

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

**SERVICE APPEAL NO. 715/2013**

Date of institution ... 15.04.2013

Date of judgment ... 31.10.2016

Shaheen Begum D/o Layeq Jan  
Ex-PST, GGPS Dapoor, Dir Lower

... (Appellant)

VERSUS

1. Executive District Officer, Elementary & Secondary Education, Dir Lower.
2. District Coordination Officer, Dir Lower now Deputy Commissioner, Dir Lower.
3. Director, Elementary & Secondary Education, Dir Lower.
4. Secretary, Govt. of KPK, Elementary & Secondary Education Department, Peshawar.

... (Respondents)

APPEAL AGAINST OFFICE ORDER NO. 15728, DATED 16.09.2010 OF  
RESPONDENT NO. 1 WHEREBY APPELLANT WAS REMOVED FROM  
SERVICE FOR NO LEGAL REASON AND OFFICE ORDER NO. 23157 DATED  
31.12.2012 WHEREBY REPRESENTATION OF APPELLANT WAS REJECTED.

Mr. Arbab Saif-ul-Kamal, Advocate.

.. For appellant.

Mr. Kabirullah Khan Khattak, Assistant Advocate General

.. For respondents.

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

MR. PIR BAKHSH SHAH

.. MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:-

Facts giving rise to the instant appeal are that

the appellant was appointed as PST on 14.02.2009 by respondent No. 1 and the appellant assumed the charge of the post on 02.03.2009 after expiry of winter holidays. That in the year 2009 military operation was started by imposing curfew in the area, and movements were restricted, in such a situation the appellant was unable to serve at her station. That on 14.05.2010 show-cause notice was issued to the appellant to resume duty. That order was without re-coursing to law, appellant was removed from service on account of absence vide

order dated 16.09.2010 by respondent No. 1. That the appellant filed a representation before respondent No. 1 which was rejected vide order dated 31.12.2012 and appellant received the rejection order of her departmental appeal from office on 15.03.2013, hence the instant service appeal with a prayer that on acceptance of this service appeal order dated 16.09.2010 and 31.12.2012 be set-aside and appellant be reinstated in service with all back benefits.

2. The learned counsel for the appellant argued that absence of the appellant from duty was neither willful nor intentional but was due to the compelling circumstance of the area due to militancy in Swat/Malakand. He further argued that although major punishment of removal was awarded to the appellant but formal inquiry was not conducted, personal hearing was not given to the appellant and opportunity of defence was not provided before passing of the impugned order. He further argued that similarly placed persons were reinstated either by the department themselves or by the Service Tribunal and the appellant being similarly placed person also deserved the same treatment adding further that Chowkidar (Muslim Khan) of the said school who remained absent for 125 days was reinstated and his absence period was treated leave without pay and minor penalty of stoppage of one increment was awarded to him. He further cited judgments of the Service Tribunal in Appeal No. 232/2014 decided on 02.05.2016 and Appeal No. 27/2013 decided on 02.05.2016 where identical appeals were accepted by this Tribunal. He prayed that on acceptance of this appeal impugned orders dated 15.09.2010 and 31.12.2012 may be set-aside and the appellant may be reinstated in service with all back benefits.

3. The learned Assistant Advocate General resisted the appeal and argued that the appeal was time barred as the impugned order was passed on 16.09.2010 which was rejected on 31.12.2012 but the appellant failed to file service appeal in the Service Tribunal within stipulated time period and the said service appeal was filed on 15.04.2013. He further argued that the appellant remained absent without permission of the competent authority and all codal formalities were fulfilled before passing of the impugned order. He prayed that the appeal being time barred and also devoid of merits may be dismissed.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that the appellant was proceeded against on the charges of absence from duty and major penalty of removal from service was imposed on the appellant vide order dated 16.09.2010. The record reveal that a regular inquiry was not conducted in the case and the proceedings were carried out on the basis of a show-cause notice which the appellant denied to have been served on her. The record reveals that disciplinary proceedings were carried out under the Khyber Pakhtunkhwa Civil Servant Efficiency and Disciplinary Rules, 1973 where as Removal from Service (Special Powers) Ordinance, 2000 was in the field at that time, the entire proceedings were thus rendered invalid and ineffective under the law. We have also perused record of cases cited by the learned counsel for the appellant and from perusal of the record it transpired that penalty of removal imposed upon the appellant was very harsh in view of the peculiar circumstances prevailing in the area at that time. In the above scenario, we are constrained to indulge in the case by setting-aside the impugned orders dated 16.09.2010 and 31.12.2012 and reinstate the appellant in service by treating the intervening period as leave of the kind due. The competent authority is at liberty to proceed de-novo against the appellant if he deem it appropriate but the said proceedings shall be strictly in accordance with law and rules and shall be concluded within a period of two months of the receipt of this judgment. The appeal is decided in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCEMENT

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

**SERVICE APPEAL NO. 715/2013**

Date of institution ... 15.04.2013

Date of judgment ... 31.10.2016

Shaheen Begum D/o Layeq Jan  
Ex-PST, GGPS Dapoor, Dir Lower

... (Appellant)

**VERSUS**

1. Executive District Officer, Elementary & Secondary Education, Dir Lower.
2. District Coordination Officer, Dir Lower now Deputy Commissioner, Dir Lower.
3. Director, Elementary & Secondary Education, Dir Lower.
4. Secretary, Govt. of KPK, Elementary & Secondary Education Department, Peshawar.

... (Respondents)

APPEAL AGAINST OFFICE ORDER NO. 15728, DATED 16.09.2010 OF  
RESPONDENT NO. 1 WHEREBY APPELLANT WAS REMOVED FROM  
SERVICE FOR NO LEGAL REASON AND OFFICE ORDER NO. 23157 DATED  
31.12.2012 WHEREBY REPRESENTATION OF APPELLANT WAS REJECTED.

Mr. Arbab Saif-ul-Kamal, Advocate.

.. For appellant.

Mr. Kabirullah Khan Khattak, Assistant Advocate General

.. For respondents.

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

MR. PIR BAKHSH SHAH

.. MEMBER (JUDICIAL)

**JUDGMENT**

**ABDUL LATIF, MEMBER:-**

Facts giving rise to the instant appeal are that

the appellant was appointed as PST on 14.02.2009 by respondent No. 1 and the appellant assumed the charge of the post on 02.03.2009 after expiry of winter holidays. That in the year 2009 military operation was started by imposing curfew in the area, and movements were restricted, in such a situation the appellant was unable to serve at her station. That on 14.05.2010 show-cause notice was issued to the appellant to resume duty. That order was without re-coursing to law, appellant was removed from service on account of absence vide

order dated 16.09.2010 by respondent No. 1. That the appellant filed a representation before respondent No. 1 which was rejected vide order dated 31.12.2012 and appellant received the rejection order of her departmental appeal from office on 15.03.2013, hence the instant service appeal with a prayer that on acceptance of this service appeal order dated 16.09.2010 and 31.12.2012 be set-aside and appellant be reinstated in service with all back benefits.

2. The learned counsel for the appellant argued that absence of the appellant from duty was neither willful nor intentional but was due to the compelling circumstance of the area due to militancy in Swat/Malakand. He further argued that although major punishment of removal was awarded to the appellant but formal inquiry was not conducted, personal hearing was not given to the appellant and opportunity of defence was not provided before passing of the impugned order. He further argued that similarly placed persons were reinstated either by the department themselves or by the Service Tribunal and the appellant being similarly placed person also deserved the same treatment adding further that Chowkidar (Muslim Khan) of the said school who remained absent for 125 days was reinstated and his absence period was treated leave without pay and minor penalty of stoppage of one increment was awarded to him. He further cited judgments of the Service Tribunal in Appeal No. 232/2014 decided on 02.05.2016 and Appeal No. 27/2013 decided on 02.05.2016 where identical appeals were accepted by this Tribunal. He prayed that on acceptance of this appeal impugned orders dated 16.09.2010 and 31.12.2012 may be set-aside and the appellant may be reinstated in service with all back benefits.

3. The learned Assistant Advocate General resisted the appeal and argued that the appeal was time barred as the impugned order was passed on 16.09.2010 which was rejected on 31.12.2012 but the appellant failed to file service appeal in the Service Tribunal within stipulated time period and the said service appeal was filed on 15.04.2013. He further argued that the appellant remained absent without permission of the competent authority and all codal formalities were fulfilled before passing of the impugned order. He prayed that the appeal being time barred and also devoid of merits may be dismissed.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that the appellant was proceeded against on the charges of absence from duty and major penalty of removal from service was imposed on the appellant vide order dated 16.09.2010. The record reveal that a regular inquiry was not conducted in the case and the proceedings were carried out on the basis of a show-cause notice which the appellant denied to have been served on her. The record reveals that disciplinary proceedings were carried out under the Khyber Pakhtunkhwa Civil Servant Efficiency and Disciplinary Rules, 1973 where as Removal from Service (Special Powers) Ordinance, 2000 was in the field at that time, the entire proceedings were thus rendered invalid and ineffective under the law. We have also perused record of cases cited by the learned counsel for the appellant and from perusal of the record it transpired that penalty of removal imposed upon the appellant was very harsh in view of the peculiar circumstances prevailing in the area at that time. In the above scenario, we are constrained to indulge in the case by setting-aside the impugned orders dated 16.09.2010 and 31.12.2012 and reinstate the appellant in service by treating the intervening period as leave of the kind due. The competent authority is at liberty to proceed de-novo against the appellant if he deem it appropriate but the said proceedings shall be strictly in accordance with law and rules and shall be concluded within a period of two months of the receipt of this judgment. The appeal is decided in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
31.10.2016

  
(PIR BAKHSH SHAH)  
MEMBER

  
(ABDUL LATIF)  
MEMBER

715/2013

21.10.2016

Counsel for the appellant and Mr. Usman Ghani, Sr.GP for respondents present. The learned Member Judicial Mr. Pir Bakhsh Shah is on leave therefore Bench is incomplete. To come up for further arguments on 31-10-16 before D.B.



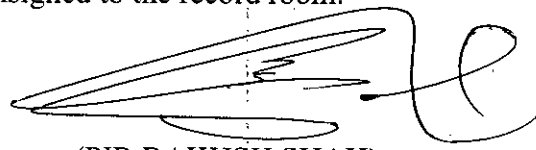
(ABDUL LATIF)  
MEMBER

31.10.2016

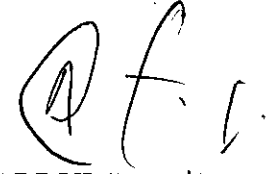
Counsel for the appellant and Mr. Hameed-ur-Rehman, AD (lit.) alongwith Mr. Kabirullah Khan Khattak, Assistant AG for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today placed on file, this appeal is disposed of as per the said detailed judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
31.10.2016



(PIR BAKHSH SHAH)  
MEMBER



(ABDUL LATIF)  
MEMBER

15.03.2016

Counsel for the appellant and Mr. Zafarullah Khan, ADO alongwith Mr. Muhammad Jan, GP for respondents present. Rejoinder submitted, copy whereof handed over to learned GP. To come up for arguments on 3.6.16 before D.B.

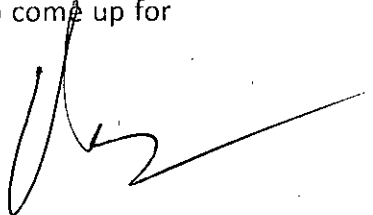
  
MEMBER

  
MEMBER

3.6.2016

Appellant in person and Assistant AG for respondents present. Appellant requested for adjournment. To come up for arguments on 20.10.2016.

  
Member

  
Member.

20.10.2016

Counsel for the appellant and Mr. Usman Ghani, Sr.GP for respondents present. Partially arguments heard. To come up for further arguments on 21.10.2016.

(ABDUL LATIF)  
MEMBER

(PIR BAKHSH SHAH)  
MEMBER.



08.01.2015

No one is present on behalf of the appellant. Mr. Tariq Ahmed, ADO on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. The Tribunal is incomplete. To come up for written reply/comments on 24.04.2015.

  
Reader.

24.04.2015

Counsel for the appellant, M/S Tariq Ahmed, ADO and Khurshid Khan, SO alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further time to submit written reply. Last opportunity granted. To come up for written reply/comments on 10.7.2015.

  
Member

10.07.2015

Counsel for the appellant, M/S Khurshid Khan, SO, Javed Ahmed, Supdt. and Noor Muhammad, ADO alongwith Assistant A.G for respondents present. Written reply on behalf of respondents No. 1, 3 and 4 submitted. None present on behalf of respondent No. 2. Fresh notice be issued to him for submission of written reply by way of last opportunity for 17.9.2015.

  
Member

17.09.2015


Counsel for the appellant and Mr. Nasrullah, ADO alongwith Assistant AG for respondents present. Written reply by respondents No. 1, 3 and 4 have already submitted. Written reply by respondent No. 2 not submitted despite last opportunity. Proceeded ex-parte. To come up for rejoinder and arguments on 15-3-16.

  
MEMBER

  
MEMBER

15.01.2014


Since 14<sup>th</sup> January has been declared as public holiday on account of "Eid Milad-un-Nabi". Therefore, case is adjourned to 4.4.14

  
Reader

4.4.2014

Counsel for the appellant (Arbab Saif-ul-Kamal, Advocate) and Mr. Khurshid Khan, SO for respondent No. 4 with AAG for the respondents present. Written reply has not been received. To come up for written reply/comments, positively, on 2.7.2014.

02.7.2014

  
Chairman  
Counsel for the appellant and Mr. Khurshid Khan, SO for respondent No. 4 with Mr. Usman Ghani, Sr. GP for the respondents present. Written reply has not been received, and request for further time made on behalf of the respondents. Another chance is given for written reply/comments, positively, on 30.10.2014.

