

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

Service Appeal No. 1568/2019

**BEFORE:** SALAH UD DIN --- MEMBER(J)  
MIAN MUHAMMAD --- MEMBER(E)

**Shamshad Khan Ex Primary School Teacher Qilla Jabbar  
Peshawar..... (Appellant)**

**VERSUS**

1. District Education Officer (Male) Peshawar.
2. Director Elementary and Secondary Education Govt. of Khyber Pakhtunkhwa Peshawar.
3. Secretary, Elementary and Secondary Education, Govt. of Khyber Pakhtunkhwa Peshawar..... (**Respondents**)

**Present:**

RABIA MUZAFFAR,  
Advocate --- For Appellant.

MUHAMMAD RIAZ KHAN PAINDAKHEL,  
Assistant Advocate General, --- For respondents.

Date of Institution.....18.11.2019  
Date of Hearing.....22.09.2022  
Date of Decision.....22.09.2022

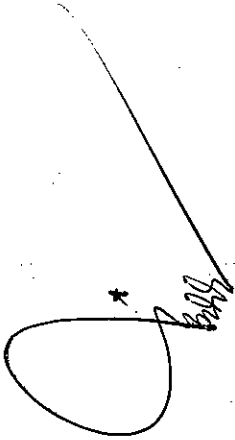
**JUDGEMENT.**

**MIAN MUHAMMAD, MEMBER(E):-** The appellant has approached the Service Tribunal against the impugned Notification of respondent No. 1 dated 04.02.2013 whereby major penalty of "removal from service" was imposed on him. It has been prayed that "on acceptance of this appeal the impugned order dated 04.02.2013 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits."

02. Brief facts of the case are that the appellant joined the respondent department as Primary School Teacher on 10.11.1994 and while posted at GPS Qilla Jabbar Peshawar he was proceeded against for unauthorized and willful absence from duty w.e.f. 29.08.2010. On culmination of the proceedings, the appellant was removed from service vide impugned Notification 04.02.2013 which was challenged through departmental appeal on 11.06.2019. However, the departmental appeal was not responded to within the statutory period of 90 days whereafter he instituted the instant service appeal on 18.11.2019.

03. On admission of the service appeal in preliminary hearing on 03.02.2020, the respondents were put on notice to submit written defense through reply/para-wise comments. Reply/Parawise comments were submitted on 05.11.2020. We have heard learned counsel for the appellant as well as learned Assistant Advocate General for the respondents in Divisional Bench and gone through the record thoroughly with their valuable assistance today.

04. Learned counsel for the appellant contended that the appellant was performing his duties with honesty and devotion up to the entire satisfaction of his seniors. He was falsely implicated in FIR No. 247 dated 29.08.2010 under Section 302 PPC of Police Station Regi Peshawar. He was therefore, unable to have performed his duties. He submitted application for three months leave which was processed and entry also made to this effect in



his service book. Due to enmity, the appellant was compelled to go into hiding and finally he was removed from service vide impugned Notification dated 04.02.2013. It was after assurance of the complainant party and having arrived patch up between the parties that the appellant was released on bail, whereafter he submitted departmental appeal on 11.06.2019. It was further contended that absence from duty was not deliberate but beyond the control of appellant. The ends of justice have not been met by the respondents and the appellant has been condemned unheard without issuance of charge sheet/statement of allegations, Show Cause Notice or personal hearing. Moreover, on acquittal of the appellant by the competent court of law on 05.10.2021 appellant is entitled to be reinstated in service with all back benefits. In support of her arguments, learned counsel for the appellant relied on 2008 SCMR 1369, 2003 SCMR 207, 2012 SCMR 165, PLD 2010 Supreme Court 695 and 2006 SCMR 1240.

05. Learned Assistant Advocate General controverted the assertions made in the appeal and arguments advanced by the learned counsel for appellant, mainly on the ground that the appellant was willful absent from duty since 29.08.2010. He did neither submit application for leave nor had he ever been sanctioned three months leave by the competent authority as claimed by the appellant. Moreover, in the attached copy of FIR there is no mention of the name of appellant to have been registered as accused and even FIR No. 247 dated 29.08.2010

does not show name of the concerned Police Station and Sections of applicable law in the crime. He has not been proceeded against on the basis of involvement in criminal case but for willful absence from duty. He further contended that the appellant has not challenged the impugned Notification dated 04.02.2013 through a departmental appeal to the appellate authority. The appellant was penalized and "removed from service" after observance and completion of all codal formalities. The service may therefore be dismissed with costs.

