

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.569/2019

Date of Institution ... 02.05.2019
Date of Decision ... 15.07.2022

Mr. Shams Ud Din, Junior Clerk (BPS-11), Government High School Domil,
District Chitral. ... (Appellant)

VERSUS

The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and three
others. ... (Respondents)

Noor Muhammad Khattak,
Advocate ... For appellant.

Riaz Khan Pindakhel,
Assistant Advocate General ... For respondents.

Mr. Salah Ud Din ... Member (J)
Mrs. Rozina Rehman ... Member (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer as
copied below:

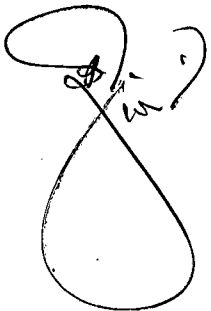
**“On acceptance of this appeal the impugned order dated
21.12.2018 may very kindly be modified to the extent of back
benefits w.e.f 26.03.2015 till date.”**

2. Brief facts of the case are that appellant was appointed as Junior
Clerk in the year 1991. During service, impugned order dated
26.03.2015 was issued by the respondent No.3 whereby major penalty
of removal from service was imposed upon appellant on account of
allegations of corruption, misconduct and absentia. Feeling aggrieved,
he filed departmental appeal but the same was rejected. He then filed

Service Appeal No. 463/2016 which was decided in favor of appellant on 09.02.2018. The respondents implemented the said judgment and reinstated the appellant into service with immediate effect vide order dated 14.04.2018. Feeling aggrieved from the order dated 14.04.2018, appellant filed an application before the respondents to modify the judgment by reinstating the appellant w.e.f 26.3.2015 instead of immediate effect. The respondents accepted the said application and reinstated the appellant into service w.e.f 26.03.2015. In response to the said order, appellant submitted his charge report and started performing his duty. The respondent No.3 issued order dated 11.06.2018 whereby order dated 10.05.2018 was withdrawn by reinstating the appellant with immediate effect. He then filed departmental appeal and the respondent Department reinstated the appellant w.e.f 26.03.2015 but without back benefits. Feeling aggrieved from the impugned order mentioned above, he filed departmental appeal which was not responded to, hence, the present service appeal.

3. We have heard Noor Muhammad Khattak, Advocate learned counsel for the appellant and Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Noor Muhammad Khattak Advocate, learned counsel for the appellant argued inter alia that the impugned order dated 21.12.2018 is against law, facts and norms of natural justice, hence liable to be modified to the extent of back benefits w.e.f 26.03.2015. Learned counsel further submitted that the appellant was not treated by the respondents in

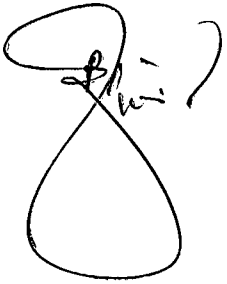


accordance with law and rules and that the respondents violated Articles- 4 & 25 of the Constitution of Islamic Republic of Pakistan, ,1973. He contended that the impugned order dated 21.12.2018 issued by the respondent Department is not tenable in the eyes of law to the extent of back benefits and is liable to be rectified to that extent. He, therefore, requested that the impugned order being violative of principle of natural justice, may be set aside and the appellant may be granted full back benefits of the intervening period in the light of rules and regulation in vogue.

5. Conversely, learned AAG submitted that appellant was removed from service based on the written complaints made against him by Syed Abdul Latif, cousin of the late teacher Faiz Ullah A.T. He contended that the Department never acted in arbitrary manner regarding payment of back benefits and that he was treated according to rules and that before passing the impugned order, all the codal formalities had been complied with.

6. From the record it is evident that vide office order dated 26.03.2015, the appellant was removed from service allegedly involved in corruption, misconduct and absence from duty since long. After completion of all codal formalities in shape of departmental appeal, he filed Service Appeal No.463/2016 in this Tribunal. Relevant Para from the judgment of this Tribunal is hereby reproduced for ready reference:

“7. The appellant “Ex-Junior Clerk” was removed from service on the ground of corruption, misconduct and



absence from duty. Learned AAG remained unable to rebut the argument of Learned counsel for the appellant that the appellant was removed from service without issuance of any charge sheet, statement of allegations and show cause notice. In the given circumstances when the impugned order of removal from service has been issued without adhering to the legal requirements/codal formalities, both the impugned orders are not tenable in the eyes of law.

