



Form- A
FORM OF ORDER SHEET

Court of _____

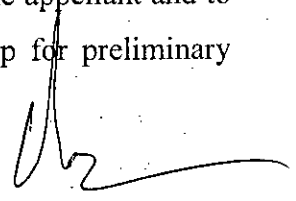
Case No. _____ 588/2014 _____

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/04/2014	<p>The appeal of Mr. Yar Muhammad resubmitted today by Mr. Ashraf Ali Khattak 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	7-5-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>25-6-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

3
25.06.2014

Counsel for the appellant present and filed an application for condonation of delay. Preliminary arguments partly heard. Perusal of the case reveals that the impugned order has been passed on 19.05.2013, however the learned counsel for the appellant submitted before the court that the impugned order ~~was~~ came into the knowledge of the appellant during pendency of Writ Petition filed by the appellant, hence the instant appeal.

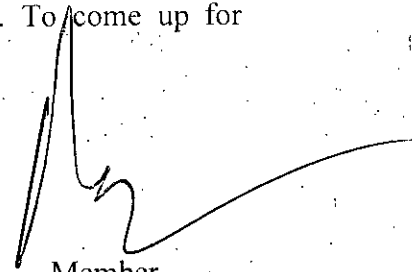
Since the matter required further elucidation on the point of limitation, therefore, pre-admission notice is hereby given to the respondents to produce the relevant record of the appellant and to learned GP to assist the Tribunal. To come up for preliminary hearing on 13.08.2014.



Member

4
13.08.2014

Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. The learned counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 16.10.2014.



Member

5
16.10.2014

No one is present on behalf of the appellant. Mr. Kabirullah Khattak, Asst: Advocate General for the respondents present. Notices be issued to the appellant/counsel for the appellant. The learned AAG also directed to contact the respondents for production of complete record of the appellant. To come up for preliminary hearing on 15.12.2014.



Member

6.
Reader Note:

15.12.2014

No one is present on behalf of the appellant. Mr. Kabirullah Khattak, Asst: Advocate General for the respondents present. Since the Tribunal is incomplete, therefore, case is adjourned to 05.03.2015 for the same.


Reader


7.
05.03.2015

No one is present on behalf of the appellant. Notice be issued to the learned counsel for the appellant. To come up for preliminary hearing on 04.05.2015.


Member

04.05.2015

Counsel for the appellant present and requested for adjournment. Request accepted. To come up for preliminary hearing for 05.06.2015 before S.B.


Member

05.06.2015

Agent of counsel for the appellant present, and requested for adjournment. Request accepted. To come up for preliminary hearing on 05.08.2015 before S.B.


Member

05.08.2015

None for the appellant present. Asstt: AG for the respondents present. Notice be issued to the appellant/counsel for the appellant. To come up for preliminary hearing on 24.08.2015 before S.B.


Member

24.08.2015

Agent of counsel for the appellant and Assistant A.G for respondents present. Seeks adjournment. Adjourned to 31.8.2015 for preliminary hearing before S.B.


Chairman

31.08.2015

None present for appellant. Assistant A.G for respondents present.
Learned counsel for the appellant is not in attendance due to strike of Bar.
Adjourned to 21.9.2015 for preliminary hearing before S.B.


Chairman

21.09.2015

None present for appellant. Assistant AG for respondents
present. Counsel for the appellant has been appointed as Public
Prosecutor. Notice to appellant be issued for 30.9.2015 for
preliminary hearing before S.B.


Chairman

30.09.2015


Mr. Nawab Zada, Advocate on behalf of the appellant present.
Requested for adjournment as the grievances of the appellant are being
considered departmentally. To come up for further proceedings/
preliminary hearing on 13.10.2015 before S.B.


Chairman

13.10.2015

None present for appellant despite repeated calls. The Court time is about to over. Dismissed for want of prosecution. File be consigned to the record room.

ANNOUNCED
13.10.2015


Chairman
13.10.15

The appeal of Mr. Yar Muhammad Ex-Chowkidar Govt. Middle School Zawar Bara received today i.e. on 31.03.2014 is incomplete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 day.