06. Careful perusal of the record reveals that the appellant was removed from service on the ground of willful absence vide impugned Notification dated 04.02.2013. The appellant challenged it before the appellate authority through departmental appeal on 11.06.2019 which was not responded. The appellant thereafter filed the service appeal in the Service Tribunal on 18.11.2019 i.e. after 06 years, 9 months and 14 days. The settled proposition of law dictates that when an appeal of the civil servant is time barred before the appellate authority, then the appeal before the service Tribunal is also not competent and maintainable. Reliance is placed on 2007 SCMR 513, 2006 SCMR 453 and PLD 1990 Supreme Court 951. This Tribunal can take merits of the case only when the appeal is within time. The august Supreme Court of Pakistan in its judgement reported as 1987 SCMR 92 has held that when an appeal is required to be

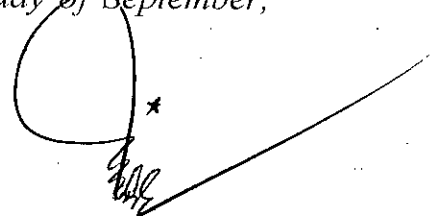
dismissed on the ground of limitation then its merits need not to be discussed.

07. As a sequel to the foregoing discussion, the instant service appeal is badly time barred, therefore, the appeal being not maintainable is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 22<sup>nd</sup> day of September, 2022.*



(SALAH UD DIN)  
MEMBER (J)



(MIAN MUHAMMAD)  
MEMBER (E)

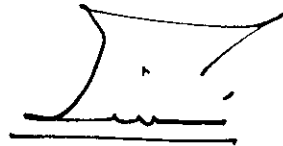
**ORDER**

22.09.2022

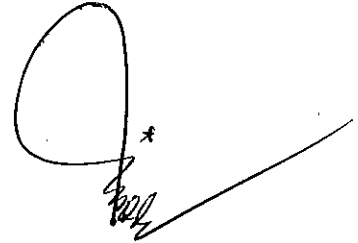
Miss Rabia Muzaffar, Advocate for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

02. Vide our detailed judgement of today separately placed on file consisting (05) pages, the instant service appeal is badly time barred, therefore, the appeal being not maintainable is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 22<sup>nd</sup> day of September, 2022.*



(SALAH UD DIN)  
MEMBER (J)




(MIAN MUHAMMAD)  
MEMBER (E)

25.11.2021

Proper DB is not available, therefore, the case is adjourned to 1/3/22 for the same <sup>as</sup> before ~~D.B.~~


1-3-22

Due to retirement of the Hon. Reader  the case is adjourned to come up for the same as before on 11-5-22

Reader

11-5-22

Proper DB not available the case is adjourned on 26-7-22

  
Reader

26<sup>th</sup> July 2022

Miss. Rabia Muzaffar, junior of learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for respondents present.

Junior of learned counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Ad'journd. To come up for arguments on 22.09.2022 before the D.B.



(Salah-Ud-Din)  
Member (J)



(Kalim Arshad Khan)  
Chairman

08.09.2021

Miss Rabia Muzaffar, Advocate, Junior of learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that counsel for the appellant is busy in the august High Court. Adjourned To come up for arguments before the D.B on 25.11.2021.



(ATIQ UR REHMAN WAZIR)  
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)



30.12.2020

Due to summer vacation, case is adjourned to  
17-3.2021 for the same as before.

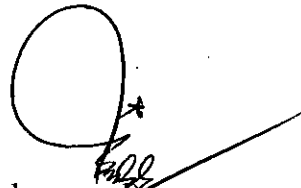
  
Reader

17.03.2021


Junior to counsel for the appellant and Addl: AG for  
respondents present.

Junior to counsel for the appellant has submitted  
rejoinder which is placed on file and requests for adjournment  
to argue the case on the next date.

Adjourned to 17.05.2021 for arguments before D.B.



(Mian Muhammad)  
Member (E)



Chairman

17.5.2021

*Due to COVID-19, The case is adjourned  
to 8. 9. 2021 for the same.*



16.09.2020

Appellant in person and Addl. AG for the respondents present.

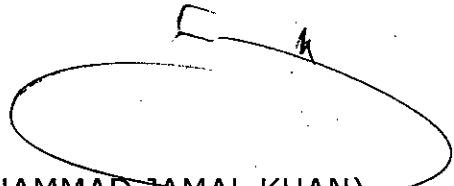
Learned AAG requests for time to contact the respondents and submit written reply/comments. Adjourned to 05.11.2020 on which date reply/comments shall be submitted positively.