8. In the light of above, the impugned orders are set aside and the respondent department is directed to conduct denovo proceedings against the appellant. The appellant is reinstated into service without back benefits as the issue of back benefits shall be subject to the outcome of denovo proceedings. The present appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room."

7. It was on 14.04.2018 when appellant was reinstated into service with immediate effect without back benefits. He submitted an application before the District Education Officer on 09.05.2018 and as a result, corrigendum was issued on the next day i.e. 10.05.2018 vide which office order regarding reinstatement into service dated 14.04.2018 in respect of appellant was modified in the following words:



“This office order regarding re-instatement into service issued vide No.7832-38/EB (M)/A-7/Apptt:/MS dated 14/04/2018, in respect of Mr. Shams Ud Din S/O Ghulam Sakhi Junior Clerk Government High School Domil may be read as with effect from his removal from service i.e. 26/03/2015, instead of with immediate effect.”

Another corrigendum was issued on 11.06.2018 vide which corrigendum dated 10.05.2018 was withdrawn and previous order dated 14.04.2018 was restored which was in respect of reinstatement of the appellant with immediate effect. Again, he filed departmental appeal before the Director Elementary & Secondary Education on 06.07.2018 and another revised notification/corrigendum was issued on 21.12.2018 which is hereby reproduced for ready reference:

“REVISED NOTIFICATION/CORRIGENDUM


Office order issued vide this office Endst: No.7832-38/EB (M)/A-7/Apptt:/MS dated 14/04/2018 & Corrigendum No.10684/EB (M) A-7/Apptt:/MS dated 10/05/2018 is modified with reference to the letter received from the Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar vide his No.2600/F. No. A-23/MS/Chitral-III dated 07/12/2018, as under:

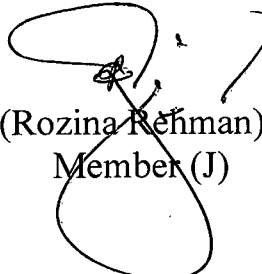
The service in respect of Mr. Shams Ud Din S/O Ghulam Sakhi Junior Clerk is hereby re-instated with effect from 26/03/2015. However, the absence period with effect from 26/03/2015 to 09/02/2018 is hereby converted into Extra Ordinary Leave (without pay).”

From the above revised notification, it is evident that the request of the appellant was honored in respect of his reinstatement w.e.f. 26.03.2015 instead of immediate effect, however, back benefits were declined. During the intervening period w.e.f 26.03.2015 to 09.02.2018, the appellant could not perform his duty on account of his wrongful removal from service. The appellant was not at fault, therefore, no legal justification exists for treating the intervening period as extra ordinary leave without pay. Moreover, there is nothing on file which could show that the appellant was gainfully employed anywhere during the relevant period, therefore, it would be unjust and harsh to deprive him of back benefits for the period for which he remained out of job without any fault from his side. Similarly, the allegations of corruption, misconduct and absence were not proved as nothing was brought before this Bench and the same is clear from the order of respondent Department in shape of revised notification of the District Education Officer vide which the appellant was reinstated into service with effect from the impugned order dated 26.03.2015 when he was removed from service.

7. We are unison on acceptance of this appeal in the light of our observation in the preceding paras which immediately call for the acceptance of the instant service appeal as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
15.07.2022


(Salah Ud Din)
Member (J)


(Rozina Rehman)
Member (J)

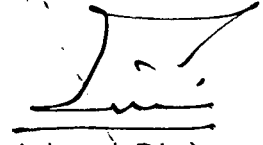
14.07.2022

Appellant alongwith his counsel present: Mr. Mafta-ud-Din, DEO (Male) alongwith Mr. Riaz Ahmad Paindakhel, Assistant Advocate General for the respondents present.

Arguments heard. To come up for order on 15.07.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

ORDER

15.07.2022

Appellant present through counsel.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General for respondents present.