30.10.2014

No one is present on behalf of the appellant. Mr. Muhammad Adeel Butt, AAG for the respondents present. Written reply has not been received on behalf of the respondents despite another chance given for the purpose on the previous date. A last chance is given for written reply/comments on 08.01.2015.

  
Chairman

Appeal No. 715/2013  
Mst. Shaheen Azam

24.07.2013

Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on the point of maintainability on 30.09.2013.

  
Member


30.09.2013

No one is present on behalf of the appellant. To come up for preliminary hearing on the point of maintainability on 05.11.2013.

  
Member

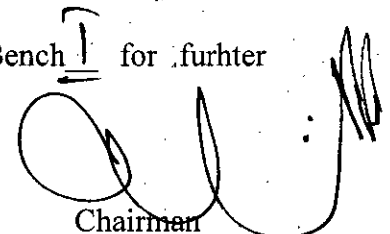
05.11.2013

Counsel for the appellant present and heard on preliminary. Contended that the appellant has not been treated in accordance with law/rules. The original order dated 16.09.2010 has been taken under E&D rules 1973 which have since been repealed and new E&D rules 2011 promulgated. Points raised at the Bar need consideration. The appeal is admitted to full hearing, subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter notices be issued to the respondents for submission of written reply on 14.01.2014.

  
Member

05.11.2013

This case be put up before the Final Bench I for further proceedings.


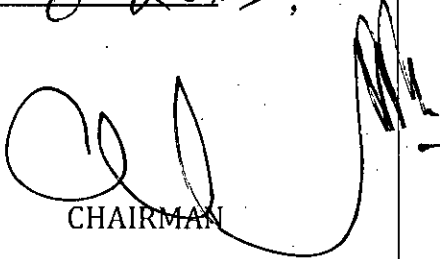

  
Chairman

## Form- A

## FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 715/2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19/04/2013	<p>The appeal of Mst. Shaheen Begum resubmitted today by Mr. Saadullah Khan Marwat Advocate 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	24-4-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>7-6-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3.	7.6.2013	<p>Assistant to Counsel for the appellant and <del>Yousaf Khan Staff Officer respondents</del> present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note Reader for proceedings as before on 24.7.2013.</p> <p style="text-align: right;"> Reader</p>

The appeal of Mst. Shaheen Begum D/O Layed Jan received today i.e. on 15/04/2013 is incomplete on the following scores which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Index of the appeal may be prepared according to Khyber Pakhtunkhwa Service Tribunal Rules 1974.
- 2- Copy of appointment order mentioned in para-1 of the memo of appeal is not attached with the appeal which may be placed on it.
- 3- Copies of show cause notice and its reply mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 4- Annexures of the appeal may be attested.
- 5- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 645 /S.T,

Dt. 15/04/2013.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

MR. SAADULLAH KHAN ADV. PESH.

*by*

*Resubmitted after completion.*

*by*

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

S.A. No. 715 /2013

Shaheen Begum

Versus

E.D.O & others

**I N D E X**

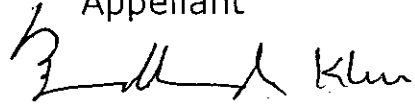
S.No	Documents	Annex	P.No.
1.	Memo of Appeal		1-4
2.	Appointment order, 14.02.2009	"A"	5-6
3.	Charge Report, 02.03.2009	"B"	7
4.	Show Cause Notice, 14.05.2010	"C"	8
5.	Removal from service, 16.09.2010	"D"	9
6.	Representation,	"E"	10-11
7.	Comments along with covering letter, 18.06.2012	"F"	12-13
8.	Rejection order, 31.12.2012	"G"	14

Dated. 15.04.2013

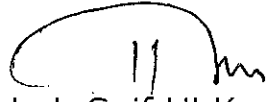
Through

&

Appellant



Saad Ullah Khan Marwat

  
Arbab Saif Ul Kamal  
Advocates.

21-A Nasir Mension,  
Shoba Bazar, Peshawar.

Ph: 0300-5872676

**BEFORE KPK SERVICE TRIBUNAL PESHAWAR**

S.A No. 715 /2013

Shaheen Begum D/o Layeq Jan  
Ex-PST, GGPS Dapoor, Dir Lower . . . . . Appellant

Versus

~~Dr. W. F. P. P. P.~~  
~~764~~  
~~15-4-13~~

1. Executive District Officer, Elementary & Secondary Education, Dir Lower.
2. District Coordination Officer, Dir Lower now Deputy Commissioner, Dir Lower.
3. Director, Elementary & Secondary Education, Dir Lower.
4. Secretary, Govt. of KPK, Elementary & Secondary Education Department, Peshawar . . . . . Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL AGAINST OFFICE ORDER NO.15728, DATED 16.09.2010 OF R.NO.1 WHEREBY APPELLANT WAS REMOVED FROM SERVICE FOR NO LEGAL REASON OR OFFICE ORDER NO.23157 DATED 31.12.2012 WHEREBY REPRESENTATION OF APPELLANT WAS REJECTED.**

~~19/4/13~~  
18/4/13

re-submitted to  
and filed.

⇔<=>⇔<=>⇔<=>⇔<=>⇔

19/4/13, Respectfully Sheweth;

1. That appellant was appointed as PST on 14.02.2009 by R.No.1 and her name was placed at S.No.12 of the appointment order. (Copy as annex "A")
2. That on 02.03.2009, appellant assumed the charge of the post after expiry of winter holidays. (Copy as annex "B")
3. That since the year, 2009 the area was under the clutches of militancy and Government servants were threatening not to perform their duties at any station. Those who did not comply with the orders of miscreants, were either kidnapped or beheaded. The Government machinery, by keeping law and order situation intact, was totally collapsed. The schools etc. were either blown up or under threat.

Military operation was started by imposing curfew in the area, and movements were restricted. In such a situation, not only appellant but hundred and thousands of other officials of the Education or other departments were unable to serve their respective stations.

4. That on 14.05.2010, Show Cause Notice was issued to the concerned to resume their duties but as stated earlier, postal service was totally collapsed, so this Show Cause Notice was not received by the appellant to reply the same. (Copy as annex "C")
5. That without re-coursing to law, appellant was removed from service on account of absence vide order dated 16.09.2010 by R.No.1. (Copy as annex "D")
6. That appellant submitted representation before R.No.2 for reinstatement in service and comments were called for from R.No.1 by R.No.2 which were submitted on 18.06.2012, stating therein the aforesaid version. (Copies as annex "E & F")
7. That on 31.12.2012, representation of appellant was rejected in flimsy manner which was received from the



office on 15.03.2013 as the same was not dispatched to appellant as is evident from the same. (Copy as annex "G")

8. That here it would be not out of place to mention that numerous employees of the Education Department and hundred and thousands employees of the other departments like, Police, Health, Agriculture, etc. on the aforesaid count of absence from duty were removed and thereafter they were reinstated either by the respective department herself or through the judgments of this hon'ble Tribunal.

Hence this appeal, inter alia, on the following grounds:-

**GROUND S:**

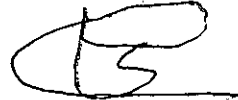

- a. That absence from duty was neither willful nor intentional but was due to the compelling circumstances of the area.
- b. That though appellant was given major punishment but the procedure, i.e. conduct of regular inquiry, Final Show Cause Notice, personal hearing and opportunity of defence was not provided to her.
- c. That similarly and equally placed employees were either reinstated by the departments or by this hon'ble Tribunal, so appellant is also entitled for the same relief.
- d. That appellant has served the department for more than one year but she was dealt with severely.
- e. That absence does not constitute misconduct when the same is not willful.
- f. That the impugned orders, by keeping in view the aforesaid submissions, are not only illegal, ab-initio void but are also based on malafide and discrimination.

It is, therefore, most humbly prayed that on acceptance of appeal, order dated 16.09.2010 and 31.12.2012 be set aside and appellant be reinstated in

service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

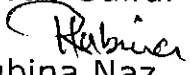
Dated. 15.04.2013

Through

  
Appellant  
  
Saad Ullah Khan Marwat

  
Arbab Saiful Kamal

&

  
Rubina Naz,  
Advocates.

A

5

14-2-09

**OFFICE OF THE EXECUTIVE DISTRICT OFFICER (E&SE), DIR  
LOWER**

**NOTIFICATION.**

Consequent upon the approval accorded by the Distt. Recruitment/Appointment Committee, dated 14.02.2009. The following candidates are hereby appointed as PST in BPS-07 @ Rs \_\_\_\_\_, BPS-06 @ Rs. \_\_\_\_\_, BPS-05 @ Rs. 3340-160-6140 and BPS \_\_\_\_\_ P.M plus usual allowances as admissible to them under the rules in the Govt. Girls Schools noted against their names subject to the following terms & conditions in the interest of public service.

**25% DISTRICT OPEN MERIT**

S. No	Name of Candidate	Father's Name	Residence	Qualification	Merit Position	Union Council	Name of GGPS where apptt:	Remarks
1	Shabana	Fazal Khaliq	Mata, Islamabad	BA/PTC	61.34	Noora Khel	Ghadai	A.V Post
2-10	-	-	-	-	-	-	-	-
11	Shabnam	Anwar Din	Shamshi Khan	FA/PTC	53.96	Shahi Khel	Ghawrgay	A.V Post
12	Shaheen Begum	Layeq Jan	Dapuri	MA/PTC	53.95	Zamdara	Dapur	A.V Post
13	Zakia Akhtar	Mohd. Jan	Dapur	BA/PTC	53.84	Zamdara	Gall	A.V Post
14-169	-	-	-	-	-	-	-	-
170	Balqees Begum	Zaman Khan	-	-	-	-	-	A.V Post

**Terms & Conditions:-**

1. They will be governed by such rules and regulations as awarded by the Government time to time for the category of Govt. Servant to which they belong.
2. Their appointments are purely on temporary basis, liable to terminate at any time without assigning any reason. In case leaving the service, they shall be required to submit one month prior notice OR their one month's pay in the Govt. treasury on lieu thereof.
3. The appointment of the candidates mentioned above are subject to the condition that they are having domiciled of District Dir Lower.
4. They are directed to produce their Health & Age Certificate from the Civil Surgeon, Bir Lower at Timergara.
5. No TA/DA will be paid to them on joining the post.
6. Their age may not exceed 35 years OR below 18 years.
7. Charge reports should be submitted to all concerned.
8. Drawing and Disbursing Officers concerned are directed to check/verify their documents from the concerned boards/institutions, before giving over charge to them.

9. This order is issue error and omissions accepted, as a notice only.
10. The candidate having academic qualification of FA/F.Sc with PTC will be appointed in BPS-06 plus usual allowances as admissible under the rules while in case of having FA/FSC without PTC will be granted BPS-05 fixed plus usual allowances as admissible under the rules having SSC with PTC will be granted BPS-05 (Running) plus usual allowances as admissible under the rules and having SSC without PTC will be granted BPS-05 fixed plus usual allowances as admissible under the rules respectively.
11. 75% appointment ahs been made purely on union council base subject to the production of domicile of the same union council.
12. They are further directed to take over the charge on 01.03.2009 i.e. after the expiry of winter vacations.
13. They will got all the benefits fo civil servants except pension of gratuity vide letter No.6 (E & AD) 1-13/2005 dated 10.08.2005 and Act 2003 NWFP 23.07.2005.
14. The candidates appointed from the adjacent union councils will be terminates as and when eligible candidates in the same union councils become available.
15. The candidates having passed Diploma from Sarhad University and those private institutions affiliated to Gomal University before 12.05.2008 will be considered for appointment subject ot the conditions that they will take 3 months Refresher Course with a reasonable condition to the concerned RITE/College Physical Education as per rules.

(Saeed Khan)  
 Executive District Officer  
 (E & SE) Lower, Dir.

Endst: No.2283-89/ Dated Timergara the 14/02/2009

Copy of the above is forwarded to the:-

1. The District Coordination Officer Lower Dir at Timergara.
2. The District Nazim Lower Dir at Timergara.
3. P.A to Secretary Elementary & Secondary Education NWFP Peshawar.
4. P.A to Director Elementary & Secondary Education NWFP Peshawar.
5. The District Officer (E & SE) Lower Dir.
6. Dy. District Officer (F) Timergara/Samar Bagh.
7. Candidates concerned.

*Attested*  
 \_\_\_\_\_  
*ky*

Sd/-  
 Executive District Officer  
 (E & SE) Lower, Dir.

B

چارچ لائوٹ

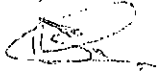
7 2-3-09

میں نے آج مورخہ 2007ء و 2003ء میں از وقت دو پیکر سیمپلین آرڈر  
 2283-89 گورنمنٹ گمرلز پرائمری سکول دور ضمدان  
 تحصیل لال قلعہ ضمدان میں اپنے عہدے کا چارج بحال کیا  
 P.S.T. معملہ منتقل کیا۔

منزلہ کا دوائے کے لئے چارج  
 دفتر میں حاضر ہے۔

چارچ گمرلز

Shahwan Begum



چارچ دکن

Begum Begum

Senior Assistant

G.P.S

Government of Punjab

Attested

by

1

8

14-5-10

**SHOW CAUSE NOTICE**

I, Saeed Khan Executive District Officer ( E & SE) Dir Lower as a competent authority, under the NWFP removal from service HND rules 1973, do hereby serve you Miss Shaheen Begum PST, GGPS Dapoor Tehsil Tall Qala district Dir Lower.

1. I, consequent upon the completion of enquiry conducted against you, by the enquiry committee and on going through its finding recommendation of the enquiry committee the allegations about your willful absence from duty with effect from 03.03.2010 to date has been proved.
2. I am satisfied that you committed the following acts/omissions specified in the section 3 of the said ordinance.
  - a) In efficiency.
  - b) Miss conduct.
  - c) Negligence in government day.
3. As a result thereof, I being a competent authority have tentatively decided to imposed upon you the penalty of termination from service.
4. You are therefore required to Show Cause Notice as why the aforesaid penalty should not be imposed upon you.
5. If no reply to this notice is received within 15 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defense to put in the, in that case, ex-party decision will be taken against you.
6. A copy of enquiry report is enclosed.

