhtunkhwa .
- That on May 19, 2011 a show cause notice was issued to the concerned staff of this institution wherein there were three kinds of teaching staff whose jurisdiction of action was under the following competent officers:

- I. Secretary (E&SE) Government of Khyber Pakhtunkhwa
- II. Directress (E&SE) Government of Khyber Pakhtunkhwa
- III. E.D.O (E&SE) Nowshera
- IV. D.C.O Nowshera

All the Subject Specialists (BPS-17) are under the competent jurisdiction of Secretary (E&SE) Khyber Pakhtunkhwa.

All the S.E.Ts in BPS-16 and 17 are under the jurisdiction of Directress (E&SE) Khyber Pakhtunkhwa.

All the other staff members in BPS 1-10 are under the jurisdiction of E.D.O (E&SE) Nowshera.

All the other staff members in BPS 1-10 are working in BPS 11-15 is under the jurisdiction of D.C.O Nowshera.

(Copy of charge of allegations in respect of officers from Serial Number 1-16 is attached herewith as Annexure-C)

The Directress (E&SE) Khyber Pakhtunkhwa, E.D.O (E&SE) Nowshera and D.C.O Nowshera have already imposed the penalty of CENSURE with strict warning to remain careful in future to all staff/teachers mentioned at Serial Number 1-10 who were served with the same notice as were served upon staff members Serial Number 11-16.

- That the penalty awarded to Serial Number 11-16 is harsher than the penalty awarded to the Serial Number 1-10 awarded by the Directress (E&SE) Khyber Pakhtunkhwa, E.D.O. (E&SE) Nowshera and D.C.O. Nowshera although we all were served by the same notice so were not treated equally.

It is worth mentioning that no inquiry whatsoever was conducted in the matter and the appellant was penalized without holding an inquiry in this matter.

It is submitted that the action taken by the competent authority against Civil Servants from Serial Number 11-16 is harsh, ultra vires, against natural justice and ab-initio void in the light of 1996 SCMR, 1186 Para (C).

Hence, it is submitted inter alia on the following grounds:

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- (a) That the nature of the case is same but from Serial Number 1-10 are imposed a minor penalty of Censure whereas from Serial Number 11-16 are penalized harshly by stoppage of two consecutive increments. It is against natural justice in the light of 1996 SCMR 1185 Para (C).
- (b) That to exonerate some person and penalize others, whereas the nature of the case is same, it is a kind of approbate and reprobate in the light of 1996 PLD (Lahore) 1050, 1967 PLD (Dacca) 303, PLD 1965 (SC) 254, and also violation of article 25 of the Constitution.
- (c) That the allegations of absence from duty was neither intentional nor deliberate nor wilful but due to the reason stated above, hence imposition of penalty that too without probing into the matter is illegal and not sustainable.
- (d) That Principal of School had explained the situation in writing, but the same was ignored. That the Parliament of Pakistan and Provincial Assembly Khyber Pakhtunkhwa has already vividly abrogated the Removal from Service (special powers) ordinance 2000 from September 2011. Whereas the penalty imposed is w.e.f. October 26, 2011 which is of the posterior nature, hence it cannot penalize a person anterior in nature.

In the light of above facts contained in Para (a) of the grounds, the officials from Serial Number 11-16 may be exonerated from the penalty of stoppage of two consecutive increments under FR 29 because of the nature of the case from Serial Number 1-10 is identical and the impugned action may be laid to rest.

Yours Obediently,

Zari Aman



Subject Specialist (Economics)

GHSS Khairabad, Nowshera

Copy forwarded to

1. Chief Minister Khyber Pakhtunkhwa
2. Secretary (E&SE) Khyber Pakhtunkhwa
3. Director (E&SE) Khyber Pakhtunkhwa
4. E.D.O (E&SE) Nowshera
5. Personal file

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IMMEDIATE/REGISTERED

(Annex G) (17)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

No. SO (S/M) E&SED/4-17/2011/Surprise visit
Dated Peshawar the December 24, 2011

To

- i. Mr. Shafiq-un-Nabi,,
Subject Specialist Biology (BS-17),
GHSS Khairabad, District Nowshera.
- ii. Mr. Ishtiaq Ahmad,
Subject Specialist Chemistry (BS-17),
GHSS Khairabad, District Nowshera.
- iii. Mr. Muhammad Naseem,
Subject Specialist Physics (BS-17),
GHSS Khairabad, District Nowshera.
- iv. Mr. Zari Aman,
Subject Specialist Economics (BS-17),
GHSS Khairabad, District Nowshera.
- v. Mr. Muhammad Idrees,
Subject Specialist History cum-Civics (BS-17),
GHSS Khairabad, District Nowshera.
- vi. Mr. Azmat Alam,
Subject Specialist English (BS-17),
GHSS Khairabad, District Nowshera.

Subject: - DEPARTMENTAL APPEAL AGAINST PENALTY IMPOSED ON
SUBJECT SPECIALISTS (BS-17) IN VARIOUS SUBJECTS GHSS
KHAIRABAD DISTRICT NOWSHERA.

I am directed to refer to your appeal/ representation dated 11-11-2011 on the subject noted above and to inform you that the Competent Authority/ Chief Minister Khyber Pakhtunkhwa has filed/ rejected your appeal/ representation having no valid grounds/ justifications.