- 1- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Appeal may be got signed by the appellant.
- 3- Copies of extract of service book mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 4- Copies of writ Petition and reply of departmental mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 5- Copy of impugned termination order dated 19.5.2011 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.
- 6- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 7- Four copies/sets of the appeal along with annexures i.e. complete in all respect may be also be submitted with the appeal.

No. 546 /S.T.

Dt. 01/04 /2014.

Received on 9/4/2014

Mr. Ashraf Ali Khattak Adv. Pesh.

Resubmitted after needful completion on
22/4/2014

LSQ
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Advocate

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 588/2014

Yar Muhammad Ex-Chowkidar

Govt Middle School Zawar Bara Khyber Agency.....Appellant


VERSUS

The Agency Education Officer

(E & S C) Khyber Agency & others..... Respondents

INDEX

S.NO	PARTICULARS	ANNEX	PAGES
1.	Service Appeal		1-5
2.	Copies of appointment order, charge report, medical fitness certificate and service books	A	6-13
3.	Copy of para wise comments in WP -3532/2012	B	14-16
4.	Copy of termination letter	C	17
5.	Copy of withdrawal of writ petition dt.26.11.13	D	18-20
6.	Copy of demartmental appeal dt.30.11.2013	E	21-23
8.	Wakalat Nama		


Appellant

Through


Ashraf Ali Khan Khattak

And


Nawab Zada

Advocates, Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

St. W. J. P. No. 480
Date 31/3/2014

Service Appeal No. 588 /2014

Yar Muhammad, Ex-Chowkidar,
Govt: Middle School, Zawa Bara,
Khyber Agency.....

Appellant

VERSUS

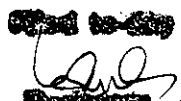
1. The Director of Education (E&SE), Dabgari Gardens, Peshawar.
2. The Director of Education (E&SE) FATA,
Warsak Road, Peshawar.
3. The Agency Education Officer,
Khyber agency at Jamrud.....

Respondents

Service Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order dated 19.05.2011 passed by the respondent No.3 and against which appellant filed departmental appeal, which is still pending without disposal.

Prayer:

On acceptance of the instant service appeal, this Hon'ble Tribunal may graciously be pleased to declare the impugned order dated 19.05.2011 of respondent No.3 as illegal, unlawful, void and without lawful authority and set aside the same and re-instate the appellant with all back benefits.



31/3/14

Respectfully sheweth

Facts giving rise to the present appeal are as under :-

re-submitted to ~~file~~
and filed.

1. That appellant was appointed as Class-IV (Chowkidar) vide order dated 24.08.2005 on regular basis and was posted at Govt Middle School, Zawa Bara. Appellant took over the charge of his service/ duty and performed his duty to the entire satisfaction of his superiors. He has


29/4/14

never been rated as in-efficient and un-qualified. Appellant's service book was also maintained. (Copy of service book is annexure 'A')

2. That it is pertinent to mention here that during the year 2010 the law and order situation in the Khyber Agency was very worst due to Taliban militancy and almost all the Educational institutions were under the Taliban militant threat. The same can best be verified from the news clipping during those days and it was the reason that almost all the educational institutions were closed till the time of continual threats got vanished.
3. That unfortunately on 22.07.2010 the Taliban militant attacked the school and destroyed the school building with all infrastructures therein.
4. That on the basis of aforementioned tragedy the respondent No.2 suspended the appellant from his service along with his other class-IV employees and their salaries were stopped.
5. That appellant and his other colleagues submitted numerous representations before the high-ups and competent authorities but in spite of their hectic efforts the suspension remained in field along with stoppage of their salaries.
6. That appellant after their hectic efforts and having no other alternative remedy filed Constitutional petition No.3532/2012. The Hon'ble Peshawar High Court Peshawar was pleased to direct the respondents to file para-wise comments and the respondents after almost one year filed para-wise comments on 29.10.2013, wherein the respondents took the plea that the services of the appellant and his other colleagues have been terminated vide order dated 19.05.2011 (Annexure 'B')
7. That it was from the comments of the respondents that appellant and his other colleagues got the knowledge of their termination. (Annexure 'C')
8. That appellant has never been informed of any disciplinary action or pendency of disciplinary action nor served with any sort of charge sheet and statement of allegations etc; the termination order has never been communicated to the appellant.
9. That upon the fresh development, appellant and his other colleagues were left with no other alternative option except to withdraw the writ

petition as the same was against suspension order and was not against the termination order and therefore, the writ petition was withdrawn (Annexure 'D').