  
Chairman

05.11.2020

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Arshed Ali, ADEO (Litigation) for the respondents are also present.


Representative of the department submitted written reply on behalf of respondents No. 1 to 3 which is made part of record. File to come up for rejoinder and arguments on 30.12.2020 before D.B.

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

19.03.2020

Appellant in person present and submitted application for allowing him to submit security and process fee which have not been deposited within due time.

The application is allowed and the appellant is permitted to deposit the requisite fee within three working days from today. Thereafter, notices be issued to respondents for submission of written reply/comments on 28.04.2020 before S.B.

  
Appellant Deposited  
Security & Process Fee

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

28.04.2020

Due to COVID19, the case is adjourned to 21.07.2020 for the same as before.

  
Reader

21.07.2020

Appellant is absent. Notices to respondents could not be issued due to public holidays on account of COVID-19, therefore, fresh notices be issued to the respondents for submission of written reply/comments. To come up for written reply/comments on 16.09.2020 before S.B. Appellant be also put to notice for the date fixed.

  
(MUHAMMAD JAMAL KHAN)  
MEMBER

03.02.2020

Counsel for the appellant Shamshad Khan present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Education Department as Primary School Teacher. It was further contended that he was involved in criminal case vide FIR No. 247 dated 29.08.2020 under section 302 PPC. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 04.02.2013 on the allegation of absence from duty. It was further contended that since the appellant was involved in the aforesaid criminal case falsely, therefore, it was beyond the control of the appellant to attend the duty. It was further contended that neither the appellant was served any notice nor proper inquiry was conducted nor he was informed regarding departmental proceeding nor any absence notice was issued at his home address, therefore, the impugned order is illegal and liable to be set-aside. It was further contended that after confirmation of his pre-arrest bail, the appellant immediately filed the present service appeal. It was further contended that there is some delay in departmental appeal but the appellant has already filed application for condonation of delay therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to limitation and all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 19.03.2020 before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER



**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 1568/2019

Shamshad Khan .....Appellant

**V E R S U S**

DEO and others.....Respondents

**I N D E X**

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with Affidavit		1-3
2.	Application for condonation of delay with affidavit		4
3.	Copy of FIR	A	5-
4.	Copy of Attendance Register & Application	B & C	6-8
5.	Copy of Order dated 04-02-2013	D	9
6.	Copy of departmental appeal dated 06-11-2019	E	10-12
7.	Wakalat Nama		13

**Dated:- 18-11-2019**

*Shamshad Khan*  
Appellant

**Through**

*Fazal Shah Mohmand*  
**Fazal Shah Mohmand**  
**Advocate, Peshawar**

**OFFICE:-** Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841  
**Email:-** fazalshahmohmand@gmail.com

- 1 -

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 1568 2019

Shamshad Khan Ex Primary School Teacher Qilla Jabbar Peshawar.

.....**Appellant**

Khyber Pakhtunkhwa  
Service Tribunal

**V E R S U S**

Diary No. 1657

1. District Education Officer, (Male) Peshawar.
2. Director, Elementary and Secondary Education, Govt. of Khyber Pakhtunkhwa Peshawar.
3. Secretary, Elementary and Secondary Education, Govt. of Khyber Pakhtunkhwa Peshawar. ....**Respondents**

18/11/2019

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 04-02-2013 OF RESPONDENT NO 1 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF MORE THAN THE STATUTORY PERIOD OF NIENTY DAYS.**

**PRAYER:-**

On acceptance of this appeal the impugned Order dated 04-02-2013 of respondent No 1 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Filed to day  
Registrar

**Respectfully Submitted:-**

1. That the appellant was appointed as Primary School Teacher on 10-11-1994 and since then he performed his duties with honesty and full devotion and to the entire satisfaction of his high ups.
2. That the appellant while lastly posted to Govt. Primary School Qilla Jabbar Peshawar, was involved in a false criminal case vide FIR No 247 dated 29-08-2010 U/S 302 PPC of Police Station Regi. **(Copy of FIR is enclosed as Annexure A)**.
3. That the appellant in order to protect his life was unable to have performed his duties therefore submitted application for three months leave which was processed accordingly and this fact

was also entered in his Service Book. **(Copy of Attendance Register & Application is enclosed as Annexure B & C).**

