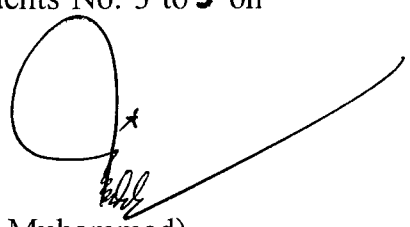


30.09.2022

Appellant present in person. Mr. Muhammad Tufail, Assistant for respondents No. 1 and 3 alongwith. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Reply/comments on behalf of respondents No. 1 & 2 submitted which are placed on file. Copy of the same is handed over to junior counsel for the appellant. Learned AAG requested for further time to contact the remaining respondents for submission of reply/comments. Last opportunity is granted. . To come up for reply/comments of respondents No. 3 to 5 on 15.11.2022 before S.B.



(Mian Muhammad)
Member (E)

09.05.2022

Counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Haseen Ullah Assistant for respondents present.

Reply on behalf of respondents was not submitted. Representative of respondents requested for time to submit reply/comments. Last chance is given. To come up for reply/comments on 27.06.2022 before S.B.


(Rozina Rehman)
Member (J)

27.06.2022

Appellant alongwith his counsel present.

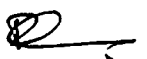
Learned Member (Executive), is on leave. Therefore, the case is adjourned to 09.08.2022 for the same as before.

9.8.2022

Due to the Public Holiday
is Adjourned to 30-9-2022


READER

The Case


Reader.

14.12.2021


Appellant alongwith his counsel present. Mr. Noor Zaman Khattak, District Attorney for respondents present.

Written reply/comments not submitted. Learned District Attorney seeks time to contact the respondents for submission of written reply/comments. Adjourned. To come up for written reply/comments on 21.02.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

21.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 12.04.2022 for the same as before.


Reader.

12.04.2022

Counsel for the appellant present.

Muhammad Adeel Butt, learned Additional Advocate General alongwith Asif Nawaz Assistant for the respondents present.

Respondents requested for time to submit reply/comments. Granted with direction to submit reply/comments within 10 days in office, positively. If the reply/comments are not submitted within stipulated time, right of respondents for submission of reply shall be deemed as struck off.

Adjourned to 09.05.2022 before S.B.


(Rozina Rehman)
Member (J)

04.08.2021

Counsel for the appellant present. Preliminary arguments heard.

In term of normal procedure, the appeal appears to be time barred but in view of Section 30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the limitation period provided under any law shall remain frozen. This appeal having been filed after promulgation of the said Act, is not affected by bar of limitation. Points raised need consideration. The appeal is admitted for hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 14.12.2021 before the D.B.

Appellant Deposited
Security & Process Fee

04/8/21

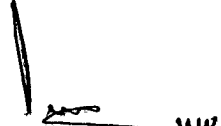


Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 5963 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/06/2021	<p>The appeal of Mr. Mushtaq Ali resubmitted today by Akhunzada Syed Pervez Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>04/08/2021</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

The appeal of Mr. Mushtaq Ali son of Abdul Ghani Senior Clerk GHSS Jabbi District Nowshra received today i.e. on 07.06.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of implementation petition and order passed by this Tribunal mentioned in para-4 of the memo of appeal (Annexure-D) are not attached with the appeal which may be placed on it.
- 2- Copy of order dated 24/12/2019 illegible which may be replaced by legible/better one.


No. 957 /S.T,

Dt. 08/06 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Akhunzada Syed Pervez Adv. Pesh.

*The concerned pages have been
rectified & re-submitted.*


10/6/21

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Service Appeal No. 5963 /2021


Mushtaq Ali Appellant

VERSUS

Govt Of KPK & other Respondents

INDEX

S.No	Description of Documents	Annex	Pages
1	Grounds of Service Appeal		1-5
2	Affidavit		6
3	Copy of compulsory retirement order dated 05.09.2014	A	7
4	Copy of the order/judgment dated 25.10.2019	B	8-12
5	Copy of the office orders and copy of de-novo inquiry Report dated 06.01.2020	C	13-18
6	Copy of application / COC for implementation of judgment and order	D	19
7	Copy of office order dated 06.03.2020 and Notification dated 12.05.2020	E	20-21
8	Copy impugned office order/notification dated 23.12.2020	F	22
9	Copy of departmental appeal	G	23
10	Wakalat Nama		24


Appellant

Through


Akhunzada Syed Pervez

Dated: 07.06.2021

Advocate, High Court Peshawar

Cell#0300-3160098

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2021

Mushtaq Ali S/O Abdul Ghani R/O Musazai, Gul Abad, Inqilab Road,
Peshawar, Senior Clerk GHSS Jabbi, District Nowshera.

..... Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar R/O Civil Secretariat, Peshawar.
2. Deputy Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar R/O Firdous Chowk Peshawar.
3. Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar R/O Firdous Chowk Peshawar.
4. District Education officer (Male) Peshawar.
5. District Education officer (Male) Nowshera.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER/NOTIFICATION DATED 23/12/2020 VIDE WHICH THE APPELLANT WAS REINSTATED IN SERVICE BUT HOWEVER RESPONDENT NO. 2 DISENTITLED THE APPELLANT FROM THE GRANT OF BACK SERVICE BENEFITS W.E.F 01.10.2014 TO 30.06.2020 AGAINST THE POST OF SENIOR CLERK OF THE PETITIONER. AND DEPARTMENTAL APPEAL TO RESPONDENT NO. 2 IS NOT HONORED TILL DATE.

Respectfully Sheweth:

The Appellant humbly submits as under;

- 1) That the Appellant was serving as Senior Clerk in Respondent's Department, and he was imposed major penalty of compulsory retirement vide order dated 05.09.2014 on the allegation of

②

absence from duty. **(Copy of compulsory retirement order dated 05.09.2014 is attached as annexure "A")**.

- 2) That the Appellant after availing departmental remedy filed a service appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar and learned Service Tribunal vide order & judgment dated 25.10.2019 partially accepted the said appeal and directed the respondents to reinstate the appellant into service and also directed the respondent's department to conduct de-novo inquiry in the mode and manners prescribed under Government Servants (Efficiency & discipline) Rules, 2011 strictly in accordance with law within period of 90 days from the date of receipt of copy of this judgment, however the issue of back benefits will be subject to outcome of the de-novo inquiry. **(Attested Copy of the order/judgment dated 25.10.2019 is attached as annex "B")**.
- 3) That the Appellant has conveyed certified copy of judgment to the respondents for compliance, and the respondents departments vide office order No. 5385 dated 13.12.2019 given direction for de-novo inquiry, and a de-novo inquiry was conducted by respondents department. **(Copy of the office orders and copy of de-novo inquiry Report dated 06.01.2020 are attached as annex "C")**.
- 4) That despite of de-novo inquiry the respondent's department did not implement the judgment of learned Service Tribunal, hence the Appellant on 24.02.2020 filed an application/COC in this Hon'able Service Tribunal for implementation of its order and judgment. **(Copy of application/COC for implementation of order and judgment is attached as annexure "D")**.
- 5) That it was utter surprise for the Appellant when he was reinstated vide office order 5821/25 dated 06.03.2020 but subject to again de-novo inquiry, and later on the respondents vide notification dated 12.05.2020 constituted an illegal and unlawful committee for de-novo inquiry. **(Copy of office order dated 06.03.2020 and Notification dated 12.05.2020 is attached as annexure "E")**.
- 6) That the Appellant approached to respondents and requested to cancel and set aside the said illegal and unlawful **Notification dated 12.05.2020** and they should also not take any adverse action against the Appellant and also requested for a revised reinstatement order of the Appellant with all back benefits but they refused, hence the appellant filed a contempt petition against the concerned authority but during pendency of that COC petition on 29.01.2021 the appellant during course of argument came to know that respondent No.1 passed an other illegal and unlawful office

order/notification dated 23/12/2020 vide which the respondent No.2 disentitled the appellant from the grant of back service benefits w.e.f 01.10.2014 to 30.06.2020 against the senior clerk post, in view of inquiry report dated 30.11.2020 of the District Education Officer (M) Nowshera. It is worth to mention here that up till now the respondents did not legally and properly communicated the said impugned office order/notification dated 23.12.2020 to appellant. It is also pertinent to mention here that the said C.O.C petition is still pending for adjudication before this Honorable Service tribunal, wherein next date 28.06.2021 is fixed. **(Copy of impugned office order/notification dated 23.12.2020 is attached as Annexure "F").**

- 7) That thereafter, the appellant filed a departmental appeal to respondent No. 3 on dated 26.02.2021 which met dead respond till date.
(Copy of departmental appeal is attached as Annexure "G")
- 8) That the Appellant having found himself in a situation explained above and having exhausted all the available remedies but in vain finally approaches this Hon'ble Service Tribunal for seeking justice, hence file the instant service appeal on the following grounds amongst others.

GROUND:

- A. That the impugned office order/notification dated 23.12.2020 is illegal and unlawful, hence liable to be set aside.
- B. That the competent authority failed to take into consideration the procedure provided under E & D Rules 2011.
- C. That in the said judgment dated 25.10.2019, the respondents were directed to conduct De-Novo inquiry within stipulated period of 90 days after receipt of its judgment and then passed proper order, hence the respondents department was legally bound to implement the judgment of Hon'ble Tribunal in letter and spirit within 90 days but respondents failed to comply the order and judgment of this honorable Tribunal.
- D. That non-compliance of the aforesaid judgment dated 25.10.2019 of Honorable Service tribunal by the respondents is illegal, without lawful authority based on malafide.
- E. That office order dated 06.03.2020 and notification dated 12.05.2020 for De-novo inquiry are illegal and unlawful, hence liable to be set aside.

- 4
- F. That when DENOVO ENQUIRY was not conducted as per the mandate of law, appellant becomes entitled under the law for all back benefits.
- G. That judgment of the hon'ble Tribunal was not dealt with by the respondents as per the mandate of law, so on this score alone appellant deserves all back benefits
- H. That similar question of Law and facts came up not only before this Hon'ble court but also before the apex Supreme Court of Pakistan by not finalizing the matter within the stipulated period, then servant were reinstated with all back benefits.
- I. That by not honoring the judgment of Hon'ble Service Tribunal the Respondents department extinguished the right of De-Novo inquiry and the Appellant shall be reinstated in service with all back consequential benefits.
- J. That the acts of the respondents are against the law and natural justice as well as the order of Hon'ble Service Tribunal.
- K. That it is pertinent to mention here that although the respondent-department vide office order No. 452 dated 06.01.2020 has conducted de-novo inquiry but despite of conclusion of that very de-novo inquiry the respondents are not ready to implement the judgment & order of this Hon'ble Service Tribunal, hence they committed gross violation of order and judgment of this honorable tribunal.
- L. That the appellant was not well fully absent from his service. The appellant was severely ill hence he submitted application for medical leave to concern authority. Moreover the appellant was involved in criminal case vide F.I.R No. 304 dated 23.03.2013 under section 489-F Police station Takht Bahi, hence his absence was not intentional /deliberate but the same was due to involvement of the appellant in criminal case. It is pertinent to mention here that the respondents have not mentioned the absent period in the impugned office order.
- M. That no charge sheet/statement of allegation was framed or served upon the appellant.
- N. That neither proper inquiry is conducted nor was the appellant provided opportunity of personal hearing and defense.
- O. That no absence notice/show cause notice was advertised in two newspapers as required under rule -9 of Government Servants (Efficiency & Discipline Rules, 2011, therefore the appellant is
-

C5

condemned unheard which has rendered the whole proceeding illegal and liable to be to be set-aside.