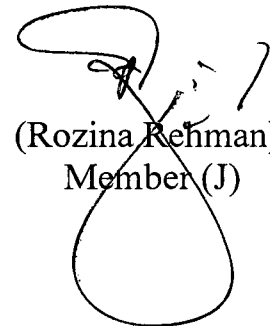
Vide our detailed judgment of today of this Tribunal placed on file, instant service is accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

15.07.2022



(Salah Ud Din)
Member (J)



(Rozina Rehman)
Member (J)

8-3-2022

Due to Retirement of the
Hon'ble Chairman the case is
Adjourned to 27-06-2022

Leader

27.06.2022

Learned counsel for the appellant present. Mr. Bakhmal Jan, Assistant Director (Litigation) and Mr. Muhammad Tufail, Assistant alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Partial arguments heard. To come up for remaining arguments on 01.07.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

01.07.2022

Learned counsel for the appellant present. Mr. Mehmood Ghaznavi, District Education Officer (Male) Chitral Upper and Mr. Muhammad Tufail, Assistant alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant sought adjournment in order to further prepare the brief of the instant appeal. Adjourned. To come up for remaining arguments on 14.07.2022 before the D.B.

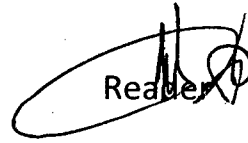
(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

24.11.2020

Due to non-availability of D.B, the case is adjourned to 04.02.2021 for the same as before.


Reader

04.02.2021

Due to COVID-19, the case is adjourned for the same on 03.05.2021 before D.B.


READER

9.5.2021

Due to COVID-19, the case is adjourned to 1.9.2021 for the same.

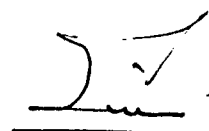

Reader

01.09.2021

Mr. Noor Muhammad Khattak, Advocate, for the appellant present. Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.


Learned counsel for the appellant seeks adjournment on the ground that he has not met preparation for arguments. Adjourned. To come up for arguments before the D.B on 29.11.2021.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

29.11.2021


Due to unavailability of DB, the case is adjourned to 08-03-2022.


Reader

11.5 .2020

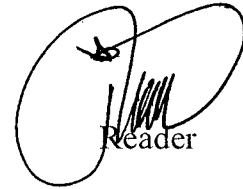
Due to COVID19, the case is adjourned to

4/8 /2020 for the same as before.


Reader

04.08.2020

Due to summer vacation case is adjourned to 05.10.2020
before D.B for the same.


Reader


05.10.2020

Junior counsel for appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate
General present.

Former requests for adjournment as senior counsel
for appellant is indisposed.

Adjourned to 24.11.2020 for arguments before D.B


(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

12.12.2019

Appellant in person present. Asst: AG alongwith Mr. Abdul Malik, Dy: DEO for respondents No. 1 to 3 present.

The representative of the respondents No. 1 to 3 has submitted written reply/comments which is placed on file.

To come up for rejoinder and arguments on 21.01.2020 before D.B.


Chairman

21.01.2020

Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 11.03.2020 for rejoinder and arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

11.03.2020

Junior to counsel for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. M. Ashraf, ADEO for respondents present. Junior to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 11.05.2020 before D.B.


Member


Member

569/2019

17.09.2019

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

Learned AAG requests for further time to submit parawise comments on behalf of respondents No. 1 to 3. Adjourned to 09.10.2019 on which date the requisite reply/comments shall positively be submitted on behalf of the said respondents.

Chairman



09.10.2019

Appellant in person, Addl. AG for respondents NMo. 1 to 3 and Mr. Abdul Qadar, AAO for respondent No. 4 present.

Learned AAG seeks further time for submission of reply/comments on behalf of respondents No. 1 to 3. Adjourned to 13.11.2019 on which date the requisite reply/comments shall positively be submitted.

Chairman



13.11.2019

Counsel for the appellant and Addl. AG present. No representative is available on behalf of the respondents.

Fresh notices be issued to the respondents to furnish the requisite reply/comments on the next date by way of last chance.

Adjourned to 12.12.2019 before S.B.

Chairman




20.06.2019

Counsel for the appellant Shams-ud-Din present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was removed from service on the allegation of corruption and absentia. The appellant filed service appeal before this Tribunal which was partially accepted, the appellant was reinstated into service and the department was directed to conduct de-novo inquiry. After conducting de-novo inquiry, the inquiry officer exonerated the appellant and the appellant was reinstated in service but the intervening period was converted into extra-ordinary leave without pay therefore, the appellant filed departmental appeal on 04.01.2019 but the same was not responded hence, the present service appeal. It was further contended that since the appellant was found exonerated by the inquiry officer in de-novo inquiry therefore, the appellant is entitled for back benefits of the aforesaid period.