- 4. That due to enmity the appellant was unable to have performed his duties therefore went into hiding and finally he was dismissed from service vide Notification dated 04-02-2013. **(Copy of Notification dated 04-02-2013 is enclosed as Annexure D).**
- 5. That after assuring the complainant party of his innocence, the matter was patched up between parties and the appellant was accordingly released on bail, wherftaer the appellant filed departmental appeal before respondent No 2 on 11-06-2019 which is still pending and has not been decide so far. **(Copy of Departmental appeal is enclosed as Annexure E).**
- 6. That the impugned Order dated 04-02-2013 -08-2019 of respondent No 1 is against the law, facts and principles of justice on grounds inter alia as follows:-

**GROUND S:-**

- A. That the impugned Order is illegal, unlawful and void ab-initio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules.
- C. That the absence from duty was not willful and deliberate rather the same was due to involvement in criminal case in which he has patched up the matter and as such too the impugned order is not tenable.
- D. That the appellant was not proceeded according to law and rules on the subject and his rights secured have badly been violated.
- E. That proceedings in case of absence were not conducted as required by law rather exparte action has been taken against the appellant.
- F. That the appellant has been condemned unheard and was not provided opportunity to present the side of his story.
- G. That no notice was issued to the appellant and the impugned order as such is liable to be struck down.



- H. That the appellant was not provide with opportunity of personal hearing.
- I. That no proper inquiry was conducted in the matter to have found out the true facts and circumstances. No one was examined in presence of the appellant nor was he ever afforded opportunity of cross examination.
- J. That the appellant has about 19 years of service with unblemished service record.
- K. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

**It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.**

**Any other relief deemed appropriate and not specifically asked for, may also be granted in favor of the appellant.**

**Dated-: 18-11-2019**

*Shamshad Khan*  
**Appellant**

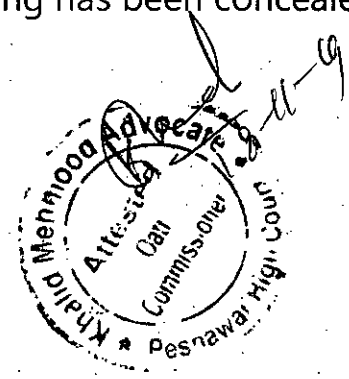
**Through**

*Fazal Shah Mohmand*  
**Fazal Shah Mohmand  
 Advocate, Peshawar**

**AFFIDAVIT**

I, Shamshad Khan Ex Primary School Teacher Qilla Jabbar Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

*Shamshad Khan*  
**DEPONENT**



**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No \_\_\_\_\_/2019

Shamshad Khan ..... **Appellant**

**V E R S U S**

DEO and others ..... **Respondents**

**Application for the condonation of delay if any.**

**Respectfully submitted:-**

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the impugned order being void ab-initio, illegal and time factor becomes irrelevant in such cases, furthermore departmental appeal of the applicant is still pending and awaited decision and the appeal is as such within time.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit.

**It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.** *Khan*

**Dated:- 18-11-2019**

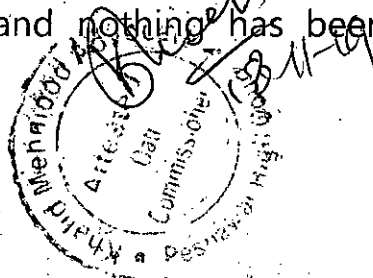
*Shamshad Khan*  
**Appellant**

**Through**

*Fazal Shah Mohmand*  
**Fazal Shah Mohmand  
Advocate, Peshawar**

**A F F I D A V I T**

I, Shamshad Khan Ex Primary School Teacher Qilla Jabbar Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



*Shamshad Khan*  
**DEPONENT**



# رجسٹر حاضری ٹیچر سینئر گورنمنٹ پرائمری سکول مولہ جیہا

۱۹۷۵ء

ابتداء آمدت

نواب شاہ  
P-S-T

شعبہ دفاع  
P-S-T

سید صاحب  
P-S-T

ادارہ تعلیم  
P-S-T

تاریخ آمد	دستخط	روانگی	شعبہ دفاع			سید صاحب			ادارہ تعلیم		
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## تفصیلات مہینہ جولائی

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ATTESTED

التفصیلات

# رجسٹر حاضری مدرسین گورنمنٹ کالج برائے سیکولر قلعہ جہاڑ

ی (1) مختار خان  
P.S.T.

ی (2) مختار خان  
P.S.T.

ی (3) عبدالکرم  
P.S.T.