- P. That no final show cause has been served upon the appellant.
- Q. That no opportunity was given to appellant to produce his evidence and even no opportunity was given to appellant to cross examine the witness if any was produced. The whole proceeding was kept secretly and even the impugned office order/ notification dated 23.12.2020 is up till now not properly communicated to appellant.
- R. That any other ground will be raised at the time of arguments with the prior permission of this Hon'ble Court.

It is, therefore, humbly prayed that on acceptance of this service appeal, this Hon'ble Service Tribunal may kindly be modified the office order / notification dated 23.12.2020 of Respondent No. 2 to the extent that the appellant be made entitled for all back benefits w.e.f 01.10.2014 to 30.06.2020 against the senior clerk post which shall be paid to him hence forthwith with consequential reliefs.

Any other relief avail in the circumstances of the case may also be granted to the petitioner.


Appellant

Through


Akhunzada Syed Pervez

Dated: 07.06.2021

Advocate, High Court Peshawar

Cell#0300-3160098

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2021

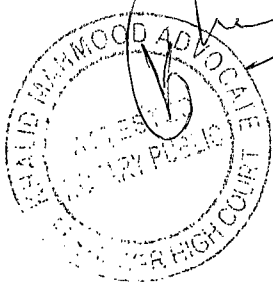
Mushtaq AliAppellant

VERSUS

Govt Of KPK & other Respondents

AFFIDAVIT

I, Mushtaq Ali S/O Abdul Ghani R/O Musazai, Gul Abad, Inqilab Road, Peshawar, Senior Clerk GHSS Jabbi, District Nowshera, do hereby solemnly affirm and declare on oath that the contents of this accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



DEPONENT

Handwritten signature
17301-7488978-7

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.

COMPULSORY RETIREMENT:-

Whereas absence report was received from the principal GHSS No.4 Kakshal Peshawar city against Mr.Mushtaq Ali J/Clerk ,vide his Memo No.47 dated:22/05/2013, No.53,dated:29/05/2013, No.63 dated:13/06/2013 and No.71 dated:24/06/2013.

Whereas the principal was directed vide this office memo No.430,dated:06/07/2013 to furnish latest information regarding absence of the official concerned.

Whereas the principal GHSS No.4 Kakshal Peshawar city has confirmed the absence of the official from 18/05/2013 vide his memo No.99 dated:22/11/2013.

Whereas Show Cause Notice was served on the official concerned through principal GHSS No.4 Kakshal Peshawar city vide this office Memo No:3187 dated:12/02/2014 duly acknowledged by him on 18/02/2014.

Whereas the reply to show cause notice dated 19/02/2014 was received in this office.

Whereas an inquiry was conducted through the principal GHSS Hazar Khwani Peshawar in compliance with notification issued in this regard vide Endst No:6049-51 dated:27/03/2014.

Whereas the inquiry officer recommended for imposing of major penalty (Compulsory Retirement) vide his report No.160dated:15/05/2014.

And whereas I ,Mr.Sharif Gul DEO(M) Peshawar being competent authority am pleased to impose major penalty (Compulsory Retirement) under Rules 4(b) (ii) of Govt of KPK Govt Servants (E&D) Rules 2011 w.e.f 18/05/2013.

The pay of the official concerned of the absence period should be recovered and copy of challan be furnished to this office for reference and record.

(Sharif Gul)
District Education Officer,
(Male) Peshawar.

Endst: No. 729-32 Dated Peshawar the 5/9 /2014

Copy for information and necessary action to the :-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Director E&SE KPK Peshawar.
3. Principal GHSS No.4 Kakshal Peshawar city for strict compliance regarding recovery from the official concerned.
4. Official Concerned.

Deputy District Education Officer,
(Male) Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 1228/2018

Date of institution ... 08.10.2018

Date of judgment ... 25.10.2019



Mushtaq Ali S/o Abdul Gahani R/o Musazai, Gul Abad,
Inqilab Road, Peshawar, Senior Clerk District Education Officer (M),
Battagram. ... (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. District Education Officer (M) Peshawar, Hashtnagri, Peshawar.
3. District Education Officer (M) Battagram Bazar, Battagram.
4. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Firdous Chowk Peshawar. ... (Respondents)

25-01
2020

10
7
2020

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER ENDST NO. 1505-10/F.NO/A-23/MS/APPEAL MUSHTAQ ALI DATED 18.09.2018 OF RESPONDENT NO. 4(DIRECTOR ELEMENTARY & SECONDARY EDUCATION, KHYBER PAKHTUNKHWA, FIRDOUS CHOWK PESHAWAR) WHEREBY HE UPHOLD THE ORDER OF MAJOR PENALTY IMPOSED BY RESPONDENT NO. 2 (DISTRICT EDUCATION OFFICER (M) PESHAWAR, HASHTNAGRI, PESHAWAR) ENDST NO. 729-32/DATED PESHAWAR THE 05.09.2014 AND REJECTED THE APPEAL OF THE APPELLANT FOR NO LEGAL REASON.

25.10.2019

Mr. Akhunzada Syed Pervez, Advocate
Mr. Kabirullah Khattak, Additional Advocate General

For appellant.
For respondents

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. HUSSAIN SHAH

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

ATTESTED

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the

appellant and Mr. Kabirullah Khattak, Additional Advocate General alongwith
Mr. Arshed Ali, ADO for the respondents present. Arguments heard and recor
perused.

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

9

2. Brief facts of the case as per present service appeal are that the appellant was serving as Senior Clerk in Education Department. He was imposed major penalty of compulsory retirement vide order dated 05.09.2014 on the allegation of absence from duty by the competent authority. The appellant after availing departmental remedy, filed service appeal before this Tribunal and after hearing arguments this Tribunal issued direction to the appellate authority (Respondent No. 4 i.e. Direction Elementary & Secondary Education, Khyber Pakhtunkhwa) to decide the departmental appeal filed by the appellant within two months of the receipt of copy of judgment vide detailed judgment dated 10.07.2018. The departmental authority rejected/dismissed the departmental appeal vide order dated 18.09.2018 and thereafter, the appellant filed the present service appeal on 08.10.2018.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving as Senior Clerk in Education Department. It was further contended that the appellant was involved in criminal case vide FIR No. 304 dated 23.03.2013 under section 489-F PPC Police Station Takht Bahi. It was further contended that the absence of the appellant was not intentional/deliberate but the same was due to involvement of the appellant in the aforesaid criminal case. It was further contended that neither absence period has been mentioned by the competent authority in the impugned order nor by the departmental authority in the order of departmental appeal. It was further contended that neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence nor any absence notice was issued to the appellant at his home address nor any absence notice/show-cause notice was advertised in two newspapers as required under rule-9 of Government Servants (Efficiency &

M. H. Khan
25.10.2019

ATTESTED

[Signature]
Secretary
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


Discipline) Rules, 2011 therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside and prayed for acceptance of appeal. (10)

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant remained absent with effect from 18.05.2013 till the impugned order dated 05.09.2014 without permission of lawful authority. It was further contended that a proper show-cause notice was issued to the appellant which was also received by the appellant on 18.02.2014 as revealed from the copy of show-cause notice but the appellant could not satisfy the competent authority and the Principal of Government Higher Secondary School Hazar Khawani Peshawar recommended for compulsory retirement from service vide inquiry report dated 15.05.2014 therefore, it was vehemently contended that after fulfilling all the codal formalities, the appellant was rightly imposed major penalty of compulsory retirement and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving as Senior Clerk in Education Department. The record further reveals that the appellant was involved in the aforesaid criminal case due to which the appellant remained absent from duty with effect from 18.05.2013. The record further reveals that the appellant was imposed major penalty of compulsory retirement by the competent authority i.e District Education Officer Male Peshawar vide order dated 05.09.2014. The record further reveals that the appellant filed departmental appeal against the impugned order dated 05.09.2014 but the same was not responded by the departmental authority within the stipulated period therefore, the appellant filed Service Appeal before this Tribunal. The record further reveals that this Tribunal disposed off the service appeal of the appellant and directed the departmental authority to decide the departmental appeal.

18.02.2014
15.05.2014

ATTESTED


OFFICER
Peshawar
Service Tribunal,
Peshawar

11

by the appellant within two months of the receipt of copy of judgment vide detailed judgment dated 10.07.2018. The record further reveals that the departmental authority also dismissed the departmental appeal of the appellant vide order dated 18.09.2018 and thereafter, the appellant filed the present service appeal on 08.10.2018. The record further reveals that the appellant was imposed major penalty of compulsory retirement on the allegation of absence from duty but neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence. The record further reveals that the competent authority has issued only a show-cause notice undated to the appellant for the absence with effect from 18.05.2013 which was received to the appellant on 18.02.2014 and after issuing the show-cause notice, the appellant was imposed major penalty of compulsory retirement vide order dated 05.09.2014 but neither regular inquiry was dispensed by the competent authority in the aforesaid show-cause notice nor any reason for dispensing regular inquiry was mentioned in the said show-cause notice. The record further reveals that the aforesaid show-cause notice was received by the appellant on 18.02.2014 as revealed from the copy of show-cause notice available on the record but a fact finding inquiry was conducted by the Principal of Government Higher Secondary School Hazar Khawani Peshawar on 15.05.2014 after issuing a show-cause notice which itself speak that the said fact finding inquiry is against the rules as the competent authority was required to first initiate proper inquiry including chargesheet, statement of allegation against the appellant and thereafter, if the appellant was proved guilty than he would have issued a show-cause notice for the absence period but the inquiry officer has submitted inquiry report after the aforesaid show-cause notice therefore, the whole proceeding is illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order. reinstate the appellant into service and direct the

M. Akbar Khan
25-9-2019

ATTESTED

[Signature]
 Director
 Service Tribunal,
 Peshawar

12

respondent-department to conduct de-novo inquiry in the mode and manners prescribed under Government Servants (Efficiency & Discipline) Rules, 2011 strictly in accordance with law within a period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.10.2019

Muhammad Amin
(MUHAMMAD AMIN KHAN KUND)
MEMBER

Hussain Shah

(HUSSAIN SHAH)
MEMBER

Certified to be true copy

[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Petition *14-11-19*

Number of Words *2000*

Copying Fee *2200*

Urgent

Total *2200*

Name of Copyist *[Signature]*

Date of Completion of Copy *19-11-19*

Date of Delivery of Copy *19-11-19*



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.

