

16.05.2017


Counsel for the appellant and Mr. Kabir Ullah Khattak Assistant AG for the respondent present. Counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 06.09.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

06.09.2017

Appellant present. Mr. Muhammad Adeel Butt, Additional AG for respondent present. Arguments could not be heard due to incomplete bench. To come up for arguments on 10.10.2017 before D.B.



(Muhammad Hamid Mughal)
Member

✓ 10.10.2017

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

This appeal is also dismissed as per our detailed judgment of today in connected service appeal No. 507/2014, entitled "Sulaiman Vs. Agency Education Officer, Mohmand Agency, Ghallanai and others". Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman

ANNOUNCED
10.10.2017

27.6.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. During the course of arguments, this Tribunal was informed that identical appeals of other Civil Servants have been allowed. Learned counsel for the appellant further submitted that he wants to file rejoinder in which he may given some time, hence case is adjourned. To come up for rejoinder and arguments on

28.9.16


Member


Member

28.09.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for rejoinder and final hearing on 7.02.2017 before D.B.


Member


Chairman

07.02.2017

Counsel for the appellant and Mr. Muhammad Jan, GP alongwith Mr. Daud Jan, GP for respondents present. Counsel for the appellant requested for time to file rejoinder. To come up for rejoinder and final hearing on 16.05.2017.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

30.07.2015

Counsel for the appellant and Mr. Daud Jan, Supdt. alongwith Addl: A.G for respondents present. Comments on behalf of respondents No. 1 and 2 submitted. The learned Addl: A.G reply on the same on behalf of respondents No. 3 and 4. The appeal is assigned to D.B for rejoinder and final hearing for 26.11.2015.


Chairman


26.11.2015

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Arguments could not be heard due to learned Member (Executive) is on leave. Therefore, the case is adjourned to 21/3/16 for arguments.


Member

21.03.2016

Clerk of counsel for the appellant and Mr. Usman Ghani, Sr. GP for respondents present. Clerk of counsel for the appellant requested for adjournment. To come up for arguments on 27.06.2016.


Member


Member

03.04.2015

Counsel for the appellant and Mr. Abdul Sattar, Asst. Agency Education Officer alongwith Add: AG for the respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 29.05.2015 before S.B.

Chairman

29.05.2015

Counsel for the appellant and Assistant A.G for respondents present. Written reply not submitted due to Election process. Last opportunity extended. To come up for written reply/comments on 14.7.2015 before S.B.

Chairman

14.07.2015

Counsel for the appellant and Mr. Daud Jan, Supdt. alongwith Add: A.G for respondents present. Informed the Tribunal that due to death of brother of Agency Education Officer he could not submit the written statement before this Tribunal despite last opportunity. In view of the peculiar circumstances one more opportunity is granted. To come up for written reply/comments on 30.7.2015 before S.B.

Chairman

Appeal No. 509/2012
Mr. Saeed Khan.

3. 04.06.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned order dated 19.07.2010, he filed departmental appeal on 26.12.2013, which has not been responded within the statutory period of 90 days, hence the present appeal on 09.04.2014. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 29.08.2014.

Appellant Deposited
Security & Process Fee
Rs. 2,000/- Bank
Receipt is attached with File.

JLO
13/6/14

Member

4. 04.06.2014

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

Chairman

29.8.2014

Counsel for the appellant and Mr. Daud Jan, Supdt. on behalf of the respondents with Mr. Muhammad Adeel Butt, AAG present. Written reply has not been received, and request for further time made on behalf of the respondents. To come up for written reply/comments, positively, alongwith connected appeals on 29.12.2014.

Chairman

29.12.2014

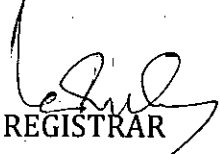
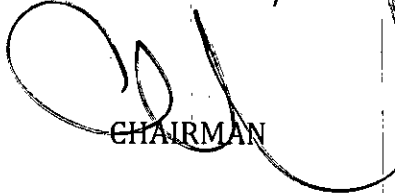
Clark of counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for written reply/comments alongwith connected appeals on 03.04.2015.

Reader.

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 509/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	09/04/2014	<p>The appeal of Mr. Saeed Khan presented today by Mr. Taimur Haider Khan 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	16-4-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>4-6-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Appeal no. 509/2014

Appeal no / /2014

SAEED KHAN

VERSUS

AGENCY EDUCATION OFFICER and others

INDEX

S#	Description of the Documents	Annex	Pages
1.	Appeal	*	1-5
2.	Copy of termination order	A	6-9
3.	Copy of permanent order	B	10-11
4.	Copy of Department appeals	C	12-15
5.	Copy of all mentioned order & appeals Copy of different courts	D	16
6.	Copy of Department appeals dated 26-12-2013	E	17-19
7.	Copy of previous appeal order 5-12-2013	F	20-

[Signature]
Petitioner

Through:-

[Signature]

Taimur Haider Khan ,
ADVOCATE HIGH COURT
PESHAWAR

original

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal no. 509/14

Appeal no / /2014

538
09/4/2014

SAEED KHAN S/O GUL ZADA, CHOWKIDAR (SECURITY GUARD/CLASS IV)
PERMANENT EMPLOYEE OF GOVT HIGH SCHOOL QAMARDIN KOR
,QANDARI SAFI MOHMAND AGENCY.....

APPELLANT

VERSUS

1. AGENCY EDUCATION OFFICER, MOHMMAND AGENCY GALLANAI
2. DIRECTOR OF EDUCATION(FATA) KPK , FATA SECRETARIAT
PESHAWAR
3. POLITICAL AGENT MOHMAND AGENCY AT GHALLANAI
4. ADDITNIOL CHIEF SECRETARY, FATA SECRETARIAT,
PESHAWAR

.....RESPONDENTS

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974,
AGAINST THE IMPUGNED ORDER DATED 19-07-2010
OF RESPONDENT NO.1 WHEREBY, APPELANT HAS
BEEN TERMINATED AND HIS DEPARTMENTAL
APPEAL DATED 04-08-2010 & 26-12-2013 BEFORE
RESPONDENT NO. 2 HAS NOT YET BEEN DECIDED
WITHIN THE STATUTORY PERIOD OF NINTY (90)
DAYS.

9/4/14
PRAYER IN PETITION:

BY ACCEPTING THIS APPEAL, THE IMPUGNED ORDER
DATED 19-07-2010 OF RESPONDENT NO 1 & 3 MAY
KINDLY BE SETASIDE, BEING UNLAWFUL,
UNCONSTITUTIONAL, BIASED, AND THE APPELLANT MAY BE
REINSTATED WITH ALL BACK BENEFITS WITH
RETROSPECTIVE EFFECTS, (SINCE MARCH, 2010).

original

Respectfully submitted:

1. That the appellant is the Government Servant, performing his duty under the subordination of Respondents in Mohammand Agency, where as the appellant was terminated vide office order 9805-10 dated 19-7-2010.

(Copy of termination order dated 19-7-2010 is annexed as annexure A)

2. That the appellant from his appointment till his termination date was performing his duty with out any failure with honesty but due to operation in Mohmmand Agency the school of appellant, where performing his duty was destroyed by the militants and despite his repeated reminders to allocate or assign to the appellant other duty of same nature, but with no avail.

(Copy of the documents of permanent employment is annexed as annexure B)

3. That the appellant has served departmental appeal to Respondent no .2 on dated 4.8.2010, against the unlawful termination order of 19.7.2010 of respondent no 1, which was not considered.

(Copy of departmental appeal dated 04-08-2010 Respondent no 2 is annexed as annexure c)

4. That after the departmental appeal to the Respondent No. 2 the appellant had been told that your department appeal has under consideration and in this analogy the appellant time and again proceeded to the office of Respondent No. 2 for his reinstatement but unfortunately the response was the same and every time the appellant was assured that you will be reinstated in the near future.

5. That in this regard the appellant proceded in appeal under section 48 of Frontier Crime Regulation 1901, before the Honorable Commissnior FCR, Peshawar Division Peshawar, which was entertained, comments have been asked from Political Administration but the said Administration was reluctant to submit the desire comments and after the transfer of former commissioner Mr. Tariq Jamil the successor namely Sahibzada

mentioning any reason. After that the petitioner inadvertently filled a revision petition under section 55-A of the FCR, 1901 which was entertained and direction was given to the appellant / petitioner to file Departmental appeal before the competent and proper forum.

(Copy of the all mentioned orders and appeals of different courts and tribunals are annexed as Annexure D)

6. That with the direction of the Honorable FATA tribunal the appellant has submitted departmental appeal dated 25-06-2013 which was entertained and with the direction and order of this Honorable tribunal dated 05-12-2013 the appellant has withdrawn the appeal with the permission to file a fresh one.
7. That in compliance with the order dated 05-12-2013 of this Honorable Tribunal on 26-12-2013 the appellant has again moved departmental appeal before the Respondent No. 2 (**DIRECTOR OF EDUCATION(FATA) KPK , FATA SECRETARIAT PESHAWAR**) but no action was taken and the result was same as before .

(Copy of departmental appeal dated 26-12-2013 & order dated 05-12-2013 of this Honorable tribunal is annexed as annexure E & F)

8. That the appellant now again approaches this Honorable Tribunal on the following grounds inter alia.

G R O U N D S

1. That the act of the respondents is against the law hence untenable.
2. That the acts of the Respondents are discriminatory as they have already reinstated other terminated employees, whose names are also mentioned in the list of termination order, dated 19.7.2010.
3. That the unlawful and discriminatory acts of the respondents amounts to playing havocs with the future of the appellant and is derogatory to the fundamental rights guaranteed by the constitution of the Pakistan .

4. That the respondents have not conducted any inquiry before termination of the appellant neither show cause notice has been served on him. **Audi alteram partem. As reported in the 1999 SCMR Pg no.2203.**
5. That the appellant has not been intimated any reason as to why his service were terminated which is violation of section 24-A(2) of the General Clauses Act, 1897 as upheld by the august Supreme Court of Pakistan and reported in 1991 SCMR 2230 (e).
6. That the appellant has been terminated from his service since March, 2010 and salaries of the appellant have been stopped with out any lawful justification and the acts of respondents are the sheer violation of the fundamental rights of the constitution of Pakistan.
7. That there is no fault on the part of the appellant regarding the destruction of the school and the appellant has ever performed his duty punctually and honestly.
8. That the appellant time and again moved an applications to the respondents, requesting for reinstatement and releasing his salaries since the stopped date, i.e. March 2010, but to no avail.
10. That appellant has **also requested the respondents to assign him duty in some other school but to no avail.**
11. That the appellant belongs to a poor family and the drawing salary which has been stopped since March 2010, was the only source of income /livelihood for the appellant and due to non-payment of such salaries, the appellant is compelled to spend life in miserable condition..
12. That the unlawful acts of the respondents are not only against natural justice but also in violation of fundamental rights guaranteed under **Articles 4,14,25,27,37(A)(E),And Article 38(B)(C) of 1973 constitution of Pakistan as well as Article**

38(B)(C) of 1973 constitution of Pakistan as well as Article 1,2,6,8,11(1)(2), and 26 (1)(2)(3) of UNIVERSAL DECLARATION OF HUMAN RIGHTS.

12. That any other ground shall be raised at the time of arguments for the best administration of justice.

PRAYER:

BY ACCEPTING THIS APPEAL, THE IMPUGNED ORDER DATED 19-07-2010 OF RESPONDENT NO 1 & 3 MAY KINDLY BE SET ASIDE, BEING UNLAWFUL, UNCONSTITUTIONAL, BIASED, AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK BENEFITS WITH RETROSPECTIVE EFFECTS, (SINCE MARCH, 2010),

Any other remedy, which is not specifically mentioned but deem fit by this Honorable tribunal for the safe administration of justice may also be granted in favor of the appellant.

[Signature]
APPELLANT

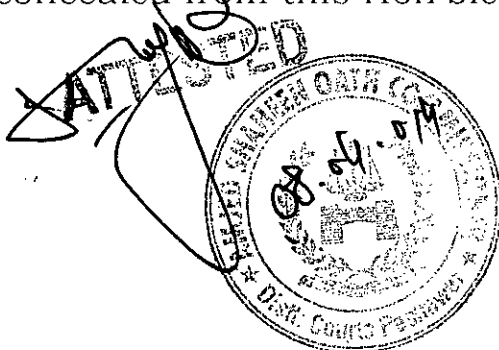
Through

[Signature]
Taimur Haider Khan
Advocate High Court

Date 14.2.2014

AFFIDAVIT.