ی (4) وارث خان

تاریخ	ی (1) مختار خان		ی (2) مختار خان		ی (3) عبدالکرم		ی (4) وارث خان	
	آمد	دستخط	آمد	دستخط	آمد	دستخط	آمد	دستخط
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ATFF

The D.C)

E of SE Peshawar.

-8-0

Sub: Application for grant of Three months leave

R/Sir

This is submit that due to some unavoidable circumstances I cannot attend the school for three months from 1-9-2010 to 30-11-2010.

Therefore Sir, you are requested to accord sanction of three months leave from 1-9-2010 to 30-11-2010.

I shall be thankful to you for that

Govt. Primary School  
Qilla Jabbar.

ATTESTED  
To be True Copy

Yours obediently

S Khan  
Ham Shad

Shamshad Khan

P.S.T, G.P.S Qilla Jabbar

Submitted to  
form 9 please  
D.D  
9/9/2010  
Officer (M)  
Peshawar

"D" -9-

**DISTRICT EDUCATION OFFICER ( MALE ) ELEMENTARY AND SECONDARY**  
**EDUCATION PESHAWAR.**

**NOTIFICATION :-**

**WHEREAS** Mr. Shamshad Khan PST Government Primary School Qilla Jabbar Peshawar was proceeded against under Khyber Pakhtunkhwa Govt: Servant (Efficiency & Discipline ) Rules, 2011 for the charge of " wilful absence from duty with effect from 29/08/2010

**2. AND WHEREAS** absence notice was served upon the accused official through ADO Circle concerned under registered post at his home address but he did not report for duty.

**3. AND WHEREAS** the absentee / show cause notice were served upon Mr. Shamshad Khan PST, Government Primary School Qilla Jabbar Peshawar through Daily Newspapers Express and Khabrain dated 09/12/2012 but he remained absent and did not report for duty in response to the notice.

**4. AND WHEREAS** The competent authority (District Education Officer (M) E&SE) Peshawar) after having considered the charge and evidence on record is of the view that the charge of wilful absence against the accused official has been proved.

**5. NOW THEREFORE**, In exercise of the Powers conferred under Rules-4 (b) iii of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, I being the competent Authority ( District Education Officer (Mae) E&SE Peshawar ) is pleased to impose major penalty of " **Removal from Service** " upon Mr. Shamshad Khan PST GPS Qilla Jabbar Peshawar with immediate effect.

**SHARIF GUL**  
District Education Officer  
(Male) Peshawar.

Endst: No. 3504-6 / Dated Peshawar the 6/12 /2013

Copy forwarded to the :-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Sub Divisional Education Officer (Male) Peshawar with the remarks to recover and payment made to the above named official and deposit in to Govt: Treasury under intimation to this office.
3. ASDEO (Male) Circle Mathra Peshawar.

District Education Officer  
(Male) Peshawar.

**ATTESTED**  
To Be True Copy

کبریت ضبابہ ڈائریکٹر تعلیم اور کونسلر ڈیپارٹمنٹ (کراچی)

-10-

درخواست نمبر ادا محکمہ تعلیم برصغیر ہند

تعداد 6/2/13 نمبر 6-3504 روزنامہ

ضبابہ - DEO میں کیے

ضبابہ عالیہ  
سائل محکمہ تعلیم میں بحیثیت PST کی خدمات کیا  
صرف 6/2/13 کو حکم ہڈانے سائل پر بسپر کسی شوکار  
نوٹس، صبر داری اور سوائی کی سائل کے  
صرف بچر پنشنی Removal from Service کا حکم صادر

کیا  
سائل کو حکم ہڈانے کی طرف سے کسی قسم کا شوکار  
نوٹس جاری نہیں ہوا ہے۔ نیز سائل نے کسی اور  
ذریعے سے صبر داری کیا ہے۔ سائل کو حکم ہڈانے  
سوائی کے بسپر تیار حکم صرف 6/2/13 جاری

ATTN To Be li.

شہرہ ہے۔ جو در طلبین قانون عدل ہے 11-6-1964

ارشاد  
سائل نے صرف ایک چھوٹی FIR درج و اس پر  
پروٹیکٹ ہے۔ جس میں سائل نے عدالت گزار  
میں BBA دائر رکھیں ہے۔  
جوئے سائل سال 1964 سے حکم تعلیم میں



ڈاؤنی ہر محوریہ - اور سائل نے نہایت اہمیت رکھتی ہے  
حالیہ فرائض سے محکم میں خدمات انجام دے رہی ہیں  
کسی محکم نے سائل کے خلاف ایک ممبر ٹاؤنی،  
hard آرڈر جاری کر دیا ہے۔