No. 5385 /F.No. /A-23/MS/Appeal/Mushtaq ali S/Clerk
Dated Peshawar the 13-12 /2019
Phone: 091-9225344 Email: ddadm.ese@gmail.com

To

The District Education Officer
(Male) Peshawar

Subject: APPEAL FOR RE-INSTATEMENT IN TO SERVICE IN R/O MR. MUSHTAQ ALI
JUNIOR CLERK AND CONDUCT OF DE-NOVO ENQUIRY WITH IN 90
DAYS FROM THE DATE OF RECEIPT OF JUDGEMENT OF KP SERVICE
TRIBUNAL DATED 25/10/2019

Memo:

I am directed to refer to the subject noted above and to enclosed herewith
Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 25/10/2019 in service
appeal No 1228/2018 title "Mushtaq Ali s/o Abdul Ghani R/O Musazai Gul Abbad Road
Peshawar", Ex S/Clerk DEO (M) Battagram vs Secretary E&SE KP and others for re-
in-statement in to service and conduct, de-novo enquiry through an honest
/competent officer in BPS-18.

The matter may be given personal attention being court matter.

Endst; No. 5386

Copy forwarded to the:-

1. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa
Peshawar.

Assistant Director (Admn)
Directorate of E&SE K.P, Peshawar.

Assistant Director (Admn)
Directorate of E&SE K.P, Peshawar.

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR

NOTIFICATION

The District Education Officer (Male) Peshawar has been pleased to appoint Mr. Naveed Akhtar Principal GHS Nanak Pura Peshawar as enquiry officer to conduct detailed DE-NOVO enquiry against Mr. Mushtaq Ali Ex-J/Clerk GHSS No. 4 Kakshai Peshawar in light of Judgment dated 25-10-2019 passed by Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal No. 1228/2108 with the following TERMS:

1. To inquire absence period w/e 18-05-2013 to 12-02-2014.
 2. To inquire how the official got promotion from J/c to S/Clerk.
 3. To inquire whether the concerned officer/officers signed / countersigned the report of the official the impugned promotion?
 4. To examine the Track Record of this official in the education Department etc.
- The enquiry officer is requested to submit report / recommendations to this office within days after the issuance of this letter please.

(Muhammad Idrees Azam)
DISTRICT EDUCATION OFFICER
(MALE) PESHAWAR.

Encl: No: 2251-56 / SPL-Fie-Mushtaq Ali EX-JC- dated 24 / 12 / 2019.

Copy is forwarded to the:

1. Mr. Naveed Akhtar Principal GHS Nanak Pura Peshawar
2. PA to Director (E&S) KPK Peshawar w/r to his letter No. 5385 P.No/MS/Appeal/Mushtaq Ali S/Clerk dated 13-12-2019.
3. Mr. Mushtaq Ali Ex-J/Clerk R/o Musazai Gul Abad, Inqilab Road, Peshawar Senior Clerk, DEO(M) Battagram.
4. DEO(M) Battagram.
5. P/File.

DY: DISTRICT EDUCATION OFFICER
(MALE) PESHAWAR.

14-A

BETTER COPY

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR

Notification:

The District Education officer (Male) Peshawar has been placed appoint Mr. Naveed Akhtar Principal GHS Nanakpura Peshawar as inquiry officer to conduct detail denovo inquiry of Mr. Mushtaq Ali Ex-Senior Clerk GHSS No.4 Kakshal Peshawar City. In light of judgment dated 25/10/2019 passed by Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No.1228/2018 with the following:

- 1- Inquiry absence period of 18/05/2013 to 12/02/2014
- 2- To inquiry how the official got promotion from junior clerk to Senior Clerk.
- 3- To inquiry whether the concerned officer / officers signed / countersigned the papers J.C Official the impugned promotion.
- 4- To examine the track record of the official in the education department etc

The inquiry officer is requested to submit report /recommendation to this within 7 days after the issuance of this letter please.

**Sd/-
(Muhammad Idress Azam)
District Education officer (M)
Peshawar**

Endst: No.2252-56 /SPL File Mushtaq Ali Ex-Junior Clerk dated 24/12/2019.
Copy is forwarded to the:

- 1- Mr. Naveed Akhtar Principal GHS Nanakpura Peshawar
- 2- PA to Director (E&SE) KPK Peshawar w/r to his letter No.5385 File/MS/Appeal/ Mushtaq Ali Senior Clerk dated 13/12/2019.
- 3- Mr. Mushtaq Ali Ex-Junior Clerk R/o Mussazai, Mohallah Gulabad Inqilab Road, Peshawar Senior Clerk.
- 4- DEO (Male) Battagram
- 5- Personal fie.

**Sd/-
Deputy District Education officer (M)
Peshawar**



OFFICE OF THE
PRINCIPAL GHS NANAK PORA PESHAWAR
CITY

15

To, No. 452 / Principal/GHS Nanak Pora/Enquiry /Mushtaq /SC / dated 06/01/2020

The District Education Officer
(Male) Peshawar.

Subject; SUBMISSION OF ENQUIRY REPORT
Memo,

With reference to your office order Endstt No. 2252-56 dated; 24-12-2019.

Enclosed please find herewith enquiry report in R/o Mr. Mushtaq Ali Ex- Senior Clerk DEO (M)
Battagram along with its enclosure for further necessary action please.

(Enclosed as above).

(NAVEED AKHTAR)
Principal/Enquiry Officer BPS-18
GHS Nanak Pora
Peshawar

3437
07/1/2020

PRINCIPAL
GHS Nanak Pora
Peshawar

16

**OFFICE OF THE PRINCIPAL GHS NANAK
PURA, DISTRICT PESHAWAR**

**ENQUIRY REPORT IN SERVICE APPEAL NO. 1228/2018 IN R/O MR .
MUSHTAQ ALI EX-SENIOR CLERK OFFICE OF THE DEO(M) BATTAGRAM**

INTRODUCTION:-

The undersigned has been appointed as enquiry Officer by the DEO(Male) Peshawar vide Order issued under Endst: No. 2252-56 dated ; 24-12-2019 in pursuance of the decision of the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1228/2018 with the following .


1. The absence period i.e. 18-05-2013 to 12-2-2014
2. Promotion order from Junior Clerk to Senior Clerk
3. To enquire the whether the concerned officer/ officers signed countersigned the relevant papers pertaining to promotion of appellant to the post of S/Clerk.
4. To examine the track record in education department.

HISTORY OF THE CASE.

In compliance with the order issued by the worthy DEO(M) Peshawar the undersigned started the enquiry preceding and called Mr. Mushtaq Ali Ex-Senior Clerk to appear before the enquiry officer on the date/time and venue so fixed on 28-12-2019. The undersigned studied all the relevant documents available on the record as well as judgment issued by the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Having gone through the record thoroughly, it was observed that the then Principal GHSS No.4 Kakshal, Peshawar City submitted the absence report of the mentioned accused appellant wef 18-05-2013 to 12-02-2014 (09) Months. However Mr. Mushtaq Ali Ex-Junior Clerk GHSS No.4 Kakshal, Peshawar City submitted his application for medical leave w.e.f 18-05-2013 to 18-01-2014 (copy attached) Furthermore, he was hospitalized and admitted at Khursheed Medical Center & Surgical Hospital Peshawar w.e.f 18-05-2013 to 31-05-2013. He was discharged from Hospital on 31-05-2013 and the Doctors advised him for complete bed rest for 06 Month. A Questionnaire to this effect was served on him (copy attached) He replied to the said Questionnaire accordingly. As per statement obtained from him, it was revealed that he was patient of Hepatitis "C" Hence, he was not in position to perform his duty.

After the thorough checking of his documents as well Original Service Book (copy attached) he was appointed as Junior Clerk in Elementary & Secondary Education Department on 15-12-1986 vide Director E & SE Khyber Pakhtunkhwa Peshawar (copy attached) He performed his duty regularly w.e.f 15-12-1986 to 17-05-2013. As per his original service book he was not remained on leave without pay. His service record was found duly verified by the concerned Officers/DEOs/DDO,s from time to time till 29-09-2014. All the relevant documents i.e Original Service Book ,ACR, Non Involvement, Reliving Chit, LPC duly attested /Re- Attested by the Principal GHSS No.4 Peshawar City in connection with his promotion case to the post of Senior Clerk.


 GHS Nanak Pura
 Peshawar

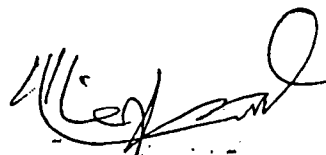
Accordingly, based on the above mentioned verified record, the Director E&SE KP, Peshawar issued his promotion order as Senior Clerk vide Endst: No. 4015-4040/ .F.No.A-

23/MS/Promotion/S/Clerk/DD(F&A) dated 28-05-2014 appearing at S.No. (39) and adjusted him at DEO(M) office Battagram. He took over charge of his new assignment/post on 04-06-2014 and he performed his duty w.e.f 04-06-2014 to 29-09-2014. Later on, Directorate E&SE KP, Peshawar had withdrawn his promotion order as S/Clerk on the basis of his compulsory retirement order issued by the then DEO(M) Peshawar.

FINDINGS:

Keeping in view history of the case dig out as above and after careful checking of the relevant record, the undersigned reached to the following conclusion/findings:-

1. The appellant concerned was on medical leave for the period from 18-05-2013 to 18-01-2014.
2. All the documents available on the record showing that he submitted his application for medical Leave and the Principal concerned had forwarded his leave application to DEO (M) Peshawar on 18-05-2013. However his Leave was not sanctioned by the then DEO (M) Peshawar.
3. Later on, the appellant was promoted to the Post of Senior Clerk vide Directorate E&SE KP, Peshawar Order vide Endst: No. 4015-4040/ .F.No.A-23/MS/Promotion/S/Clerk/DD (F&A) dated; 28-05-2014 falling at S.No. (39) and adjusted him at DEO (M) office Battagram.
4. The Principal GHSS No.4 Kakshal Peshawar City reported him as absent, and ignored the application of the Mr. Mushtaq Ali Ex-Junior Clerk GHS Kakshal Peshawar already forwarded by him.
5. Furthermore, all the documents relevant to his promotion duly attested by the Principal Mr. Muhammad Tahir GHSS No.4 Kakshal Peshawar City vide his letter No. 91 dated; 17-12-2015 and re-verified by the Principal concerned on 30-12-2019.
6. Furthermore, Directorate E & SE also conducted an enquiry in this case through Mr. Saif-ur-Rahman Principal GHS No.1 Nowshera Cantt (copy attached) who had recommended that the said appellant/Ex-Senior Clerk may be reverted to his lower Post i.e Junior Clerk.
7. Moreover, Mr. Mushtaq Ali Ex-Senior Clerk lodged his appeal before the service Tribunal Peshawar vide Service Appeal No.1228/2018 and passed his Judgment announced on 25-10-2019 at the disposal of DEO (M) Peshawar to conduct de-novo enquiry.
8. It is also worth mentioning that Directorate E&SE KP, Peshawar issued letter to DEO (M) Peshawar for re-instatement of his services in the compliance of the Judgment of Honorable Service Tribunal Peshawar Khyber Pakhtunkhwa Peshawar referred to above.