10. That appellant filed departmental appeal (Annexure 'E') against the illegal termination order and allegedly passed by respondents on 19.05.2011 before the respondent No.1 which is still pending without disposal, hence the statutory period has elapsed therefore, the instant service appeal inter alia on the following grounds:-

GROUND:

- A. That respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of article 4 of the Constitution of Islamic Republic of Pakistan, 1973, Section 16 of the Civil Servant act 1973 provides that every civil servant is liable for prescribed disciplinary action and penalty only through prescribed procedure. In the instant case no prescribed procedure has been adopted by the respondents, hence the action taken by the authority is illegal, coarm, non-judice and liable to be set aside.
- B. That appellant has never and ever been served with any sort of charge sheet and statement of alleged and even has not been informed of any sort of disciplinary action or pendency of any cause / lis.
- C. That major penalty has been imposed without any sort of inquiry and appellant has been condemned unheard and no valid reason has been assigned with termination order which constitutes violation of section 24A of the General Clauses Act, 1897, therefore, the impugned orders are not sustainable in the eyes of law and liable to be struck down.
- D. That the Hon'ble Supreme Court of Pakistan has in thousands of cases held that no major punishment could be imposed without regular inquiry, the subject impugned order based on no inquiry has therefore, no base in the light of the decision of the apex court, thus liable to be set aside.
- E. That factual controversy is involved in the subject case, therefore, regular inquiry was absolutely necessary as per law laid down by the

Hon'ble Supreme Court of Pakistan, the same has been ignored in toto, therefore, on this score, the impugned order is also liable to be set aside.

- F. That the well-known principle of law "Audi altram partem" has been violated. This principle of law was also deemed to have embedded in every statute even though there was no express specific or express provision in this regard.

.....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS)1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

- G. That appellant is jobless since his dismissal from service, therefore is entitled to be re-instated with all service benefits.
- H. That appellant would like to seek permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

It is, therefore, humbly prayed that the appeal may graciously be allowed as prayed for above. Any other relief as deemed appropriate in the circumstances of the case, not specifically asked for, may also be granted to the appellant.

Dated: _____


Appellant

Through


Ashraf Ali Khan Khattak

And


Nawab Zada

Advocates, Peshawar

AFFIDAVIT

I, do hereby solemnly affirm and declare on Oath that the contents of the instant Service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


DEPONENT

Annex, A

P-6

OFFICE OF THE AGENCY EDUCATION OFFICER KHYBER AGENCY AT JAMRUD.
APPOINTMENT ORDER.

Consequent upon the recommendation of Political Administration and approval Mr: Yar Mohammad S/O Khan Mohammad is hereby appointed against the post of C/IV in BPS:01 Contract period of three years (03) at Govt: Middle School Zawa Tehsil Bara Khyber Agency with effect from the date of his taking over charge in the interest of public services.

Note :-

1. The employee shall serve the Govt: School from the date of assumption of charge.
2. He shall devote his whole time to his duties as C/IV.
3. He shall submit himself to the lawful orders of the Govt: officers
4. The post will not be transferred.
5. He shall produce Health and Age certificate from Agency surgeon concerned.
6. His original date of Birth/NIC and Domicile certificate should be checked before handing over charge of the post.
7. If they fail to report within 15 days the order will automatically be treated as cancelled
8. Charge report should be submitted to all concerned.
9. He will not be handed over the charge if he is below 18 years and above 38 years of age.

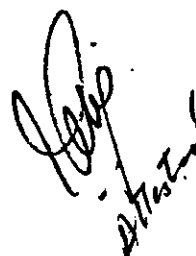
(DILBAR KHAN)
AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD.

2647-50
Endst; No _____ /Appt/C/IV/Khy; Dated Jamrud the 24/8/2005
Copy forwarded to the:-

1. Director of Education FATA NWFP Peshawar.
2. Agency Accounts Officer Khyber at Peshawar.
3. Political Agent Khyber at Peshawar w/r No.1724 dated.3-8-2005.
4. Accountant local office


AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD.

Appointment: Amjad Ali.