The contentions raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 19.08.2019 before S.B.

Appellant deposited
Security & Process Fee
20/6/19


(Muhammad Amin Khan Kundi)
Member

19.08.2019

Counsel for the appellant and Mr. Abdul Qadar, AAO for respondent No. 4 alongwith Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present.

Representative of respondent No. 4 submitted parawise comments on behalf of the said respondent. Learned AAG is required to contact respondents No. 1 to 3 and submit written reply/comments on the next date positively. Adjourned to 17.09.2019 before S.B.

Chairman

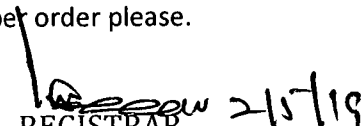




Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 569/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/05/2019	<p>The appeal of Mr. Shams-ud-Din presented today by Mr. Noor Muhammad Khattak 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 2/5/19</p>
2-	09/05/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/06/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
19.06.2019		<p>Counsel for the appellant present and requested for adjournment. Adjourned to 20.06.2019 for preliminary hearing before S.B.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 569 /2018

SHAMS-UD-DIN

VS

EDUCATION DEPTT:

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5.	Appellate order	D	14.
6.	Service appeal	E	15- 17.
7.	Judgment	F	18- 21.
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13.	Impugned order	L	27.
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15.	Vakalat nama	29.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK,
ADVOCATE

Flat No. 3, Upper Floor,
Islamia Club Building,
Khyber Bazar, Peshawar
0345-9383141

OBEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

**Khyber Pakhtunkhwa
Service Tribunal**

APPEAL NO. 569 /2019

Diary No. 695

Dated 2-5-2019

Mr. Shams-Ud-Din, Junior Clerk (BPS-11),
Govt: High School Domil, District Chitral.....**APPELLANT**

VERSUS

- 1- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer (M), District Chitral.
- 4- The District Account Officer, District Chitral.

.....**RESPONDENTS**

**APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST
THE INACTION OF THE RESPONDENT DEPARTMENT BY
NOT MODIFYING/EXTENDING THE IMPUGNED ORDER
DATED 21.12.2018 TO EXTENT OF BACK BENEFITS AND
AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL
APPEAL OF THE APPELLANT WITHIN THE STATUTORY
PERIOD OF NINETY DAYS.**

PRAYER:

That on acceptance of this appeal the impugned order dated 21.12.2018 may very kindly be modified/extended to the extent of back benefits w.e.f. 26.03.2015 till date. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

1- That appellant was appointed as Junior Clerk in the respondent Department in the year 1991 on the proper recommendation of Departmental Selection Committee. That in response of the said appointment order the appellant submitted his charge report and started performing duty quite efficiently and upto the entire satisfaction of his superiors.

*Filed to day
27/5/19.*

2- That during service the respondent No.3 issued an impugned order dated 26.03.2015 against the appellant whereby major penalty of removal from service was imposed on the appellant on account of baseless allegations of corruption, misconduct and absentia. Copy of the impugned order dated 26.03.2015 is attached as annexure.....**A.**