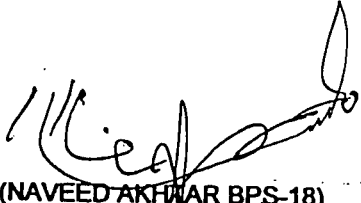


G.H.S Nanak Pura
Peshawar

RECOMMENDATION:-

Keeping in view aforesaid findings into consideration, it is recommended that:-

1. In the compliance with the Judgment of Honorable Service Tribunal Peshawar, the incumbent DEO (M) Peshawar is requested first to set aside the compulsory retirement order of Mr. Mushtaq Ali Ex-Junior Clerk GHS Kakshal Peshawar issued by the then DEO (M) Peshawar vide Endst: No.72932 dated 05-09-2014 and he may be re- instated in service against his original post of Junior Clerk retrospectively.
2. The absent period w.e.f 18-05-2013 to 18-01-2014 as Junior Clerk may be converted into Medical Leave.
3. After his reinstatement against Junior Clerk post, his case along with this inquiry report may be forwarded to the Director E&SE KP, Peshawar for restoration of his promotion order to the post of Senior Clerk which was with-drawn by the Directorate E&SE KP Peshawar vide Order No.6145-52 dated 17-09-2014 and he may be adjusted against first available Senior Clerk post.
4. The period for which he remained under trail at Honorable Service Tribunal Peshawar w.e.f 30-09-2014 (Appeal date) till the date of restoration of his promotion order as S/Clerk may be considered as spent on duty as the case of the appellant concerned remained under trail in the High Court and Service Tribunal Peshawar respectively.
5. His promotion order may be restored to the Post of Senior Clerk from the date of his taking over charge as senior Clerk i.e 04-06-2014 as due to him under the rules .


(NAVEED AKHTAR BPS-18)
Principal
GHS Nanak Pura Peshawar City
(Enquiry Officer)

G.H.S Nanak Pura
Peshawar

(10)
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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

C.O.C No. _____/2020

In

Service Appeal No. 1228/2018

Mushtaq Ali S/O Abdul Ghani R/O Musazai, Gul Abad, Inqilab Road,
Peshawar, Ex-Senior Clerk District Education Officer (M).

.....PETITIONER

VERSUS

1. Mr. Hafiz Ibrahim, Director Elementary and Secondary Education,
Khyber Pakhtunkhwa, Peshawar R/O Firdous Chowk Peshawar.
2. Mr. Irfan Ali, District Education Officer (M) Peshawar R/O
Hashtnagri, Peshawar.

..... RESPONDENTS

**PETITION UNDER SECTION 3, 4 & 5 OF THE CONTEMPT
OF COURT ACT, FOR INITIATING CONTEMPT OF COURT
PROCEEDINGS AGAINST THE RESPONDENTS FOR NOT
HONOURING JUDGMENT DATED 25.10.2019 IN SERVICE
APPEAL NO. 1228/2018 PASSED BY THIS HONOURABLE
TRIBUNAL AND PETITION FOR THE IMPLEMENTATION
OF THE ORDER OF THIS HON'BLE TRIBUNAL DATED
25.10.2019 IN APPEAL NO. 1228/2018.**

Respectfully Sheweth:

That the petitioner humbly submits as under:

1. That above noted service appeal was filed by the petitioner
before this Hon'ble Service Tribunal and this Hon'ble Service

Tribunal vide order & judgment dated 25.10.2019 partially accepted the said appeal and directed the respondents to reinstate the appellant/petitioner into service and also directed the respondent-department to conduct de-novo inquiry in the mode and manners prescribed under Government Servants (Efficiency & discipline) Rules, 2011 strictly in accordance with law within period of 90 days from the date of receipt of copy of this judgment, however the issue of back benefits will be subject to outcome of the de-novo inquiry. **(Attested Copy of the order/judgment dated 25.10.2019 is attached as annexure "A").**

2. That certified copy of judgment was conveyed to the respondents for compliance by the petitioners, but they did not implement the judgment of this Hon'ble Service Tribunal till today and hence this petition, inter alia, on the following grounds:

GROUND S:

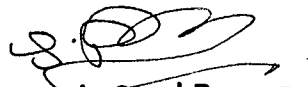
- A. That non-compliance of the aforesaid judgment dated 25.10.2019 of this Honorable Service tribunal by the respondents is illegal, without lawful authority based on malafide.
- B. That thereafter the petitioners time and again approached the respondents for the implementation of the judgment & Order of this Hon'ble Service Tribunal but all in vain.
- C. That by not honoring the judgment of this Hon'ble Court the Respondents has intentionally/ willfully and deliberately made contempt of this Hon'ble Service Tribunal.
- D. That the acts of the respondents are against the law and natural justice as well as the order of this Hon'ble Service Tribunal.
- E. That non-compliance of the order of the Honorable Court, speaks malafide on the part of respondents and to lower the position of the judiciary in the eye of public at large.

- F. That from the facts and grounds taken the in the service appeal, it has become crystal clear that the respondents have committed contempt of court.
- G. That it is pertinent to mention here that although the respondent-department vide office order No. 452 dated 06.01.2020 has conducted de-novo inquiry but despite of conclusion of that very de-novo inquiry the respondents are not ready to implement the judgment & Order of this Hon'ble Service Tribunal, hence they committed gross violation of order and judgment of this honorable tribunal. **(Copy of de-novo inquiry dated 06.01.2020 is attached as Annexure "B")**
- H. That the above named respondents have grossly violated, disregarded and disobeyed the lawful order of this Hon'ble Court and have thus committed the act of contempt of court and therefore is liable to be prosecuted under the law.
- I. That any other ground will be raised at the time of arguments with the prior permission of this Hon'ble Court.

It is, therefore, humbly prayed that on acceptance of this Petition, the contempt of court proceedings may please be initiated against the above mentioned Respondents for noncompliance / disobedience of the order and judgment of this Hon'ble service tribunal and the respondents may kindly be further directed to implement the order of this Hon'ble service tribunal which has been directed on dated 25.10.2019 passed by this Hon'ble service tribunal in Service Appeal No. 1228/2018 for the interest of justice.

Petitioner

Through



Akhunzada Syed Pervez
Advocate, High Court Peshawar.
Cell # 0300-3160098

Dated: 24.02.2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

C.O.C No. _____/2020

In

Service Appeal No. 1228/2018

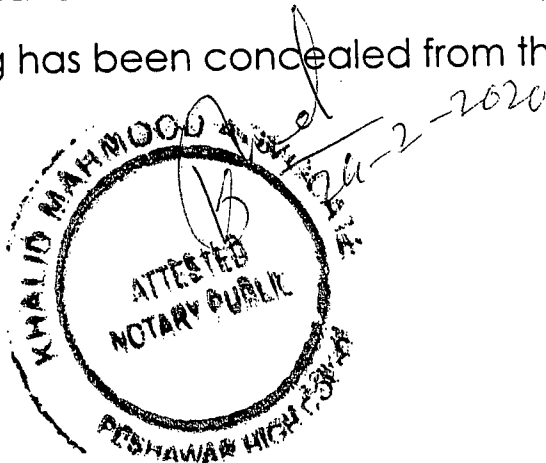
Mushtaq AliPETITIONER

VERSUS

Mr. Hafiz Ibrahim & other Respondents

AFFIDAVIT

I, Mushtaq Ali S/O Abdul Ghani R/O Musazai, Gul Abad, Inqilab Road, Peshawar, Ex-Senior Clerk District Education Officer (M) District Battagram, do hereby solemnly affirm and declare on oath that the contents of this accompanying Contempt **of Court Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.




DEPONENT



NOTIFICATION

1. WHEREAS, Mr. Mushtaq Ali Ex-Junior Clerk GHSS No. 4 Kakshal Peshawar promoted to post of S/Clerk and adjusted in the office of the DEO (M) Battagram was compulsory retired from service by the DEO (M) Peshawar vide his Notification No Endst No 729-32 dated 05/09/2014.
2. AND WHEREAS, the promotion Notification of Mr. Mushtaq Ali Junior Clerk to the Post of Senior Clerk issued vide this office under Endst No 4015-4040 dated 28/05/2014.
3. AND WHEREAS, the promotion Notification of Mr. Mushtaq Ali Junior Clerk to the Post of Senior Clerk has been withdrawn by this office Notification under Endst No 6145-52 dated 17/09/2014 due to his compulsory retirement from service as Junior Clerk.
4. AND WHEREAS, the said aggrieved Junior Clerk filed a departmental appeal dated 30/09/2014 and 08/12/2014 to the Director E&SE Khyber Pakhtunkhwa Peshawar (appellate Authority) for redressal of his grievances/reinstatement in service.
5. AND WHEREAS, the competent Authority (Director E&SE KP Peshawar) rejected his appeal vide this office Notification under Endst No 1505-10 dated 18/09/2018.
6. AND WHEREAS, Mushtaq Ali Ex-Junior Clerk lodged appeal bearing No 1228/2018 dated 08/10/2018 in the Khyber Pakhtunkhwa Service Tribunal against the order of DEO (M) Peshawar Endst No 729-32 dated 05/09/2014.
7. AND WHEREAS, the Honorable Khyber Pakhtunkhwa Service Tribunal has accepted his appeal for re-instatement into service on 25/10/2019 and directed the respondent to conduct De-novo enquiry within the period of 90 days.
8. NOW, THEREFORE, the compulsory retirement order issued by DEO (M) Peshawar under Endst No 729-32 dated 05/09/2014 and cancellation of promotion notification issued vide this office under Endst No 6145-52 dated 17/09/2014 in r/o Mushtaq Ali Ex-Senior Clerk office of the DEO (M) Battagram is hereby withdrawn by the competent authority in the light of judgment of the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar dated 25/10/2019, and he is hereby re-instated in to service, and his services are placed at the disposal of DEO (M) Nowshera for further adjustment, till the completion of De-Novo Inquiry.

DIRECTOR

Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 5824-25 / F.No. /A-23/MS/Appeal/Mushtaq Ali S/Clerk/Battagram

Dated Peshawar the 6/3/2020

- Copy of the above is forwarded for information and n/action to the:-
- 1- District Education Officer (Male) Battagram w/r to her letter No. cited above.
 - 2- District Education Officer (Male) Nowshera with the remarks to adjust Mr. Mushtaq Ali S/C against any vacant post till the completion of De-Novo Inquiry.
 - 3- District Account Officer Concerned.
 - 4- Appellant concerned.
 - 5- PA to the Director E&SE Khyber Pakhtunkhwa Peshawar.

4/3/20
Assistant Director (Admn)
Directorate E& Secondary Education
Khyber Pakhtunkhwa, Peshawar



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.

Phone: 091-9225344

Email: ddadmn.es@gmail.com

Notification

A committee comprising on the following officers is hereby constituted in connection with the De-novo enquiry against Mushtaq Ali Ex-Senior Clerk DEO (M) Battagram in the light of Judgment of the Honorable Khyber Pakhtunkhwa Service Tribunal dated 25.10.2019. (copy attached).

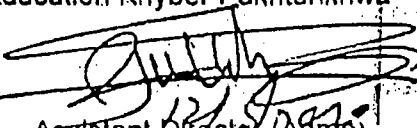
1. Mr. Isreel Khan Principal BPS-19 GHSS Doaba Hangu Chairman
2. Mr. Shakir Ahmad Khan Principal BPS-19 GHSS No. 2 Hangu Member

Note: The Enquiry committee is directed to submit his recommendation/findings within a fortnight.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst. No. 379-80 /A-23/MS/Appeal/Mushtaq Ali S/C Dated Pesh: the 12/11/2020
Copy forwarded to the: -

1. Mr. Isreel Khan Principal BPS-19 GHSS Doaba Hangu along with copy of appeal Judgment of the Honorable Khyber Pakhtunkhwa Service Tribunal dated 25.10.2019 in the light of case of Mushtaq Ali Ex-S/Clerk DEO (M) Battagram (Registered)
2. Mr. Shakir Ahmad Khan Principal BPS-19 GHSS No. 2 Hangu.
3. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.