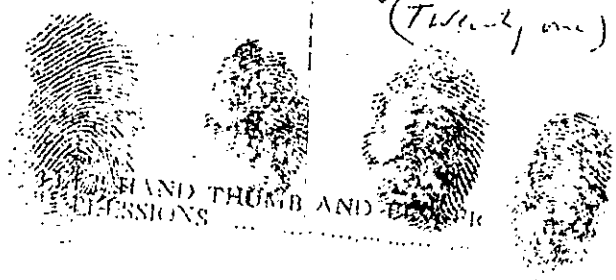
P-7

MEDICAL CERTIFICATE

Name of Applicant: Mr. Yar Mohammad.
 Aka: Aka Khel.
 S/o: Khan Mohammad.
 Village: Village Aka Khel Farid Khel Tehsil Bara Khyber
 Agency: Agency.
 Date of birth: 1984:
 Exact height by measurement: 5-5"
 Personal mark of identification: Mohd. Yar Mohammad
 Signature of the Official: [Signature]
 Signature of head of office: [Signature]

I do hereby certify that I have examined Mr. Yar Mohammad in relation to
 employment in the Office of the Education Department.
 and do not discover that he had any disease, physical or mental, or any
 affection or bodily infirmity except None.

I do not consider this as disqualification for employment in the Office of the Education
 Department. His age according to his statement is 21 years and by
 appearance about Twenty one years.
 (Twenty one)



Medical Superintendent
 Agency Head-Quarter Hospital
 Mandi Kotla.
 24/08/2005

28 - خارج رپورٹ

لہذا یہ کہانی ہے کہ ^{مستحق} محمد یار محمد ولد خان محمد
نے گورنمنٹ سڈل سکول زاوہ تحصیل باڑہ ضلع خٹک
میں بھرتی کوکہ بحوالہ آرڈر نمبر 2641-50
مورخہ 1/9/05 ایسے ہی کا خارج لایا

خارج کر دینا
یا محمد

خارج کر دینا

Mansoor

Attested

1-9-05

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.

Name: Yaq. Muhammad

Race: Akka khel (Margat khel)

Residence: village. Zawa Teh S P-o. Bara Khyber Age

Father's name and residence:

Khan Muhammad

5. Date of birth by Christian era as nearly as can be ascertained:

1984 (Nineteen-H. & Eighty Four)

6. Exact height by measurement:

5-5"

Date

7. Personal marks for identification:

Black Mole on right face.

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:

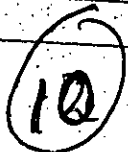
Handwritten signature of the government servant.

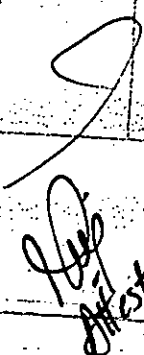

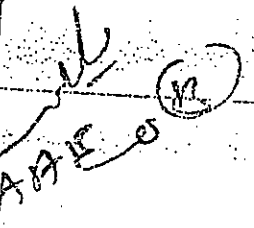
10. Signature and designation of the Head of the Office, or other Attesting Officer.

Agency Education Officer, Khyber Agency (At Jamrud).

Verification stamp: Verified by H. A. B. (Signature)

Signature and stamp of the Agency Education Officer.

1 Name of post	2 Whether substantive or officiating and whether permanent or temporary.	3 If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	4 Pay in substantive post	5 Additional Pay for officiating	6 Other emolument falling under the term "Pay"	7 Date of Appointment	8 Signature of Government Servant
Mr. Yaq. Muhammad C-IV (g. M.S. (C. & P.)) Zawar.		BPS No. 1 (2150-65-4100)	Rs. 2150/-	-	-	24/05	
"		B 2150/-	-	-	-	12/05	
"		B 2215/-	-	-	-	12/06	
		Revised BPS 02 (2530-85-5080)					
"		B 2615/-	-	-	-	17/07	
"		B 2700/-	-	-	-	12/07	
		Revised BPS 02 (3035-100-6035)					
"		B 3235/-	-	-	-	17/08	
"		Rs. 3335/-	-	-	-	12/08	
		Rs. 3435/-	-	-	-	12/05	
		BPS No. 2 (3570-85-5070)					
"		Rs. 2700/-	-	-	-	9/07	