(Saeed Khan)  
Executive District Officer  
(E & SE) Lower, Dir.

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (E&SE) DIR LOWER.

Endst: No.6959-6/ Dated Timergara the 14/05/2010

Copy of the above is forwarded to the:-

1. The District Coordination Officer District Lower Dir.
2. Miss Shaheen Begum ADO (F) Local Office with the direction to serve the show cause notice on the accused teacher and acknowledgment receipt may be sent to this office for record.
3. Miss Shaheen Begum PST GGPS Dapoor Tehsil Lal Qala District Dir Lower.

Attest  
by

Sd/-  
Executive District Officer  
(E & SE) Lower, Dir.

Notification:-

Where as one Mr. Shaheen Begum PST GGPS Dapoor Maidan Tehsil Lalqila District Dir lower, remained absent willfully from duties w.e from 03/03/2009 to date.

And where as show cause notice was issued / served upon him through registered cover and then through a notice published in "Daily Mashriq" dated 21-07-2010 but no convincible reply has been received so far.

Where as a committee was constituted under the chairmanship of District Officer (M) local office, to scrutinize / finalize the cases of absent teachers/officials.

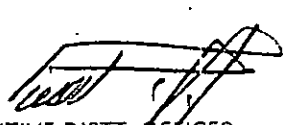
On the recommendation of the committee, and after consultation with District Coordination Officer Dir lower, the undersigned, being the competent authority do hereby ordered the removal from service of Mr. Shaheen Begum PST GGPS Dapoor Maidan Tehsil Lalqila District Dir lower under the E&D rules 1973 from the date of her absence.


(SAEED KHAN)  
EXECUTIVE DISTT: OFFICER  
(E&SE)DISTRICT DIR LOWER


15728-33  
Endst: No. \_\_\_\_\_ / Dated Timergara the 16 /09/2010.

Copy to:-

1. The District Coordination Officer Dir lower.
2. The District Accounts Officer Dir lower.
3. The District Officer (F) local office.
4. AP DEMIS Cell local office.
5. The Deputy District Officer (F) Timergara.
6. The accused concerned.

  
EXECUTIVE DISTT: OFFICER  
(E&SE)DISTRICT DIR LOWER

①   
29/10/2017

Attested  


بکسور جناب ڈسٹرکٹ کوارڈینیشن آفیسر ضلع دیرپاکین بمقام تیسر گروہ

محکمہ آبپل =

آپیل منجانب سائلہ۔ نسبت حکم ایگزیکٹو ڈسٹرکٹ آفیسر تعلیم ضلع دیرپاکین  
نمبری 33-15728 مورثہ 16/09/010 مابت ریبول سائلہ از ملازمت پی ایس ٹی۔

جناب عالی۔ سائلہ ذیل عرض رساں ہے۔

- (۱) یہ کہ سائلہ محکمہ تعلیم میں بمقام ڈپو گورنمنٹ گرلز پرائمری سکول علاقہ میدان ضلع دیرپاکین میں بطور پی ایس ٹی معطلہ تعینات تھی۔
- (۲) یہ کہ سال 2009 کے شروع میں علاقہ ہذا میں طالبان تیزیشن کا دور دورہ شدت اختیار کر کے ارفتہ رفتہ زمانہ استانیوں کو بشمول سائلہ طرح طرح کی دھمکیاں ملتے رہے۔ حتیٰ کہ حالات انتہائی کشیدہ ہو کر شدید جسمانی خوف و خطر کے بناء سائلہ سکول مذکور میں مزید درس و تدریس دینے کے قابل نہ رہی۔
- (۳) یہ کہ حالات مزید خراب ہونے پر سائلہ کو پیشنی خدشات نقل لاحق ہونے کے بناء سائلہ نے جان بچانے کی غرض سے علاقہ ہذا چھوڑ کر بمقام پشاور رشتہ داران کے پاس جا کر قیام پزیر ہوئی۔
- (۴) یہ کہ بعدہ علاقہ ہذا میں شدت پسندوں کی قلع قمع کی غرض سے حکومت پاکستان نے بھاری مقدار میں فوجی آپریشن شروع کی۔ جو آپریشن علاقہ میدان میں تاحال رواں ہے۔
- (۵) یہ کہ علاقہ میدان میں حالات قدرے پرسکون ہونے کے بناء سائلہ ماہ ہذا کے اوائل میں علاقہ خود آکر پتہ برابری پر معلوم ہوا۔ کہ سائلہ کی ملازمت کا بموجب علاقہ حاضری بحوالہ چٹی جاریہ بالا خاتمہ کیا گیا۔ پس آپیل ہذا پیش حضور بوجہ ذیل دائر کیا جاتا ہے۔ (نقل چٹی نمبر 33-15728 لف۔ ہے۔)
- (۱) یہ کہ سائلہ کی غیر حاضری قسداً و بظہاً نہیں ہے۔



- (ii) یہ علاقہ ہذا میں سالوں غرض طالبان کا دردمرد رہنے کا کیفیت نیز ہذا  
تاحال جاری فوجی آپریشن کے واقعات حضور والہ کے ٹائم ورنس میں ہے۔
- (iii) یہ کہ سائیکلہ کو علاقہ ہذا سے جانے کے دوران قتل کی بار بار چمکیاں ٹپکی  
ہیں۔ اور یوں سائیکلہ جان بچانے کی خاطر عدم حاضر رہ چکی ہے۔
- (iv) یہ کہ علاقہ ہذا میں اب بھی مستورات کا سکولوں میں دیگر ذرات میں خصوصاً بحوالہ  
میدان اناجانا ایک مشکل شمل ہے۔ تاہم سائیکلہ انتہائی نادار زونہ ہونے کے بنا  
بہر کیف محکمہ تعلیم میں ملازمت برقرار کرنے کی خواہش مند ہے۔
- (v) یہ کہ سائیکلہ نے خرابی حالات علاقہ سے قبل سال 2010 سے بعد از تعیناتی  
مسلل ایمانداری و جان فحاشی کیساتھ محکمہ تعلیم کیلئے خدمات انجام دی  
ہے۔ اور برائے ائیندہ بھی بطور مذکور خدمات انجام دینے کی عزم دارادہ رکھتی ہے۔

پس غرض ہے۔ کہ درخواست ہذا بمطابق استدعا  
درج مندر منظور فرمایا جاوے۔

شاہین بیگم

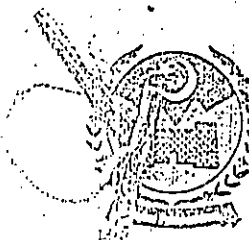
سائیکلہ

Attested  
by

F

12

18-6-12



OFFICE OF THE  
EXECUTIVE DISTRICT OFFICER  
(E&SI) DISTRICT DIR LOWER

Tel: 0945-9250081

9250082

E-Mail: edosldir@yahoo.com

19638 / Dated Timergara the 18/06/2012.

The Dist; Coordination Officer,  
Dir Lower.

Subject:- APPEAL FOR RE-INSTATEMENT IN SERVICE

Memo:-

In response to the appeal in respect of Miss Shaheen Begum Ex-PST GGPS Dapoor Maidan Tehsil Lal Qila Dir Lower, requesting therein for re-instatement in service, duly marked by your goodself (Copy attached Annexure "A").

It is stated for your kind information that the appellant was appointed as PST at GGPS Dapoor Maidan vide this office Endst; No.2289-83 dated 14/2/2009 at SNo.12 of the order with the condition to take over the charge after the expiry of winter vacation i.e on 1/3/2009 (Copy attached annexure "B"). She took over the charge on 2/3/2009, and submitted her charge reports. Due to militancy, visits of Schools in Maidan area Schools were not possible for the visiting officer. Hence her duty position was not checked in time, and after that due to military operation the school was closed. On opening of the Schools duty position of the appellant was checked by the DDO(F) Timergara, and the teacher was reported as absent from duty w.e.f 3/3/2009. A show cause notice was served upon the teacher vide this office No.6959-61 dated 14/5/2010, but no convincing reply was received (Copies attached annexure "C, D, E"). Her absence from duty was published in Daily "Ajj" dated 21/7/2010, with other absence cases of teachers etc. and in this regard a committee was constituted for the decision of absence cases. The committee fixed the date and a local Notice was also displayed i.e on 2/9/2010 for personal hearing. (Call: Annex = F9)

The appellant appeared before the committee on the target date i.e on 2/9/2010, but she did not satisfy the committee about her absence. The committee recommended her for removal from service due to her willful absence from duty. The report of the committee was honored in consultation, with Ex- DCO, and the teacher (Appellant) was removed from service vide this office Endst; No.15728-33 dated 16/9/2010. (Call: 5-10)

Now the appellant has applied for re-instatement in service, and showed the reason that she was unable to perform the duty at that school i.e GGPS Dapoor Maidan due to militancy and violence in the region.

The report is being sent herewith for perusal and further orders please.

EA  
A

27/9  
2012

Attended by

Executive Dist: officer  
(E&SI) Dir Lower.

[Signature]

13

5-9-12

OFFICE OF THE  
DISTRICT COORDINATION OFFICER,  
DIR LOWER.

No. 13457 /EA  
Dated Timergara the 5 /09/2012.

To  
The Executive District Officer (E&SE),  
Dir Lower.

Subject: APPEAL FOR RE-INSTATEMENT IN SERVICE.

Reference this office memo: No.10638 dated 18/6/2012, on the  
above noted subject.

1. In order to proceed further, the service book of the appellant may be completed as no termination from service order was found recorded in the service book which is objectionable, because she has been removed from service.
2. The position with regard to action in respect of each Govt: servant mentioned in the show cause notice as published in daily AJJ on 21/7/2010, may be intimated to handle the appeal properly. (service book attached)

  
District Coordination Officer,  
Dir Lower.

Attested  
by



OFFICE OF THE  
EXECUTIVE DISTRICT OFFICER  
(E&SE) DISTRICT DIR, LOWER

Tel:

0945-9250081  
9250082

E. Mail: edosldir@yahoo.com

No. 23157 / Dated Timergara the 31 / 12/2012

The Dist; Coordinaton Officer,  
Dir Lower

Subject; - APPEL FOR RE-INSTATEMENT IN SERVICE

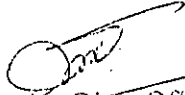
Memo;-

Kindly refer to your letter No,13457 dated 5/10/2012, on the subject noted above.

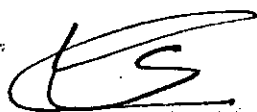
It is stated for your kind information that the attached Service Book, presented by the appellant made by herself, nor prepared by the office. Only two days the appellant attened the School, and after that she remained absent. Hence she removed from service.

Moreover the position with regard to action in respect of each Govt; Servant mentioned in the show cause notice as published in Daly Ajj on 21/7/2010, is as under;-

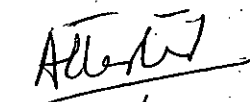
"All of them removed from service except SNo, 16 named Muslim Khan Chowkidar, GHSS Bagh Maidan, who's absence period wef 8/4/2010 to 11/8/2010 (125) days was converted in to leave without pay, and stopped one Annual Increment falling on 1/12/2010"

  
Executive Distt; Officer  
(E&SE) Dir Lower

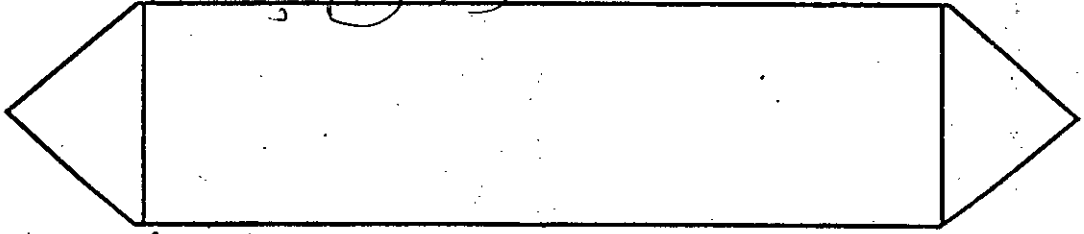
Received from the  
office on 15.3.13.



15.3.2013

  
by

# بعدالت سروس ٹریڈ مارک



3 مارچ 2013ء پنجاب اسلام آباد  
 شاپین سنگھ بنام حکمہ شہزادہ

مورخہ 13-4-2013  
 مقدمہ ---  
 دعویٰ ---  
 ---

## باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
 آن مقام لہذا اور کیلئے سوزالہ فیض محو / ارباب سندہ کمال احمد روہیسہ ناز کو

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 ثالت ہ فیصلہ بر 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 اختیار 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 اختیارات حاصل ہوں گے اور اس کا ساختہ  
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے دہوگا۔  
 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 لکھدیا کہ سندر ہے۔

المرقوم لہذا ماہ اپریل 2013ء

العبد واہ العبد

کے لئے منظور ہے۔

شاپین سنگھ

بمقام

Advocate

Advocate

Advocate

**"B"**

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**  
**JUDICIAL COMPLEX (OLD), KHYBER ROAD,**  
**PESHAWAR.**

*FBI*

No.

*[Handwritten signature]*

Appeal No. 715 of 20/13

Shabeen Begum Appellant/Petitioner

Versus

EDO Dir Respondent

Respondent No. 1

Notice to:

EDO ELSE Dir lower Dir

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 14-1-14 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this~~  
office Notice No. .... dated .....

*29*

Given under my hand and the seal of this Court, at Peshawar this .....

Day of 11 20 13

*[Handwritten signature]*  
Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.  
2. Always quote Case No. While making any correspondence.