Assistant Director (Admin)
Directorate of Elementary & Secy Edu.
Khyber Pakhtunkhwa Peshawar.



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**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR**

NOTIFICATION:

1. Whereas, the titled service appeal was instituted on 08-10-2018 before this Honorable Tribunal against the impugned order dated 18-09-2018 of the Respondent No.4 whereby, he upheld the order dated 05-09-2014 of the Respondent No.2 to the extent of maintaining the major penalty of removal from service against the appellant.
2. And Whereas, aggrieved from the order dated 05-09-2014 of the Respondent No.2, the appellant has filed a Departmental appeal to the Respondent No.4 for setting aside the impugned order of the DEO (M) Peshawar but the same has been rejected vide Notification dated 18-09-2018 by the Respondent No.4 after observing all the codal formalities by maintaining the impugned order dated 05-09-2014 of the DEO (M) Peshawar on the grounds of being legally competent.
3. And whereas, aggrieved from the orders & Notifications dated 05-08-2014 & 18-09-2018 of the DEO (M) Peshawar, Director E&SE Khyber Pakhtunkhwa respectively, the appellant has filed the titled case before this Honorable Tribunal with the prayer for setting aside the impugned orders & Notifications of the Respondent Department along with his re-instatement in service against the senior clerk post, & finally the case was decided vide Judgment dated 25-10-2019 by setting aside the impugned orders & Notifications dated 05-09-2014 & 18-09-2018 of the Respondent No.2 & 4 with the directions to conduct De-nove inquiry in to the matter under the provision of E&D Rules 2011 within a period of 90 days with further observations that the issue of back benefits of the appellant will be subject to the outcome of the De-nove inquiry.
4. And Whereas, in compliance of the Judgment dated 25-10-2019 of this Honorable Tribunal, the Respondent Department has conducted De-nove inquiry vide Notification No.2252-56 dated 24-12-2019 through the Principal GHS Nanak Pura District Peshawar who submitted inquiry report vide his office letter No.452 dated 06-01-2020 which was observed as mis directed & even against the facts & circumstances of the case, hence, declared null & void under the sub-rule 6 rule 14 of E&D rules 2011 by the Respondent No.4 by nominating another inquiry committee through the DEO (M) Nowshera vide Notification/Corrigendum No.2012-20 dated 04-12-2020, who submitted his inquiry report on dated 30-11-2020 with the observations that the appellant has not performed his official duty w.e.f. 01-10-2014 to 30-06-2020 against the Senior Clerk post, hence, the intervening period may be treated as EOL.
5. And Whereas, consequent upon the Judgment dated 25-10-2019 of this Honorable Tribunal, the Respondent No.4/Director E&SE Khyber Pakhtunkhwa Peshawar after considering the facts & circumstances of the case along with consulting the inquiry report of the DEO (M) Nowshera has made the appellant not entitled for the grant of back service benefits w.e.f. 01-10-2014 to 30-06-2020 on the analogy of question of Law & facts of no duty & no Pay passed by this Honorable Tribunal as well as the august Supreme Court of Pakistan.

Therefore, in compliance of the Judgment dated 25/10/2020, passed by this Honorable Tribunal in the titled appeal & in Exercise of the Powers conferred upon the undersigned under the relevant provisions of Law & Rules in field, the appellant is hereby made NOT entitled for the grant of Back service benefits w.e.f. 01-10-2014 to 30-06-2020 against the senior clerk post, in view of the inquiry report dated 30-11-2020 of the District Education officer (M) Nowshera with immediate effect & in the interest of public service.

**DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar**

Endstt. No. 6252-59

Dated Peshawar the 23/12 /2020

Copy of the above is forwarded for information & n/action to the:

1. Learned Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. Learned AAG Khyber Pakhtunkhwa Service Tribunal Peshawar.
3. Section Officer (Litigation-II) E&SE Department Khyber Pakhtunkhwa Peshawar.
4. District Education Officer (M/F) Battagram.
5. District Education Officer (M/F) Nowshera.
6. Deputy Director (F&A) local Directorate.
7. Mr. Mushtaq Ali Senior Clerk r/o Musa Zai Gulabad Inqilab Road Peshawar.
8. PA to Director E&SE, Peshawar.
9. Master File.

**Deputy Director (F&A)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar**

23/12/2020

بخدمت جناب ڈائریکٹر صاحب ایلیمنٹری اینڈ سیکنڈری
ایجوکیشن خیبر پختون خوا پشاور۔

Please put up on file

اپیل بمراد بحالی سابقہ مراعات و بقایا جات۔

26/02/2021

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جناب عالی!

مؤدبانہ التماس ہے کہ مورخہ 11/07/2020 کو حکمہ ہڈانے خیبر پختون خوا سروس ٹریبونل کے فیصلے
مورخہ 25/10/2019 کی روشنی میں سائل کو ملازمت پر بحال کیا۔ یہ کہ سروس ٹریبونل کے مذکورہ فیصلے کے روشنی
میں مورخہ 06/01/2020 کو سائل کی حکمانہ ازسرنو انکوآٹری (Denevo Enquiry) کرائی گئی جس میں
سائل کو تمام سابقہ مراعات و واجبات دینے کی سفارش کی گئی۔ (انکوآٹری کی فوٹو کاپی ساتھ لف ہے)

یہ کہ اس کے بعد مورخہ 23/12/2020 کو دوبارہ حکمانہ انکوآٹری میں سائل کو سابقہ مراعات و واجبات نہ دینے
کی سفارش کی گئی اور اس کی وجہ یہ بتائی گئی کہ سائل چونکہ اس عرصے میں ڈیوٹی پر حاضر نہ تھا، لہذا سائل مذکورہ عرصے
والے مراعات کا حقدار نہ ہے۔ (دوسری انکوآٹری کی کاپی ساتھ لف ہے)

گزارش ہے کہ دوسرے انکوآٹری میں سائل کو سابقہ مراعات و بقایا جات نہ دینے کا فیصلہ انتہائی غیر منصفانہ اور
زیادتی پر مبنی ہے کیونکہ اگر سائل ڈیوٹی پر حاضر نہ تھا تو یہ سائل کا ذاتی فیصلہ نہ تھا بلکہ محکمے نے اس کو ملازمت سے نکالا
تھا۔ لہذا استدعا ہے کہ سائل کو پہلی انکوآٹری کے سفارش کی روشنی میں تمام سابقہ مراعات و واجبات جو کہ مورخہ
01/10/2014 سے 30/06/2020 تک بنتے ہیں عطا فرما کر تاحیات مشکور فرمائیں۔

المرقوم 26/02/2021

ارض

Received

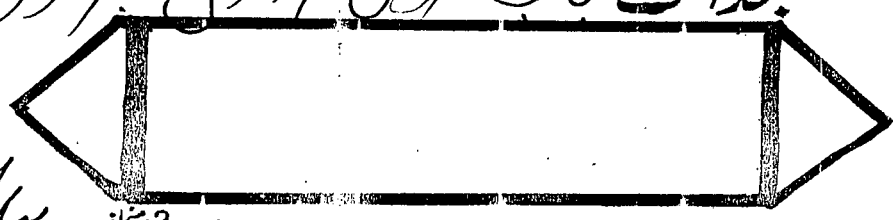
D.No. 26/02/2021

مشاق علی ولد عبدی
سینئر کلرک گورنمنٹ ہائر سیکنڈری سکول
ڈاک اسماعیل خیل ضلع نوشہرہ۔

Please put up on file.

26/2/21

بعد التصاب سروس لہذا قبول فیتر عنوان لہذا



سید محمد علی شاہ
بنام سید محمد علی شاہ
عبدالغنی

موزخہ	-----	سید محمد علی شاہ
مقدمہ	-----	بنام سید محمد علی شاہ
دعویٰ	-----	عبدالغنی
جرم	-----	مکملہ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
 آن مقام کے لئے اقویٰ نذرہ سید محمد علی شاہ کے
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب سروس کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
 بسورت ڈگری کرنے اجراء اور وصولی چیک اور پیسہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا انگریزی کیلٹرفہ یا اپیل کی برآمدگی اور منسوخی
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ بصورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات موصول ہوں گے اور اس کا ساختہ
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جات کے لئے مقدمہ کے سبب سے ہوگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حدیب سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 07 ماہ صفر 2021

المقبول
 بمقام
 Accepted by
 [Signature]

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No: 5963/2021

Mushtaq Ali Senior Clerk GHS Jabbi District Nowshera.....Appellant

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & others.....Respondents

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No: 1 to 5.

Respectfully Sheweth:

The Respondents 1 to 5 submit as under:-

PRELIMINARY OBJECTIONS.

- 1 ***That*** the Appellant has got no cause of action/locus standi.
- 2 ***That*** the instant Service Appeal is badly time barred and barred by law/rules.
- 3 ***That*** the Appellant has concealed material facts from this Honorable Tribunal with mala fide intention.
- 4 ***That*** the Appellant is not entitled for the relief he has sought from this Honorable Tribunal to the extent of service back benefits w.e.f. 01-10-2014 to 30-06-2020 against the Senior Clerk post under the Rules in field.
- 5 ***That*** the Appeal is not maintainable in its present form.
- 6 ***That*** the Appeal is bad for mis-joinder & non joinder of the necessary and proper parties.
- 7 ***That*** the Appellant is not competent to file the instant appeal against the respondents.
- 8 ***That*** the Appellant is estopped by his own conduct to file the instant Appeal.
- 9 ***That*** this Honorable Tribunal has got no jurisdiction to entertain the instant case.
- 10 ***That*** no Departmental Appeal has been preferred by the appellant.

11 **That** the impugned Notification dated 23-12-2020 is in compliance of the Judgment dated 25-10-2019 of this Honorable Tribunal in Service Tribunal No. 1228/2018.

ON FACTS.

1 **That** Para-1 is correct to the extent of the Notification dated 05-09-2014, whereby, major penalty of removal from service against the Senior Clerk post was imposed upon the appellant on account of his willful absence from official duty in the Respondent Department.

However, aggrieved from the Notification, the appellant has filed a Departmental Appeal dated 30-09-2014 & 08-12-2014 to the Respondent No. 03 which was rejected vide order dated 18-09-2018 on merits of the case by the Respondent Department.

Therefore, he then filed a Service Appeal No. 1228/2018 under case titled Mushtaq Ali Vs Govt of KPK & others before this Honorable Tribunal Peshawar, on dated 08-10-2018 against the Notification dated 05-09-2014 of the Respondent No. 04 which was allowed vide Judgment dated 25-10-2019 with the directions to the Respondent Department for conducting De-Novo inquiry against the appellant which conducted accordingly vide order dated 24-12-2019 by the Respondent No.04 through Mr. Naveed Akhtar Principal/Inquiry Officer BPS-18 of GHS Nanak Pura Peshawar who submitted has inquiry report on dated 06-01-2020 not honored by the Respondent Department on the grounds of being misdirected & without any solid purpose, hence the impugned Notification dated 23-12-2020, whereby the appellant has been made not entitled for the grant of service back benefits w.e.f. 01-10-2014 to 30-06-2020 against the Senior Clerk post in the Respondent Department on the analogy of no duty no pay. *(Copies of the Notification dated 05-09-2014, rejection of Appeal order dated 18-09-2018, Judgment dated 25-10-2019, Notification of De-Novo inquiry 24-12-2019, submission of inquiry report on dated 06-01-2020 & impugned Notification dated 23-12-2020 are attached as Annexures-A, B, C,D,E & F).*

2 **That** Para-2 is misleading on the grounds that the appellant has been found guilty of willful absence from his duty w.e.f. 01-10-2014 to 30-06-2020 against the Senior Clerk post in the Respondent Department. Therefore, he was removed from service on dated 05-09-2014 after due process of Law.