I, Saeed Khan do hereby solemnly affirm that the contents of the accompanying appeal / petition is true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



[Signature]
SAEED KHAN S/O GUL ZADA
(Deponent)

Annexure

(A)

(6)

(6)

OFFICE OF THE AGENCY
EDUCATION OFFICER MOHMAND
AGENCY GHALLANAI.

TERMINATION OF CLASS IV

Memo:

Consequent upon the instruction issued by worthy Political Agent Mohmand Agency Vide No 2908/Reader dated 24.06.2010 following Class IV of Government schools are hereby terminated with immediate effect, due to not fulfilling their territorial responsibilities assigned to them and as a result of which Govt buildings of schools of their posting were blasted and destroyed.

S.NO	NAME	SCHOOL
1	Zari Lal Chow	GGPS Adam Kor
2	Nehayat Bibi Caller	GGPS Adam Kor
3	Gul Rahman Chow	GGPS Mohammad Hassan Malik Kachkool
4	Gul Laja Caller	GGPS Mohammad Hassan Malik Kachkool
5	Razia Caller	GGMS Dag Mulla Abdul Jabbar
6	Masechullah C/IV	GGMS Dag Mulla Abdul Jabbar
7	Rafiqullah C/IV	GGMS Dag Mulla Abdul Jabbar
8	Shawali Chow	GPS Sepah Qandari
9 ✓	Said Rehman Peon	GMS Amri Kor
10 ✓	Maloom Said Chow	GMS Amri Kor
11 ✓	Dilawar khan Chow	GMS Amri Kor
12	Mosam Khan C/IV	GMS Amri Kor
13 ✓	Saeed Khan Chow	GHSS Qamir Din Kor
14 ✓	Misal Khan Mali	GHSS Qamir Din Kor
15 ✓	Sulaiman L/ATD	GHSS Qamir Din Kor
16	Ihsanullah Sweeper	GHSS Qamir Din Kor
17	Khanawada Peon	GHSS Qamir Din Kor
18 ✓	Gulzada Chow	GHSS Qamir Din Kor
19	Jehangir khan Mali	GGHS shawa farsh
20	Abdul samad LT/d	GGHS shawa farsh
21	Sajidullah Sweeper	GGHS shawa farsh
22	Mumtaz Chow	GGHS shawa farsh
23	Laila Begum Caller	GGHS shawa farsh

Attest
Fazim Haddu kha
Shawal High cori

(7)



24	Farhat Khan Chow	GPS Gongat Din
25	Hayat sher Chow	GPS Akram Beg
26	Afsar khan chow	GPS Chamarkand Sardari
27	Basher Muhammad	GPS Chamarkand No.1
28	Mohammad Rasan chow	GPS Amri No.2
29	Khan Wada	GPS Ghariba Gorbaz
30	Arshad Khan Sweep	GMS Alingar
31	Shoukat Khan Chow	GMS Alingar
32	Aslam C/IV	GMS Alingar
33	Khan Gul	GMS Alingar
34	Inayat ur Rehman Chow	GMS Sagi
35	Momin Khan sweep	GMS Sagi
36	Gulzada Chow	GMS Sagi
37	Mohammad Ayub	GMS Sagi
38	Maseeh Gul Sweeper	GHS Lakkrai
39	Llaqat Jan Chow	GHS Lakkrai
40	Muhammad Chow	GHS Lakkrai
41	Niamat Gul Behshti	GHS Lakkrai
42	Rehmat wali L/A	GHS Lakkrai
43	Saz wali Mali	GHS Lakkrai
44	Mujahid N/Qasid	GHS Lakkrai

KHAN)

(SAID MUHAMMAD

Ghallaanai,

Agency Education Officer
Mohammad Agency at

Lndst: No. _____ / Dated, _____ /2010

Copy To :-

1. Director of Education (FATA) NWFP, Peshawar.
2. Political Agent Mohamand Agency at Ghallaanai.
3. Assistant Political Agent Mohmand Agency at Ghallaanai.
4. Head Masters/ Head Mistress Concerned.
5. Accountant local office.

Agency Education Officer,
Mohmand Agency at Ghallaanai.

[Handwritten Signature]
 Tahir Hamid Khan
 Advocate High Court



Annexure A 8

OFFICE OF THE AGENCY EDUCATION OFFICER
MOHMAND AGENCY AT GHALLANAI.
No. _____
Dated Ghallanai the _____/2010

TERMINATION OF CLASS IV.

Memo:
Consequent upon the instruction issued by worthy Political Agent Mohmand, Agency 7001/1008/Headq. dated 24.06.2010, following Class IV of Govt. schools are hereby terminated with immediate effect, due to not fulfilling their territorial responsibilities assigned to them and as a result of which Govt. buildings of schools of their posting were blasted and destroyed.

S.No	Name	School	
1	Fari Lal Chow	GGPS Adam Kor	104002 ✓
2	Nehayat Bibi Caller	GGPS Adam Kor	115178 ✓
3	Gul Rahman Chow	GGPS Mohammad Hassan Malik Kachkool	110836 ✓
4	Gul Laja Caller	GGPS Mohammad Hassan Malik Kachkool	110299 ✓
5	Razia Caller	GGMS Dag Mula Abdul Jabbar	203578 ✓
6	Maseehullah C/IV	GGMS Dag Mula Abdul Jabbar	389436 ✓
7	Rahullah C/IV	GGMS Dag Mula Abdul Jabbar	389436 ✓
8	Shah Wali Chow	GPS Sepah Qandari	103051 ✓
9	Said Rahman Peon	GMS Amrai Kor	102430 ✓
10	Maloom Said Chow	GMS Amrai Kor	102432 ✓
11	Dilawar Chow	GMS Amrai Kor	103296 ✓
12	Mosam Khan C/IV	GMS Amrai Kor	102515 ✓
13	Muhammad Khan Chow	GHS Qamar Din	102129 ✓
14	Muhammad Khan Mali	GHS Qamar Din	102131 ✓
15	Sulman I/Attd.	GHS Qamar Din	102130 ✓
16	Bizan ullah Sweeper	GHS Qamar Din	109822 ✓
17	Khanawada Peon	GHS Qamar Din	109819 ✓
18	Gul Zada Chow	GHS Qamar Din	102756 ✓
19	Jehangir Khan Mali	GGHS Shawa Farsh	112163 ✓
20	Abdul Samad I/Attd.	GGHS Shawa Farsh	112162 ✓
21	Sajid ullah Sweeper	GGHS Shawa Farsh	112161 ✓
22	Munir Chow	GGHS Shawa Farsh	110851 ✓
23	Lala Begum Caller	GGHS Shawa Farsh	102292 ✓
24	Farihat Khan Chow	GPS Gungat Din	103052 ✓

ATTESTED by
Tammuz Haider Khan
Adelaide High Court Perth

25	Hayat Sher Chow	GPS Akram Beg 104031
26	Afkar Khan Chow	GPS Chamarkand Sardari 352081
27	Masdar Mohammad	GPS Chamarkand No:1 103816
28	Mohammad Rasan Chow	GPS Amrai No: 2 103602
29	Khan Wada Chow	GPS Ghariba Gorbaz 103398
30	Arshad Khan Sweep	GMS Alingar 110865
31	Ghousal Khan Chow	GMS Alingar 110866
32	Aslam C/IV	GMS Alingar 103788
33	Khan Gul C/IV	GMS Sagi 102451
34	Inayat Rahman Chow	GMS Sagi 111347
35	Momin Khan Sweep	GMS Sagi 111371
36	Gul Zaidi Chow	GMS Sagi 102450
37	Mohammad Ayub	GMS Lakkari 102063
38	Masleh Gul Sweeper	GMS Lakkari 102059
39	Lauq Jan Chow	GMS Lakkari 102056
40	Mohammad Chow	GMS Lakkari 102057
41	Namat Gul Behshu	GMS Lakkari 102061
42	Rahmat Wali L/X	GMS Lakkari 102060
43	Sae Wali Wali Mali	GMS Lakkari 285247
44	Majid N/Qasid	

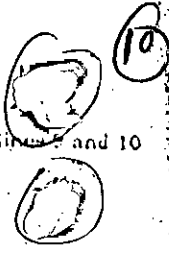
(SAID MUHAMMAD KHAN)
 Agency Education Officer,
 Mohmand Agency at Ghallanai.

Encl: No. 9905-10 / Dated. 19/7/2010.

- Copy to:-
1. Director of Education (IATA) NWFP, Peshawar.
 2. Political Agent Mohmand Agency at Ghallanai.
 3. Assistant Political Agent Mohmand Agency at Ghallanai.
 4. Agency Accounts Officer Mohmand Agency at Ghallanai.
 5. Head Masters/Head Mistress concerned.
 6. Accountant local office.

[Signature]
 Agency Education Officer,
 Mohmand Agency at Ghallanai.

Attested
[Signature]
 Tawar Shada Khan
 Advocate High Court



Note: The entries in this page should be renewed or re-attested at least every five years and the signature to lines 9 and 10 should be dated.

1. Name: Mr. Saheed Ichan

2. Rank: Physician (Generalist)

3. Residence: Village Gopal Dhan near P.O. Gopal Chaur
Tehsil Lakarai, Mohammedi Agency

4. Father's name and residence: Mr. Gopal Das As above

5. Date of birth by Christian era as nearly as can be ascertained: 30-12-1980

6. Exact height by measurement: 5-6"

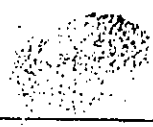
7. Personal marks for identification: Blinker on four R/side.

8. Left hand thumb and finger impression of (Non-Gazetted) officer:

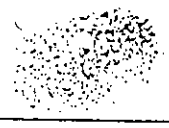
Little Finger:



Ring Finger:



Middle Finger:



Fore Finger:



Thumb:

9. Signature of Government Servant:

10. Signature and designation of the Head of the Office, or other Attesting Officer:

Agency 14/1/07 Office
Mohammedi Agency

Attested
Tamir Kandi
Advocate High Court

1	2	3	4	5	6	7	8
Name of post	Whether substantive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "Pay"	Date of Appointment	Signature of Government Servant
	Revised pay in BPS No. 2 (G.O. (2530-85-5080))						
			Rs 2270/PM			1/7/07	
			Rs 2955/PM			1/12/07	
	Revised pay in BPS No. 2 (G.O. (3035-100-6035))						
			Rs 3535/PM			1/7/08	
			Rs 4135/PM			1/12/08	
	Revised emolument due to Special Adv. J.M.C.						
B.2			Rs 2955/PM			1/9/07	
			Rs 3640/PM			1/12/07	
	Revised emolument BPS No. 2 (G.O. (3035-100-6035))						
			Rs 4135/PM			1/7/08	
			Rs 4735/PM			1/12/08	

صوبہ سرحد (خانہ)

درخواست بہ مراد ادائیگی تنخواہ وصال ملازمت

جناب عالی! مؤرخہ گزشتہ روز صبح صوبہ سرحد پاکستان ملازمت
 سپریم میں جوہ ملازمت شروع رہا نام و ذکر ہے لیکن مسئلہ سولڈ
 کو دستبرد گیا ہے یا حقوں بنائی کی وجہ سے منتقلیہ نہ صرف
 ملازمت سے برطرف کیا ہے بلکہ تاریخ 2010 سے تنخواہیں بھی ادا نہیں کی
 گئیں جس سے صوبہ سرحد انتظامی خلیفہ اور سولڈ کی زندگی گزار رہے ہیں
 ایجنس ایجوکیشن افسر درخواست نہ تو کسی قسم کی سبوتاژ نہیں کیا ہے اور
 نہ ہی صوبہ سرحد کی تہذیبی کمی ہے جو کہ صوبہ سرحد کا چاروں حوالہ ہے
 لہذا استدعا کی جاتی ہے کہ ایجنس ایجوکیشن افسر کو جمع کاری کر دی جائے
 صوبہ سرحد کی ملازمت خالی اور تنخواہیں جاری کر دی جائیں تاکہ اسے ضرورت
 زندگی کو پورا کر سکیں۔

ATTACHED BY
 Tamer Haidar Khan
 Advocate High Court

الصارف

- 1. محمد شمس الدین ولد داد خان لوہنگی لڑائی سٹول طرفہ تہذیبی صوبہ سرحد
- 2. سید محمد ولد سید محمد ولد سید محمد ولد سید محمد ولد سید محمد ولد
- 3. خان محمد ولد سید محمد ولد سید محمد ولد سید محمد ولد سید محمد ولد
- 4. سلمان ولد داد خان سولڈ سولڈ سولڈ سولڈ سولڈ سولڈ
- 5. سید محمد خان ولد محمد ولد سولڈ سولڈ سولڈ سولڈ سولڈ سولڈ
- 6. گل ولد سولڈ سولڈ سولڈ سولڈ سولڈ سولڈ سولڈ سولڈ سولڈ

2010-8-04

Attested by
 Tamer Haidar Khan
 Advocate High Court

Annexure
①



13

**OFFICE OF THE
COMMISSIONER PESHAWAR
DIVISION PESHAWAR**

No. 2292/Appeal/AR

Dated 06.03.2013

To

The Political Agent,
Mohmand Agency at Ghallani.