12

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

S.A No.715/2013

Mst: Shaheen Begum D/O Layeq Jan Ex. PST GGPS Dapoor Dir lower.

(Appellant)

**VERSUS**

1. District Education Officer Female Dir lower
2. Deputy Commissioner Dir lower.
3. Director Elementary and Secondary Education KPK Peshawar.
4. Secretary to Govt: of KPK, Elementary & Secondary Education Department, Peshawar.

(Respondents)

**Para wise Comments on behalf of Respondents No 1, 3, & 4.**

**Preliminary Objections:-**

1. That the appellant has got no locus standi or cause of action to file the instant appeal.
2. That the appellant has not approached this honorable Tribunal with clean hands.
3. That no discrimination/injustice has been done with the appellant.
4. That the appeal is not based on facts and justification.
5. That the instant appeal is barred by law.

**Respectfully Sheweth,**


1. Pertains to record.
2. Correct up to the extent of her arrival in school for only one day i.e 2.3.2009 and since that she has been failed to continue her duties and hence considered absent.
3. Incorrect. Her appointment was made in her residential U/C and native village. She could perform the duty if were willing to accept the job. There is no proof of her displacement nor she informed the office about uncertainty in the area.
4. Incorrect. The show cause notice was received by her through her brother in law in person. (copy of the acknowledgement is attached as Annexure (A)
5. Incorrect. She was removed after observing all the codal formalities i.e, show cause notice was issued to her but no convincible reply was received. Her absence from duty was published in daily Ajj dated 21-07-2010. And Proper committee was constituted for personal hearing and deciding the cases of all the absent officials, who were issued show cause notices. The appellant failed to satisfy the committee and hence removed from services on the recommendation of the committee. (Copy attached as Annexure B,C and D)..

- 11
6. Pertains to record.
  7. Incorrect. The representation of the appellant was thoroughly examined in the light of relevant rules and it was rejected through a speaking order. The rejection order was received by the appellant soon after its issuance and not on 15/03/2013 hence the appeal in hand is badly time barred and liable to be dismissed on this score alone.
  8. In reply to Para-8, it is submitted that eligible employees were reinstated into service however the case of the appellant is totally different from them.

**Grounds :-**

- (A) Incorrect. The appellant remained willfully absent from duty and the uncertainty in the area was not so long as her absent period is;
- (B) Incorrect. Proper show cause notice was issued to her and she was given the chance to defend herself and appear before the appellate committee but she failed.
- (C) Incorrect. The case of the appellant is not similar and identical to them.
- (D) Incorrect. She attended the school on 02-03-2009 and then remained absent.
- (E) Incorrect. The appellant remained willfully absent and it is misconduct under the law.
- (F) Incorrect. The respondent department observes the law, rules and Govt; Policy in vogue and no discrimination is made to anyone.

It is therefore most humbly prayed that in the light of the above facts, the instant appeal may kindly be dismissed.

  
SECRETARY,  
(E&SE) KHYBER PAKHTUNKHWA, PESHAWAR  
(Respondent No.4)

  
DIRECTOR,  
(E&SE) KHYBER PAKHTUNKHWA, PESHAWAR  
(Respondent No.3) 

  
DISTRICT EDUCATION OFFICER (F)  
DIR LOWER AT TIMERGARA  
(Respondent No.1) 



*For Appellant*

**BEFORE KPK SERVICE TRIBUNAL PESHAWAR**

S.A No. 232 /2014

Fazal Tawab S/o Ubaid Ur Rehman,  
R/O Village Ouch, Dir Lower,  
Ex-Constable No. 4645, PL: No. 78,  
FRP Swat, Malakand Range . . . . .



Appellant

Versus

**246**  
**21-2-14**

1. Commandant, Frontier Reserve Police, KP, Peshawar.
2. Superintendent of Police, FRP, Malaknad Range, Swat . . . . . Respondents

⇄<=>⇄<=>⇄<=>⇄<=>⇄

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, AGAINST OFFICE ORDER NO. 943-49 / EC, DATED 03.02.2014 OF RESPONDENT NO. 1, WHEREBY DEPARTMENTAL APPEAL AGAINST ORDER DATED 01.07.2009, REMOVING HIM FROM SERVICE, WAS REJECTED FOR NO LEGAL REASON.**

**ATTESTED**

*[Signature]*  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

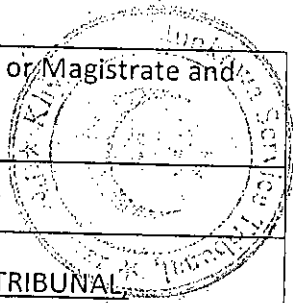
⇄<=>⇄<=>⇄<=>⇄<=>⇄

**Respectfully Sheweth:**

1. That appellant was enlisted as constable in Frontier Reserve Police, vide order dated 25.10.2004. (Copy as annex "A")  
*[Signature]*  
**21/2/14**
2. That on 19.02.2009, appellant was issued Charge Sheet containing allegation of absence from duty with effect from 10.01.2009 till date. The same was not replied as it was not served upon him. (Copy as annex "B")

of edings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
--------------	----------------------------------	--

2	3
---	---



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

CAMP COURT SWAT

APPEAL NO.232/2014

Fazal Tawab-vs-Commandant, Frontier Reserve Police, KP, Peshawar etc.

JUDGMENT

02.05.2016

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN: Counsel for

the appellant and Mr. Mushtaq Ahmed, Inspector (legal) alongwith Mr. Muhammad Zubair, Senior Government Pleader for respondents present.

Fazal Tawab S/o Ubair Ur Rehman, hereinafter referred to as the appellant, has preferred the instant appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against original order dated 01.07.2009 vide which he was removed from service and where-against his departmental appeal was rejected on 03.02.2014.

Brief facts giving rise to the instant appeal are that the appellant was serving as Constable in FRP Dir (Lower) when subjected to inquiry on the allegations of wilful absence for a period of about 5 months and 18 days and vide impugned order dated 01.07.2009 removed from service under the provisions of KPK Removal from Service (Special Power) Ordinance 2000 where-against his departmental appeal was rejected by Commandant FRP vide order bearing endorsement dated 03.02.2014.

Learned counsel for the appellant argued that neither charge sheet was served on appellant nor the prescribed procedure including opportunity of hearing was afforded to the appellant and that the final

ATTESTED

*[Signature]*  
 CHAIRMAN  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

show-cause notice was issued against the appellant on 01.07.2009 and on the same date impugned order of removal from service was passed.

Learned Senior Govt. Pleader argued that the absence of the appellant was wilful and established before the concerned authority and that the impugned orders of removal warrant no interference.

We have heard arguments of the learned counsel for the parties and perused the record.

There is nothing on record to suggest that charge sheet was ever served on the appellant. According to the observation of the inquiry committee dated nil curfew was imposed in the area due to operation of Pak Army against the militants. It is also established from the record that the final show-cause notice was signed by the competent authority on 1.7.2009 and the impugned orders was passed on the same date i.e 1.7.2009 meaning thereby that the said orders was unilaterally passed by the competent authority without waiting for 15 days period which period was mentioned and granted by him in his own final show-cause notice for reply of the appellant.

The above facts and circumstances would clearly suggest that the inquiry proceedings were conducted in undesirable manners and that the prescribed procedure was neither followed nor taken into account.

For the above stated reasons we are left with no option but to accept the present appeal and set-aside the impugned order dated 01.07.2009 as well as 03.02.2014 and reinstate the appellant in service placing the respondents at liberty to conduct de-novo inquiry in the prescribed manners if need be which shall be concluded expeditiously but not later than 2 months after receipt of this judgment. The period

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

of absence shall be subject to outcome of fresh inquiry which, if not conducted, shall be treated as leave of the kind due. Parties are, however, left to bear their own costs. File be consigned to the record room.

Announced Sd/- M. Azim Khan Afridi,  
02.05.2016 Chairman

Sd/- Abdul Latif,  
Member

Certified to be true copy

EX-100  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 10-05-2016  
 Number of Words 1600  
 Copying Fee 10-00  
 Urgent -  
 Total 10-00  
 Name of Copyist Arif  
 Date of Copyist's Signature 12-05-2016  
 Date of Delivery 12-05-2016

To,

1. Provincial Police Officer,  
KPK, Peshawar.
2. Deputy Inspector General of Police  
Malakand Division, Malakand
3. District police officer, Swat

**Subject:- COMPLIANCE OF JUDGMENT DATED.02.05.2016 IN  
LETTER AND SPIRIT.**

**Respectfully Sheweth:-**

Please comply with judgment dated.02.05.2016 of the Hon'ble Tribunal passed in Appeal No.27/2013 in letter and Spirit and Obligated. Certified copy attached.

Moreover, my arrival report for assumption of the charge be also accepted.

*Tajuddin*  
**Muhammad Tajuddin**  
S/o Shah Nazar khan  
R/o Kas Kalam Swat,  
Ex.C. No.117, Pesh Imam  
DG House, Malakand.

Dated.14.05.2016

BEFORE KPK SERVICE TRIBUNAL PESHAWAR



S.A No. 27 /2013

~~A.W.P. B...~~  
~~...~~  
Page No. 59  
Date 04-01-13

Taj Uddin S/o Shah Nazar Khan,  
R/o Kas Kalam, Ex.Constable No.117,  
Pesh Imam, DIG House, Malakand ..... Appellant

Versus

1. Provincial Police Officer, KPK,  
Peshawar.
2. Deputy Inspector General, Malakand  
Division, Malakand.
3. District Police Officer, Swat..... Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

APPEAL AGAINST OFFICE ORDER  
NO.3507 DATED 27.11.2012 OF  
R.NO.1 WHEREBY REVISION  
PETITION AGAINST ORDER  
NO.1032/E, DATED 18.02.2012 OF  
R.NO.2 WAS REJECTED AS R.NO.2  
HAD REJECTED DEPARTMENTAL  
APPEAL AGAINST O.B. NO.48,  
DATED 11.03.2010 ON 18.02.2012  
OF R.NO.3.

~~...~~  
*4/1/2013*

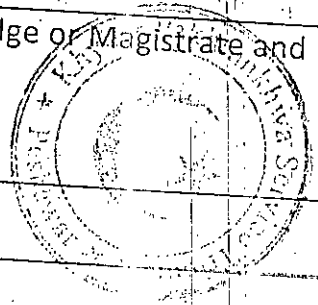
⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respected Sheweth,

1. That appellant was appointed as Constable on 16.03.2009. He was performing his duties with R.No.2 as Pesh Imam also in his house.

**ATTESTED**

For Appellant

Date of  
Order or  
proceedings.Order or other proceedings with signature of Judge or Magistrate and  
that of parties where necessary.

2

3

02.05.2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT SWAT.

APPEAL NO.27/2013

(Taj-ud-Din-vs-Provincial Police Officer, KPK, Peshawar and others etc).

JUDGMENT

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN: Appellant

with counsel and Mr. Imranullah, Inspector (legal) alongwith Mr. Muhammad Zubair, Senior Government Pleader for respondents present.

Tajud Din son of Shah Nazar, hereinafter referred to as the appellant, has preferred the instant appeal against the original order dated 11.03.2010 followed by order passed on departmental appeal dated 18.02.2012 and order passed in review petition dated 27.11.2012.

Brief facts of the case are that the appellant was serving as Constable when discharged from service with immediate effect due to his links with terrorists/miscreants organization.

Perusal of the record would suggest that the first original order was passed on 11.3.2010 while the appellant was handed over to Pak Army on 10.3.2010 i.e. one day earlier than passing the impugned order. According to the letter dated 13th April 2010 issued by C

Commanding Headquarter 37 Division appellant was investigated by the Pak Army personnel and declared clear by the concerned authority. Apart from the said certificate appellant was not proceeded against departmentally as neither any charge sheet nor any statement of allegations was served on him nor enquiry was conducted and hence the appellant was condemned unheard and the impugned order is a void order finding no support from any legal provision of service laws.

For the above mentioned reasons the appeal is accepted and as a consequence thereof appellant is reinstated in service with back benefits. The respondents may, in case of need, proceed against the appellant afresh and in such eventuality proceedings shall be completed within a period of two months. Parties are however left to bear their own costs. File be consigned to the record room.

Announced  
02.05.2016

Sd/- M. Azim Khan Afzidi,  
Chairman  
Sd/- Abdul Latif,  
Member

Certified to be true copy

EMANUEL R.  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 10-05-2016  
 Number of Vols. 1200  
 Copying Fee 8-00  
 Urgent \_\_\_\_\_  
 Total 8-00  
 Name of Applicant \_\_\_\_\_  
 Date of Completion 12-05-2016  
 Date of Delivery 12-05-2016



# Annex A

## SHOW CAUSE NOTICE

I Saeed Khan Executive District Officer (E&SE) Dir Lower as a competent authority, under the NWFP removal from service END rules 1973, do hereby serve you Miss: Shaheen Begum PST GGPS Dapoor Teshil Lal Qila District Dir Lower.

1. consequent upon the completion of enquiry, conducted against you, by the enquiry committee, and on going through its finding/recommendation of the enquiry committee the allegations about your willful absence from duty with effect from 3.3.2009 to date has been proved.
2. I am satisfied that you committed the following acts/omissions specified in the section 3 of the said ordinance.
  - a) In efficiency.
  - b) Miss conduct.
  - c) Negligence in government duty.
3. As a result thereof, I being a competent authority have tentatively decided to impose upon you the penalty of termination from service.
4. You are therefore required to show cause notice as why the aforesaid penalty should not be imposed upon you.
5. If no reply to this notice is received within 15 days of its delivery in the normal course of circumstances, it shall be presumed, that you have no defense, to put in, in that case, ex-party decision will be taken against you.
6. A copy of enquiry report is enclosed.

(Saeed Khan)  
Executive District Officer  
(E&SE) Dir Lower.