However aggrieved from the aforesaid order, the appellant has filed a Service Appeal No.1228/2018 which was decided on dated 25-10-2019 with the direction to the Respondent Department for De-Novo inquiry against the appellant conducted accordingly & submitted his inquiry report in a misdirected form to the Respondent Department, hence, not considered prior to the issuances of the Notification dated 23-12-2020 for considering the absence from duty period w.e.f. 01-10-2014 to 30-06-2020 as period with pay under the relevant rules by the Department.

- 3 **That** Para-3, is incorrect & denied on the grounds that the act of the Respondent Department with regard to the De-Novo inquiry is an compliance of the Judgment dated 25-10-2019 of this Honorable Tribunal whereby, the appellant was re-instated in service as Senior Clerk only for the purposes of the De-Novo inquiry.
- 4 **That** Para-4 is correct, hence needs no further comments.
- 5 **That** Para-5 is incorrect & denied on the grounds that the case was referred to the appellate committee for the disposal of the same vide Notification dated 15-05-2020 as per direction of this Honorable Tribunal, hence, resulted in the Notification dated 23-12-2020 which is legal & liable to be maintained.
- 6 **That** Para-6 is also incorrect & denied on the grounds that agitated in the foregoing paras of the present reply hence, the plea of the appellant is liable to be rejected.
- 7 **That** Para-7 is incorrect as no Departmental appeal has been field by the appellant against the impugned Notification dated 23-12-2020 which has got final under the relevant provision of Law of limitation Act 1908, hence, the appeal in hand is also liable to be rejected in favor of the respondents.
- 8 **That** Para-8 is incorrect & denied, the Notification dated 23-12-.2020 is legal & liable to be maintained, hence, the Respondents further submit on the following grounds inter alia:-

ON GROUNDS.

- A **Incorrect not admitted.** The statement of the appellant is baseless, against the facts, without legal proof & justification and even based on mala fide motives. Because the appellant has been treated as per law, rules & Procedure prior to the issuance of the impugned Notification dated 23/12/2020 by the Respondents in the interest of justice.
- B **Incorrect not admitted.** The appellant has been found guilty of willful absence from duty, hence he has been proceeded under the E&D Rules 2011 & has thus been removed from service vide Notification dated 23/12/2020 by the Department.
- C **Incorrect not admitted.** Because, detail reply to his grounds has been given in the above mentioned paras, Hence, needs no further comments.
- D **Incorrect not admitted.** The appellant has been given due opportunity of his personal hearing by the Department hence the statement of the appellant is against the facts & available record on file, hence is liable to be dismissed in favor of the Respondents as the De-Novo inquiry is well in time.

- E **Incorrect not admitted.** , Hence, needs no further comments.
- F **Incorrect not admitted.** As replied above, Hence, needs no further comments
- G **Incorrect not admitted.** On the grounds that the Judgment of this Honorable Tribunal has been implemented in its true letter & spirit by the Department.
- H **Incorrect not admitted.** Hence, needs no further comments
- I **Incorrect not admitted.** As replied above, Hence, needs no further comments.
- J **Incorrect not admitted.** The statement of the appellant is against the facts of the case on the grounds that the impugned Notification dated 23/12/2020 is legal.
- K **Incorrect not admitted.** On the grounds that the act of the respondent Department with regard to the De-Nove inquiry is an compliance of the Judgment dated 25-10-2019 of this Honorable Tribunal. Hence, resulted in the Notification dated 23-12-2020 which is legal & liable to be maintained.
- L **Incorrect not admitted.** The appellant has been found guilty of willful absence from duty by the Department & removed from service vide Notification dated 23/12/2020 by the Department.
- M **Incorrect not admitted.** Hence, needs no further comments.
- N **Incorrect not admitted.** Hence, needs no further comments.
- O **Incorrect not admitted.** As replied above, Hence, needs no further comments.
- P **Incorrect not admitted.** Hence, needs no further comments.
- Q **Incorrect not admitted.** The Notification dated 23/12/2021 is legal & liable to be maintained.
- R **Incorrect not admitted.** Therefore, the Respondents also seek leave of this Honorable Tribunal to submit additional grounds, record & case law at the time of arguments on the date fixed.

In view of the above made submissions, it is most humbly prayed that this Honorable Tribunal may very graciously be pleased to dismiss the instant Appeal with cost in favor of the Respondent Department in the interest of justice.

Dated ___/ ___/2022.



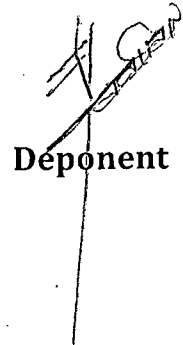
SECRETARY
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 1)



DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 2-5)

AFFIDAVIT

I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief.



Deponent

(A) 1118 Annex (A/B) P-10

34

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.

COMPULSORY RETIREMENT:-

Whereas absence report was received from the principal GHSS No.4 Kakshal Peshawar city against Mr.Mushtaq Ali J/Clerk vide his Memo No.47 dated:22/05/2013, No.53,dated:29/05/2013, No.63 dated:13/06/2013 and No.71 dated:24/06/2013.

Whereas the principal was directed vide this office memo No.430,dated:06/07/2013 to furnish latest information regarding absence of the official concerned.

Whereas the principal GHSS No.4 Kakshal Peshawar city has confirmed the absence of the official from:18/05/2013 vide his memo No.99 dated:22/11/2013.

Whereas Show Cause Notice was served on the official concerned through principal GHSS No.4 Kakshal Peshawar city vide this office Memo No:3187 dated:12/02/2014 duly acknowledged by him on 18/02/2014.

Whereas the reply to show cause notice dated 19/02/2014 was received in this office.

Whereas an inquiry was conducted through the principal GHSS Hazar Khwani Peshawar in compliance with notification issued in this regard vide Endst No:6049-51 dated:27/03/2014.

Whereas the inquiry officer recommended for imposing of major penalty (Compulsory Retirement) vide his report No.160dated:15/05/2014.

And whereas I, Mr.Sharif Gul DEO(M) Peshawar being competent authority am pleased to impose major penalty (Compulsory Retirement) under Rules 4(b) (ii) of Govt of KPK Govt Servants (E&D) Rules 2011 w.e.f 18/05/2013.


The pay of the official concerned of the absence period should be recovered and copy of challan be furnished to this office for reference and record.

(Sharif Gul)
District Education Officer,
(Male) Peshawar.

Endst: No. 729-324 Dated Peshawar the 5/9 /2014

Copy for information and necessary action to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Director E&SE KPK Peshawar.
3. Principal GHSS No.4 Kakshal Peshawar city for strict compliance regarding recovery from the official concerned.
4. Official Concerned.


Deputy District Education Officer,
(Male) Peshawar.

NOTIFICATION.

(3)

WHEREAS, on finality of disciplinary proceedings under Khyber Pakhtunkhwa E&D Rules-2011 major penalty of Compulsory retirement from service was imposed upon Mr. Mushtaq Ali, Ex-Junior Clerk GHSS No. 4 Kakshal Peshawar city by the DEO (M) Peshawar vide Notification No. 729-32 dated 5.9.2014.

AND WHEREAS, the said aggrieved Junior Clerk filed a departmental appeal dated 30.9.2014 & 12.2014 to the Director E&SE Khyber Pakhtunkhwa Peshawar (appellate Authority) for redressal of his grievances/reinstatement in service.

AND WHEREAS, the appellant filed a service appeal No. 438/2017 before the Khyber Pakhtunkhwa service Tribunal Peshawar.

AND WHEREAS, the operative part of the judgment dated 10.7.2018 contains the following remarks.

"In the stated circumstances this Tribunal is constrained to issue directions to the appellate authority (respondent No. 4) to decide the departmental appeal filed by the appellant within two months of the date of this judgment"

AND WHEREAS, in pursuance of the judgment dated 10.07.2018 and Section 17 read with sub rule (1) & (2) of the E&D Rules-2011 the appellate authority called for the record of the case and comments from the concerned DEO vide letter No. 3030 dated 27.1.2018 for consideration of the appeal.

AND WHEREAS, the DEO concerned had provided the requisite record/comments accordingly vide his letter No. 4984 dated 6.9.2016 describing the reason/circumstances under which the appellant was compulsorily retired from service after fulfillment of code of formalities.

AND WHEREAS, to know the factual position the Director E&SE (appellate authority) ordered Scrutiny Committee vide Notification No. 4985 dated 29.8.2018 to examine the appeal in light of record provided by the DEO (M) Peshawar.

AND WHEREAS, consequent upon perusal of relevant record, reason and circumstances by the appellate authority under which Mr. Mushtaq Ali, Ex-Junior Clerk GHSS No. 4 Kakshal Peshawar city (appellant) was Compulsory retired, the appeal submitted by the aforesaid Ex-Junior Clerk for reinstatement was not found tenable by the Scrutiny Committee constituted for the purpose.

NOW, THEREFORE, in exercise of the powers conferred under Section-17 rule (2) (a) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, the Director E&SE/appellate authority "uphold the order of Major penalty and reject appeal" lodged by Mr. Mushtaq Ali, Ex-Junior Clerk GHSS Kakshal District Peshawar (appellant)

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. 1505-10 /F.No. /A 23/MS/appel. vide Mushtaq Ali Dated Peshawar the 18/9/2018.

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

- 1- Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar w/ to Service Appeal No. 438/2017.
- 2- Deputy Director (Litigation) Local Office.
- 3- District Education Officer (Male) Peshawar
- 4- DEO (Male) Battagram.
- 5- Appellant concerned.
- 6- PA to the Director E&SE Khyber Pakhtunkhwa Peshawar.

Assistant Director (Admn).
E&SE, Khyber Pakhtunkhwa, Peshawar

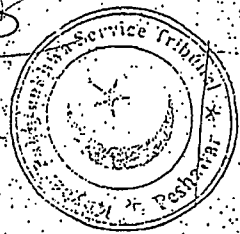
18/9/2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 1228/2018

Date of institution: 08.10.2018

Date of judgment: 25.10.2019



Mushtaq Ali S/o Abdul Gahani R/o Musazai, Gul Abad,
Inqilab Road, Peshawar, Senior Clerk District Education Officer (M),
Battagram. (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. District Education Officer (M) Peshawar, Hashtnagri, Peshawar.
3. District Education Officer (M) Battagram Bazar, Battagram.
4. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Firdous Chowk Peshawar. (Respondents)

25-01
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2020

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER ENDST NO. 1505-10/F.NO/A-23/MS/APPEAL MUSHTAQ ALI DATED 18.09.2018 OF RESPONDENT NO. 4(DIRECTOR ELEMENTARY & SECONDARY EDUCATION, KHYBER PAKHTUNKHWA, FIRDOUS CHOWK PESHAWAR) WHEREBY HE UPHOLD THE ORDER OF MAJOR PENALTY IMPOSED BY RESPONDENT NO. 2 (DISTRICT EDUCATION OFFICER (M) PESHAWAR, HASHTNAGRI, PESHAWAR) ENDST NO. 729-32/DATED PESHAWAR THE 05.09.2014 AND REJECTED THE APPEAL OF THE APPELLANT FOR NO LEGAL REASON.