- 3- That appellant feeling aggrieved from the impugned order dated 26.03.2015 filed Departmental appeal before the appellate authority with documentary proofs but the same was rejected by the appellant authority i.e. respondent No.2 on no good grounds vide appellate order dated 21.04.2016. Copies of the Departmental appeal, Supported documents and appellate order are attached as annexure.....**B, C & D.**
- 4- That feeling aggrieved from the impugned appellate order dated 21.04.2016 the appellant filed service appeal No.463/2016 which was decided in favor of the appellant vide judgment dated 09.02.2018. Copies of the service appeal No. 463/2016 and judgment are attached as annexure.....**E & F.**
- 5- That appellant received attested copy of the judgment dated 09.02.2018 and the same was submitted before the respondents. That the respondents implemented the said judgment and re-instated the appellant into service with immediate effect vide order dated 14.04.2018. That appellant feeling aggrieved from the order dated 14.04.2018 filed an application before the respondents to modify the judgment by re-instating the appellant w.e.f. 26.03.2015 instead of with immediate effect. Copies of the order dated 14.04.2018 & application are attached as annexure.....**G & H.**
- 6- That the respondents accepted the said application of the appellant and re-instated into service w.e.f 26.03.2015 vide order dated 10.05.2018 and in response to the said order the appellant submitted his charge report and started performing his duty. Copy of the order dated 26.03.2018 is attached as annexure.....**I.**
- 7- That astonishingly the respondent No.3 issued the order dated 11.06.2018 whereby the order dated 10.05.2018 has been withdrawn by re-instating the appellant with immediate effect. That appellant feeling aggrieved filed Departmental appeal before the appellate authority on which the respondent Department re-instated the appellant w.e.f. 26.03.2015 vide order dated 21.12.2018 but without back benefits. Copies of the order dated 11.06.2018, application & 21.12.2018 are attached as annexure.....**J, K & L.**
- 8- That appellant feeling aggrieved from the impugned order dated 21.12.2018 filed Departmental appeal before the appellate authority but no response has been received so far. Hence the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure.....**M.**

GROUND:

- A- That the impugned order dated 21.12.2018 is against the law, facts, norms of natural justice and materials on the record hence liable to be modified/extended to the extent of back benefits w.e.f. 26.03.2015.

- B- That appellant has not been treated by the respondents in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of Islamic Republic of Pakistan 1973.
- C- That the respondent Department acted in arbitrary and malafide manner by not modifying the impugned order dated 21.12.2018 to the extent of back benefits w.e.f. 26.03.2015.
- D- That the impugned order dated 21.12.2018 issued by the respondent Department without back benefits is not tenable in the eye of law and liable to be modify /rectify to the extent of back benefits of the intervening period.
- E- That the impugned order dated 21.12.2018 is violative of the principle of natural justice.
- F- That in Denovo inquiry the appellant has been exonerated from the charges, therefore the appellant is entitle for the back benefits.
- G- That the Denovo inquiry so conducted by the respondents is also violative of the basic provisions of the E&D Rules 2011.
- H- That appellant is fully entitle for the back benefits of his intervening period in light of the Rules and regulations in vogue.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 26.04.2019

APPELLANT



SHAMS-UD-DIN

THROUGH:

NOOR MOHAMMAD KHATTAK

&



MIR ZAMAN SAFI
ADVOCATES

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHITRAL.

A-4

OFFICE ORDER.

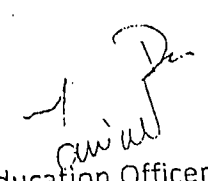
As reported by the Enquiry Committee dated 19-02-015, Mr. Shamsud Din S/O Ghulam Sakhi Junior Clerk Govt: High School Rech Tehsil Mastuj District Chitral is involved in corruption, misconducts and absent from duty since long period.



Therefore under the conduct and disciplinary rules No. 4(6) Major Penalty section iii removal from service page No.1320 Esta Code volume No.2 E&D rules 2011, being a competent authority .Shamsud Din S/O Ghulam Sakhi resident of Jughoor District Chitral is hereby removed from service with immediate effect.

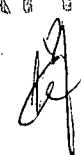
(Moin-ud-Din Khattak)
District Education Officer,
(Male) Chitral.

Endst: No. 5062-68 /EB/(M) D-3, Dated Chitral the 26/03 /2015.
Copy of the above is forwarded for information to the:-

1. Director of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. District Accounts Officer, Chitral.
3. The Manager National Bank Chitral.
4. Incharge Headmaster Govt: High School Rech.
5. Mr. Iftikhar Ahmad DDO GHS Rech/Headmaster, GHS Hone.
6. Accounts Officer (Local Office).
- ✓ 7. Mr. Shamsud Din Junior Clerk GHS Rech, Village Jughoor Tehsil: & District Chitral.


District Education Officer,
(Male) Chitral.


ATTESTED


ATTESTED


TO.

Dated.08/04/2015

THE DIRECTOR OF ELEMENTARY & SECONDARY
EDUCATION, KHYBER PATHTUNKHWA, PESHAWAR.