-11

جو تک سائل کی مہارت سے وعدہ کیا گیا ہے  
اور نہ سائل کی مستوائی پر مبنی ہے۔

کہہ آ رہے صاف سے صحت میں خودیام انجام دے  
تہ سائل کے خلاف جاری شدہ آرڈر کی رقم 4/2/13  
کو مسترد فرما کر سائل کو سروس پر کافی کے اہلکار  
میں محکمہ برائے خدمات جاری کر دے۔  
وہ درود سائل کے ساتھ رہے۔

سائل  
Rame Shah

ATTESTED  
To Be True Copy

مسٹر محمد خان ولد قاسم شاہ  
مسٹر کافور ڈھیر

G.P.S.  
Qilla Jabbad  
Dist. Peshawar

G.P.S.  
Qilla Jabbad. Peshawar.

**DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR.**

No. 6611 /F. No.A-10/Vol:II/Appeal of  
PST.

Dated Peshawar the 11/11 /2019.

To,

The District Education Officer (M)  
Peshawar.

Subject: - DEPARTMENTAL APPEAL.

Memo:-

I am directed to refer to the appeal on the subject cited above and to enclose herewith a copy of appeal in respect of Mr. Shamshad Khan S/O Khanzada Ex:PST GPS Qilla Jabbar District Peshawar, and to ask you to submit detail report/comments to this office within a week time.

*[Signature]*  
11/11/2019  
Assistant Director (Estab :)  
Elementary & Secondary Edu:  
Khyber Pakhtunkhwa Peshawar.

Endst: No. \_\_\_\_\_

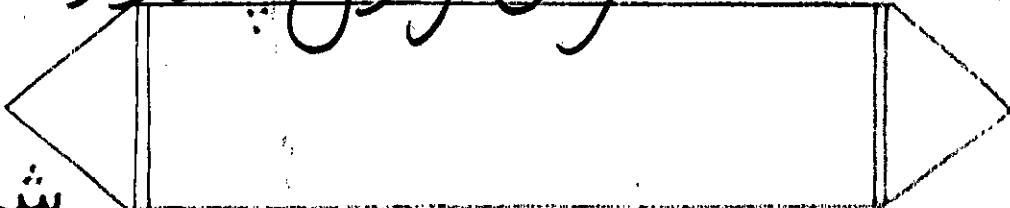
Copy forwarded to the:-

1. P.A to Director Elementary and Secondary Education local office.

*[Signature]*  
11/11/2019  
Assistant J Director (Estab :)  
Elementary & Secondary Edu:  
Khyber Pakhtunkhwa Peshawar.

**ATTESTED**  
To Be True Copy

# بعدالت لسروس ٹریبونل پشاور



شمشاد خان

2019ء مارچ

شمشاد خان بنام

D.E.O وغیرہ

موردہ  
مقدمہ  
دعویٰ  
برم

## باعث تحریر آئنگہ

آج کے مقدمہ میں درجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آج کے مقدمہ میں درجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

پشاور کیلئے فصل شہادہ مہمند ایس ڈی اے راجہ مظفر ایڈووکیٹ  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو رضی مانہ کر... نے تقریر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور  
بے صورت ڈگری کرنے اجراء اور صولی چیک ورڈ پیسہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرنے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی  
نیز دائر کرنے اپیل ٹرنائی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقریر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سہاقت  
برادخیز منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب ہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکورہ کریں۔ لہذا وکالت نامہ لکھدیا کہ سند ہے۔

شمشاد خان

Shah  
Shamsheed

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الترتوم 18 ماہ نومبر 2019ء

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پشاور

مقام

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**SERVICE APPEAL NO.1568/2019**

**Shamshad Khan                      V/S                      District Education Officer (Male) & others**

**REPLY ON BEHALF OF RESPONDENT NO.1,2,3.**

Respectively Sheweth:

The Respondent submits below:

**PRELIMINARY OBJECTIONS:**

1. That the Appellant has got no cause of action /locus standi.
2. That the Appellant has concealed material facts from this Hon,ble Tribunal.
3. That the Appellant has been estopped by her own conduct to file the instant appeal before this Hon'ble Tribunal.
4. That the instant Appeal is badly time barred.
5. That the instant Appeal is not maintainable in its present form.
6. That the instant Appeal is bed for mis- joinder and non- joinder of the necessary parties.
7. That the Appellant has not come with clean hands to this Hon'ble Tribunal.
8. That the instant Appeal is barred by law.