M. Amin
25.10.2019

Mr. Akhuzada Syed Pervez, Advocate
Mr. Kabirullah Khattak, Additional Advocate General


For appellant.
For respondents

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. HUSSAIN SHAH

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

ATTESTED

JUDGMENT


Kundi
Secretary

MUHAMMAD AMIN KHAN KUNDI, MEMBER:- Counsel for the

appellant and Mr. Kabirullah Khattak, Additional Advocate General along with
Mr. Arshed Ali, ADO for the respondents present. Arguments heard and record
perused.

(9)

2. Brief facts of the case as per present service appeal are that the appellant was serving as Senior Clerk in Education Department. He was imposed major penalty of compulsory retirement vide order dated 05.09.2014 on the allegation of absence from duty by the competent authority. The appellant after availing departmental remedy, filed service appeal before this Tribunal and after hearing arguments this Tribunal issued direction to the appellate authority (Respondent No. 4 i.e Direction Elementary & Secondary Education, Khyber Pakhtunkhwa, to decide the departmental appeal filed by the appellant within two months of the receipt of copy of judgment vide detailed judgment dated 10.07.2018. The departmental authority rejected/dissmised the departmental appeal vide order dated 18.09.2018 and thereafter, the appellant filed the present service appeal on 08.10.2018.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving as Senior Clerk in Education Department. It was further contended that the appellant was involved in criminal case vide FIR No. 304 dated 23.03.2013 under section 489-F PPC Police Station Takht Bahi. It was further contended that the absence of the appellant was not intentional/deliberate but the same was due to involvement of the appellant in the aforesaid criminal case. It was further contended that neither absence period has been mentioned by the competent authority in the impugned order nor by the departmental authority in the order of departmental appeal. It was further contended that neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence nor any absence notice was issued to the appellant at his home address nor any absence notice/show-cause notice was advertised in two newspapers as required under rule-9 of Government Servants (Efficiency &

ATTORNEY

[Signature]
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

[Handwritten notes]
 2.5.10.2019

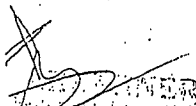
Discipline) Rules, 2011 therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside and prayed for acceptance of appeal. (10)

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant remained absent with effect from 18.05.2013 till the impugned order dated 05.09.2014 without permission of lawful authority. It was further contended that a proper show-cause notice was issued to the appellant which was also received by the appellant on 18.02.2014 as revealed from the copy of show-cause notice but the appellant could not satisfy the competent authority and the Principal of Government Higher Secondary School Hazar Khawani Peshawar recommended for compulsory retirement from service vide inquiry report dated 15.05.2014 therefore, it was vehemently contended that after fulfilling all the codal formalities, the appellant was rightly imposed major penalty of compulsory retirement and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving as Senior Clerk in Education Department. The record further reveals that the appellant was involved in the aforesaid criminal case due to which the appellant remained absent from duty with effect from 18.05.2013. The record further reveals that the appellant was imposed major penalty of compulsory retirement by the competent authority i.e District Education Officer Male Peshawar vide order dated 05.09.2014. The record further reveals that the appellant filed departmental appeal against the impugned order dated 05.09.2014 but the same was not responded by the departmental authority within the stipulated period therefore, the appellant filed Service Appeal before this Tribunal. The record further reveals that this Tribunal disposed off the service appeal of the appellant and directed the departmental authority to decide the departmental appeal.

6/10/2019
175/19-2019
A. J. Khan
19

ATTESTED


OFFICER
Peshawar
Peshawar

11

by the appellant within two months of the receipt of copy of judgment vide detailed judgment dated 10.07.2018. The record further reveals that the departmental authority also dismissed the departmental appeal of the appellant vide order dated 18.09.2018 and thereafter, the appellant filed the present service appeal on 08.10.2018. The record further reveals that the appellant was imposed major penalty of compulsory retirement on the allegation of absence from duty but neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor the appellant was provided opportunity of personal hearing and defence. The record further reveals that the competent authority has issued only a show-cause notice undated to the appellant for the absence with effect from 18.05.2013 which was received to the appellant on 18.02.2014 and after issuing the show-cause notice, the appellant was imposed major penalty of compulsory retirement vide order dated 05.09.2014 but neither regular inquiry was dispensed by the competent authority in the aforesaid show-cause notice nor any reason for dispensing regular inquiry was mentioned in the said show-cause notice. The record further reveals that the aforesaid show-cause notice was received by the appellant on 18.02.2014 as revealed from the copy of show-cause notice available on the record but a fact finding inquiry was conducted by the Principal of Government Higher Secondary School Hazar Khawani Peshawar on 15.05.2014 after issuing a show-cause notice which itself speak that the said fact finding inquiry is against the rules as the competent authority was required to first initiate proper inquiry including charge sheet, statement of allegation against the appellant and thereafter, if the appellant was proved guilty than he would have issued a show-cause notice for the absence period but the inquiry officer has submitted inquiry report after the aforesaid show-cause notice therefore, the whole proceeding is illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order, reinstate the appellant into service and direct the

M. Abbas
25.8.2019

ATTESTED

[Signature]
 Chief Justice
 Service Tribunal,
 Peshawar

12

respondent-department to conduct de-novo inquiry in the mode and manners prescribed under Government Servants (Efficiency & Discipline) Rules, 2011 strictly in accordance with law within a period of 90 days from the date of receipt of copy of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
25.10.2019

Muhammad Amin Khan
(MUHAMMAD AMIN KHAN KUND)
MEMBER

Hussain Shah

(HUSSAIN SHAH)
MEMBER

Certified to be true copy

Shahid Ali Khan
Secretary
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Petition *14-11-19*
Number of Words *2000*
Copying Fee *2200*
Urgent *_____*
Total *2200*
Name of Officer *_____*
Date of Completion of Copy *19-11-19*
Date of Delivery of Copy *19-11-19*

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR

NOTIFICATION

The District Education Officer (Male) Peshawar has been pleased to appoint Mr. Mayara, SSA, Principal, GHS Nanak Pura, Peshawar, as enquiry officer to conduct defailed DE-NOVO enquiry against Mr. Mushtaq Ali Ex-J/Clerk GHSS No. 4 Kakshal, Peshawar. In light of Judgment dated 23-10-2019 by Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal No: 1228/2108 with the following TORs..

1. To inquire absence period wef 18-05-2013 to 12-02-2014.
 2. To inquire how the official got promotion from J/c to S/clerk.
 3. To inquire whether the concerned officer/officers signed / countersigned the papers of the official the impugned promotion?
 4. To examine the Track Record of the official in the education Department etc.
- The enquiry officer is requested to submit report / recommendations to this office within days after the issuance of this letter please.

(Muhammad Idrees Azam)
DISTRICT EDUCATION OFFICER
(MALE) PESHAWAR.

Encl: No: 225-56 / SPL-File-Mushtaq Ali EX-JC- dated 24 / 12 / 2019.

Copy is forwarded to the:

1. Mr. Naveed Akhtar Principal GHS Nanak Pura, Peshawar
2. PA to Director (E&S) KPK Peshawar w/r to his letter No. 5385 P/NO/MS/Appeal/Mushtaq Ali S/Clerk dated 13-12-2019.
3. Mr. Mushtaq Ali Ex-J/Clerk R/o Musazai, Gul Abad, Inqilab Road, Peshawar Senior Clerk, DEO(M) Battagram.
4. DEO(M) Battagram.
5. P/File.

DY: DISTRICT EDUCATION OFFICER
(MALE) PESHAWAR

BETTER COPY

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR

Notification:

The District Education officer (Male) Peshawar has been placed to appoint Mr. Naveed Akhtar Principal GHS Nanakpura Peshawar as inquiry officer to conduct detail denovo inquiry of Mr. Mushtaq Ali Ex-Senior Clerk GHSS No.4 Kakshal Peshawar City. In light of judgment dated 25/10/2019 passed by Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No:1228/2018 with the following:

- 1- Inquiry absence period of 18/05/2013 to 12/02/2014
- 2- To inquiry how the official got promotion from junior clerk to Senior Clerk.
- 3- To inquiry whether the concerned officer / officers signed / countersigned the papers J.C Official the impugned promotion.
- 4- To examine the track record of the official in the education department etc

The inquiry officer is requested to submit report /recommendation to this within 7 days after the issuance of this letter please.

Sd/-
(Muhammad Idress Azam)
District Education officer (M)
Peshawar

Endst: No.2252-56 /SPL File Mushtaq Ali Ex-Junior Clerk dated 24/12/2019.
Copy is forwarded to the:

- 1- Mr. Naveed Akhtar Principal GHS Nanakpura Peshawar
- 2- PA to Director (E&SE) KPK Peshawar w/r to his letter No.5385 File/MS/Appeal/ Mushtaq Ali Senior Clerk dated 13/12/2019.
- 3- Mr. Mushtaq Ali Ex-Junior Clerk R/o Mussazai, Mohallah Gulabad Inqilab Road, Peshawar Senior Clerk.
- 4- DEO (Male) Battagram
- 5- Personal file.

Sd/-
Deputy District Education officer (M)
Peshawar



OFFICE OF THE
PRINCIPAL GHS NANAK PORA PESHAWAR
CITY

15

To, No. 452 / Principal/GHS Nanak Pora/Enquiry /Mushtaq /SC / dated 06/01/2020

The District Education Officer
(Male) Peshawar.

Subject; SUBMISSION OF ENQUIRY REPORT
Memo;

With reference to your office order Endstt No. 2252-56 dated; 24-12-2019.

Enclosed please find herewith enquiry report in R/o Mr. Mushtaq Ali Ex- Senior Clerk DEO (M) Battagram along with its enclosure for further necessary action please.
(Enclosed as above).

(NAVEED AKHTAR)
Principal/Enquiry Officer BPS-18
GHS Nanak Pora
Peshawar

3437
07/1/2020

PRINCIPAL
GHS Nanak Pora
Peshawar

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**OFFICE OF THE PRINCIPAL GHS NANAK
PURA, DISTRICT PESHAWAR**

**ENQUIRY REPORT IN SERVICE APPEAL NO. 1228/2018 IN R/O MR.
MUSHTAQ ALI EX-SENIOR CLERK OFFICE OF THE DEO(M) BATTAGRAM**

INTRODUCTION:-

The undersigned has been appointed as enquiry Officer by the DEO(Male) Peshawar vide Order issued under Endst: No. 2252-56 dated ; 24-12-2019 in pursuance of the decision of the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1228/2018 with the following .