17

8 Name of Servant	9 Post and Designation of the office or attesting officer attestation of columns 1 to 8	10 Date of termination or appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting officer.	13 Leave		14 Signature of the head of the office or other attesting officer	Reference to any record punishment or reward or praise of the Government Servant
					Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		
					Period	Government to which debitable		
APL	Asst. Secy. Cyber	30/11/05	Inc. Nil	[Signature]			Appointed against contract ^(C/IE) post of C/IE no BPS 01 Contract period of three years vice AEO Cyber Endost No. 2647-50 dated 24-8-2005	
	[Signature]	30/11/06	Inc	[Signature]				
	[Signature]	30/6/07	R/Prm + Placed BPS 02	[Signature]				
	[Signature]	30/11/07	Inc	[Signature]			Agency Education Officer Cyber Agency At Jamnagar	
	[Signature]	30/6/08	R/Prm	[Signature]			SERVICES VERIFIED from 24-8-05 to 30-6-08 from the P.O. Bill & other records of the office	
	[Signature]	30/11/08	A/Inc	[Signature]			Agency Education Officer Cyber Agency At Jamnagar	
	[Signature]	30/11/09	A/Inc	[Signature]				
	[Signature]	30/11/07	A/Inc	[Signature]				
	[Signature]		PTO	[Signature]				

In the light of PATA Secrete
 Despite letter No. 5074/2005
 The official is allowed on
 to be approached/moved up
 01-07-07, vide PATA
 11836, dt 05-08-07

Ver
 [Signature]
 ATTORNEY
 [Signature]

AGS
 [Signature]
 [Signature]

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 Ser
Cook Post							
B.P.S Zaver Dawra			Rs 2785/-			12 1/09	
//			Rs 3335/-			12 1/08	
//			Rs 3435/-			12 1/08	
//			Rs 3535/-			12 1/09	
//			Rs 3635/-			12 1/2010	
-//-			Rs 5920/- P.M			12 1/2011	
-//			Rs 6090/-			12 1/2011	

12

Attested

13

9 Signature and Designation of the head of the office or other attesting officer in attestation of columns 1 to 8	10 Date of termination or appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting officer.	13 Leave		14 Signature of the head of the office or other attesting officer	15 Reference to any recorded punishment or censure, or reward or praise of the Government Servant	
				Nature and dura- tion of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government			
					Period			Government to which debitable
	30/6/08	Revision of pay						
	30/11/08	A/L						
	30/11/08	A/L						
	30/11/2010	A/L						
	30/6/2011	R/Pay						
	30/11/2011	Mov						

TR No. 175/17

Dues = 2837-72 of same
income up to 1/2/07

31/1/2012

Agency Education Officer
Khyber

SERVICES VERIFIED
From 1-7-08 to 30-11-2010.
From the Pay Data sheet record
of this Office.

Agency Education Officer
Khyber Agency at Jamrud

SERVICES VERIFIED
From 1-12-10 to 30-11-2011
From the Pay Data sheet record
of this Office.

Annex B

P-14

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

Writ petition No. 3532-p/2012.

Zahid Khan and others..... Petitioners.

Versus

Director Education FATA and others..... Respondents.

Comments on behalf of Respondents No.1 and 2.

PRELIMINARY OBJECTIONS.

1. That the petitioner has got no cause of action, locus standi to file the instant petition.
2. That the Petitioner has concealed material facts from this High Court.
3. That the Petitioner is estopped by his own conduct to bring the instant Petition.
4. That the petition is not maintainable.
5. That this Honorable Court has no jurisdiction to adjudicate upon the matter.

OBJECTIONS ON FACTS.

1. Correct to the extent that the Petitioners Were appointed as Class-IV employees but they were appointed; purely on a contract basis and were liable to be terminated at any time and rest of the para is denied/incorrect.
2. Incorrect. The Petitioners were responsible for security of the school.
3. Incorrect. The Petitioners were suspended on 05-08-2010, suspension order already attached to the writ Petition as (Annexure-B) and later on the petitioners were terminated on 19-05-2011 on the directions of Political Agent and Director Education FATA, for their negligence and violation of terms and conditions of their service/appointment. (photo copy of termination order is attached as (Annexure ^A).
4. As the Petitioners were terminated on the directions of Political Agent and the Petitioners have moved an application to the Political Agent (Respondent No.3), therefore, he will be in a better position to reply.
5. No Comments.