Subject:

APPLICATION/PETITION TITLED

1. Saeed Security Guard in GHS Qamar Din Kor, Qandari, Mohmand Agency
2. Gul Zada, Security Guard. Govt: High School Qamar Din Kor, Qandari, Safi.

.....Apellants

VS

1. Agency Education Officer, Mohmand Agency.
2. Political Agent Mohmands.
3. APA Ghallanai.
4. AAO, Mohmand Agency.

Respondents

Memo:

I am directed to enclose herewith a copy of joint application petition filed by the subject applicants/petitioners through Taimur Haider Khan Advocate against stoppage of their salaries.

It is therefore, requested that comments in the above may kindly be furnished to this office at the earliest.

(SHAMã NIAMAT)

Assistant to Commissioner (R/GA)
For Commissioner Peshawar Division

IN THE COURT OF COMMISSIONER PESHAWAR DIVISION
PESHAWAR

14
Annexure
B
C

No. 4039/Appeal/AR

Dated 22.04.2013

To

The Political Agent,
Mohmand Agency at Ghallani.

Subject:

APPLICATION/PETITION TITLED

1. Saeed Khan s/o Gul Zada, r/o Qamardin Kor Tehsil U/Mohmand Agency.
(Security Guard in GHS Qamardin Kor, Qandari Safi Mohmand Agency.
2. Gul Zada s/o Tajawal Khan r/o Tor Kor Qandari, Tehsil U/Mohmand, Mohmand Agency.
(Security Guard in GHS Qamardin Kor, Qadhari, Safi Mohmand Agency).....appellants

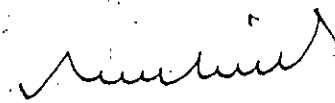
VS

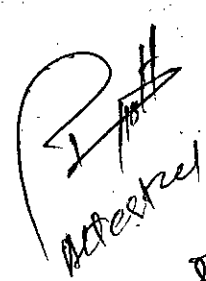
1. Agency Education Officer, Mohmand Agency.
2. Political Agent Mohmands.
3. APA Ghallani.
4. Agency Accounts Officer, Mohmand Agency.

.....Respondents

Memo:

I am directed to refer to this office letter No. 2293/Appeal/AR dated 06.03.2013 on the above noted subject and to state that comments in the subject appeal is still awaited at your end, which mya kindly be furnished to this court before the date **25.04.2013** fixed for hearing. Furthermore, a representative of your office alongwith relevant record may also be deputed to attend the court of Commissioner Peshawar on the due date.


Assistant to Commissioner (R/GA)
For Commissioner Peshawar Division


Attested
Date

by Fax
No.

(15)

IN THE COURT OF COMMISSIONER PESHAWAR DIVISION PESHAWAR

Date of institution 22.11.2012
Date of decision 25.04.2013
Appeal No. 08/2013

Saeed Khan & Other (Security Guard) employee of Govt: High School Qamardin
Kor Qandari Safi, Mohmand Agency.

Vs.

(Appellant)

1. Agency Education Officer, Mohmand Agency at Ghallanai.
2. Political Agent Mohmands at Ghallanai.
3. Assistant Political Agent, Ghallanai, Mohmand Agency.
4. Agency Accounts Officer, Ghallani.

(Respondents)

ORDER:

This is an appeal filed by the above named appellants for issuance directions to the Respondents to reinstate the appellants and release their salaries stopped since March-2010 claiming such act of the administration as violation of Article 4,14,25,27,37 (A)(E) and Article 38 (B)(C) of 1973 constitution of Pakistan.

Comments asked for from the Political Agent Mohmands not received, however, perusal of the record reveals that the appeal is not maintainable and thus stands rejected. File to GRK.

Announced
25.04.2013

COMMISSIONER
PESHAWAR DIVISION PESHAWAR

Attested

Asstt: to Commissioner (Sec/GIA)
Peshawar Division, Peshawar

Attested
Tawees Haq



(45)

IN THE COURT OF
COMMISSIONER PESHAWAR DIVISION
PESHAWAR

DATE OF INSTITUTION 10.09.2013
DATE OF DISPOSAL: 13.03.2014
APPEAL NO. /2013.

1. ASLAM KHAN S/O DILBAR KHAN
2. ASAL KHAN S/O AMIR DOST KHAN
3. JEHAN ZAIB KHAN R/O TEHSIL SAFI, CHENARI MOHMAND AGENCY, EMPLOYEES OF GOVT. MIDDLE SCHOOL CHENARI.

(APPELLANT)

POLITICAL AGENT, MOHMAND AGENCY

VS

(RESPONDENT)

CLAIM: TERMINATION OF CLASS-IV.

This order will dispose off the appeal filed by the above named appellants challenging the order dated 26.06.2010 of Political Agent, Mohmand Agency whereby the services of appellants were terminated.

Facts of the case are that during the operation in the area the Armed forces directed the inhabitants of the area to vacate the area due to which the appellants along with their families shifted to IDPs camp. The building of the school was also damaged during the operation.

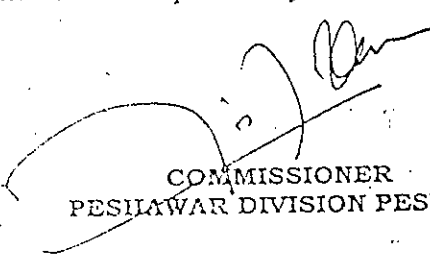
Counsel for the appellants present and heard. Case record perused.

Counsel for the appellants argued that the services of class-IV of Chinarai were terminated without cogent reason. He requested that the services of class-IV of the said school may be re-instated or the case may be remanded to the Political Agent Mohmand for disposal.

Comments received from Political Agent, Mohmand perused. Perusal of the comments reveals that the services of appellants were terminated.

The case is remanded to the Political Agent Mohmand with the direction to dispose off the case on merit under the law within a month positively.

Announced
13.03.2014


COMMISSIONER
PESHAWAR DIVISION PESHAWAR

OFFICE OF THE POLITICAL AGENT MOHMAND AGENCY

S/No
6, 7, 8

OFFICE ORDER

Consequent upon Commissioner Peshawar Division Peshawar Order No. 3267/Reader FCR dated 20.03.2014, services of class-IVs of GMS Chinari Tehsil Safi, terminated vide this office order No. 2927-30/Reader dated 24.06.2010 is hereby restored.

Release

Political Agent
Mohmand Agency

21/04/2013

No. 3117-20/Reader

Dated. 24 /04/2013.

Copy to:

1. Commissioner Peshawar Division Peshawar w/r to his Order No. 3267/Reader FCR dated 20.03.2014 for information please
2. Agency Education Officer Mohmand Agency at Ghallanai for information.
3. Agency Account Officer Mohmand Agency at Ghallanai for n/action please
4. Assistant Political Agent Upper Mohmand for information w/r to his letter No. 44/ APA (UM) dated 09.01.2014.

Political Agent
Mohmand Agency

21/04/2013

323

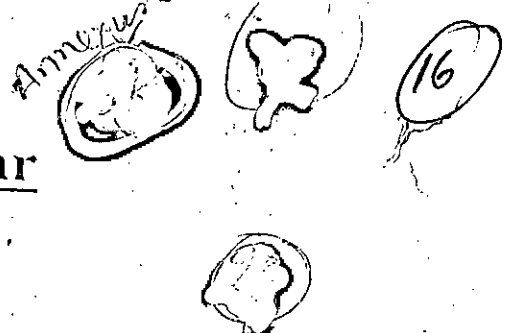
[Handwritten signatures and notes]

24/2/2014

[Handwritten signatures]

[Handwritten signature]

FATA Tribunal Peshawar

Announced


Criminal/Civil/Revision/Review Petition No. 276/13

Date of Institution _____

Counsel for the Petitioner (s) _____

Counsel for the Respondent (s) _____

Petitioner (s) _____

Respondent (s) _____

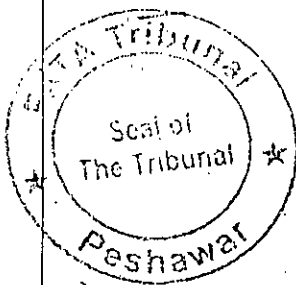
[Handwritten signature]

Order Sheet No.

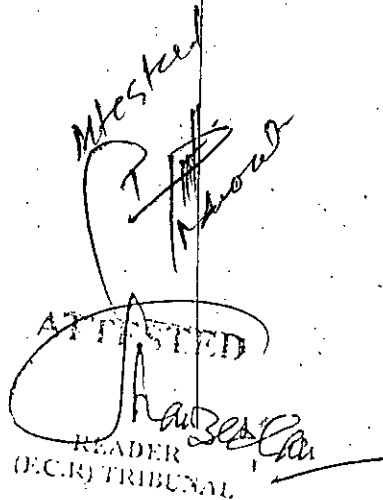
Date

Proceedings

17.6.13



Early the case was adjourned to 26/6/13 but the learned counsel for the p'tor again appeared & requested for hearing of preliminary arguments today. Hence file requisitioned & his argument heard. As the matter is of service, therefore this Tribunal has got no jurisdiction to entertain the instant petition. The same is therefore returned to the p'tor with the direction to file it before proper forum if he so desires. File to RR.

Attested

 ATTESTED
 READER
 (C.R.) TRIBUNAL

Announced
17/6/13

Pir Fida Mohammad

Shah Wali Khan

Peshawar
 FATA Tribunal
 17/6/13

To

17

The Director of Education Fata,
Khyber Pakhtukhwa, Peshawar.

APPEAL IN RESPECT OF CLASS-IV
PERMANENT EMPLOYEE NAMEDLY
SAEED KHAN "SECURITY GUARD"
G.H.S. QAMARDIN KOR, QANDHARI
TEHSIL SAFI MOHMMAND AGENCY
FOR RE-INSTATEMENT WITH ALL
BACK/CONSEQUENT BENEFITS SINCE
HIS TERMINATION.

Respectfully submitting;

1. That the appellant is the bonafide citizen of Pakistan, having good moral character and never involved in any sort of criminal activities.
2. That the appellant had been serving permanently in the education department as "security guard (class-IV)" since his appointment.
(Copy of permanent employment certificate is annexed as Annexure A)
3. That the appellant remained a good reputable employee of said department and never faced any sort of departmental disciplinary action during his services.

Received today DE (FATA)
ccf
26/12/14

4. That the appellant has been terminated vide termination order No.2908/Reader dated 24.06.2010 with out due process of law.

(Copy of termination order is annexed as Annexure B)

5. That the reason for termination shown that due to not fulfilling his territorial responsibilities, as a result the school buildings have been blasted by the militants.

6. That the malafide of the political administration as well as Agency Education Officer is crystal clear from the fact that the appellant had malafidely been terminated with the pretext that school had been blown up by his negligence, which does not appeal to the prudent mind.

7. That in this respect the appellant has served several applications requesting for his re-instatement in the said department but no avail.

(Copies of applications are annexed as Annexure C & D respectively)

8. That in this respect, the appellant has already submitted a departmental appeal before this honorable office but no heed was paid.

(Copy of departmental appeal dated 04-08-2010 is annexed as Annexure E)

9. That malafide and discrimination reveals from the fact that other employees of the same school are still performing their duties who have not been terminated which amounts to bias and prejudice attitude towards the appellant.

10. That it is also discrimination on the part of political administration/AFO that some employees have been re-instated with back benefits whose names are also mentioned in the serial No. 9, 10, 11, and 27th in the list of termination and such discrimination of the authorities concerned is against the article 4 and 25 of the constitution of 1973 of Pakistan.

(Names of the re-instated employees are mentioned in the termination order which is annexure B)

Prayer:

It is therefore most humbly prayed that by acceptance of this appeal the appellant may kindly be re-instatement with all back/consequent benefits since his termination for the best administration of justice.