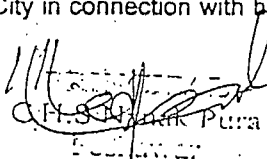
1. The absence period i.e. 18-05-2013 to 12-2-2014
2. Promotion order from Junior Clerk to Senior Clerk
3. To enquire the whether the concerned officer/ officers signed countersigned the relevant papers pertaining to promotion of appellant to the post of S/Clerk.
4. To examine the track record in education department.

HISTORY OF THE CASE.

In compliance with the order issued by the worthy DEO(M) Peshawar, the undersigned started the enquiry preceding and called Mr. Mushtaq Ali Ex-Senior Clerk to appear before the enquiry officer on the date/time and venue so fixed on 28-12-2019. The undersigned studied all the relevant documents available on the record as well as judgment issued by the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Having gone through the record thoroughly, it was observed that the then Principal GHSS No.4 Kakshal, Peshawar City submitted the absence report of the mentioned accused appellant wef 18-05-2013 to 12-02-2014 (09) Months. However Mr. Mushtaq Ali Ex-Junior Clerk GHSS No.4 Kakshal, Peshawar City submitted his application for medical leave w.e.f 18-05-2013 to 18-01-2014 (copy attached) Furthermore, he was hospitalized and admitted at Khursheed Medical Center & Surgical Hospital Peshawar w.e.f 18-05-2013 to 31-05-2013. He was discharged from Hospital on 31-05-2013 and the Doctors advised him for complete bed rest for 06 Month. A Questionnaire to this effect was served on him (copy attached) He replied to the said Questionnaire accordingly. As per statement obtained from him, it was revealed that he was patient of Hepatitis "C" Hence, he was not in position to perform his duty.

After the thorough checking of his documents as well Original Service Book (copy attached) he was appointed as Junior Clerk in Elementary & Secondary Education Department on 15-12-1986 vide Director E & SE Khyber Pakhtunkhwa Peshawar (copy attached) He performed his duty regularly w.e.f 15-12-1986 to 17-05-2013. As per his original service book he was not remained on leave without pay. His service record was found duly verified by the concerned Officers/DEOs/DDO,s from time to time till 29-09-2014. All the relevant documents i.e Original Service Book ,ACR, Non Involvement, Reliving Chit, LPC duly attested /Re- Attested by the Principal GHSS No.4 Peshawar City in connection with his promotion case to the post of Senior Clerk.


Principal GHS Nanak Pura
Peshawar

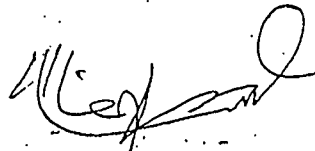
Accordingly, based on the above mentioned verified record, the Director E&SE KP, Peshawar issued his promotion order as Senior Clerk vide Endst No. 4015-4040/ .F.No.A-

23/MS/Promotion/S/Clerk/DD(F&A) dated 28-05-2014 appearing at S.No. (39) and adjusted him at DEO(M) office Battagram. He took over charge of his new assignment/post on 04-06-2014 and he performed his duty w.e.f 04-06-2014 to 29-09-2014. Later on, Directorate E&SE KP, Peshawar had withdrawn his promotion order as S/Clerk on the basis of his compulsory retirement order issued by the then DEO(M) Peshawar.

FINDINGS:

Keeping in view history of the case dig out as above and after careful checking of the relevant record, the undersigned reached to the following conclusion/findings:-

1. The appellant concerned was on medical leave for the period from 18-05-2013 to 18-01-2014.
2. All the documents available on the record showing that he submitted his application for medical Leave and the Principal concerned had forwarded his leave application to DEO (M) Peshawar on 18-05-2013. However his Leave was not sanctioned by the then DEO (M) Peshawar.
3. Later on, the appellant was promoted to the Post of Senior Clerk vide Directorate E&SE KP, Peshawar Order vide Endst No. 4015-4040/ .F.No.A-23/MS/Promotion/S/Clerk/DD (F&A) dated; 28-05-2014 falling at S.No. (39) and adjusted him at DEO (M) office Battagram.
4. The Principal GHSS No.4 Kakshal Peshawar City reported him as absent, and ignored the application of the Mr. Mushtaq Ali Ex-Junior Clerk GHS Kakshal Peshawar already forwarded by him.
5. Furthermore, all the documents relevant to his promotion duly attested by the Principal Mr. Muhammad Tahir GHSS No.4 Kakshal Peshawar City vide his letter No. 91 dated; 17-12-2015 and re-verified by the Principal concerned on 30-12-2019.
6. Furthermore, Directorate E & SE also conducted an enquiry in this case through Mr. Saif-ur-Rahman Principal GHS No.1 Nowshera Cantt (copy attached) who had recommended that the said appellant/Ex-Senior Clerk may be reverted to his lower Post i.e Junior Clerk.
7. Moreover, Mr. Mushtaq Ali Ex-Senior Clerk lodged his appeal before the service Tribunal Peshawar vide Service Appeal No.1228/2018 and passed his Judgment announced on 25-10-2019 at the disposal of DEO (M) Peshawar to conduct de-novo enquiry.
8. It is also worth mentioning that Directorate E&SE KP, Peshawar issued letter to DEO (M) Peshawar for re-instatement of his services in the compliance of the Judgment of Honorable Service Tribunal Peshawar Khyber Pakhtunkhwa Peshawar referred to above.

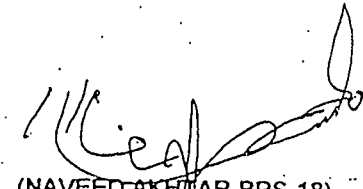


G.H.S Nanak Pura
Peshawar

RECOMMENDATION:-

Keeping in view aforesaid findings into consideration, it is recommended that:-

1. In the compliance with the Judgment of Honorable Service Tribunal Peshawar, the incumbent DEO (M) Peshawar is requested first to set aside the compulsory retirement order of Mr. Mushtaq Ali Ex-Junior Clerk GHS Kakshal Peshawar issued by the then DEO (M) Peshawar vide Endst: No.72932 dated 05-09-2014 and he may be re-instated in service against his original post of Junior Clerk retrospectively.
2. The absent period w.e.f 18-05-2013 to 18-01-2014 as Junior Clerk may be converted into Medical Leave.
3. After his reinstatement against Junior Clerk post, his case along with this inquiry report may be forwarded to the Director E&SE KP, Peshawar for restoration of his promotion order to the post of Senior Clerk which was with-drawn by the Directorate E&SE KP Peshawar vide Order No.6145-52 dated 17-09-2014 and he may be adjusted against first available Senior Clerk post.
4. The period for which he remained under trail at Honorable Service Tribunal Peshawar w.e.f 30-09-2014 (Appeal date) till the date of restoration of his promotion order as S/Clerk may be considered as spent on duty as the case of the appellant concerned remained under trail in the High Court and Service Tribunal Peshawar respectively.
5. His promotion order may be restored to the Post of Senior Clerk from the date of his taking over charge as senior Clerk i.e 04-06-2014 as due to him under the rules .



(NAVEED AKHTAR BPS-18)
Principal
GHS Nanak Pura Peshawar City
(Enquiry Officer)

G.H.S Nanak Pura
Peshawar



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR

NOTIFICATION:

1. Whereas, the titled service appeal was instituted on 08-10-2018 before this Honorable Tribunal against the impugned order dated 18-09-2018 of the Respondent No.4 whereby, he upheld the order dated 05-09-2014 of the Respondent No.2 to the extent of maintaining the major penalty of removal from service against the appellant.
2. And Whereas, aggrieved from the order dated 05-09-2014 of the Respondent No.2, the appellant has filed a Departmental appeal to the Respondent No.4 for setting aside the impugned order of the DEO (M) Peshawar but the same has been rejected vide Notification dated 18-09-2018 by the Respondent No.4 after observing all the codal formalities by maintaining the impugned order dated 05-09-2014 of the DEO (M) Peshawar on the grounds of being legally competent.
3. And whereas, aggrieved from the orders & Notifications dated 05-08-2014 & 18-09-2018 of the DEO (M) Peshawar, Director E&SE Khyber Pakhtunkhwa respectively, the appellant has filed the titled case before this Honorable Tribunal with the prayer for setting aside the impugned orders & Notifications of the Respondent Department along with his re-instatement in service against the senior clerk post, & finally the case was decided vide Judgment dated 25-10-2019 by setting aside the impugned orders & Notifications dated 05-09-2014 & 18-09-2018 of the Respondent No.2 & 4 with the directions to conduct De-nove inquiry in to the matter under the provision of E&D Rules 2011 within a period of 90 days with further observations that the issue of back benefits of the appellant will be subject to the outcome of the De-nove inquiry.
4. And Whereas, in compliance of the Judgment dated 25-10-2019 of this Honorable Tribunal, the Respondent Department has conducted De-nove inquiry vide Notification No.2252-56 dated 24-12-2019 through the Principal GHS Nanak Pura District Peshawar who submitted inquiry report vide his office letter No.452 dated 06-01-2020 which was observed as mis directed & even against the facts & circumstances of the case, hence, declared null & void under the sub-rule 6 rule 14 of E&D rules 2011 by the Respondent No.4 by nominating another inquiry committee through the DEO (M) Nowshera vide Notification/Corrigendum No.2012-20 dated 04-12-2020, who submitted his inquiry report on dated 30-11-2020 with the observations that the appellant has not performed his official duty w.e.f. 01-10-2014 to 30-06-2020 against the Senior Clerk post, hence, the intervening period may be treated as EOL.
5. And Whereas, consequent upon the Judgment dated 25-10-2019 of this Honorable Tribunal, the Respondent No.4/Director E&SE Khyber Pakhtunkhwa Peshawar after considering the facts & circumstances of the case along with consulting the inquiry report of the DEO (M) Nowshera has made the appellant not entitled for the grant of back service benefits w.e.f. 01-10-2014 to 30-06-2020 on the analogy of question of Law & facts of no duty & no Pay passed by this Honorable Tribunal as well as the august Supreme Court of Pakistan.

Therefore, in compliance of the Judgment dated 25/10/2020, passed by this Honorable Tribunal in the titled appeal & in Exercise of the Powers conferred upon the undersigned under the relevant provisions of Law & Rules in field, the appellant is hereby made NOT entitled for the grant of Back service benefits w.e.f. 01-10-2014 to 30-06-2020 against the senior clerk post, in view of the inquiry report dated 30-11-2020 of the District Education officer (M) Nowshera with immediate effect & in the interest of public service.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endstt. No. 6752-59

Dated Peshawar the 23/12 /2020

Copy of the above is forwarded for information & n/action to the:

1. Learned Registrar-Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. Learned AAG Khyber Pakhtunkhwa Service Tribunal Peshawar.
3. Section Officer (Litigation-II) E&SE Department Khyber Pakhtunkhwa Peshawar.
4. District Education Officer (M/F) Battagram.
5. District Education Officer (M/F) Nowshera.
6. Deputy Director (F&A) local Directorate.
7. Mr. Mushtaq Ali Senior Clerk r/o Musa Zai Gulabad Inqilab Road Peshawar.
8. PA to Director E&SE, Peshawar.
9. Master File.

Deputy Director (F&A)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

23/12/2020



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR

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DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endstt. No. 6752-59

Dated Peshawar the 23/12 /2020

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Deputy Director (F&A)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

23/12/2020