**ON FACTS.**

1. That Para No.1 pertains to record.
2. That Para No.2 is also pertains record.
3. That in reply Para No.3, it is submitted that the appellant was willful absent from 29-08-2010 to 13-09-2012 his duty, therefore, the Department were served absence notice but he did not submit his reply of the said notice. Then on 09-12-2012 issued show cause notice to the appellant through Daily news Papers Express and Khabrain but he remained absent from his duty nor submit written reply to the said show cause notice. That after fulfilling all the codel formalities the appellant removed from his service on 04-02-2013 under the (E & D) rules 2011.

**(Copies of absence notice, publication of News Paper are attached as Annex: A &B)**

4. That in reply to Para No.4, it is submitted that the appellant was willful absent from his duty and after fulfilling all the codel formalities the Department removed the appellant from his service according to law and rules.

5. That in reply Para No.5, it is also submitted that the removal Notification was issued on 04-02-2013 but the appellant did not file appeal to the competent authority in the prescribe time of the appeal according to law and rules.
6. That the Appellant has no cause of action to file the instant appeal in this Hon'ble Service Tribunal.

### GROUNDS

- A. That Ground-A is incorrect and misleading the said order is according to law and rules.
- B. That Ground-B is incorrect and misleading. The appellant was willful absent from his duty therefore, the Department removed him from service according to law and rules.
- C. That Ground-C incorrect and misleading, the detail reply has been given in the above Para.
- D. That Ground-D is incorrect and misleading, the Appellant treated according to law and rules.
- E. That Ground- E is incorrect and misleading. Detail reply has been given in the above Para.
- F. That Ground-F is incorrect and misleading, the department issued absentee/ show cause notice through daily news paper express and Khabrain but the appellant did not resume his duty.
- G. That Ground-G is incorrect, the removal order dated: 20-04-2016 is according to law.
- H. That Ground-H is incorrect and misleading, the Appellant did not submit replies of absentee and show cause notices.
- I. That Ground-I is incorrect and misleading.
- J. That Ground-J pertains to record.
- K. That respondent also seek leave of this Hon'ble Tribunal to present case law and to raise additional grounds at the time of arguments.

It is therefore, very humbly prayed that on acceptance of this reply, the instant appeal may very kindly be dismissed with cost.

  
District Education Officer  
(Male) Peshawar

REGISTERED

OFFICE OF THE ADO CIRCLE MATHRA (M) PESHAWAR

NO. \_\_\_\_\_ Dated 13/7/12

To

Mr. Shamshad Khan PST

GPS Qilla Jabbar Peshawar

Village Kafoor Dheri P/O Shagai Thana Peshawar.

Subject: Absent from Duty

Memo:

You have been absent from duty w.e.f 29/08/2010 till now. You are directed to resume your duty and explain your position of your willful absence from duty within 3 days after receipt of this final notice otherwise report will be submitted to the competent authority for stern action against you under the (E&D) Rules 2011.

Personal No  
00048204

Endst 151-183  
Copy forwarded to:

1. DDO (M) E & S.E Peshawar
2. PA to EDO E & S.E Peshawar
3. Local office

Assistant District Officer

(M) Circle Mathra Peshawar

 13/7/12  
Assistant District Officer

(M) Circle Mathra Peshawar

Asstt: Distt: Officer (M)  
Circle Mathra Peshawar.

# DAILY EXPRESS



اسلام آباد کراچی لاہور پشاور ملتان فیصل آباد کوٹلی ڈیرہ گڑھی شاہو حیدرآباد حیدرآباد کراچی سکھراہ کوٹلی سے ایک وقت شائع ہونے والا واحد قومی روزنامہ

جلد 11 شمارہ 70 | اتوار 24 محرم الحرام 1434ھ | 9 دسمبر 2012ء | نمبر 2069 | فون: 9-4226-26 | صفحات 48 قیمت 15 روپے

0333-9862425, 0332-9189191 E-Mail: alabmad\_ttc@yahoo.com  
M/s Zarqa International; LIC: MPD 1591 RWP PE(R) 36466 Dt: 05 10 2012

## شوکار نوٹس بسلسلہ غیر حاضری

برکات آپ درج ذیل پرائمری سکول ٹیچرز کو ملنے کوئی جھٹائے اپنی ذمہ داری سے نام کے آگے اور تاریخ سے غیر حاضر ہیں۔

- (1) شہزاد خان بی ایس ٹی گورنمنٹ پرائمری سکول کھنڈہ چار چار مورچہ 2010-08-29 سے اور
- (2) اسد خان بی ایس ٹی گورنمنٹ پرائمری سکول پٹی بندہ روڈ ڈی پٹار مورچہ 2007-09-05 سے