Any other remedies which are not specifically mentioned but deem fit for the safe administration of justice may also be granted in favor of appellant.



Appellant

Saeed Khan s/o Gul zada R/O
Qamardin kor p/o sandokhel,
tehsil upper mohmmad,
mohmmad agency

Dated
20-12-2013

Amended
(P)
(20)

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER
PAKHUNKHWA PESHAWAR

Appeal no // 67/2013

SAEED KHAN S/O GUL ZADA, RESIDENT OF QAMARDIN KOR
OFFICE SANDO KHEL, TEHSIL UPPER MOHMMAND, MOHMMAND
AGENCY.

DESIGNATION: CHOW (SECURITY GUARD) (CLASS IV)

PERMANENT EMPLOYEE OF GOVT HIGH SCHOOL QAMARDIN KOR
, QANDARI SAFI MOHMAND AGENCY

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

.....
APPELLANT

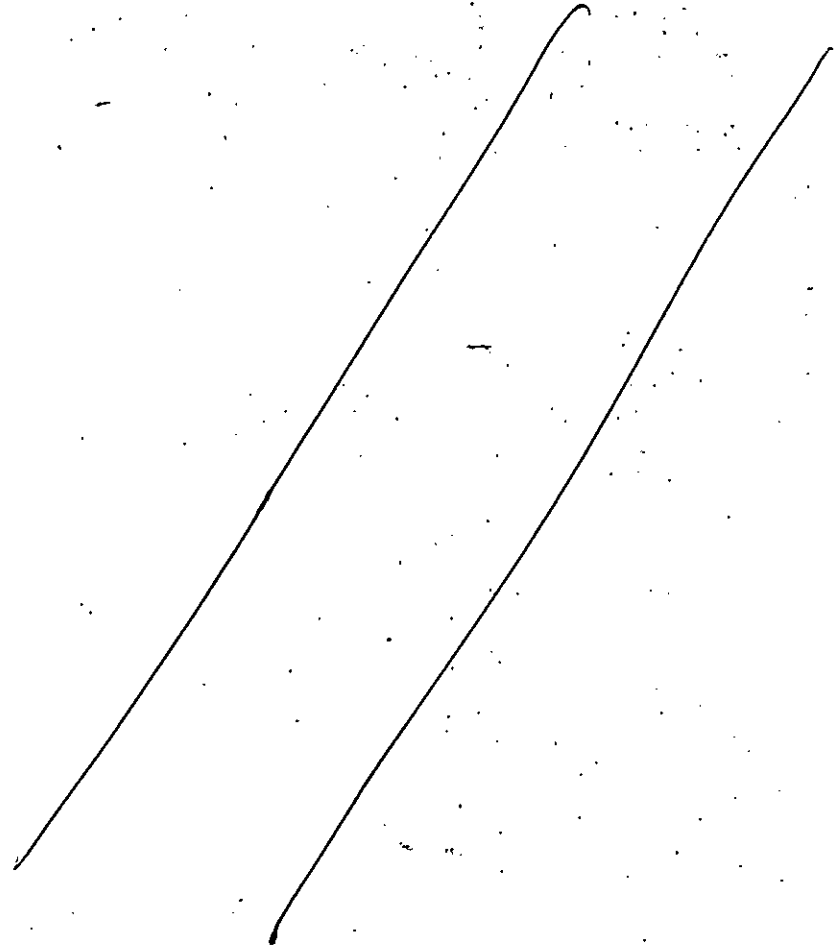
VERSUS

1. COMMISSIONER FCR PESHAWAR DIVISION PESHAWAR
2. SECRETARY EDUCATION GOVERNMENT OF KHYBER
PAKHTUNKHWA, PESHAWAR.
3. DIRECTOR OF EDUCATION(FATA) KPK , PESHAWAR
4. POLITICAL AGENT MOHMAND AGENCY AT GHALLANAI
5. ASSISTANT POLITICAL AGENT MOHMMAND AGENCY GALANAI.
6. AGENCY EDUCATION OFFICER, MOHMMAND AGENCY GALLANAI
7. AGENCY ACCOUNTS OFFICER MOHMAND AGENCY AT
GHALLANAI.

re-submitted to
and filed.

.....RESPONDENTS

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974,
AGAINST THE IMPUGNED ORDER DATED 25.4.2013
OF RESPONDENT NO.1.



05.12.2013

Counsel for the appellant present filed and application for withdrawal of the appeal with permission to file fresh one. Application is accepted and the appeal is dismissed as withdrawn in limine with permission to file fresh one subject to all legal objections. File be consigned to the record.

ANNOUNCED
05.12.2013.

Sd-Member

Certificate to be true copy

JW
MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	7-4-14
Number of Volumes	800
Copying Fee	6-00
Urgent	
Total	6-00
Name of Counsel	S. Harris Shah
Date of Copying	8-4-14
Date of Delivery of Copy	8-4-14

POWER OF ATTORNEY

IN THE COURT OF Honorable Service Tribunal K.Peshawar

SAEED KHAN Plaintiff
Appellant
Complainant

AGENCY Education Officer ^{Others} Defendant
Respondent
Accused

I/We, the undersigned do hereby nominate and appoint

TAIMUR HADIER KHAN

Advocate High Court

On Behalf of Appellant

Know all to whom these presents shall come that I/We the undersigned appoint:

The above named Advocate in district Pesh in the above mentioned case to do all the following acts, deeds and things:

1. To act, appear and plead in the above mentioned case in this court or any other court in which the same may be tried or heard in the first instance or in appeal or review or revision or application or at any other stage of its progress until its final decision.
2. To present pleadings, appeals, case objection or petitions for execution, review, revision, withdrawal, compromise or other petitions or affidavits or other documents as shall be deemed necessary or advisable for the prosecution/defense of the said case at all stages.
3. To withdraw or compromise the said case or submit to arbitration any differences or disputes that shall arise touching or any manner relating to said cause.
4. To employ, authorize any other legal practitioner to assist or exercise the power in authority hereby conferred on the advocate when ever he may think to do so.

AND I/We hereby agree to ratify whatever the advocate or his substitute shall do in this behalf and I/We hereby agree not to hold the advocate or his substitute responsible for the result of the case in consequence of his absence from the court when the said case is called up for hearing.

AND I/We in case of expiry of the said advocate any full fee or part payment thereof, will not claim in any manner whatsoever, or in case of disengagement of the said advocate will not make any claim regarding fee.

(Handwritten signature)

(Signature of thumb impression of the Executant)

SAEED S/O Gulzada P/O
Ramzar Diwkar P/O Sandal Area
Upper Mohmand Agency

Dated: 1/4/2014
Accepted subject of the terms
And full payment of Settled Fee

Taimur Haider Khan
Advocate High Court

Attested & Accepted by Taimur Haider Khan Advocate High Court

Handwritten notes in Urdu on the right margin.

BEFORE THE K.P.K SERVICE TRIBUNAL PESHAWAR:

Appeal No. 508 /2014

Gulzada S/O Taj Wali Khan, Security Guard GHS Qamardin Kor
Mohmand Agency -----Appellant.

----- VS -----

1. Agency Education Officer Mohmand Agency at Ghallanai.
2. Director of Education FATA, K.P.K Peshawar.
3. Political Agent Mohmand Agency at Ghallanai.
4. Add: Chief Secretary FATA Secretariat Warsak Road Peshawar----Respondents

**Para wise comments on behalf of R. No. 1&2 in appeal
No.508/2014.**

Preliminary objection:

1. That the appellant has got no cause of action /locus standi to file the instant appeal.
2. That the appellant has not come to this Honorable Tribunal with clean hands.
3. That the appellant has concealed materials facts from this Honorable Tribunal.
4. That the appellant is estopped by his own conduct to bring the present appeal.
5. That the appeal is not maintainable in its present form.
6. That the appeal is bad due to mis-joinder and non-joinder of necessary parties.

R.Sheath

1. Incorrect: pertains to record.
2. Incorrect: it is submitted for the kind information of the Honorable Service Tribunal that R. No.1 i.e Agency Education Officer Mohmand wrote a letter to R.No. 2 about the performance of the said class IV that both the respondents are not satisfied from the duty of the concerned class IV. (copy attached as annexure A)
3. Incorrect. The departmental appeal of the appellant is not available on the record of the respondent's offices except this joint departmental appeal which is not acceptable / maintainable under the rules. Therefore the appeal is badly time barred and not maintainable.
4. Incorrect: No written proofs are available with the main appeal which shows that the appellant will be re-instated on his service. But the appellant challenged his termination order in the FCR court which has been rejected on the basis of non-maintainability (Order attached).
5. Incorrect. The appellant termination order has been issued on 19.7.2010. Right forum for the re-instated of the appellant is only service tribunal which has not entertained in time and thus the appeal of the appellant has been made badly time barred. Therefore the appeal is not maintainable at this belated stage.
6. Incorrect. After lapse of 03 years, the appeal is badly time barred as the appellant has been terminated on 19.07.2010 and the Departmental appeal jointly made on 5.12.2013 which is not admissible under the rules.
7. No comments pertain to record.
8. The appellant has got no cause of action to file instant appeal.


Grounds:

1. Incorrect. The respondent acted as per law hence tenable.


2. Incorrect. The appellant did not obey the order/ instructions of the respondents, therefore he is not entitled to be reinstated.
3. Incorrect. Each & every Govt servants are bound to perform their duties according to the rules/ instructions given by the Govt from time to time in the interest of public service.
4. Incorrect. As the appellant was not available in the area / school therefore it is impossible for the respondents to conduct an enquiry / personal hearing.
5. Incorrect. The appellant should submit documentary proofs about his attendance which will shows that the appellant was present on his duty.
6. Incorrect. The Govt are paying salaries on the basis of performance of duty not on the basis of charity.
7. Incorrect. As the appellant was not performed his duty therefore he is not entitle for salary/ any benefits from Govt side.
8. Incorrect. No such application has been made from the appellant to the respondents.
9. Incorrect. As explained in para No. 8 above.
10. No comments. Pertains to record.
11. Incorrect. The appellant has been dealt by the respondents under the rules invogue in Education Department and no right of the appellant is violated.
12. Departments are also seeks permission to advance other grounds and poofs at the time of argumnts.

In the light of above facts it is humbly prayed that the appeal may be dismissed having no legal force.

Respondents No.1.


 Director of Education
 FATA, K.P.K Peshawar.

Respondents No. 2.


 Agency Education Officer
 Ghallanai Mohmand Agency.

Affidavit

We the above respondents do here by declare and affirm that the above comments are true and correct to the best of our knowledge in the belief that nothing has been concealed from this Honorable Tribunal.

Respondents No.1


 Director of Education
 FATA, K.P.K Peshawar.

Respondents No. 2.


 Agency Education Officer
 Ghallanai Mohmand Agency.

Annex - "A"

OFFICE OF THE AGENCY EDUCATION OFFICER
MOHMAND AGENCY AT GHALLANAI
P NO:0924290180 FAX:0924290180
NO. 37385 / Dated Ghallanai the 20/2 /2014

The Director of Education,
TATA, K.P.K Peshawar.

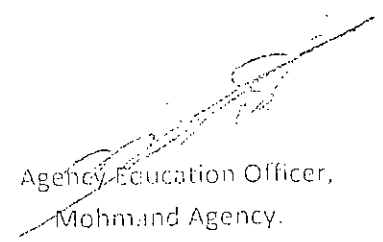
Subject: APPEALS OF CLASS IV IN MOHMAND AGENCY TERMINATED / RE-STATEMENT.

Reference your office No. 233 dated 08.01.2014 about the cited subject, it is stated for your kind informations that most of the contents contained in the appeals of the class IV are baseless, and possess no weight, as neither the undersigned i.e Agency Education Officer Mohmand nor Political administration is satisfied with the performance of these class IV.

Report about the matter is hereby submitted with the remarks, that these are absent from their duties since long i.e before the dates of their termination and stoppage of salaries, they have not fulfilled the duties assigned to them, due to which the buildings of schools were destroyed.

Teachers of these schools have been directed to remain present in the concerned schools and carry on the education activities, but no support has been given to the teachers of these schools from the side of these class IV, as they are not available in the area.

Moreover Political administration has also declared them as non cooperative and absent from their duties, during their visits to the concerned schools. Moreover three class IV namely Saeed Khan, Gul Zada, and Sulaiman have been terminated while salaries of three class IV Alam Gul, Mst Shamim, and Saodager Khan have been stopped due to their absence and negligence.