Attested

P-15

GROUNDS.

- A. Incorrect. The Petitioners were suspended for their negligence and later on were terminated from service, therefore they were not entitled for salaries.
- B. Incorrect. As stated in para-3 above.
- C. Incorrect. The Petitioners were terminated from their service after suspension.
- D. Incorrect as the Petitioners were terminated from their service, therefore the Petitioner are not entitled for salary.

It is therefore requested that in the light of above real facts, the case of the Petitioner may kindly be dismissed with costs.

Respondent No.1

Respondent No. 2

M. J. Ahmad

[Signature]
Director Education,
FATA, Secretariat Peshawar.

[Signature]
Agency Education officer

Khyber Agency at Jamrud.

P-16

JURISDICTION
PESHAWAR HIGH COURT PESHAWAR

Writ petition No 3532-p/2012.

Zahid Khan and others.....Petitioner.

Versus

Director Education FATA and others..... Respondents.

AFFIDAVIT.

I Abdul Malik Assistant Director (Litigation) Directorate of Education FATA, Peshawar do hereby solemnly affirm and declare that, contents of the Para Wise Comments submitted by respondent No.1 and 2 are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Court.

Abdul Malik

Deponent.

16/01-1510736-9

Identified by

[Signature]
Suptt
Advocate General, Khyber
Pakhtunkhwa Peshawar.

- 3823 -

Asst Director of B Abdul Malik
FATA
A.C.

[Signature]
Attest

[Signature]
29/10/2012
Advocate General, Khyber
Pakhtunkhwa Peshawar.

Amex C

12-17

AGENCY EDUCATION OFFICE KHYBER AGENCY AT JAMRUD

TERMINATION.

Consequent upon the direction of Director Education FATA at Peshawar vide letter No. 23901-12/AD (C) E-3/File No Dated Peshawar the 19/12/2009 the following male class IV servants of GMS Zawa Tehsil Bara Khyber Agency are hereby terminated from service with immediate effect due to their negligence and violation of terms and conditions of their recruitment.

S.No	Name & Designation	Name of Institution
01	Muhammad Wali chowkidar	GMS Zawa Bara
02	Zahid Khan Beshti	GMS Zawa Bara
03	Amir Zada Sweeper	GMS Zawa Bara
04	Yar Muhammad Class IV	GMS Zawa Bara

Note:- Necessary entry to this effect should be made in their service book.

(HASHAM KHAN)
AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD.

Endst. No. 0532-35 Damage School File, Dated. 19/5 /2011

Copy forwarded to the:

1. Director Education FATA at Peshawar.
2. Political Agent Khyber Agency at Peshawar.
3. Assistant Political Agent Tehsil Jamrud Khyber Agency.
4. AAEO concerned local office.
5. Superintendent/Accountant local office.
6. Officials concerned.

[Handwritten signature]

[Handwritten signature]
AGENCY EDUCATION OFFICER
KHYBER AGENCY AT JAMRUD.

Ames D

18

IN THE PESHAWAR HIGH COURT PESHAWAR



WRIT PETITION No. 3532 P/2012

1. Zahid Khan S/o Murad Khan,
Former Behishti, Govt. Middle School,
Zawa Bara, Khyber Agency.
2. Muhammad Wali S/o Fawakal Khan,
Former Chowkidar, Govt. Middle School,
Zawa Bara, Khyber Agency.
3. Yar Muhammad S/o Khan Muhammad,
Former Cook, Govt. Middle School,
Zawa Bara, Khyber Agency.....Petitioners

Versus

1. The Director, Education (FATA),
FATA Secretariat, Warsak Road, Peshawar.
2. The Agency Education Officer,
Khyber Agency at Jamrud.
3. The Political Agent,
Khyber Agency at Peshawar.....Respondents.

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

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That petitioners were appointed as Class-IV,
employees on 13.12.2006, 24.08.2005 and
27.10.2009 and were posted at the relevant time at
Govt. Middle School Zawa, Khyber Agency. Since
the date of joining their services, petitioners have
performed their duties upto the date with

RECEIVED TODAY
Deputy Registrar
18 DEC 2012

Attested

ATTESTED

EXAMINER
Peshawar High Court.