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (E&SE) DIR LOWER.

Endst: No. 6959-61

Dated: 14/05/2010

Copy forwarded to:

1. The District Coordination Officer District Dir Lower.
2. Miss: Shaheen Begum ADO(F) Local Office with the direction to serve the show cause notice on the accused teacher and acknowledgement receipt may be sent to this office for record.
3. Miss: Shaheen Begum PST GGPS Dapoor Teshil Lal Qila District Dir Lower.

Received on  
24/5/10  
1/2/2/9

Received on  
Roidat Mshad J/c

Executive District Officer  
(E&SE) Dir Lower.



Annex: C

STATEMENT SHOWING THE ABSENTEE REPORT REGARDING DIFFERENT TEACHERS DATED 22-02-2010

S#	Name of Absentee teacher	School	Duration	1. Personal Hearing ✓ 2. Written Statement 3. Absentia 4. No. response	Remarks / Suggestion / Recommendations of Committee
①	Mahreen Begum PST	GSPS Dapoor	3/3/2009 to-date		From report of DDO (F) it is evident that the teacher remained absent w.e.f 3/3/2009 to-date. Even though she has arrived the school on 2/3/2009, after report it. After ward till now remain absent. Hence her report & order may be withdrawn.

Decision of EDO (E&SE) Dir Lower

*Agreed*

*[Signature]*  
 Executive District Officer,  
 Elementary & Secy  
 Distt: Dir (L)

1. Muhammad Nagin DO (Chairman). *[Signature]*

2. Aftab Alam Khan DO (F) (Member). *[Signature]*

3. Gul Hamid Jan DDO TMG:(Member). *[Signature]*

4. Muhammad Israr DDO (M) S.Bagh (Member). *[Signature]*

5. ADO Circle Concerned (Member). *[Signature]*

6. *[Signature]*

Notification:-

Where as one Mr. Shaheen Begum PST GGPS Dapoor Maidan Tehsil Lalqila District Dir lower, remained absent willfully from duties w.e. from 03/03/2009 to date.

And where as show cause notice was issued / served upon him through registered cover and then through a notice published in "Daily Mashriq" dated 21-07-2010 but no convincible reply has been received so far.

Where as a committee was constituted under the chairmanship of District Officer (M) local office, to scrutinize / finalize the cases of absent teachers/officials.

On the recommendation of the committee, and after consultation with District Coordination Officer Dir lower, the undersigned, being the competent authority do hereby ordered the removal from service of Mr. Shaheen Begum PST GGPS Dapoor Maidan Tehsil Lalqila District Dir lower under the E&D rules 1973 from the date of ~~his~~ absence.

(SAEED KHAN)  
EXECUTIVE DISTT: OFFICER  
(E&SE)DISTRICT DIR LOWER

15728-33  
Endst: No. \_\_\_\_\_ / Dated Timergara the 16 /09/2010.

Copy to:-

1. The District Coordination Officer Dir lower.
2. The District Accounts Officer Dir lower.
3. The District Officer (F) local office.
4. AP DEMIS Cell local office.
5. The Deputy District Officer (F) Timergara.
6. The accused concerned.

  
EXECUTIVE DISTT: OFFICER  
(E&SE)DISTRICT DIR LOWER

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. 715/2013

Shaheen Begum

Versus

E.D.O &amp; Others

**REPLICATION****Respectfully Sheweth,****PRELIMINARY OBJECTION.**

All the 05 preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no locus standi/cause of action, unclean hands, discrimination/injustice has been done, appeal is based on facts and justification and the appeal is not barred by law.

**ON FACTS**

1. Needs no comments.
2. Admitted to the extent of arrival in the school. Rest of the para is not correct and as stated in para 3 of the appeal, the law and order situation was abnormal.
3. Not correct. The para of the appeal is correct. It was not only the appellant but also the respondents were well aware about the deteriorated situation of the area. The area was ruling by miscreants and was under curfew.
4. Not correct. The show cause notice was not received either by the appellant or by his brother as Roidar Muhammad, Junior Clerk is alien and is not her brother.
5. Not correct. As stated earlier, there was communication gap in all fields including postal service, distribution of News Papers, etc.
6. Admitted correct by the respondents. The fact stated in para No. 3, 4, etc regarding law and order situation is admitted

by the respondents in letter dated 18.06.2012 attached with the appeal as annex "F" P. 12.

7. Not correct. The para of the appeal is correct. If order dated 05.09.2012, removing appellant from service is glanced upon, then no copy to appellant or to any authority was endorsed.
8. Admitted correct by the respondents. The case of the appellant is at par with the cases mentioned in the para of appeal.

**GROUND S:**

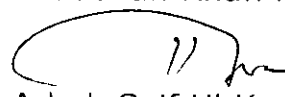
All the grounds of the appeal are legal and correct while that of the reply are illegal and incorrect, the same are once again affirmed.

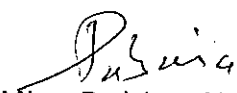
It is, therefore, most humbly prayed that the appeal be accepted as prayed for.

Through

Dated: 15.09.2015

Appellant  
  
 Saadullah Khan Marwat

  
 Arbab Saif Ul Kamal

  
 Miss Rubina Naz  
 Advocates.

**COUNTER AFFIDAVIT**

I, Shaheen Begum D/o Layeq Jan, Ex-PST, GGPS Dapoor, Dir Lower, Appellant, do hereby solemnly affirm and declare that contents of the **Appeal & Replication** are true and correct to the best of my knowledge and belief and that of the reply are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.

  
 DEPONENT

2015 S C M R 165

[Supreme Court of Pakistan]

Present: Ijaz Ahmed Chaudhry and Umar Ata Bandial, JJ

*Respondent side*

MUHAMMAD ASIF CHATHA and others---Appellants

versus

CHIEF SECRETARY, GOVERNMENT OF PUNJAB, LAHORE and others---Respondents

Civil Appeals Nos.222 to 238 of 2012, decided on 25th November, 2014.

(On appeal against the judgment dated 25-11-2011 passed by Punjab Service Tribunal, Lahore in Appeals Nos.2933 to 2936, 2939 to 2943, 2951 of 2005, 4416 of 2006, 500 to 505 and 591 of 2006)

**(a) Constitution of Pakistan---**

---Art. 212(3)---Civil service---Appeal against judgment of Service Tribunal filed before the Supreme Court---Question of fact---Such question could not be gone into in appeal proceedings before the Supreme Court under Art. 212(3) of the Constitution. [p. 170] B

**(b) Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---**

---R. 8-B---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 13--- Appointment on acting charge/officiating basis---Promotion---Scope---Appointment on acting charge/officiating basis did not confer any vested right for regular promotion. [p: 170] C

Tariq Aziz-ud-Din's case 2010 SCMR 1301 ref.

**(c) Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---**

---R. 13---Promotion to higher post on officiating basis---Civil servants seeking regularization of such promotion--- Limitation--- Delay of 6 years in raising issue of regularization of promotion---Effect---Three seniority lists were issued, during the period when civil servants remained promoted on officiating basis, showing them not only junior to other civil servants but also on officiating basis but they kept mum and never challenged the said lists---Civil servants after their

A  
6

D)

3

12  
Senior

195

Respondent  
 8/2/14

appointment on officiating basis in the years 1995-1998 could not have agitated the matter in the year 2001---Civil servants seemingly had accepted their appointment on officiating basis---Appeal filed by civil servants seeking regularization of their promotion was dismissed accordingly. [pp. 169, 170, 171] A, D, E & F

Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan PLD 1970 Quetta 115 distinguished.

(d) *Service Tribunals Act (LXX of 1973)*---

---S. 4---Departmental representation, filing of---Limitation period--- Appeal filed before Service Tribunal--- Limitation period and competency---When a departmental representation was barred by time, then without disclosing any sufficient reason for delay, no subsequent order of disposal of such incompetent representation could create fresh cause of action and that the appeal filed before the Service Tribunal would be incompetent. [p. 171] G

Abdul Wahid v. Chairman, Central Board of Revenue, Islamabad and others 1998 SCMR 882 and NED University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453 ref.

Saif ul Malook, Advocate Supreme Court for Appellants (in all cases).

Respondents in person.

Mudassir Khalid Abbasi, A.A.-G. for Government of Punjab.

Date of hearing: 13th November, 2014.

JUDGMENT

IJAZ AHMED CHAUDHRY, J.---These appeals by leave of the Court have been directed against the judgment dated 25-11-2011 passed by the learned Punjab Service Tribunal, Lahore, whereby the appeals filed by the appellants were dismissed.

2. Briefly stated the facts of the matter are that the appellants who were possessing B.Sc. Engineering Degree were promoted to the post of Assistant Engineer/SDO in BS-17 on officiating basis between the year 1995 to 1998 whereas the respondents who were holding B.Tech (Hons.) Degree were promoted in the year 2001 to the same post on regular basis. Appellants filed Constitution petitions before the High Court and challenged the promotion of the respondents. The learned High Court while dismissing the writ petitions directed the Department to decide the controversy in accordance with law after hearing both the parties.

SCMR

SCMR



case are concerned, it is not denied that the principal accused namely Baz Khan, who allegedly transported the joint pipes in question, was reinstated into service by the appellant-Department. Despite specific query, learned counsel for the appellants has not been able to point out the pecuniary loss suffered by the Company and it is not denied that the alleged pipes were recovered and were restored to the Company.

13. For what has been discussed above, we do not find any merit in these appeals as they neither raise any question of law of public importance within the meaning of Article 212 of the Constitution nor they point out any illegality to warrant interference. The appeals having no merits are accordingly dismissed.

Appeals dismissed.

M.H./N-2/SC

2010 S C M R 1564

[Supreme Court of Pakistan]

Present: Ch. Ejaz Yousof and Sardar Muhammad Aslam, JJ

Mst. ROQIAZA AKBAR and others---Petitioners  
versus

SECRETARY, EDUCATION (S&L), N.-W.F.P.  
and others---Respondents

C.P.L.As. Nos.480-P to 483-P, decided on 1st April, 2009.

(On appeal from the order/judgment, dated 6-7-2007 passed by the N.-W.F.P. Service Tribunal, Peshawar in Appeals Nos.729, 731 to 733 of 2006).

North-West Frontier Province Service Tribunals Act (I of 1976)---

S. 4--Appeal--Termination of service--Dismissal of departmental appeal for being barred by time--Effect--Utilization of departmental remedy was condition precedent towards maintainability of appeal before Service Tribunal--Where appeal before departmental authority was barred by time, then appeal before Tribunal would also be incompetent--Tribunal dismissed appeal as not maintainable. [pp. 1566, 1567] A, B & C

Muhammad Alsam v. WAPDA and others 2007 SCMR 513;  
Muhammad Ramzan v. Inspector-General of Police 2007 SCMR 346

SCMR

Chairman, Evacu Nazir 2006 SC Technology v. S/ ur-Rehmat v. Fe The Chairman, P

Mir Ada for Petitioners. (i

Nemo fe

Date of

CH. EJ

against a com N.-W.F.P. Ser 2006, 731 of petitioners we therefore, we common judgn

2. Facts

C.P.

Petit on 31-7-199 appointment from her di which was preferred a which wa representat

C

P

on 31-7- appointm from her which w preferre which represe

SCMR

*Ramzan*

*Ramzan*

84

[Vol: XLIII

2010] Roqiaza Akbar v. Secretary, Education (S&L), N.-W.F.P. 1565  
(Ch. Ejaz Yousaf, J)

Chairman, Evacuee Trust Property Board and other v. Khawaja Shahid Nazir 2006 SCMR 1862; N.E.D. University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453; S.M. Afzal-Rehmat v. Federation of Pakistan and others 2005 SCMR 1322 and the Chairman, PIAC and others v. Nasim Malik PLD 1990 SC 951 rel.

Mir Adam Khan, Advocate Supreme Court/Advocate-on-Record  
Petitioners (in all cases).

Nemo for Respondents (in all cases).

Date of hearing: 1st April, 2009.

### JUDGMENT

CH. EJAZ YOUSAF, J.---All these four petitions are directed against a common order/judgment dated 6-7-2007 passed by the N.W.F.P. Service Tribunal, Peshawar, whereby Appeals Nos.729 of 2006, 731 of 2006, 732 of 2006 and 733 of 2006 filed by the petitioners were dismissed. Since same question of law is involved, therefore, we propose to decide all the four petitions through this common judgment.

2. Facts of each case, in brief, are as under:--

#### C.P.L.A. No.480-P of 2007

Petitioner in this case was appointed as untrained PTC teacher on 31-7-1999. Her services were terminated from the date of her appointment vide order dated 26-11-1999, on the ground of long absence from her duty. The petitioner filed departmental appeal on 19-5-2006 which was rejected vide order dated 22-7-2006. Being aggrieved she preferred an appeal before the N.-W.F.P. Service Tribunal, Peshawar, which was dismissed as not maintainable on the ground that representation before the department was barred by limitation.

#### C.P.L.A. No.481-P of 2007

Petitioner in this case was appointed as untrained PTC teacher on 31-7-1999. Her services were terminated from the date of her appointment vide order dated 26-11-1999, on the ground of long absence from her duty. The petitioner filed departmental appeal on 19-5-2006 which was rejected vide order dated 22-7-2006. Being aggrieved she preferred an appeal before the N.-W.F.P. Service Tribunal, Peshawar, which was dismissed as not maintainable on the ground that representation before the department was barred by limitation.

#### C.P.L.A. No.482-P of 2007

Petitioner in this case was appointed as untrained PTC teacher

2007 SCMR 513;  
2007 SCMR 346;

unals Act (I of

al of departmental  
Utilization of  
resources maintainability  
before departmental  
Tribunal would  
not maintainable.

tioners

N.F.P.

2009.