Agency Education Officer,
Mohmand Agency.

No.
aid
att
spo
r th
ella
2 cc
im
s th
tain
bec
adn

Commissioner Peshawar

Annexure

(J)

(2)

(15)

IN THE COURT OF COMMISSIONER PESHAWAR DIVISION PESHAWAR

Date of institution 22.11.2012
Date of decision 25.04.2013
Appeal No. 08/2013

Saeed Khan & Other (Security Guard) employee of Govt. High School Qamardin
Kor Qandari Safi, Mohmand Agency.

Vs.

(Appellant)

1. Agency Education Officer, Mohmand Agency at Ghallanai.
2. Political Agent Mohmands at Ghallanai.
3. Assistant Political Agent, Ghallanai, Mohmand Agency.
4. Agency Accounts Officer, Ghallanai.

(Respondents)

ORDER:

This is an appeal filed by the above named appellants for issuance directions to the Respondents to reinstate the appellants and release their salaries stopped since March-2010 claiming such act of the administration as violation of Article 4,14,25,27,37 (A)(E) and Article 38 (B)(C) of 1973 constitution of Pakistan.

Comments asked for from the Political Agent Mohmands not received, however, perusal of the record reveals that the appeal is not maintainable and thus stands rejected. File to GRR.

Announced
25.04.2013

[Signature]
COMMISSIONER
PESHAWAR DIVISION PESHAWAR

[Signature]
Asstt. to Commissioner (Rev/GA)
Peshawar Division, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Appeal No.509/2014

Saeed Khan.....Appellant

V/S

Agency Education Officer and others.....Respondents

REJOINDER IN RESPECT OF REPLY /
COMMENTS FILED BY THE RESPONDENT AS
ADMITTEDLY THE SIMILAR NATURE OF
EMPLOYEES' SALARIES HAVE BEEN RESTORED
AND RE-ASSIGNED THEM THEIR DUTIES,
WHOSE APPEALS NO.673/2014, 671/2014,
672/2014 ARE ALREADY PENDING
ADJUDICATION BEFORE THIS HON'BLE
TRIBUNAL. SIMILARLY ON 05.12.2013 ORDER
OF THE HON'BLE TRIBUNAL, THE PREVIOUS
APPEAL BEING ANNEXED, WAS WITHDRAWN,
AS DIRECTION/ PERMISSION WAS GIVEN TO
RE-SUBMIT THE SAME AFTER FULFILLING THE
LEGAL OBJECTIONS. MOREOVER, VIDE
IMPUGNED TERMINATION ORDER, THE
APPELLANT WAS NEVER TERMINATED ON THE
BASIS OF ABSENCE OR THE MATTER
PERTAINS TO THE SATISFACTION OF DUTY
BUT DUE TO ASTONISH REASON,
TANTAMOUNT THAT THE APPELLANT BEING
CLASS-IV EMPLOYEE HAD NOT RESISTED/

COMBAT THE MILITANT AT THE TIME OF WAR
AGAINST TERROR (WAT) RESULTANTLY THE
BUILDING OF THE SCHOOL WAS DESTROYED
BY THE MILITANTS. IN ADDITION AS
EXPOUNDED ABOVE THE APPELLANT'S APPEAL
IS WELL ON TIME AND EXACTLY ON THE SAME
FOOTING THIS HON'BLE TRIBUNAL VIDE
JUDGMENT DATED 31.10.2011 IN APPEAL
NO.731/2010 HAS ALLOWED THE SIMILAR
NATURE APPEAL

Respectfully Sheweth

1. That as expounded in the main appeal via the above subject, all the preliminary objections are incorrect and vehemently denied. Similarly the reply/ comments of instant appeal are incorrect and vehemently denied and conspicuously deviation from main facts as already in the appeal via annexed documents clearly depict the prima-facie stance of the appellant. Similarly as expounded in the subject, even the respondents had already reinstated the similar nature employee as well as this Hon'ble Tribunal had also allowed similar nature of appeal. (Copy of reinstatement orders of the respondent as well as Judgment of this Hon'ble Tribunal are attached)
2. That any other ground may be raised at the time of arguments for the best assistance of this Hon'ble Tribunal

Prayer

It is, most respectfully prayed that by acceptance of this rejoinder, the needful as prayed in the main appeal may kindly be allowed for the best administration of justice and fair play.

Appellant

Through Counsel

Taimur Haider Khan
Advocate High Court

M. Iqbal Khan

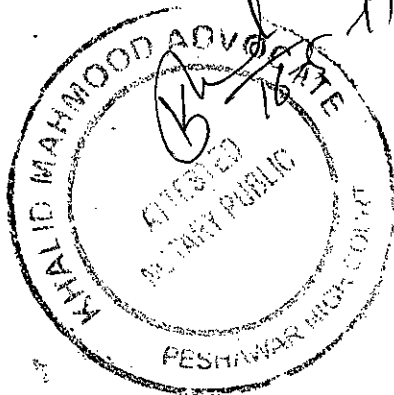
&

Nusrat Shaheen
Advocates, Peshawar

AFFIDAVIT

I, Saeed Khan S/o Gul zada Class-IV, R/o Mohmand Agency, do hereby affirm and declare that the contents of the instant Rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

new
Deponent



11-5-2017



IN THE COURT OF
COMMISSIONER PESHAWAR DIVISION
PESHAWAR

(12/13)

4

DATE OF INSTITUTION 10.09.2013
DATE OF DISPOSAL: 13.03.2014
APPEAL NO. /2013.

1. ASLAM KHAN S/O DILHAR KHAN
2. ASAL KHAN S/O AMIR DOST KHAN
3. JEHAN ZAIB KHAN R/O TEHSIL SAFI, CHENARI MOHMAND AGENCY, EMPLOYEES OF GOVT. MIDDLE SCHOOL CHENARI.

POLITICAL AGENT, MOHMAND AGENCY

VS

(APPELLANT)

(RESPONDENT)

CLAIM: TERMINATION OF CLASS-IV.

This order will dispose off the appeal filed by the above named appellants challenging the order dated 26.06.2010 of Political Agent, Mohmand Agency whereby the services of appellants were terminated.

Facts of the case are that during the operation in the area the Armed forces directed the inhabitants of the area to vacate the area due to which the appellants along with their families shifted to IDPs camp. The building of the school was also damaged during the operation.

Counsel for the appellants present and heard. Case record perused.

Counsel for the appellants argued that the services of class-IV of Chinarai were terminated without cogent reason. He requested that the services of class-IV of the said school may be re-instated or the case may be remanded to the Political Agent Mohmand for disposal.

Comments received from Political Agent, Mohmand perused. Perusal of the comments reveals that the services of appellants were terminated.

The case is remanded to the Political Agent Mohmand with the direction to dispose off the case on merit under the law within a month positively.

Announced
13.03.2014.

*Aslam Khan
Famir Haide
Advocate High Court*

[Signature]
COMMISSIONER
PESHAWAR DIVISION PESHAWAR

OFFICE OF THE POLITICAL AGENT MOHMAND AGENCY

S/No
6, 7, 8

4/A

OFFICE ORDER

Consequent upon Commissioner Peshawar Division Peshawar Order No. 3267/Reader FCR dated 20.03.2014, services of class-IVs of GMS Chinari Tehsil Safi, terminated vide this office order No. 2927-30/Reader dated 24.06.2010 is hereby restored.

Release

Political Agent
Mohmand Agency

21/04/2013

No. 3117-20/Reader

Dated: 24 /04/2013.

Copy to:

1. Commissioner Peshawar Division Peshawar w/r to his Order No. 3267/Reader FCR dated 20.03.2014 for information please
2. Agency Education Officer Mohmand Agency at Ghallanai for information.
3. Agency Account Officer Mohmand Agency at Ghallanai for n/action please.
4. Assistant Political Agent Upper Mohmand for information w/r to his letter No. 44/ APA (LM) dated 09.01.2014.

3117-20
21/04/2013
Termination Order
Advocate Haidar Khan
Advocate Haidar Khan

[Handwritten signature]

Political Agent
Mohmand Agency

21/04/2013

21/2/2014

[Handwritten notes]
21/04/2013

[Handwritten signature]

303

[Handwritten signature]

5

No. 3802 /Reader.

Dated Ghallanai the 01/05/2015.

From: Political Agent
Mohmand Agency

To: Agency Education Officer,
Mohmand Agency

Subject: RELEASE OF SALARY

Memorandum:-

As recommended by Assistant Political Agent, Upper Mohmand Sub Division pay of Class-IVs of GPS and CGPS Toor Kor Qandahari area Tehsil Safi stopped due to non-fulfillment of their territorial responsibilities and also not performing their duties are hereby released on account of fulfillment of their territorial responsibilities and performance of duties

Waqar
Political Agent,
Mohmand Agency
27/5

No. 3803 /Reader.

Dated Ghallanai the 01/05/2014.

Copy to Assistant Political Agent Upper Sub Division w/r to his letter No.1740/APA (Upper) dated 18.05.2014 for information please.

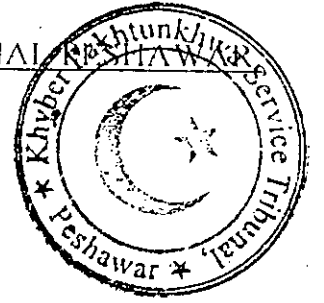
P
11/05/2014

Waqar
Political Agent,
Mohmand Agency
27/5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No.731/2010

Date of Institution. ... 13.04.2010
Date of Decision ... 31.10.2011



Hazrat Bibi, Caller, Government Girls High School, Karigar Ghari,
Tehsil Bara Khyber Agency. ...

(Appellant)

6

VERSUS

1. Agency Education Officer, Khyber Agency, at Jamrud.
2. Director of Education, FATA, Khyber Pakhtunkhwa, FATA Civil Secretariat, Peshawar.
3. Political Agent, Khyber Agency at Bara Road, Near Qayyum Stadium, Peshawar Cantt.
4. Addl.Chief Secretary, FATA Civil Secretariat, Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST IMPUGNED ORDER NO. 64-70, DATED 4.1.2010, OF RESPONDENT NO.1 WHEREBY APPELLANT HAS BEEN TERMINATED FROM SERVICE AND HER DEPARTMENTAL APPEAL, DATED 7.1.2010 BEFORE RESPONDENT NO.2 HAS NOT YET BEEN DECIDED WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate.

... For appellant.

MR. ARSHAD ALAM,
Addl. Government Pleader.

... For respondents.

MR. SULTAN MAHMOOD KHATTAK,
MR. NOOR ALI KHAN,

... MEMBER
... MEMBER

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER. This appeal has been filed by Mst. Hazrat Bibi, the appellant, U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 4.1.2010, whereby she had been terminated from service and her departmental appeal dated 7.1.2010 before the Respondent No.2 has not been decided within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned order may be set aside and the appellant may be reinstated in service with all back benefits.

2. Brief facts of the case as narrated in the memo: of the appeal are that the appellant was appointed as Caller on 8.11.1987 on fixed pay and was posted at GGHS, Ghari Karigaran, Tehsil Bara Khyber Agency. Her services were later on

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
ATTESSED

7

regularized and she has been awarded Basic Pay Scale No.1 vide Government of Khyber Pakhtunkhwa, Finance Department notification No. BO-I/1-22/2007-08, dated 29.1.2008. Due to military operation in Tehsil Bara, Khyber Agency, the militants of the area intensified their sabotage activities and started planting explosive devices in Government Girls High/Medal/Primary Schools situated at Bara and thereafter they detonated it and thus the Girls Schools of the area were either destroyed or blown up and in this process the school wherein the appellant was serving was also damaged by the militants. On the direction of Political Agent, Khyber Agency, the appellant had been suspended from service and her salary was also stopped vide order dated 23.11.2009. Later on the appellant was terminated from service vide impugned order dated 4.1.2010. Feeling aggrieved, she filed departmental appeal on 7.1.2010, which elicited no response within the statutory period, hence this appeal.

3. Notices were issued to the respondents. They filed their joint written reply and contested the appeal mainly on the grounds that the appeal is not maintainable in its present form; this Tribunal lacks jurisdiction and that the appellant has not come to this Tribunal with clean hands and concealed facts pertaining to her recruitment; that she was appointed on temporary basis at fixed pay @ Rs. 600/- per month and that the school on which the appellant was recruited has been blown up by the miscreants; that the services of the appellant are no more required as such her services terminated and that the services of the appellant were never regularized by the provincial government due to the specific policy in the FATA. The appellant rebutted the claim of the respondents by filing rejoinder. Arguments heard and record perused.