B - (5)

SUB: DEPARTMENTAL APPEAL AGAINST ILLEGAL, UNLAWFULL, BIASED AND UNJUST
REMOVAL FROM SERVICE ORDER DATED. 26.3.2015, OF THE DISTRICT EDUCATION
OFFICER (MALE) CHITRAL.

Respected Sir,

Being aggrieved and dis-satisfied with the order dated 26-03-2015, passed by the District Education Officer (Male) Chitral, whereby, the Applicant had been removed from his service, with immediate effect, hence the instant departmental appeal is preferred with the following facts and grounds, amongst others enumerated below:-

Copy of impugned order is appended herewith and marked as "A".

1. That I was appointed as junior clerk in the year of 1991 and since then I am doing my job with the education department Chitral. That from the month of December 2012, I am doing my duties at Govt. High School, Rech, Chitral.

2. That, the district education Officer (Male) issued to me a notice/explanation bearing dated 18/2/2014, alleging therein, that I have not prepared the pension case of one late teacher namely Faizullah and absence from duty, and called me to attend his good office for explaining the position, however I appeared before the District Education Officer in compliance of his notice, and informed him that, the pension case of the late Teacher Faizullah, have already completed and amounts have been deposited in his account prior to issuance of the notice.

Copy of notice/explanation is attached herewith and marked as annexure B.

3. That where after, I have not been intimated about any steps or proceeding against me by the Department, but suddenly I received my termination order dated 26/3/2015 from the District education office Chitral, hence this appeal with the following grounds.

GROUND OF REPRESENTATION/APPEAL

1. That the impugned order of removing from service dated 26-3-2015, is ab-initio void and is liable to be set aside.

2. That, the District Education Officer (Male) Chitral, committed gross illegality, while keeping me in darkness about any proceeding against me, as such not followed the prescribe rules and passed an illegal order without providing an opportunity to me of personal hearing, or constituting any inquiry committee or any other proceeding and condemned me unheard which is against the prescribed norms of justice and equity.

3. That through notice/explanation dated 18/2/2014, I have been blamed to delay in preparing the pension case of late Faizullah, however, from the perusal of office order dated 26/3/2015, I

ATTESTED

ATTESTED

6

have been removed from service on the basis of corruption, misconduct and absent from duty, in the light of inquiry committee.

4. I have not been intimated about constitution of an inquiry committee, no notice about constitution of inquiry committee been given to me, no charge sheet or statement of allegation has been given to me, neither the inquiry committee ever intimated or bother to hear me while proceeding against me. Neither have I been directed to submit my written reply to the inquiry committee.

5. That I have never involved in such type of allegation as foisted against me in the office order dated 26/03/2015, and I have been removed from service in an expatee proceeding, which without adopting the proper procedure, making my representation necessary following the prescribe rule, as such the order dated 26/3/2015 is liable to be set aside being unheard and being against the principal norms of justice and equity.

6. That no period of my absentia are specifically been mehtioned, moreover no notice or publication as per rule has ever been given to me, but in slip sharp manner, the impugned order has been passed.

5. That no show cause notice has been given to me before passing the impugned order dated 26/3/2015, which is against the norms of justice.


6. That I have not been given any notice regarding of my absentia to resume my duties rather I have directly removed from my service.

Other relevant documents are attached herewith and marked as annexure C to H.

PRAYER

it is therefore most humbly prayed that in view of the facts and grounds my instant departmental appeal/representation may kindly be considered sympathically by canceling/setting aside the impugned removing from service order dated 26/3/2015, passed by District Education Officer (Male) Chitral, and reinstate me in my service.

Yours sincerely,


(Shamsuddin)

Son of Ghulam Sakhi

Junior Clerk, Govt. High School Rech, Chitral.

ATTESTED



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C-7

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHITRAL.

OFFICE ORDER.

Mr. Shamsud Din Junior Clerk GHS: Rech is hereby directed to perform his additional duties with Shahzad Nadim ADO, Muhammad Zaman ADO and Ziur Rahman representative in addition to his own school duties till further order. Previous order vide this office NO. 20688-90/EB (M) dated 17/10/2011 is hereby restored.