6-7-2007 passed by  
is Nos.729, 731 to

accused namely  
in question, was  
Despite specific  
able to point out  
not denied that the  
Company.

find any merit in  
of law of public  
Constitution nor  
he appeals having

appeals dismissed.

on 31-7-1999. Her services were terminated with immediate effect vide order dated 26-11-1999, on the ground of long absence from duty. The petitioner filed departmental appeal on 19-5-2006 which was rejected vide order dated 22-7-2006. Being aggrieved she preferred an appeal before the N.-W.F.P. Service Tribunal, Peshawar, which was dismissed as not maintainable on the ground that representation before the department was barred by limitation.

C.P.L.A. No.483-P of 2007

Petitioner in this case was appointed as untrained PTC teacher on 31-7-1999. Her services were terminated with immediate effect vide order dated 26-11-1999, on the ground of long absence from duty. The petitioner filed departmental appeal on 19-5-2006 which was rejected vide order dated 22-7-2006. Being aggrieved she preferred an appeal before the N.-W.F.P. Service Tribunal, Peshawar, which was dismissed as not maintainable on the ground that representation before the department was barred by limitation.

3. It has been mainly contended by the learned counsel for the petitioner that the learned Tribunal has gravely erred in dismissing appeal of the petitioners on the ground that their representations before the departmental authority were time-barred.

C.Ps. 480-P to 483-P of 2007

4. We have given our anxious consideration to the contention of the learned counsel for the petitioners and have perused the record of the case, with his assistance, minutely.

5. It may be pertinent to mention here that in two of the Petitions i.e. bearing No. 480-P and 381-P of 2007, the services of the petitioners were terminated on account of non-assumption of charge, whereas in other two Petitions i.e. bearing No. 482-P and 483-P of 2007 services of the petitioners were terminated for wilful absence from duty. Although the termination orders were passed on 26-11-1999 yet, the petitioners slept over the matter and did not bother to file appeals before the departmental authority for about six years uptill 19-5-2006, which were dismissed mainly on the ground of limitation. The petitioners then approached the Service Tribunal on 11-8-2006 and the learned Service Tribunal having found that the departmental appeals being barred by time, the appeals before the Service Tribunal too, were not competent.

6. By now it is well-settled that if appeal before the departmental authority is barred by time, then appeal before the Service Tribunal would also be incompetent because under the relevant law utilization of the departmental remedy is the condition precedent towards

SCMR

maintainability of fortified by the fo

- (1) Muha
  - (2) Muha
- SCMR 3  
others v.  
Universit  
Hussain  
Federati  
Chairma

It would and not be de prosecuting his indulgence of th

7. Upshot misconceived 2  
S.A.K./R-8/SC

Mu

Civil Appe  
and Civil  
2010.

High Cou  
to 633 of

(a) Indi

—S. 25-  
Ordinan  
Termin

SCMR

maintainability of appeal before the Service Tribunal. In this view we are  
satisfied by the following reported judgments:--

- (1) Muhammad Alsam v. WAPDA and others 2007 SCMR 513,
- (2) Muhammad Ramzan v. Inspector General of Police 2007 SCMR 346, (3) Chairman, Evacuee Trust Property Board & others v. Khawaja Shahid Nazir 2006 SCMR 1862, (4) N.E.D. University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453, (5) S.M. Afzal-ur-Rahmat v. Federation of Pakistan and others 2005 SCMR 1322, (6) The Chairman, PIAC and others v. Nasim Malik PLD 1990 SC 951.

It would be pertinent to mention here that law helps the diligent and not be delinquent/remiss. If a person has been negligent in prosecuting his remedy before the proper forum, he is not entitled to indulgence of the court.

7. Upshot of the above discussion is that these petitions being misconceived are hereby dismissed and leave declined.

Leave declined.

S.A.K./R-8/SC

2010 S C M R 1567

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J.  
and Ghulam Rabbani, J

Messrs HASHMI CAN COMPANY LTD.---Appellant

versus

LIAQUAT MUHAMMAD and others---Respondents

Civil Appeals Nos.1725 to 1856, 1887 to 1943 of 2007, 25 to 40 of 2008 and Civil Petitions Nos.633-K to 640-K of 2007, decided on 18th May, 2010.

(On appeals from the judgment dated 12-9-2007 passed by the High Court of Sindh of Karachi in Labour Appeals Nos.337 to 341, 473 to 633 of 2003, 6 to 201 of 2004).

(a) *Industrial Relations Ordinance (XXIII of 1959)*---

---S. 25-A ---*Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1958)*, S.11-A & S.O. 12(1)(3)---*Grievance petition--- termination of service of workers in pursuance of retrenchment order*

2005 S C M R 1206

[Supreme Court of Pakistan]

Present: Sardar Muhammad Raza Khan and Saiyed Saeed Ashhad, JJ

MANZOOR HUSSAIN---Petitioner

versus

SECRETARY, GOVERNMENT OF PUNJAB and another---Respondents

Civil Review Petition No.169 of 2004, decided on 26th April, 2005.

(On review from the judgment, dated 17-6-2004 passed in C.P. No. 1549-L of 2003).

(a) Civil service---

---Appeal before Service Tribunal---Limitation---Limitation for a civil servant to go in appeal before Service Tribunal could not in any case be stretched beyond one hundred and twenty days.

2003 SCMR 826 ref.

Muhammad Siddique v. Mian Amir Khisro 1985 SCMR 1848 and Ghulam Ali Memon's case 2000 SCMR 1474 rel.

Constitution of Pakistan (1973)---

---Art. 212(3)---Question of limitation, though raised before Service Tribunal, but remained unattended---Effect---Supreme Court suo motu could entertain such question.

Mian Allah Nawaz, Advocate Supreme Court for Petitioner.

Dr. Mohy-ud-Din Qazi, Advocate Supreme Court for Respondents.

Date of hearing: 26th April, 2005.

## JUDGMENT

SARDAR MUHAMMAD RAZA KHAN, J.---Learned counsel for the petitioner initiated his arguments saying that the question of limitation has incorrectly been determined against the petitioner and that, in view of 2003 SCMR 826 the period of 90 days is restricted only to wait before filing an appeal and that section 4 of the Service Tribunals Act is silent on the point as to how much period thereafter the civil servant would go to the Service Tribunal.

2. We have gone through the impugned judgment but were not satisfied that it laid down a proper interpretation of section 4 of the Service Tribunals Act. Moreover, it runs contrary to the verdict of a larger Bench (of four Judges) of this Court rendered in the case of Muhammad Siddique v. Mian Amir

asro 1985 SCMR 1848 and another ruling in Ghulam Ali Memon's case reported as 2000 SCMR 474 where it has been settled authoritatively that limitation for a Civil Servants to go in appeal before the Service Tribunal cannot, in any case, be stretched beyond one hundred and twenty days.

3. The original order against the petitioner was passed on 16-7-1987 against which he made a representation on 27-7-1987 but the same remained unanswered. According to the learned counsel it is unanswered even up to this day. We are afraid that this is not the correct position because the original order; of termination dated 16-7-1987 was withdrawn on 3-12-1982 and the petitioner was reinstated. Thereafter the withdrawal order was also rescinded vide another order dated 5-12-1988 and thus, the department, wittingly or unwittingly; revived the cause of action for the benefit of the petitioner. The petitioner submitted no departmental representation against the second order aforesaid.

4. The interesting aspect of the case is that the petitioner instead of going to the Service Tribunal filed a writ petition against the order of termination dated 16-7-1987. The writ petition was dismissed on 25-4-1992 with observation that the petitioner should resort to the Service Tribunal. Even then the petitioner resorted to the Tribunal on 6-12-1997 i.e. 5 years after the above decision and 10 years after the original order of termination.

5. This Court though suo motu can entertain the question of limitation yet it was observed that the Tribunal did not attend to the question despite the fact that the respondents had taken the plea of limitation in their reply (P.90).

6. Considered from any angle, the review cannot be allowed. The same is hereby dismissed.

S.A.K./M-263/S

Review dismissed.

Haji Ghulam Rasul's case PLD 1971 SC 376; Mst. Amina Begum's case PLD 1978 SC 220 and Nawab Syed Raunaq Ali's case PLD 1973 SC 236 rel.

(b) Constitution of Pakistan---

—Art. 212(3)—Service Tribunal, finding of—Validity—Such finding being finding of fact would not call for interference by Supreme Court. [p. 680] C

Ch. Muhammad Azim's case 1991 SCMR 255 rel.

(c) Constitution of Pakistan---

—Art. 212(3)—Concurrent findings of fact by Appellate Authority and Service Tribunal—Validity—Supreme Court would not interfere with such findings. [p. 680] D

Iftikhar Ahmed Malik's case 2005 SCMR 806 rel.

(d) Service Tribunals Act (LXX of 1973)---

—S. 4—Departmental appeal being time-barred—Effect—Appeal before Service Tribunal would not be competent. [p. 680] E

Chariman PIA and others v. Nasim Malik PLD 1990 SC 951; Muhammad Aslam v. WAPDA and others 2007 SCMR 513 and Government of Pakistan through Secretary, Establishment Division v. Bashir Ahmad Khan PLD 1985 SC 309 rel.

(e) Limitation---

—Appeal, if required to be dismissed for being time-barred, then its merits need to be discussed. [p. 681] G

Khan Sahib Sher Muhammad Mir's case 1987 SCMR 92 rel.

(f) Constitution of Pakistan---

—Art. 212(3)—Constitutional jurisdiction under Art. 212(3) of the Constitution—Discretionary in character. [p. 682] J

(g) Constitution of Pakistan---

—Arts. 185(3) & 212(3)—Grant of leave to appeal by Supreme Court—Discretionary. [p. 682] K

Ghulam Qadir Khan's case 1986 SCMR 1386 rel.

*Revised*

(23) (2)

their appointment orders, medical reports and charge reports are enclosed as Annexes 'B.B-1 & B-2' respectively.

4. That the petitioners are performing their duties in the concerned schools, making their attendance in the register of the school regularly. Copies of school registers are enclosed as Annexure 'C'.
5. That the petitioners are performing their duties regularly as PTC teachers, without any fail since their appointment till date.
6. That despite the performance of their duties, the petitioners have yet to receive their monthly salary, hence, being aggrieved and having no other appropriate remedy, the petitioners seek the indulgence of this Honourable Court, in its extra ordinary jurisdiction for the redressal of their grievances, inter alia, the following grounds.

GROUNDS.

- Filed to-day, 17/1/09
1. That the petitioners were appointed according to the policy of the Government and they were adjusted in their respective schools but they did not receive any salary till date, for the reasons best known to the respondent No.3.
  2. That according to Constitution of Pakistan, every Government Servant is supposed to receive salary but in the case of the petitioners, the respondents are not even performing their duty in accordance with the Constitution and they have not issued the salary of the petitioners.
  3. That the petitioners are working in their respective place of posting, according to Civil Services Laws but they are being discriminated by the respondents, without any reasonable ground or excuse and justification.
  4. That the counsel for the petitioners may be allowed to raise additional grounds during the course of arguments.

It is, therefore, humbly prayed that the respondents may be directed to issue the monthly salary of the petitioners under the law, by issuing a writ in their favour. Any other relief deemed appropriate may also be granted in the circumstances.

Your Humble Petitioners;  
Through counsel;

*Saleemullah Khan*  
(Saleemullah Khan Ranazai)  
Advocate Supreme Court.

Dated: 05.01.2009.



**(h) Constitution of Pakistan---**

—Arts. 199 & 212(3)—Void order—Constitutional jurisdiction of High Court and Supreme Court—Scope—Such jurisdiction might be refused, if same was meant to enable petitioner to circumvent provisions of law of limitation or if he was stopped by his conduct from challenging order. [p. 682] L

Muhammad Ismail's case 1983 SCMR 168; Abdur Rashid's case 1969 SCMR 141 and Wali Muhammad's case PLD 1974 SC 106 rel.

Haider Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Nemo for Respondents.

**ORDER**

CH. IJAZ AHMED, J.—Raja Khan, petitioner, seeks leave to appeal against the impugned judgment dated 11-2-2009 whereby the learned Federal Service Tribunal, Islamabad, dismissed his appeal on merits as well as time-barred.

2. Detailed facts have already been mentioned in the impugned judgment. However, necessary facts out of which the present petition arises are that petitioner was appointed as Chowkidar with the respondents establishment from April, 1985. Show cause notice dated 23-2-2004 under section 5(4) of the Removal from Service (Special Powers) Ordinance, 2002 along with statement of allegations was served upon the petitioner containing the following charges:—

- (1) Whereas you Mr. Raja Khan, Chowkidar PESCO (WAPDA) Jhang Circle Jhang are charged with misconduct as per statement of allegations attached.
- (2) And whereas on the basis of documentary evidence available, it is not considered necessary to have formal inquiry against you and that proceedings are being initiated under section 5(4) of the Removal from Service (Special Powers) Ordinance 2002 which might entail imposition of a major penalty of dismissal from service as specified in section 3 of the said ordinance.
- (3) Now, therefore, you are required to show cause within 15 days from the date of receipt of this notice as to why the proposed action should not be taken against you.
- (4) If no response is received from you within the time stipulated above, it would be presumed that either you have no defence.

offer and/or you then be decided.

Whereas you Mr. Jhang are charged with corruption and in relevant circumstances

As per report of Mr. Ghulam Ab Circle Jhang. 17-2-2004 with from the Circle undersigned.

If any mishap responsible. You in the office aft duties."

Petitioner submitted that he was absent from authority after providing compulsory retirement dated 29-3-2004. Petition dated 6-4-2004 before the appeal barred vide order dated another appeal before the was dismissed vide order provision of second appeal being aggrieved filed at Tribunal, Islamabad, on judgment dated 11-2-20

3. Learned counsel order of dismissal of incompetent authority without lawful authority department was void, type of order. It can be void order. Learned Service Tribunal with

4. We have given the learned counsel admitted fact that sh



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
PUBLIC HEALTH ENGG: DEPARTMENT**

No.SO(Estt)/PHED/1-5/97  
Dated Peshawar, the January 28, 2013

To

✓  
Mr. Abdul Wahab Shahid Abbasi,  
Superintending Engineer,  
Office of Chief Engineer (South) PHE Peshawar.