27-11-13

19

FORM "A"
FORM OF ORDER SHEET

Court of -----

Case No.-----

Date of order or proceedings 2.	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary. 3.
26.11.2013	<p><u>WP No.3532-P/2012.</u></p> <p><u>Present:</u> Mr. Khaled Rehman, Advocate for petitioners.</p> <p>Mr. Waqar Ahmad, AAG. for respondents.</p> <p style="text-align: center;">*****</p> <p><u>NISAR HUSSAIN KHAN, J.-</u> Petitioners through the instant Constitutional petition, have challenged the Order dated 5.8.2010 of respondent No.2, whereby, they have been suspended from service. They have also prayed for issuance of an appropriate writ directing the respondents to release their salaries w.o.f. August 2010 till date.</p> <p>2. At the very outset, learned Counsel for petitioners stated at the bar that respondents alongwith their comments, have annexed copy of termination order of petitioners, due to which the scenario has changed. In the given</p>

[Handwritten signature]
Attested

[Handwritten signature]

ATTESTED
EXAMINER
Peshawar High Court

circumstances, he requests for withdrawal of this petition with permission to file afresh one or approach the competent Court of law for the redressal of their grievances.

3. In this view of the matter, this writ petition is dismissed as such.

Announced.
Dated: 26.11.2013.

JUDGE

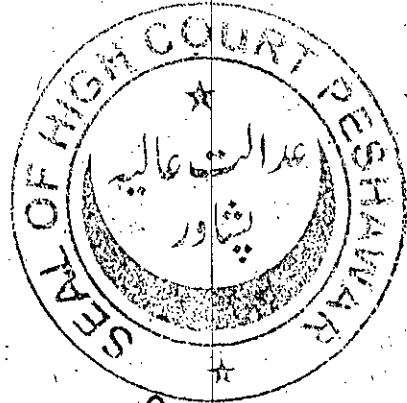
JUDGE

J. Nisar Hussain Khan
J. Musabbat Haidari

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court Peshawar
Authorised Under Article 87 of
the Qanun-e-Shahadat Order 1984

27-11-13



Attestance

2712
No. of Pages *3P*
Copying fee *600*
Urgent Fee *1*
Total *600*
Date of Preparation of Copy *27-11-13*
Date Given For Delivery *27-11-13*
Date of Delivery of Copy *27-11-13*
Received By *PA Amir*

To,

Annex E

1221

The Director Education (FATA)
FATA Secretariat, Warsak Road,
Peshawar.

DEPARTMENTAL REPRESENTATION AGAINST THE
IMPUGNED ORDER DATED 19/05/2011 PASSED BY
AGENCY EDUCATION OFFICER FATA WHERE BY
APPELLANT WAS TERMINATED FROM SERVICE WITH
IMMEDIATE EFFECT.

Respected Sir,

1. That the appellant was appointed as Class-IV employee (Chowkidar) in the year 24/08/2005 and took over the charge in the Government Middle School, Zawa Bara at Khyber Agency, he performed his duty regularly without any complaint till to 22/07/2010.
2. That unfortunately the disturbing law and order situation prevailing in the Khyber Agency, on 22/07/2010 the armed militants suddenly entered in the School at 11:12 PM and destroyed the school building along with all items therein.
3. That on the basis of the said/ bad tragedy the AEO suspended the appellant along with other colleagues for unknown period and their salaries also stopped. For the redressal of their grievances. The appellant tried his best, but no fruitful result was achieved.

[Handwritten Signature]
Attested

- 122
4. That after his best effort before the respondents, the appellant has no other choice, but to file W.P. No. 3523/2012 in Peshawar High Court, Peshawar on 18/12/2012, the Writ Petition was admitted for regular hearing and the comments were called from the respondents.
 5. That at last after 10 months the respondent filed their comments on 29/10/2013 in which the respondents stated that the appellant along with his colleagues were terminated from their services by the Agency Education officer on 19/05/2011.
 6. That it was from the comments of the respondent that the appellant new about his termination for the first time since no charge sheet/ statement of allegations, no show cause notice had been served upon the appellant. No inquiry either had been conducted and no opportunity of personal hearing was provided to the appellant.
 7. That Writ Petition was withdrawn as it had been filed against the suspension order but now it has been learned that malafidely termination order has been issued, the Writ Petition was withdrawn to file the instant Departmental Representation.
 8. That the impugned order is without any legal basis, void, arbitrary, unconstitutional; against the principle of natural justice, fair-play trial and liable to be set aside.
 9. That under F.R.53 (b) a Civil Servant is entitled to full pay during period of the suspension but respondents