The learned counsel for the appellant argued that the appellant is regular government servant. After regularization of her appointment and award of BPS-1 vide Government of Khyber Pakhtunkhwa, Finance Department notification referred to above, it was for the respondents to issue proper order as such. Temporary and permanent government servants all are to be treated in accordance with the law. The appellant was not issued a proper Charge Sheet and Statement of Allegations and no proper enquiry conducted as required under the law. The respondents should have conducted proper departmental enquiry, providing the appellant proper chance to cross examine the witnesses and to produce evidence in support but in the instant case no such enquiry had been conducted. The appellant was not issued proper Show Cause Notice which is mandatory under the law. The appellant has not been given a chance of personal hearing as provided in the law. Therefore, the appellant has been deprived of the

ATTESTED
 BY
 THE
 CLERK

8

rule "Audi Alteram Partem"(no one should be condemned unheard). As reported in the 1999-SCMR-2203, the Maxim "Audi Altram Partem" is not confined to proceedings which are judicial in form but extended to all proceedings, by whomsoever held, which may affect the person or property or other rights of the party concerned in the dispute. The appellant has not been intimated any reason as to why his services were terminated. This is clear violation of Section 2-I-A(2) of the General Clauses Act, 1897 as upheld by the august Supreme Court of Pakistan and reported in 1991 SCMR-2230(e), reproduced here as under:-

"....Departmental proceedings: original, review, representational or appellate---Rejection---Held, even if it was not a mandate by any law that the officer concerned should be informed about the reasons which prevailed with the Authority concerned, it would not be illegal either to give reasons; at least, from now onward---Such rule being the judgment of Supreme Court on a legal question, the same would be observed as a declared law."

5. Counsel for the appellant further argued that the appellant has served the department for sufficient long time and her services could not be terminated on a single stroke of pen. He also argued that other staff of the school such as Principal and teachers etc. are still in service, while the appellant had been discriminated. In support of his arguments, the learned counsel for the appellant relied on judgment dated 16.3.2011 in Service Appeal No.803/2010. He requested that the appeal may be accepted as prayed for.

The learned AGP, on the other hand, argued that due to particular situation, appointments of Class-IV servants in the Tribal Areas are usually made by nomination through the community with certain agreements, including to take care of the school and its equipments etc. but due to her negligence the schools and equipments were blown up. He further argued that Charge Sheet/Statement of Allegations and Show Cause Notices are served upon the permanent employees while the appellant was appointed on temporary basis and her services could be terminated without assigning any reason. He requested that the appeal may be dismissed.

7. The Tribunal observes that after issuance of the Government of Khyber Pakhtunkhwa, Finance Department notification referred to above, the services of the appellant have been regularized since July, 2008 and she has been awarded BPS-1.

EXAMINED
KHYBER PAKHTUNKHWA
ATTESTED

9

therefore, she is regular civil servant and should be treated in accordance with the law. The issuance of Charge Sheet/Statement of Allegations are mandatory and proper enquiry conducted. Before issuance of termination order, Show Cause Notice has to be issued and the appellant be given personal hearing as required under the law. Moreover, Section 24-A of the General Clauses Act be properly observed. The order itself shows that the same has been issued on the direction of the Director, FATA without observing the legal procedure. As such not maintainable in the eye of law. The appellant has been subjected to the harsh penalty of termination from service through a single stroke of pen. The Tribunal further observes that no action has been taken against other staff members like Principal/Headmaster and teachers while the appellant has been discriminated.

8. In view of the above, the appeal is accepted as prayed for that the impugned order is set aside and the appellant is reinstated in service with all back/consequential benefits. However, if deemed appropriate in view of facts and circumstances of the case, the department may initiate proper departmental proceedings against the appellant but strictly in accordance with the law by providing opportunity of defence and personal hearing to the appellant and in that case, the payment of consequential/back benefits would be subject to the outcome of departmental proceedings/enquiry.

9. There are 25 other connected appeals, having common questions of law and facts, fixed for arguments for to-day. This single judgment will also dispose of these connected Service Appeal Nos. 732/2010, Mehar Gul, 733/2010, Salah-ud-Din, 734/2010, Abdul Aziz, 735/2010, Jan Bibi, 736/2010, Qayyum Khan, 737/2010, Yousaf Khan, 738/2010, Khan Abaz, 739/2010, Saddar-e-Azam, 740/2010, Habib Jan, 741/2010, Islam Gul, 742/2010, Shaheena, 743/2010, Javaid Khan, 744/2010, Shah Faisal, 745/2010, Faizullah, 746/2010, Rozina, 747/2010, Bilal Khan, 748/2010, Adnan, 749/2010, Javed Iqbal, 750/2010, Mst. Zarpoomba, 751/2010, Hassan Raza, 752/2010, Imad, 753/2010, Zarbat Khan, 754/2010, Mst. Warkhmeena, 770/2010, Javed Khan and 771/2010, Najeebullah, in the same manner.

10. Parties, are however, left to bear their own costs. File be consigned to the record.

ANNOUNCED
31.10.2011

*Sd/- Sultan Muhammad Waheed
Member*
*Sd/- Noor Akbar
Member*

Certified to be true (2007)

IMPROVED
Khyber Pakhtunkhwa

AKA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Appeal No.507/2014

Sulaiman.....Appellant

V/S

Agency Educator, Officer and others.....Respondents

REJOINDER IN RESPECT OF REPLY /
COMMENTS FILED BY THE RESPONDENT AS
ADMITTEDLY THE SIMILAR NATURE OF
EMPLOYEES SALARIES HAVE BEEN RESTORED
AND RE-ASSIGNED THEM THEIR DUTIES,
WHOSE APPEALS NO.673/2014, 671/2014,
672/2014 ARE ALREADY PENDING
ADJUDICATION BEFORE THIS HON'BLE
TRIBUNAL. SIMILARLY ON 05.12.2013 ORDER
OF THE HON'BLE TRIBUNAL, THE PREVIOUS
APPEAL BEING ANNEXED, WAS WITHDRAWN,
AS DIRECTION/ PERMISSION WAS GIVEN TO
RE-SUBMIT THE SAME AFTER FULFILLING THE
LEGAL OBJECTIONS. MOREOVER, VIDE
IMPUGNED TERMINATION ORDER, THE
APPELLANT WAS NEVER TERMINATED ON THE
BASIS OF ABSENCE OR THE MATTER
PERTAINS TO THE SATISFACTION OF DUTY
BUT DUE TO ASTONISH REASON,
TANTAMOUNT THAT THE APPELLANT BEING
CLASS-IV EMPLOYEE HAD NOT RESISTED/

COMBAT THE MILITANT AT THE TIME OF WAR
AGAINST TERROR (WAT) RESUCTANTCY THE
BUILDING OF THE SCHOOL WAS DESTROYED
BY THE MILITANTS. IN ADDITION AS
EXPOUNDED ABOVE THE APPELLANT'S APPEAL
IS WELL ON TIME AND EXACTLY ON THE SAME
FOOTING THIS HON'BLE TRIBUNAL VIDE
JUDGMENT DATED 31.10.2011 IN APPEAL
NO.731/2010 HAS ALLOWED THE SIMILAR
NATURE APPEAL

Respectfully Sheweth

1. That as expounded in the main appeal via the above subject, all the preliminary objections are incorrect and vehemently denied. Similarly the reply/ comments of instant appeal are incorrect and vehemently denied and conspicuously deviation from main facts as already in the appeal via annexed documents clearly depict the prima-facie stance of the appellant. Similarly as expounded in the subject, even the respondents had already reinstated the similar nature employee as well as this Hon'ble Tribunal had also allowed similar nature of appeal. (Copy of reinstatement orders of the respondent as well as Judgment of this Hon'ble Tribunal are attached)
2. That any other ground may be raised at the time of arguments for the best assistance of this Hon'ble Tribunal

Prayer

It is, most respectfully prayed that by acceptance of this rejoinder, the needful as prayed in the main appeal may kindly be allowed for the best administration of justice and fair play.

Appellant

Through Counsel

Taimur Haider Khan
Advocate High Court

M. Iqbal Khan

&

Nusrat Shaheen
Advocates, Peshawar

AFFIDAVIT

I, Suleman S/o _____ Class-IV,
R/o Mohmand Agency, do hereby affirm and declare
that the contents of the instant Rejoinder are true and
correct to the best of my knowledge and belief and
nothing has been concealed from this Hon'ble Court.

Deponent



IN THE COURT OF
COMMISSIONER PESHAWAR DIVISION
PESHAWAR

(12/13)

(4)

DATE OF INSTITUTION: 10.09.2013
DATE OF DISPOSAL: 13.03.2014
APPEAL NO. /2013.

1. ASLAM KHAN S/O DILBAR KHAN
2. ASAL KHAN S/O AMIR DOST KHAN
3. JEHAN ZAIB KHAN R/O TEHSIL SAFI, CHENARI MOHMAND AGENCY, EMPLOYEES OF GOVT. MIDDLE SCHOOL CHENARI.

POLITICAL AGENT, MOHMAND AGENCY

VS

(APPELLANT)

(RESPONDENT)

CLAIM: TERMINATION OF CLASS-IV.

This order will dispose off the appeal filed by the above named appellants challenging the order dated 26.06.2010 of Political Agent, Mohmand Agency whereby the services of appellants were terminated.

Facts of the case are that during the operation in the area the Armed forces directed the inhabitants of the area to vacate the area due to which the appellants along with their families shifted to IDPs camp. The building of the school was also damaged during the operation.

Counsel for the appellants present and heard. Case record perused.

Counsel for the appellants argued that the services of class-IV of Chinarai were terminated without cogent reason. He requested that the services of class-IV of the said school may be re-instated or the case may be remanded to the Political Agent Mohmand for disposal.

Comments received from Political Agent, Mohmand perused. Perusal of the comments reveals that the services of appellants were terminated.

The case is remanded to the Political Agent Mohmand with the direction to dispose off the case on merit under the law within a month positively.

Announced
13.03.2014

Advocate
Tamim Haider Khan
Advocate

COMMISSIONER
PESHAWAR DIVISION PESHAWAR

OFFICE OF THE POLITICAL AGENT MOHMAND AGENCY

S/No
6, 7, 8

4/A

OFFICE ORDER

Consequent upon Commissioner Peshawar Division Peshawar Order No. 3267/Reader FCR dated 20.03.2014, services of class-IVs of GMS Chinari Tehsil Safi, terminated vide this office order No.2927-30/Reader dated 24.06.2010 is hereby restored.

Ju

Political Agent
Mohmand Agency

21/04/2013

Release

No. 3117-20/Reader

Dated. 24 /04/2013.

Copy to:

1. Commissioner Peshawar Division Peshawar w/r to his Order No.,3267/Reader FCR dated 20.03.2014 for information please
2. Agency Education Officer Mohmand Agency at Ghallanai for information.
3. Agency Account Officer Mohmand Agency at Ghallanai for n/action please.
4. Assistant Political Agent Upper Mohmand for information w/r to his letter No.44/ APA (UM) dated 09.01.2014.

P. J. Khan
1. P. J. Khan
Talimiyat Harkat
Advocate Peshawar

Political Agent
Mohmand Agency

21/04/2013

[Handwritten signature]

24/2/2014

323

[Handwritten signature]

[Handwritten signatures]
[Handwritten signatures]
[Handwritten signature]

No. 3802 /Reader.

Dated Ghallanai the 01 /06/2015.

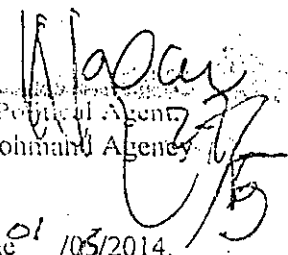
From: Political Agent
Mohmand Agency

To: ~~Agency Education Officer,~~
Mohmand Agency

Subject: RELEASE OF SALARY

Memorandum:-

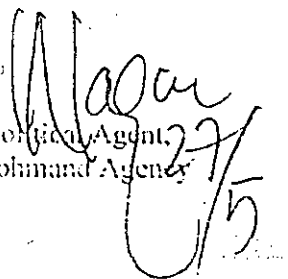
As recommended by Assistant Political Agent, Upper Mohmand Sub Division pay of Class-IVs of GPS and GGPS Toor Kor Qandahari area Tehsil-Safi stopped due to non-fulfillment of their territorial responsibilities and also not performing their duties are hereby released on account of fulfillment of their territorial responsibilities and performance of duties


Political Agent,
Mohmand Agency

No. 3803 /Reader.