*AMINOS E*  
*(26)*

Subject: **Departmental representation against Notification No. SO(ESTT)PHED/1-9/2012 dated Peshawar, March 6, 2010, communicated on 27-04-2012 whereby appellant's right of promotion to the post of Chief Engineer (BPS-20) has unlawfully been denied.**

Dear sir,

I am directed to state that the competent authority has been pleased to reject your representation dated 07-05-2012 on the subject noted above.

Yours faithfully,

*Muhammad Yunas*  
*28/1/13*

**( MUHAMMAD YUNAS )  
SECTION OFFICER (ESTT)**

Diary No.	595
Date	29/1/13
Case No.	
C.E.P.H.E. (S)	
S.E.P.H.E.	
Director Design	
Design Engr	
A.O.	
JAO	
S.O.	

onal jurisdiction of  
jurisdiction might be  
ner to circumvent  
by his conduct from

Abdur Rashid's case  
1974 SC 106 rel.

t and M.S. Khattak,

itioner, seeks leave to  
-2-2009 whereby the  
missed his appeal on

ned in the impugned  
the present petition  
howkidar with the  
w cause notice dated  
from Service (Special  
allegations was served  
es:--

ar PESCO (WAPDA)  
nduct as per statement

evidence available, it  
al inquiry against you  
nder section 5(4) of the  
Ordinance 2002 which  
lty of dismissal from  
d ordinance.

cause within 15 days  
to why the proposed

in the time stipulated  
ou have no defence to

offer and/or you have willfully declined to do so. The case shall then be decided on 'ex parte' without further reference.

Whereas you Mr. Raja Khan, Chowk dar, PESCO Jhang Circle Jhang are charged with gross misconduct, inefficiency, corruption and mal practices for the following charges and other relevant circumstances.

As per report of Mr. Shahzad Nasir, Telephone Attendant and Mr. Ghulam Abbas Bhatti Telephone Attendant PESCO Jhang Circle Jhang. You are absent from duty w.e.f 6-2-2004 to 17-2-2004 without intimation/prior permission/sanction leave from the Circle Superintendent/Technical Officer/and by the undersigned.

If any mishap/incident create in Circle office, who are responsible. You are already so many times directed to present in the office after closing hours but you have failed in official duties."

Petitioner submitted reply to the show cause notice and admitted that he was absent from duty on account of illness. The competent authority after providing him personal hearing awarded major penalty of compulsory retirement from service w.e.f. 31-3-2004 vide order dated 29-3-2004. Petitioner being aggrieved filed departmental appeal, on 6-4-2004 before the appellate authority who dismissed the same as time barred vide order dated 10-11-2004. Thereafter the petitioner filed another appeal before the Managing Director Power on 8-12-2004 which was dismissed vide order dated 4-2-2005 on the ground that there is no provision of second appeal "further appeal" under the rules. Petitioner being aggrieved filed Appeal No. 445(R)CS/2005 in the Federal Service Tribunal, Islamabad, on 12-4-2005 which was dismissed vide impugned judgment dated 11-2-2009. Hence the present petition.

3. Learned counsel for the petitioner submits that the impugned order of dismissal of the petitioner dated 29-3-2004 was passed by incompetent authority, therefore, the same was coram non iudice and without lawful authority. He further urges that impugned order of the department was void, therefore, no limitation would run against such type of order. It can be agitated at any time and could be ignored being a void order. Learned Service Tribunal had not adverted to this aspect of the case, therefore, the impugned judgment was passed by the learned Service Tribunal without application of mind.


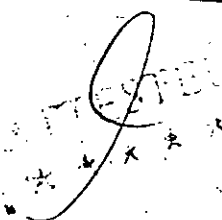

4. We have given our anxious consideration to the contentions of the learned counsel of the petitioner and perused the record. It is an admitted fact that show cause notice was served upon the petitioner

14

121

APPENDIX

S.No.	Nomenclature of post.	Minimum qualification required for appointment.	Age limit.	Method of recruitment.
1.	2.	3.	4.	5.
<b>I. Engineering Cadre:</b>				
1.	Chief Engineer (BS-20).	<i>Please see attached letter to PWS</i>		By promotion, on the basis of selection on merit, from amongst the Superintending Engineers/Directors Design/Directors (Planning and Monitoring) with at least seventeen years service in BS-17 and above, possessing degree in B.E/B.Sc Engineering (Civil) from a recognized University.
2.	Superintending Engineer / Director Design / Director (Planning and Monitoring) (BS-19).			By promotion, on the basis of seniority-cum-fitness, from amongst the Executive Engineers/ Design Engineers/Technical Officers with twelve years of service in BS-17 and above, possessing degree in B.E/B.Sc Engineering (Civil) from a recognized University.
3.	Executive Engineer/ Design Engineer/ Technical Officer (BS-18).			By promotion, on the basis of seniority-cum-fitness, from amongst Assistant Engineers/ Assistant Design Engineers/Sub Divisional Officers possessing degree in B.E/B.Sc Engineering (Civil) from a recognized University with five years service as such.



  
 Section Officer (Establishment)  
 Public Health Engineering Department  
 NWFP, Peshawar

under the provisions of Removal from Service (Special Powers) Ordinance, 2002 wherein it is specifically provided under the provisions of the Ordinance that petitioner has to file departmental appeal within the prescribed period of 15 days. The order of compulsory retirement was passed by the competent authority on 29-3-2004. The petitioner filed departmental appeal on 6-4-2004 which was dismissed as time barred on 10-11-2004. Thereafter the petitioner filed second appeal before the Managing Director on 8-12-2004 which was also dismissed on 4-2-2005 in the following terms:--

"It is to inform you that your appeal under reference does not merit consideration as there is no provision of second appeal "further appeal" under the rules."

5. The learned Service Tribunal had rightly come to the conclusion that appellate authority was justified to dismiss his appeal as time-barred and second appeal was also dismissed with cogent reasons on account of non availability of any provision under the rules to file second appeal to higher authority after dismissal of the first appeal. We have also re-examined the material on record with the assistance of the learned counsel of the petitioner. We do not find any infirmity or illegality with regard to the conclusion arrived at by the learned Service Tribunal with regard to the finding mentioned in para 7 of the impugned judgment. It is a settled principle of law that finding of service tribunal having findings of fact would not call for interference by this Court as law laid down by this Court in Ch. Muhammad Azim case (1991 SCMR 255). Even otherwise this Court does not interfere with the concurrent findings of fact arrived at by the departmental authorities and learned service Tribunal while exercising the power under Article 212(3) of the Constitution. See *Iftikhar Ahmed Malik* case (2005 SCMR 806). It is a settled proposition of law that when an appeal of the employee was time barred before the appellate authority then the appeal before the Tribunal was also not competent in view of the various pronouncements of this Court. See *Chairman PIA and others v. Nasim Malik* (PLD 1990 SC 951) and *Muhammad Aslam v. WAPDA and others* (2007 SCMR 513). The question of law with regard to the representation has already been decided by this Court in *Government of Pakistan through Secretary Establishment Division v. Bashir Ahmad Khan* (PLD 1985 SC 309). The relevant observation is as follows:--

"He challenged his first compulsory retirement through a review application filed on 23rd of October, 1974, which was decided on 3-6-1975. This was the final order passed on review. It could be challenged within 30 days, before the Tribunal under section 4 of the Service Tribunals Act. If the appellant chose not to file an appeal but only to repeat a representation before the same

SCMR

authority who give him another 4. The period any other representation, application, period of limitation the responder of filing an appeal days of this representation during the period be excluded a good ground clearly time accordingly."

6. The appeal incompetent under section Since the petitioner has fulfilling the mandate and court cannot com

Muhammad's

Messrs Raja

Mst. Sirajun-

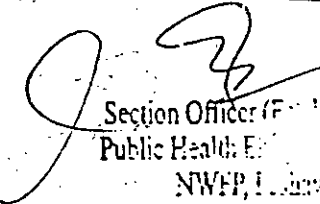
7. It is admitted been held by this Court SCMR 92) that when its merits need not be by this Court the learned merits and the appeal mention here that compulsory retiree accepted the punishment on the basis of subsequent his pensionary benefit pension claim with Rs.155,733 as well pension regularly. Tribunal on 12-4-20 judgment in para 10 justified to dismiss him and reprobate." See learned Service Trib

SCMR

15

13

Assistant Engineer/ Assistant Design Engineer/Sub Divisional Officer (BS-17).	Degree in B.E/B.Sc Engineering (Civil) from a recognized University.	21 to 32 years	<p>(a) Ten per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers who possessed Degree of B.E/B.Sc Engineering (Civil) from a recognized University;</p> <p><b>Note:</b> The seniority for the purpose of promotion shall be reckoned from the date of acquiring degree of B.E/B.Sc Engineering. (Civil) from a recognized University or date of appointment which ever is later.</p> <p>(b) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers who hold a diploma and have passed Departmental Professional Examination with at least ten years service as such; and</p> <p>(c) seventy per cent by initial recruitment.</p>
5. Sub Engineer (BS-11).	Diploma of Associate Engineering (Civil) / Electrical / Mechanical from a recognized Technical Board.	18 to 30 years	<p>(a) Ten per cent by transfer, from amongst the Draftsmen with seven years service as such, having Diploma in (Civil/Electrical/Mechanical) Technology from a recognized Board; and</p> <p>ninety per cent by initial recruitment.</p>
<b>II. Ministerial Establishment:</b>			
6. Budget and Accounts Officer/Administrative Officer (BS-17).			By promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents with five years service as such.
7. Superintendent (BS-16).			<p>(a) Seventy per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistants with five years service as such; and</p> <p>(b) thirty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Scale Stenographers with five years service as such.</p>

  
 Section Officer (Personnel)  
 Public Health Department  
 NWFP, Islamabad

(Special Powers) under the provisions of appeal within the compulsory retirement was. The petitioner filed appeal as time barred on appeal before the Tribunal dismissed on 4-2-2005

reference does not of second appeal

me to the conclusion appeal as time-barred reasons on account of file second appeal to. We have also reliance of the learned authority or illegality with Service Tribunal with impugned judgment. It is having findings of law laid down by SCMR 255). Even concurrent findings of and learned service article 212(3) of the 5 SCMR 806). It is employee was time before the Tribunal announcements of this alik (PLD 1990 SC (2007 SCMR 513). on has already been through Secretary, 1985 SC 309). The

ent through a review which was decided on review. It could Tribunal under section tant chose not to file ion before the same

authority who had decided the review, that by itself would not give him another cause of action to file an appeal under section 4. The period spent in making the representation this second or any other representation after the decision of the review application, could not be excluded as of right in counting the period of limitation ..... The review petition filed by the respondent in that behalf was decided on 13-6-1978. Instead of filing an appeal before the Tribunal under section 4 within 30 days of this final order passed on review, he made another representation which caused further delay. The period consumed during the processing of the subsequent representation could not be excluded as of right. And there being no condonation on any good ground by the Tribunal, the appeal filed on 14-1-1979, was clearly time barred and should have been dismissed accordingly."

6. The appeal of the petitioner before Service Tribunal is incompetent under section 4(1)(b) of the Service Tribunal Act, 1973. Since the petitioner has filed appeal before the Service Tribunal without fulfilling the mandatory requirement of section 4 in regard to limitation and court cannot compromise on the limitation. See:--

Muhammad's case (1998 SCMR 1354)

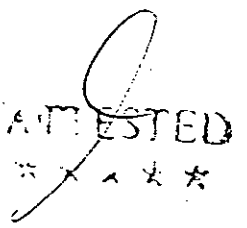
Messrs Raja Industries' case (1998 SCMR 307)

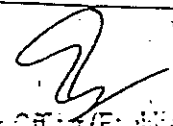
Mst. Sirajun-Munira's case (1998 SCMR 785)

7. It is admitted fact that appeal is obviously time barred and it has been held by this Court in Khan Sañib Sher Muhammad Mir's case (1987 SCMR 92) that when an appeal is required to be dismissed on limitation, its merits need not be discussed. In spite of the aforesaid law laid down by this Court the learned Service Tribunal has considered the case on merits and the appeal was also dismissed on merits. It is pertinent to mention here that the competent authority awarded penalty of compulsory retirement vide order dated 29-3-2004. The petitioner had accepted the punishment awarded by the respondents due to his conduct on the basis of subsequent events as the petitioner applied for payment of his pensionary benefit to the respondents. Petitioner got settled his pension claim within three months after his retirement and received Rs.155,733 as well as monthly pension. He also received his monthly pension regularly. Petitioner preferred appeal before the Service Tribunal on 12-4-2005. This fact was also noted in the impugned judgment in para 10. Even on merits the learned Service Tribunal was justified to dismiss his appeal on the well known principal of "approbate and reprobate." See Haji Ghualm Rasul's case (PLD 1971 SC 376). The learned Service Tribunal was justified to dismiss his appeal on the well

16

14

8.	Senior Scale Stenographers (BS-15).	<p>(a) Second Class Bachelor's Degree or equivalent qualification from a recognized University; and</p> <p>(b) a speed of 100 words per minute in English shorthand and 40 words per minute in English typing.</p>	18 to 30 years	<p>By promotion, on the basis of seniority-cum-fitness, from amongst the Stenographers BS-12 with five years service as such:</p> <p>Provided that if no suitable candidate is available for promotion, then by initial recruitment.</p>
9.	Junior Scale Stenographer (BS-12).	<p>(a) Second Class Intermediate/ D.Com or equivalent qualification from a recognized Board; and</p> <p>(b) a speed of 50 words per minute in English shorthand and 35 words per minute in English typing.</p>	18 to 30 years	<p>By initial recruitment.</p> <p style="text-align: center;">   <b>ATTENDED</b>        * * * * *     </p>

  
 Section Officer (Ed. & Insp. Staff)  
 Public Administration Department  
 NWFP, Islamabad



known principle of estoppel keeping in view subsequent events. See Mst. Amina Begum's case (PLD 1978 SC 220).