M. Ali
Attested

have stopped the salaries of appellant; against which appellant filed Writ Petition for the release of his salary; the respondent malafidely issued the termination order in back date, if the same had been issued it would have been communicated to the appellant. Only to weaken the stance of the appellant.

It is, therefore, humbly prayed that on acceptance of this Departmental Representation, the impugned order dated 19/05/2011 may kindly be set aside and the appellant may graciously be reinstated into service with all back benefits.

Appellant

Yar Muhammad

Ex-Chowkidar

Government Middle School
Zawar Bara, Khyber Agency.

Dated: 30/11/2013

Handwritten signature

for Insurance Notices see reverse. Stamps affixed, except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Write here "Registered", "Registered and Insured", "Registered and Insured" or "Insured" with the word "insured" before it when necessary.

Initials of Receiving Officer

Insured for Rs: (in figures) 1000 (in words) One Thousand

Insurance fee Rs: _____

Name and address of sender _____

Weight 100 Grams 100 Kilo

Post Stamp _____

RS. _____ PS. _____

0.179

WAKALAT NAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Yar Mohammad
Ex-Beshti ~~Zaid Khan~~ Govt middle school Zawar Bara, Khyber Agency.
.....Appellant.

Versus

The Director Education Education (FATA), FATA Secretariat, Warsak
Road, Peshawar.Respondents.

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974

KNOW ALL to whom these presents shall come that i the undersigned appoint:

*Ashraf Ali Khattak and Nawab Zada Khan Advocates High
Court Peshawar (herein after called the advocate) to be the Advocate for the Petitioner in
the above mentioned case, to do all the following acts, deeds and things or any of them ,that is to say*

- 1) To act 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 execution or in any other stage of its progress until its final decision.
- 2) To sign, verify and present pleadings, appeals, cross - objections, petitions for execution, review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of said case in all its stages.
- 3) To withdraw or compromise in the said case or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- 4) To receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said case.
- 5) To engage any other Legal practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the promises.

AND I hereby agree not to hold the Advocate or its substitute responsible for the result of the said case in consequence of his absence from the court when the said case is called up for hearing.

AND I hereby that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid, He shall be entitled to withdraw from the prosecution of the said case until the same is paid.

IN WITNESS WHEREOF I hereunto set my hand to these presents the contents of which have been explained to and understood by me, this _____ day of _____ 2013

Accepted By

M. Ashraf Ali Khattak

Ashraf
Advocate, High Court,
Cell # 0332-9931676

Signature/ thumb impression
of party / parties.

Nawab Zada Khan
Nawab Zada Khan Advocate

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Misc: Application No. ____/2014

Yar Muhammad, Ex-Chowkidar,
Govt Middle School Zawar Bara Khyber Agency.....Appellant
Versus

The Agency Education Officer,
(E & S C) Khyber Agency.....Respondent


APPLICATION FOR CONDONATION OF DELAY IF ANY

Respectfully sheweth

FACTS:

1. That the titled appeal has been pending before this Hon'ble Tribunal.
2. That the delay in filing of departmental appeal was due to the reason that order of termination was not communicated to the appellant.
3. That the termination order dated 19.05.2011 has been provided to the appellant during the pendency of writ petition on 26.11.2013.
4. That appellant immediately filed departmental appeal.
5. That limitation runs from the date of communication. The impugned termination order has been provided to the appellant on 26.11.2013, therefore, under the law, appeal is well within time.
6. That the delay is no intentionally but due to above reasons.
7. That the law favors decision on merit rather than technical grounds.

It is, therefore, humbly requested that the delay if any may kindly be condoned in the interest of justice.

Through Applicant

Nawabzada
Advocate, Peshawar

Affidavit

As per instructions of my client, solemnly affirmed and declared on oath that contents of the above application are true and correct to the best of my knowledge and belief.




Advocate