Dated Ghallanai the 01 /06/2014.

Copy to Assistant Political Agent, Upper Sui Division w/r to his letter No.1740/APA (Upper) dated 18.05.2014 for information please.

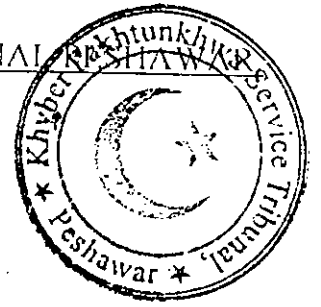

Political Agent,
Mohmand Agency



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No.731/2010

Date of Institution. ... 13.04.2010
Date of Decision ... 31.10.2011



Hazrat Bibi, Caller, Government Girls High School, Karigar Ghari,
Tehsil Bara Khyber Agency. ... (Appellant) (6)

VERSUS

1. Agency Education Officer, Khyber Agency, at Jamrud.
2. Director of Education, FATA, Khyber Pakhtunkhwa, FATA Civil Secretariat, Peshawar.
3. Political Agent, Khyber Agency at Bara Road, Near Qayyum Stadium, Peshawar Cantt.
4. Addl. Chief Secretary, FATA Civil Secretariat, Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST IMPUGNED ORDER NO. 64-70, DATED 4.1.2010, OF RESPONDENT NO.1 WHEREBY APPELLANT HAS BEEN TERMINATED FROM SERVICE AND HER DEPARTMENTAL APPEAL DATED 7.1.2010 BEFORE RESPONDENT NO.2 HAS NOT YET BEEN DECIDED WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate. ... For appellant.

MR. ARSHAD ALAM,
Addl. Government Pleader. ... For respondents.

MR. SULTAN MAHMOOD KHATTAK, ... MEMBER
MR. NOOR ALI KHAN, ... MEMBER

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER:- This appeal has been filed by Mst. Hazrat Bibi, the appellant, U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 4.1.2010, whereby she had been terminated from service and her departmental appeal dated 7.1.2010 before the respondent No.2 has not been decided within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned order may be set aside and the appellant may be reinstated in service with all back benefits.

2. Brief facts of the case as narrated in the memo: of the appeal are that the appellant was appointed as Caller on 8.11.1987 on fixed pay and was posted at GGHS, Ghari Karigaran, Tehsil Bara Khyber Agency. Her services were later on

regularized and she has been awarded Basic Pay Scale No.1 vide Government of Khyber Pakhtunkhwa, Finance Department notification No. BO-I/1-22/2007-08, dated 29.1.2008. Due to military operation in Tehsil Bara, Khyber Agency, the militants of the area intensified their sabotage activities and started planting explosive devices in Government Girls High/Medal/Primary Schools situated at Bara and thereafter they detonated it and thus the Girls Schools of the area were either destroyed or blown up and in this process the school wherein the appellant was serving was also damaged by the militants. On the direction of Political Agent, Khyber Agency, the appellant had been suspended from service and her salary was also stopped vide order dated 23.11.2009. Later on the appellant was terminated from service vide impugned order dated 4.1.2010. Feeling aggrieved, she filed departmental appeal on 7.1.2010, which elicited no response within the statutory period, hence this appeal.

3. Notices were issued to the respondents. They filed their joint written reply and contested the appeal mainly on the grounds that the appeal is not maintainable in its present form; this Tribunal lacks jurisdiction and that the appellant has not come to this Tribunal with clean hands and concealed facts pertaining to her recruitment; that she was appointed on temporary basis at fixed pay @ Rs. 600/- per month and that the school on which the appellant was recruited has been blown up by the miscreants; that the services of the appellant are no more required as such her services terminated and that the services of the appellant were never regularized by the provincial government due to the specific policy in the FATA. The appellant rebutted the claim of the respondents by filing rejoinder. Arguments heard and record perused.

The learned counsel for the appellant argued that the appellant is regular government servant. After regularization of her appointment and award of BPS-1 vide Government of Khyber Pakhtunkhwa, Finance Department notification referred to above, it was for the respondents to issue proper order as such. Temporary and permanent government servants all are to be treated in accordance with the law. The appellant was not issued a proper Charge Sheet and Statement of Allegations and no proper enquiry conducted as required under the law. The respondents should have conducted proper departmental enquiry, providing the appellant proper chance to cross-examine the witnesses and to produce evidence in his support but in the instant case no such enquiry had been conducted. The appellant was not issued proper Show Cause Notice which is mandatory under the law. The appellant has not been given a chance of personal hearing as provided in the law. Therefore, the appellant has been deprived of the

8

rule "Audi Alteram Partem" (no one should be condemned unheard). As reported in the 1999-SCMR-2203, the Maxim "Audi Alteram Partem" is not confined to proceedings which are judicial in form but extended to all proceedings, by whomsoever held, which may affect the person or property or other rights of the party concerned in the dispute. The appellant has not been intimated any reason as to why his services were terminated. This is clear violation of Section 24-A(2) of the General Clauses Act, 1897 as upheld by the august Supreme Court of Pakistan and reported in 1991 SCMR-2230(c), reproduced here as under:-

"....Departmental proceedings: original, review, representational or appellate---Rejection---Held, even if it was not a mandate by any law that the officer concerned should be informed about the reasons which prevailed with the Authority concerned, it would not be illegal either to give reasons; at least, from now onward---Such rule being the judgment of Supreme Court on a legal question, the same would be observed as a declared law."

5. Counsel for the appellant further argued that the appellant has served the department for sufficient long time and her services could not be terminated on a single stroke of pen. He also argued that other staff of the school such as Principal and teachers etc. are still in service, while the appellant had been discriminated. In support of his arguments, the learned counsel for the appellant relied on judgment dated 16.3.2011 in Service Appeal No.803/2010. He requested that the appeal may be accepted as prayed for.

The learned AGP, on the other hand, argued that due to particular situation, appointments of Class-IV servants in the Tribal Areas are usually made by nomination through the community with certain agreements, including to take care of the school and its equipments etc. but due to her negligence the schools and equipments were blown up. He further argued that Charge Sheet/Statement of Allegations and Show Cause Notices are served upon the permanent employees while the appellant was appointed on temporary basis and her services could be terminated without assigning any reason. He requested that the appeal may be dismissed.

7. The Tribunal observes that after issuance of the Government of Khyber Pakhtunkhwa, Finance Department notification referred to above, the services of the appellant have been regularized since July, 2008 and she has been awarded BPS-1.

ATTESTED

ENAMUL HAK
KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL

therefore, she is regular civil servant and should be treated in accordance with the law. The issuance of Charge Sheet/Statement of Allegations are mandatory and proper enquiry conducted. Before issuance of termination order, Show Cause Notice has to be issued and the appellant be given personal hearing as required under the law. Moreover, Section 24-A of the General Clauses Act be properly observed. The order itself shows that the same has been issued on the direction of the Director, FATA without observing the legal procedure. As such not maintainable in the eye of law. The appellant has been subjected to the harsh penalty of termination from service through a single stroke of pen. The Tribunal further observes that no action has been taken against other staff members like Principal/Headmaster and teachers while the appellant has been discriminated.

8. In view of the above, the appeal is accepted as prayed for that the impugned order is set aside and the appellant is reinstated in service with all back/consequential benefits. However, if deemed appropriate in view of facts and circumstances of the case, the department may initiate proper departmental proceedings against the appellant but strictly in accordance with the law by providing opportunity of defence and personal hearing to the appellant and in that case, the payment of consequential/back benefits would be subject to the outcome of departmental proceedings/enquiry.

9. There are 25 other connected appeals, having common questions of law and facts, fixed for arguments for to-day. This single judgment will also dispose of these connected Service Appeal Nos. 732/2010, Mehar Gul, 733/2010, Salah-ud-Din, 734/2010, Abdul Aziz, 735/2010, Jan Bibi, 736/2010, Qayyum Khan, 737/2010, Yousaf Khan, 738/2010, Khan Abaz, 739/2010, Saddar-e-Azam, 740/2010, Habib Jan, 741/2010, Islam Gul, 742/2010, Shaheena, 743/2010, Javaid Khan, 744/2010, Shah Faisal, 745/2010, Faizullah, 746/2010, Rozina, 747/2010, Bilal Khan, 748/2010, Adnan, 749/2010, Javed Iqbal, 750/2010, Mst. Zarpoomba, 751/2010, Hassan Raza, 752/2010, Imad, 753/2010, Zarbat Khan, 754/2010, Mst. Warkhmeena, 770/2010, Javed Khan and 771/2010, Najeebullah, in the same manner.

10. Parties, are however, left to bear their own costs. File be consigned to the record.

ANNOUNCED
31.10.2011

Sd/- Sultan Mahmood Shettah
Member
Sd/- Noel Akbar
Member

Certified to be true copy

MEMBER
Khuzdar District
Service Tribunal,
Peshawar

AKY

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Appeal No.507/2014

Sulaiman.....Appellant

V/S

Agency Education Officer and others.....Respondents

REJOINER IN RESPECT OF REPLY /
COMMENTS FILED BY THE RESPONDENT AS
ADMITTEDLY THE SIMILAR NATURE OF
EMPLOYEES SALARIES HAVE BEEN RESTORED
AND RE-ASSIGNED THEM THEIR DUTIES,
WHOSE APPEALS NO.673/2014, 671/2014,
672/2014 ARE ALREADY PENDING
ADJUDICATION BEFORE THIS HON'BLE
TRIBUNAL. SIMILARLY ON 05.12.2013 ORDER
OF THE HON'BLE TRIBUNAL, THE PREVIOUS
APPEAL BEING ANNEXED, WAS WITHDRAWN,
AS DIRECTION/ PERMISSION WAS GIVEN TO
RE-SUBMIT THE SAME AFTER FULFILLING THE
LEGAL OBJECTIONS. MOREOVER, VIDE
IMPUGNED TERMINATION ORDER, THE
APPELLANT WAS NEVER TERMINATED ON THE
BASIS OF ABSENCE OR THE MATTER
PERTAINS TO THE SATISFACTION OF DUTY
BUT DUE TO ASTONISH REASON,
TANTAMOUNT THAT THE APPELLANT BEING
CLASS-IV EMPLOYEE HAD NOT RESISTED/

COMBAT THE MILITANT AT THE TIME OF WAR
AGAINST TERROR (WAT) RESUCTANTCY THE
BUILDING OF THE SCHOOL WAS DESTROYED
BY THE MILITANTS. IN ADDITION AS
EXPOUNDED ABOVE THE APPELLANT'S APPEAL
IS WELL ON TIME AND EXACTLY ON THE SAME
FOOTING THIS HON'BLE TRIBUNAL VIDE
JUDGMENT DATED 31.10.2011 IN APPEAL
NO.731/2010 HAS ALLOWED THE SIMILAR
NATURE APPEAL

Respectfully Sheweth

1. That as expounded in the main appeal via the above subject, all the preliminary objections are incorrect and vehemently denied. Similarly the reply/ comments of instant appeal are incorrect and vehemently denied and conspicuously deviation from main facts as already in the appeal via annexed documents clearly depict the prima-facie stance of the appellant. Similarly as expounded in the subject, even the respondents had already reinstated the similar nature employee as well as this Hon'ble Tribunal had also allowed similar nature of appeal. (Copy of re-instatement orders of the respondent as well as Judgment of this Hon'ble Tribunal are attached)
2. That any other ground may be raised at the time of arguments for the best assistance of this Hon'ble Tribunal

Prayer

It is, most respectfully prayed that by acceptance of this rejoinder, the needful as prayed in the main appeal may kindly be allowed for the best administration of justice and fair play.

Appellant

Through Counsel

Taimur Haider Khan
Advocate High Court

M. Iqbal Khan

&

Nusrat Shaheen
Advocates, Peshawar

AFFIDAVIT

I, Suleman S/o _____ Class-IV,
R/o Mohmand Agency, do hereby affirm and declare
that the contents of the instant Rejoinder are true and
correct to the best of my knowledge and belief and
nothing has been concealed from this Hon'ble Court.

Deponent



IN THE COURT OF
COMMISSIONER PESHAWAR DIVISION
PESHAWAR

(42/13)

(4)

DATE OF INSTITUTION 10.09.2013
DATE OF DISPOSAL: 13.03.2014
APPEAL NO. ___/2013.