8. The conduct of the petitioner has been highlighted by the Service Tribunal in para 10 of the impugned judgment which is reproduced herein below:--

"We have seen placed on the record a number of documents which indicate the service record of the appellant. From 1989 to 27-3-2003, the appellant has been punished for unauthorized absence as many as eight times. The punishment included censure, stoppage of one annual increment for one year (1983), reduction to three lower stage in time scale for a period of three years (1990) stoppage of one annual increment for one year (1993) and stoppage of annual increment for one year (1995)."

9. It is settled principle of law that constitutional jurisdiction under Article 212(3) is discretionary in character. It is settled law that grant of leave to appeal is discretionary. See Ghulam Qadir Khan's case (1986 SCMR 1386). It is also settled law that constitutional jurisdiction against void order may be refused if it was meant to enable petitioner to circumvent provisions of law of limitation or if he was estopped by his conduct from challenging of order. See:--

Muhammad Ismail's case (1983 SCMR 168)

Abdur Rshid's case (1969 SCMR 141)

Wali Muhammd's case (PLD 1974 SC 106)

10. Keeping in view the conduct of the petitioner mentioned herein above in para 10 of the impugned judgment we are not inclined to exercise our discretion in favour of the petitioner on the well known maxim that he who seeks equity must come with clean hands as law laid down by this Court in Nawab Syed Raunaq Ali's case (PLD 1973 SC 236).

11. In view of what has been discussed above we do not find any infirmity or illegality in the impugned judgment. Even otherwise the learned counsel has failed to raise any question of public importance in the present case as contemplated under Article 212(3) of the Constitution. The petition has no merit and the same is dismissed. Leave refused.

S.A.K./R-7/SC

Leave refused.

Present: M.

GHULAM :

Criminal Appeal No

(On appeal

Lahore High Court,

(a) Penal Code (

---S. 302(b)---Re-

F.I.R.---Ocular acc

accused was not disj

by his deeds in pro

witnesses were fully

the facts---Matter

postmortem of both

within six hours of

proved and was cor

also supported from

revealed that empt

weapon---Statements

Effect---Prosecution

against accused at

P.P.C.---Sentence o

maintained by High

Appeal was dismissed

(b) Penal Code (

---S. 302(b)---Qanu

of evidence---Identij

accused---Accused w

and was only describ

the occurrence---Pro

time and they did n

identified him at the

Effect---Such identifi

accused was already

**GOVERNMENT OF KHYBER PAKHTUNKHWA,**  
**LAW, PARLIAMENTARY AFFAIRS AND**  
**HUMAN RIGHTS DEPARTMENT.**

NO.SH/12-11(63)Health/2015/15280-82 Dated Peshawar, the 4/06/2015  
To,

The Additional Advocate General  
Service Tribunal  
Khyber Pakhtunkhwa Peshawar.


Subject: - **TITLED APPEAL NO.373/2014 DR. IFTIKHAR IQBAL VS**  
**GOVERNMENT OF KHYBER PAKHTUNKHWA HEALTH**  
**DEPARTMENT.**

Reference:- Letter/Memo/Ends: No.SOH(Lit-II)13-2085/2015/ dated 25.05.2015  
together with its enclosures in original received from the Section Officer (Litigation-II)  
Health Department Khyber Pakhtunkhwa.

You are requested to undertake defense of above noted case fixed for  
hearing on the date ascertained to be obtained in the court of Service Tribunal Khyber  
Pakhtunkhwa Peshawar on behalf of Government of Khyber Pakhtunkhwa.

Any further information that may be required can be obtained from the  
Director General Health Services Khyber Pakhtunkhwa Peshawar direct.

The final decision in the case may be intimated at once and certified copy  
of the Judgment/Decree/Order/Memo, of the Cost, if any may be obtained and forwarded  
before expiry of period of limitation. In case the decision is adverse to Government. You  
are also requested to intimate your views as to further course of action in the matter  
clearly indicating the last date for appeal, revision:

  
(SHAKEEL ASGHAR)  
DEPUTY SOLICITOR

**Ends. No & date even.**

Copy forwarded to the Secretary to Government of Khyber  
Pakhtunkhwa Health Department with reference to his No. and date as above.

Any officer of the Department fully conversant with facts of the case  
should please be deputed to assist the law Officer representing the Government in the  
court on each date of hearing. The Officer so deputed should also prepare a detailed  
report of proceedings on every date of hearing and result thereof intimated to this  
Department regularly. Necessary Administrative Approval to defend the case at public  
expense may also be accorded and conveyed to this Department at an early date. Copy of  
the plaint Appeal Para-wise comments there on and brief history of the case may be given  
to the Law Officer and one set to this department for scrutiny and record.

---

  
(SHAKEEL ASGHAR)  
DEPUTY SOLICITOR

**Ends no & date even.**

Copy forwarded for information and necessary action with reference to  
letter/memo/Endorsement number quoted above to the:-

2. Director General Health Services Khyber Pakhtunkhwa Peshawar.

---

  
(SHAKEEL ASGHAR)  
DEPUTY SOLICITOR

innocence, the cause of his involvement projected by him is some political rivalry. But the evidence produced by the prosecution in bringing home the guilt does fully support and justify his involvement in the commission of offence, who has rightly been convicted for taking an innocent life of a child in a merciless and cruel manner for no fault of the minor boy. He does not deserve any leniency.

7. In view of the above, the appeal being without merit is dismissed accordingly.

N.H.Q./G-21/SC

Appeal dismissed.

2011 S C M R 676

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J.  
Raja Fayyaz Ahmed and Ch. Ijaz Ahmed, JJ

*Time barred*  
RAJA KHAN---Petitioner  
versus

MANAGER (OPERATION) FAISALABAD ELECTRIC SUPPLY  
COMPANY (WAPDA) and others---Respondents

Civil Petition No. 636 of 2009, decided on 21st May, 2009.

(Against the judgment dated 11-2-2009 passed by the Service Tribunal, Islamabad, in Appeal No. 445(R) CE of 2005).

(a) *Removal from Service (Special Powers) Ordinance, XVII of 2000*---

---Ss. 34 & 10---Constitution of Pakistan, Art. 212(3)---Compulsory retirement from service---Dismissal of first departmental appeal as being time barred---Dismissal of second departmental appeal as not competent---Dismissal of appeal by Service Tribunal on merits as well as its being time barred---Validity---Petitioner had filed appeal before Tribunal without fulfilling mandatory requirement of S. 4 of Service Tribunals Act, 1973 in regard to limitation---Court should not compromise on limitation---Petitioner during four years of service has been punished for unauthorized absence as many as eight times---Petitioner by his subsequent conduct had accepted punishment of compulsory retirement by getting his pension claim of 11 months pension regularly---Supreme Court refused to grant leave to appeal in such circumstances. [pp. 679, 680, 681, 682] A, B, F, H, I, J & N

Haji Ghulam Begum's case PLD 1973 SC 236 rel.

(b) *Constitution of*

---Art. 212(3)---Service Tribunal---Validity of findings of fact and law. [p. 680] C

Ch. Muhammad

(c) *Constitution of*

---Art. 212(3)---Constitution of Service Tribunal---Validity of such findings. [p. 680] C

Iftikhar Ahmed

(d) *Service Tribunal*

---S. 4---Departmental Appeal before Service Tribunal

Chariman PIA

Muhammad Aslam v. Government of Pakistan  
Bashir Ahmad Khan PLD

(e) *Limitation*---

---Appeal, if required, merits need to be discussed.

Khan Sahib Sh

(f) *Constitution of*

---Art. 212(3)---Constitution of Service Tribunal---Discretionary

(g) *Constitution of*

---Arts. 185(3) & 212(3)---Discretionary

Ghulam Qadir

(22)

(25)

Ann

BEFORE THE PESHAWAR HIGH COURT, D.I. KHAN BENCH

Writ Petition No. 25 /2008.

1. Muhammad Furqan s/o Ghulam Abbas r/o Paroa District DIKhan.
2. Khadija Bibi d/o Muhammad Rafique r/o Paroa District DIKhan.
3. Inayatullah s/o Ghulam Hassan r/o Paroa District DIKhan.
4. Khaliq Dad Khan s/o Abdul Karim Khan posted as PTC at GPS. Katta Khel District DIKhan.
5. Muhammad Anwar s/o Ghulam Muhammad posted as PTC at GPS No.2, Rehmani Khel District DIKhan.
6. Ifikhar Ahmed s/o Sher Khan posted as PTC at GPS, Bagi Qamar District DIKhan.
7. Ghulam Muhammad s/o Gul Muhammad posted as PTC at GPS No.1, Rehmani Khel District DIKhan.
8. Riyaz Ahmed s/o Rabnawaz posted as PTC at GPS, Wandah Yarik District DIKhan.
9. Saddar Yaqoob s/o Rabnawaz posted as PTC at GPS, Wandah Yarik District DIKhan.
10. Muhammad Hanif s/o Muhammad Ramzan posted as PTC at GPS, Wandah Yarik District DIKhan.
11. Naveen Akhtar Nawaz d/o Shah Nawaz posted as PTC at GPS, Umar Khel Paca District DIKhan.

12- *Mohammad Ramzan s/o Allah Bakhsh J. A.S*  
(Petitioners) *Mohammad Kaleem*

Versus

*D.I. Khan*

1. Govt. of NWFP through Secretary Education, Peshawar.
2. Director (School & Literacy) N.W.F.P, Peshawar.
3. Executive District Officer (School & Literacy) DIKhan.
4. District Accounts Officer, DIKhan.

(Respondents)

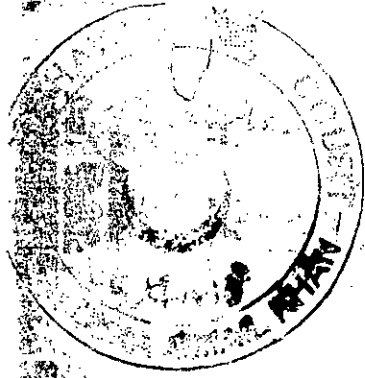
**WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973.**

Respectfully Sheweth;

Note:- Address given above are sufficient for the purpose of service of parties.

**BRIEF FACTS.**

1. That the petitioners are PTC and are qualified for the post of PTC. Copies of their educational qualifications are enclosed as Annexure 'A'.
2. That the petitioners appeared in the test and interview conducted by the office of respondent No.3 in response to the advertisement made in newspaper on 17.5.2007.
3. That the petitioners were issued appointment orders on 02.7.2007, 02.7.2007, 01.10.2007 and they submitted their arrival/charge reports in their concerned place of postings after medical examination. Copies of



128

17/11/09

ATTESTED

EXAMINER

21/7/09

360  
9/3/1016

**OFFICE OF THE DEPUTY COMMISSIONER, DIR LOWER**

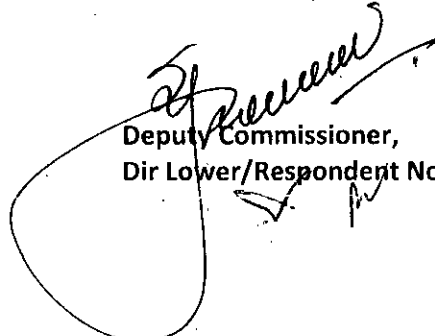
No. 3839 / Estt: Dated Timergara the 8 /03/2016.

**AUTHORITY**

District Education Officer (Female), Dir Lower is hereby authorized to attend honourable Khyber Pakhtunkhwa Service Tribunal, in Service Appeal No. 715/2013, Mst: Shaheen Begum D/O Layeq Jan, Ex. PST GGPS Dapoor Dir Lower Versus District Education Officer (Female) and others on 15/3/2016 and onward.

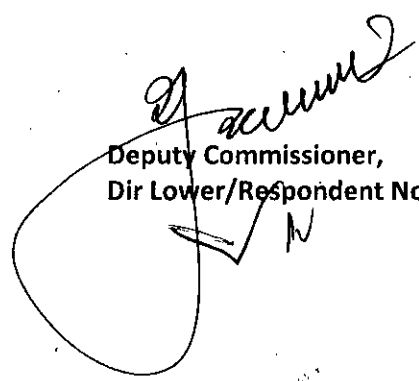
She is further directed to submit attached comments of the undersigned in the subject case in the honourable court.

No. 3840-41 / Estt:

  
Deputy Commissioner,  
Dir Lower/Respondent No. 2

Copy forwarded to the:-

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.
- ✓ 2. The District Education Officer, Female Dir Lower.

  
Deputy Commissioner,  
Dir Lower/Respondent No. 2

**OFFICE OF THE DEPUTY COMMISSIONER, DIR LOWER**

No. 3838 / Estt: Dated Timergara the 8 /03/2016.

To,

The Registrar,  
Khyber Pakhtunkhwa,  
Service Tribunal Peshawar.

Subject: **Service Appeal No. 715/2013.**

**Mst: Shaheen Begum D/O Layeq Jan,.....**  
**Ex. PST GGPS Dapoor Dir Lower.**

**Appellant.**

**Versus**

**District Education Officer (Female) and others.....**

**Respondents.**

Respect Sir,

The comments offered by Respondents No. 1, 3 & 4 in the subject case, may too,  
be considered as comments of Deputy Commissioner, Dir Lower (Respondent No. 2).

  
Deputy Commissioner,  
Dir Lower/Respondent No2