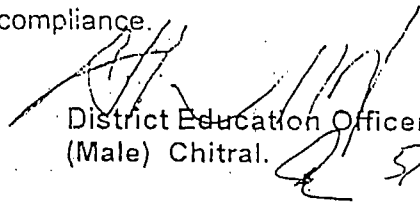
(NISAR MUHAMMAD)


District Education Officer
(Male) Chitral.



Endst: No. 5581-83 /EB (M)T-10/Prov/Arrang: Dated Chitral, the 5/6/13 ✓

Copy to:-

- 1 Concerned ADOs (Litigation)
- 2 Headmaster GHS: Rech.
- 3 Official concerned for strict compliance.


District Education Officer
(Male) Chitral. 5/6/13

ATTESTED



ATTESTED


بعدالت جناب سول جج - ۱ اعلیٰ قاضی صاحب، چترال

بجانبی عاقلہ Vs سکرٹری تعلیم

8

Serial No. Title Order or other Proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary. حکم نمبر تاریخ

بنا سکرٹری تعلیم نے سول جج کے سامنے اپنا درخواست
مقررہ کو پیش کیا ہے۔
(MUNABAD) (MUNABAD)
[Signature]

0-28
6/10

مدعیہ بذریعہ مختار خاص میراہ وکیل حاضر مدعیہ
میرا تا سہ بذریعہ نمائندہ شخص الدین حاضر۔
مدعیہ میرا تا سہ بذریعہ ایڈووکیٹ حاضر نمائندہ مدعیہ
میرا تا سہ بیانی ہے کہ م. پ. کا تبادلہ ہوا ہے
کیونکہ سکرٹری م. پ. بنوں سے تعلق رکھتا ہے لہذا حاضر
نہ ہے بدین وجہ شہادت تلبیہ صلیت طلب
کرتا ہے عدالت نذا کے نوٹس میں کہ تقریباً
2- ڈھائی مہینے سے سکرٹری م. پ. مقدمات خود میں
پیش نہیں ہو رہا ہے اور نہ ہی اس نسبت کوئی
Section 147 Intimation عدالت نذا کو دی گئی
ہے جسے بیان سے تم سکرٹری م. پ. تقریباً دو
مقدمات خود ہی پیروی نہیں کر رہا ہے جسکی
مقدمات سے خلاف حکومت کا پرواز اتوار
غیر حاضر سکرٹری م. پ. و عدم موجودگی شہادت
مدعیہ مدعیہ میرا تا سہ، مدعیہ مدعیہ مذکورہ ہیں

0-29

ATTESTED

Issued from Req. Record Original/Copy 03/10/15

ATTESTED

بی بی عاتقہ (9) vs سرکار سید علی محمد

Case No.

Title

vs

Serial No Date of Order	Order or other Proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.	حکم نمبر اتاری
<p>10-30 10-12-13</p>	<p>1000/- روپیہ پر گمانہ عائد کیا جاتا ہے جو کہ فقہار خاص مدعا علیہ بہ افزودہ شخص احاطہ شدہ آرڈر ریٹیفیکیشن ثبوت باقی و صولی رقم مذکورہ کیا گیا۔ مدعا علیہ نجات نامہ سے نمائندے کو سختی سے ہدایت کی جاتی ہے کہ آئندہ پیشی پر اپنی شہادت سمراہ سینٹر P.P. لہیفہ ہجوری پیش کرے۔ اصل پر شہادت مدعا علیہ نجات نامہ مورخہ 15/11/13 کو پیش ہو۔</p> <p>محمد علی خان سول جج</p> <p>سورج کوشلین کرم احکرم مددہ نیا میں آئندہ تاریخ پیشی مورخہ 12/13 10 مقرر ہے۔ 17/12/13</p> <p>فدولتین کاغذ - حیات مدعا علیہ نجات نمبر 30 فوگر P.P. کن سہم سول جج کا بنا ہے حیات قطع بند نہ ہے۔ سہم بڑی درجہ درجہ ہے۔ سہم سول جج مدعا علیہ مذکورہ مورخہ 17/12/13</p> <p>(MUHAMMAD SAJJAD KHAN)</p>	<p>15/11/13</p> <p>ATTESTED</p> <p>ATTESTED</p> <p>Issued from Reg. Rec Original Copy 03/10/15</p>