1. ASLAN KHAN S/O DILBAR KHAN
2. ASAL KHAN S/O AMIR DOST KHAN
3. JEHAN ZAIB KHAN R/O TEHSIL SAFI, CHENARI MOHMAND AGENCY, EMPLOYEES OF GOVT. MIDDLE SCHOOL CHENARI.

POLITICAL AGENT, MOHMAND AGENCY

VS

(APPELLANT)

(RESPONDENT)

CLAIM: TERMINATION OF CLASS-IV.

This order will dispose off the appeal filed by the above named appellants challenging the order dated 26.06.2010 of Political Agent, Mohmand Agency whereby the services of appellants were terminated.

Facts of the case are that during the operation in the area the Armed forces directed the inhabitants of the area to vacate the area due to which the appellants along with their families shifted to IDPs camp. The building of the school was also damaged during the operation.

Counsel for the appellants present and heard. Case record perused.

Counsel for the appellants argued that the services of class-IV of Chinarai were terminated without cogent reason. He requested that the services of class-IV of the said school may be re-instated or the case may be remanded to the Political Agent Mohmand for disposal.

Comments received from Political Agent, Mohmand perused. Perusal of the comments reveals that the services of appellants were terminated.

The case is remanded to the Political Agent Mohmand with the direction to dispose off the case on merit under the law within a month positively.

Announced
13.03.2014

Handwritten notes:
1. 10/3/2014
2. Termination of class-IV
3. Advocate 14/3/2014

COMMISSIONER
PESHAWAR DIVISION PESHAWAR

4/A

S/No
6, 7, 8

OFFICE OF THE POLITICAL AGENT MOHMAND AGENCY

OFFICE ORDER

Consequent upon Commissioner Peshawar Division Peshawar Order No. 3267/Reader FCR dated 20.03.2014, services of class-IVs of GMS Chinari Tehsil Safi, terminated vide this office order No.2927-30/Reader dated 24.06.2010 is hereby restored.

Political Agent
Mohmand Agency

21/04/2013

Release

No. 3117-20/Reader

Dated. 24 /04/2013.

Copy to:

1. Commissioner Peshawar Division Peshawar w/r to his Order No. 3267/Reader FCR dated 20.03.2014 for information please
2. Agency Education Officer Mohmand Agency at Ghallanai for information.
3. Agency Account Officer Mohmand Agency at Ghallanai for n/action please.
4. Assistant Political Agent Upper Mohmand for information w/r to his letter No.44/ APA (UM) dated 09.01.2014.

*3117-20
20/03/2014
Taimin Hachak
Advocate Deptt*

Political Agent
Mohmand Agency

21/04/2013

[Handwritten signature]

24/2/2014

[Handwritten notes]

[Handwritten signature]

323

[Handwritten notes]

No. 3802 /Reader.

Dated Ghallanai the 01 /06/2015.

5

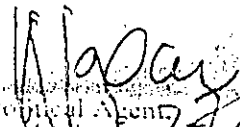
From: Political Agent
Mohmand Agency

To: Agency Education Officer,
Mohmand Agency

Subject: RELEASE OF SALARY

Memorandum:-

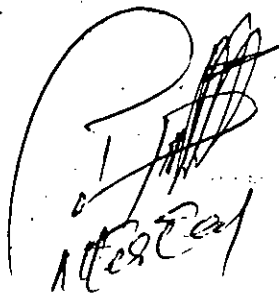
As recommended by Assistant Political Agent, Upper Mohmand Sub Division pay of Class-IVs of GPS and GGPS Toor Kor Qandahari area Tehsil Safi stopped due to non-fulfillment of their territorial responsibilities and also not performing their duties are hereby released on account of fulfillment of their territorial responsibilities and performance of duties

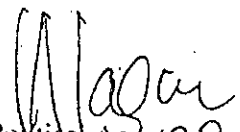

Political Agent,
Mohmand Agency
27/5

No. 3803 /Reader.

Dated Ghallanai the 01 /05/2014.

Copy to Assistant Political Agent, Upper Sul Division w/r to his letter No.1740/APA (Upper) dated 13.05.2014 for information please.





Political Agent,
Mohmand Agency
27/5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No.731/2010

Date of Institution. ... 13.04.2010
Date of Decision ... 31.10.2011



Hazrat Bibi, Caller, Government Girls High School, Karigar Ghari,
Tehsil Bara Khyber Agency. ... (Appellant) 

VERSUS

1. Agency Education Officer, Khyber Agency, at Jamrud.
2. Director of Education, FATA, Khyber Pakhtunkhwa, FATA Civil Secretariat, Peshawar.
3. Political Agent, Khyber Agency at Bara Road, Near Qayyum Stadium, Peshawar Cantt.
4. Addl.Chief Secretary, FATA Civil Secretariat, Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST IMPUGNED ORDER NO. 64-70, DATED 4.1.2010, OF RESPONDENT NO.1 WHEREBY APPELLANT HAS BEEN TERMINATED FROM SERVICE AND HER DEPARTMENTAL APPEAL DATED 7.1.2010 BEFORE RESPONDENT NO.2 HAS NOT YET BEEN DECIDED WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate. ... For appellant.

MR. ARSHAD ALAM,
Addl. Government Pleader. ... For respondents.

MR. SULTAN MAHMOOD KHATTAK, ... MEMBER
MR. NOOR ALI KHAN, ... MEMBER

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER. This appeal has been filed by Mst. Hazrat Bibi, the appellant, U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 4.1.2010, whereby she had been terminated from service and her departmental appeal dated 7.1.2010 before the respondent No.2 has not been decided within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned order may be set aside and the appellant may be reinstated in service with all back benefits.

2. Brief facts of the case as narrated in the memo: of the appeal are that the appellant was appointed as Caller on 8.11.1987 on fixed pay and was posted at GGHS, Ghari Karigaran, Tehsil Bara Khyber Agency. Her services were later on

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
ATTESTED

regularized and she has been awarded Basic Pay Scale No.1 vide Government of Khyber Pakhtunkhwa, Finance Department notification No. BO-I/1-22/2007-08, dated 29.1.2008. Due to military operation in Tehsil Bara, Khyber Agency, the militants of the area intensified their sabotage activities and started planting explosive devices in Government Girls High/Medal/Primary Schools situated at Bara and thereafter they detonated it and thus the Girls Schools of the area were either destroyed or blown up and in this process the school wherein the appellant was serving was also damaged by the militants. On the direction of Political Agent, Khyber Agency, the appellant had been suspended from service and her salary was also stopped vide order dated 23.11.2009. Later on the appellant was terminated from service vide impugned order dated 4.1.2010. Feeling aggrieved, she filed departmental appeal on 7.1.2010, which elicited no response within the statutory period, hence this appeal.

3. Notices were issued to the respondents. They filed their joint written reply and contested the appeal mainly on the grounds that the appeal is not maintainable in its present form; this Tribunal lacks jurisdiction and that the appellant has not come to this Tribunal with clean hands and concealed facts pertaining to her recruitment; that she was appointed on temporary basis at fixed pay @ Rs. 600/- per month and that the school on which the appellant was recruited has been blown up by the miscreants; that the services of the appellant are no more required as such her services terminated and that the services of the appellant were never regularized by the provincial government due to the specific policy in the FATA. The appellant rebutted the claim of the respondents by filing rejoinder. Arguments heard and record perused.

4. The learned counsel for the appellant argued that the appellant is regular government servant. After regularization of her appointment and award of BPS-1 vide Government of Khyber Pakhtunkhwa, Finance Department notification referred to above, it was for the respondents to issue proper order as such. Temporary and permanent government servants all are to be treated in accordance with the law. The appellant was not issued a proper Charge Sheet and Statement of Allegations and no proper enquiry conducted as required under the law. The respondents should have conducted proper departmental enquiry, providing the appellant proper chance to cross examine the witnesses and to produce evidence in support but in the instant case no such enquiry had been conducted. The appellant was not issued proper Show Cause Notice which is mandatory under the law. The appellant has not been given a chance of personal hearing as provided in the law. Therefore, the appellant has been deprived of the

ATTESTED

Signature and Stamp of the Officer

(8)

rule "Audi Alteram Partem"(no one should be condemned unheard). As reported in the 1999-SCMR-2203, the Maxim "Audi Altram Partem" is not confined to proceedings which are judicial in form but extended to all proceedings, by whomsoever held, which may affect the person or property or other rights of the party concerned in the dispute. The appellant has not been intimated any reason as to why his services were terminated. This is clear violation of Section 24-A(2) of the General Clauses Act, 1897 as upheld by the august Supreme Court of Pakistan and reported in 1991 SCMR-2230(c), reproduced here as under:-

"...Departmental proceedings: original, review, representational or appellate---Rejection---Held, even if it was not a mandate by any law that the officer concerned should be informed about the reasons which prevailed with the Authority concerned, it would not be illegal either to give reasons; at least, from now onward---Such rule being the judgment of Supreme Court on a legal question, the same would be observed as a declared law."

5. Counsel for the appellant further argued that the appellant has served the department for sufficient long time and her services could not been terminated on a single stroke of pin. He also argued that other staff of the school such as Principal and teachers etc. are still in service, while the appellant had been discriminated. In support of his arguments, the learned counsel for the appellant relied on judgment dated 16.3.2011 in Service Appeal No.803/2010. He requested that the appeal may be accepted as prayed for.

The learned AGP, on the other hand, argued that due to particular situation, appointments of Class-IV servants in the Tribal Areas are usually made by nomination through the community with certain agreements, including to take care of the school and its equipments etc. but due to her negligence the schools and equipments were blown up. He further argued that Charge Sheet/Statement of Allegations and Show Cause Notices are served upon the permanent employees while the appellant was appointed on temporary basis and her services could be terminated without assigning any reason. He requested that the appeal may be dismissed.

7. The Tribunal observes that after issuance of the Government of Khyber Pakhtunkhwa, Finance Department notification referred to above, the services of the appellant have been regularized since July, 2008 and she has been awarded BPS-1,

EXAMINER
KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL
ATTESTED

9

therefore, she is regular civil servant and should be treated in accordance with the law. The issuance of Charge Sheet/Statement of Allegations are mandatory and proper enquiry conducted. Before issuance of termination order, Show Cause Notice has to be issued and the appellant be given personal hearing as required under the law. Moreover, Section 24-A of the General Clauses Act be properly observed. The order itself shows that the same has been issued on the direction of the Director, FATA without observing the legal procedure. As such not maintainable in the eye of law. The appellant has been subjected to the harsh penalty of termination from service through a single stroke of pen. The Tribunal further observes that no action has been taken against other staff members like Principal/Headmaster and teachers while the appellant has been discriminated.

8. In view of the above, the appeal is accepted as prayed for that the impugned order is set aside and the appellant is reinstated in service with all back/consequential benefits. However, if deemed appropriate in view of facts and circumstances of the case, the department may initiate proper departmental proceedings against the appellant but strictly in accordance with the law by providing opportunity of defence and personal hearing to the appellant and in that case, the payment of consequential/back benefits would be subject to the outcome of departmental proceedings/enquiry.

9. There are 25 other connected appeals, having common questions of law and facts, fixed for arguments for to-day. This single judgment will also dispose of these connected Service Appeal Nos. 732/2010, Mehar Gul, 733/2010, Salah-ud-Din, 734/2010, Abdul Aziz, 735/2010, Jan Bibi, 736/2010, Qayyum Khan, 737/2010, Yousaf Khan, 738/2010, Khan Abaz, 739/2010, Saddar-e-Azam, 740/2010, Habib Jan, 741/2010, Islam Gul, 742/2010, Shaheena, 743/2010, Javaid Khan, 744/2010, Shah Faisal, 745/2010, Faizullah, 746/2010, Rozina, 747/2010, Bilal Khan, 748/2010, Adnan, 749/2010, Javed Iqbal, 750/2010, Mst. Zarpoomba, 751/2010, Hassan Raza, 752/2010, Imad, 753/2010, Zarbat Khan, 754/2010, Mst. Warkhameena, 770/2010, Javed Khan and 771/2010, Najeebullah, in the same manner.

10. Parties, are however, left to bear their own costs. File be consigned to the record.

ANNOUNCED
31.10.2011

Sd/- Sultan Mahmood Chhatta
Member
Sd/- Naeem Akbar
Member

Certified to be true copy

ANNOUNCED
Khayal Ahmad
Service Tribunal,
Peshawar

AKK