آپ کو متعلقہ سرگھوڑے۔ ڈی۔ او نے بذریعہ رجسٹرڈ پست آپ کے گھروں کے پتے پر آپ کی غیر حاضری کے متعلق آگاہ کیا اور اسے کبھی کوئی کتاب، پورا اپنی ذمہ داری پر حاضر ہو کر اپنی غیر حاضری کی وجہ بیان کریں مگر آپ رولز سے نوٹس نہ اکی کوئی پرواز کی اور ذمہ داری پر حاضر ہوئے نہ ہی آپ کی طرف سے کوئی جواب سوسول ہو اور اس طرح آپ مسلسل اپنی اپنی ذمہ داریوں سے متعلقہ غیر حاضریوں، لہذا آپ رولز کو ایک بار پھر نوٹس پڑانے کے لیے مطلع کیا جاتا ہے کہ اس نوٹس کی اشاعت کے بعد (15) دن کے اندر اپنی ذمہ داری پر حاضر ہو کر اپنی غیر حاضری کی وجہ بیان کریں، بصورت دیگر مقررہ تاریخ گزارنے کے بعد آپ کے خلاف یکطرفہ کارروائی عمل میں لائے ہوئے الی ایڈ لوی رولز نمبر 2011 کے تحت حاصل کردہ اختیارات بروئے کار لائے ہوئے آپ رولز کو ملازمت سے برخواست کر دیا جائے گا۔

(شریف گل)

ایگزیکٹو ڈائریکٹر آفس، ابتدائی و ثانوی تعلیم ضلع پشاور

Also available on [www.khyberpakhtunkhwa.gov.pk](http://www.khyberpakhtunkhwa.gov.pk) INF(P)3690

شوکار نوٹس



Before the KP Service Tribunal, Perhwar

Appeal No. 1568 / 2019

Mr. Shamsad Khan vs Education Deptt,

Application for allowing the appellant to submit security & process fee in the mentioned service appeal.

R/Sherath:

1 - That the above mentioned appeal is pending adjudication before this august Tribunal which is fixed for hearing today on 19.3.2020.

2 - That appeal of the appellant was admitted for regular hearing on the previous date, but due to un-avoidable circumstances appellant could not submit security and process fee within the prescribed period.

It is therefore, most humbly prayed that on acceptance of this application the period/time for submission of security & process fee may very kindly be extended.

Dated: 19.3.2020.

Appellant  
{  
Only  
Shamsad  
Khan  
Shamsad Khan

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No 1568/2019

Shamshad Khan.....**Appellant.**

**V E R S U S**

DEO & Others.....**Respondents.**

**REPLICATION ON BEHALF OF THE APPELLANT.**

**REPLY TO PRELIMINARY OBJECTIONS.**

All the objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action and locus standi to bring the present appeal and is maintainable in its present form. The appellant has approached this honorable tribunal with clean hands and has concealed nothing from this honorable tribunal. The appellant is not estopped by his conduct to file instant appeal in which all necessary parties have been impleaded instant service appeal is well within time and is not barred by the law.

**REPLY TO FACTS/GROUNDS:**

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules. In the circumstances the appellant has been deprived of his rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land. Respondents have admitted that the appellant absence from duty was not willful and deliberate rather the same was due to involvement in criminal case in which the matter was patched up between the parties and the appellant was accordingly released on bail. No inquiry was conducted nor any notice issued to him and he has been condemned unheard rather an Ex-Parte action has been taken against the appellant. But instead the appellant was awarded **major penalty** of '**Removal from service**' and hence the impugned order is not tenable in the eyes of law and liable to be struck down.

Respondents have tried to twist the facts, and tried to cover their, omissions, commissions and lacunas. The valuable rights of the appellant are involved from which he cannot be deprived. The appellant could not be made to suffer for the fault of others as no one could be punished for the fault of others. In the circumstances the appellant has not been treated according to law and rules being his fundamental right.

**It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for.**

**Dated:-17-03-2021**

*Shamshad Khan*  
**Appellant**

**Through**

*Fazal Shah Mohmand*  
**Fazal Shah Mohmand**  
Advocate,  
Supreme Court of Pakistan.

**AFFIDAVIT**

I, Shamshad Khan, Ex Primary School Teacher, Qilla Jabbar Peshawar (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



*Shamshad Khan*  
**DEPONENT**