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

Endst: of even number & date:

Copy of the above is forwarded to:-

1. Director E&SE Khyber Pakhtunkhwa, Peshawar.
2. PS to Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa.

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SECTION OFFICER (SCHOOLS/MALE)

ENQUIRY REPORT AGAINST THE STAFF OF GHSS KHAIR ABAD NOWSHERA.INTRODUCTION.

I, Mr. Noor Hassan Marwat -Principal, GHSS Kheshgi Payan Nowshera conducted enquiry against the staff of GHSS Khair Abad Nowshera who were late comer during surprise visit of worthy Special Secretary E&SE Deptt: Khyber Pakhtunkhwa on dated 31-03-2011 vide EDO E&SE Deptt: Nowshera letter No. _____ dt _____

FINDINGS:-

The enquiry committee visited GHSS Khair Abad Nowshera on dated 30-05-2011 and called all the six teachers/officials. Questionnaires were served upon them as well as Ahmad Din SST, the then I/C Principal of the school. (Copies enclosed as Annex-). Mr. Ahmad Din SST stated in black & white that the Principal concerned was on duty in SSC Exam: and directed him to announce the school result on 31-03-2011 @ 9.30 AM to avoid disturbance of students who were appearing in SSC(A) Exam: at the same center as there is no Exam: Hall and the seating arrangement was made in the class rooms by the Supdt: concerned (Copy enclosed as Annex-). That is why the school staff was directed in the meeting held on 30-03-2011 at local institution to reach the school at 9.00 AM on 31-03-2011 (Copy of order Book enclosed as Annex-). The worthy Special Secretary E&SE Deptt: KPK visited on the same day @ 8.45 AM and found absent these staff members. However he spent only 10 minutes at GHSS Khair Abad and then visited GHSS Khair Abad at 9.00 AM as revealed from his remarks (copy enclosed as Annex-). Though all these teachers/ Officials were not absent on 31-03-2011, however attended their official duty according to instructions given to them in the staff meeting (Copy of attendance register is enclosed as Annex-). In replies to questionnaires, all the six teachers/ officials have also recorded the same statement (Copies enclosed as Annex-). The Principal of the school has also stated in black & white that he is fully satisfied with the performance of these teachers/ Officials (Copy enclosed as Annex-).

The EDO E&SE Deptt: Nowshera also paid visits of the school twice i.e. on 09-04-2011 at 8.30 AM and found present all the staff members as revealed from the

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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 HASSAN KHAN)
Principal/Enquiry Officer
GHSS Kheshgi-Payal, Nowshera

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DIRECTORATE OF ELEMENTARY &
SECONDARY EDUCATION, KHYBER
PAKHTUNKHWA, PESHAWAR

NOTIFICATION

1. WHEREAS, Mr. Saeed-ud-Din SET GHSS Khairabad Nowshera was proceeded against under the NWFP, Removal from service (Special Powers) Ordinance, 2000 for the charges mentioned in the Show cause notice issued vide this office letter Endst: No 5575/F.No.122/SET(M) dated 30-4-2011.
2. AND WHEREAS the authority, after having considered the charge, evidence on the record, explanation of the accused teacher, is of the view that the charges against the him have been proved.
3. NOW, THEREFORE, in exercise of powers conferred by the NWFP, Removal from service (Special Powers) Ordinance, 2000, the Competent Authority (Directress Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar) is pleased to impose minor penalty of "Censure" upon Mr. Saeed-ud-Din SET GHSS Khairabad Nowshera.

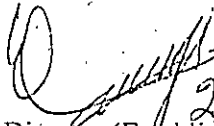
DIRECTRESS
ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR

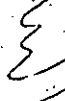
2813-16
Endst:No. _____ /F.No.122/A-14/SET(M)/

Dated Peshawar the 25/6 /2011.

Copy forwarded to the:-

- 1- Executive Distt: Officer E&SE Nowshera
- 2- Principal GHSS Khairabad Nowshera
- 3- Teacher concerned
- 4- PA to the Directress E&SE Khyber Pakhtunkhwa Peshawar


25/6/2011
Deputy Director (Establishment)
E&SE, Khyber Pakhtunkhwa, Peshawar


24/6/11

attested
RA

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

No. 1202 / Dated 16-6 / 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: J)




From

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

Subject: REMARKS IN RESPECT OF SCHOOL STAFF.

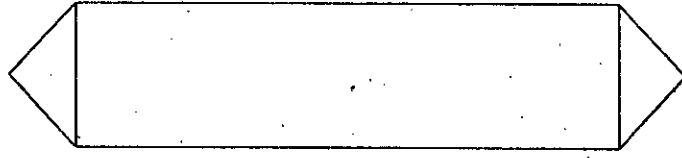
Respected Sir,

With humble submission this is requested in your honour that the reply of Zari Aman, SS Economics 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
RF



Zari Aman

Govt: of KPK

2 جناب

بنام
etc

11-01-2012

Zari Aman

Service Appeal.

مورثہ

مقدمہ

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 Rifan 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 یکطرفہ 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 با اختیار حاصل ہوں گے اور اس کا ساختہ پر داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کی سب سے وہوگا۔ 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
Rifan

for

2012

Jan

11th

المرقوم

العبد گواہ
Peshawar
مقام کے لئے منظور ہے۔

Zari Aman