1000/- روپیہ پر گمانہ عائد کیا جاتا ہے جو کہ فقہار خاص مدعا علیہ بہ افزودہ شخص احاطہ شدہ آرڈر ریٹیفیکیشن ثبوت باقی و صولی رقم مذکورہ کیا گیا۔ مدعا علیہ نجات نامہ سے نمائندے کو سختی سے ہدایت کی جاتی ہے کہ آئندہ پیشی پر اپنی شہادت سمراہ سینٹر P.P. لہیفہ ہجوری پیش کرے۔ اصل پر شہادت مدعا علیہ نجات نامہ مورخہ 15/11/13 کو پیش ہو۔

محمد علی خان
 سول جج

15/11/13

ATTESTED

ATTESTED

(MUHAMMAD SAJJAD KHAN)

National Bank of Pakistan
 (S) ATJ
 (Current PLS Finance Account Paym. Slip)
 Paid for CREDIT
 of account No. 9121101-4-11
 In the name (s) of M/S. FIZULLAH
 No. 422cm. 2
 Particulars
 Denomination (s) No. of notes (s) Amount
 Rs. 1000/- 1000/-
 Rs. 500/- 500/-
 Rs. 100/- 100/-
 Rs. 50/- 50/-
 Rs. 20/- 20/-
 Rs. 10/- 10/-
 Total Rs. 9850/-
 Received
 Cashed
 Head Cashier
 Officer's Signature
 Scroll Cash No.

ATTESTED

ATTESTED

National Bank of Pakistan
 (S) ATJ
 (Current PLS Finance Account Paym. Slip)
 Paid for CREDIT
 of account No. 9121101-4-11
 In the name (s) of M/S. FIZULLAH
 No. 422cm. 2
 Particulars
 Denomination (s) No. of notes (s) Amount
 Rs. 1000/- 1000/-
 Rs. 500/- 500/-
 Rs. 100/- 100/-
 Rs. 50/- 50/-
 Rs. 20/- 20/-
 Rs. 10/- 10/-
 Total Rs. 134350/-
 Received
 Cashed
 Head Cashier
 Officer's Signature
 Scroll Cash No.


10

~~XXXXXXXXXX~~

(A)

(11)

certified that all the liabilities of widow of Late Fazullah AT of GHS Reehi have been paid to her. Nothing is outstanding in the part of JIC Shamsud Din concerning to the case of pension of Late Fazullah.


HEAD MASTER
Govt High School Reehi - 2015
Distt. Central

ATTESTED





ATTESTED



OFFICE OF THE
DISTRICT ACCOUNTS OFFICER
CHITRAL

12

Dated 02.12.2013

NO.DAO-CHITRAL/Commutation Authority/

The Drawing & Disbursing Officer,
HEAD MASTER GHS RECH

2/3883, C

Sub:- COMMUTATION AUTHORITY IN RESPECT OF
NOORAZIMA W/O LATE FAIZULLAH EX: AT

Please refer to your letter No. 9294
dated 24.09.2013 forwarding there in pension case in respect
of above named officer / official.

2. You are hereby authorized to submit a bill for Rs.750725.00--
(Rupees: SEVEN HUNDRED FIFTY THOUSAND SEVEN HUNDRED TWENTY-FIVE)
at the counter of this office for issuance of cross cheque in favour
of Mr. Mrs. Mst. NOORAZIMA W/O LATE FAIZULLAH (Per.No :
00314647)
NIC.NO on account of Commutation of pension.

Bank Name : *NBP Chitral.*
A/c No : *9210-4*

3. The amount involved in charged / other than charged
and debit to the Federal Govt. under the following head
of accounts:-

01	- General Administration.	A04	- Transfer payment.
011	- Fiscal administration.	A041	- Pensionary benefits.
01110	- Pension.	A04102	- Commuted value of pension.
		A04103	- Gratuity value of pension.

Withheld amount

Amount Payable:	750,725.00
Amount With Held:	0.00
Amount Paid:	750,725.00

ATTESTED

Recoveries

Note:- This authority letter may please be attached with the bill in original
along with the Office order/notification of retirement. Vendor No, Name of Bank
and A/c No of payee may also be recorded on the bill

Remarks:-

Copy for information to :-
Mr. Mrs. Mst. Mst. NOORAZIMA W/O LATE FAIZULLAH

ACCOUNTS OFFICER (PENSION)

ATTESTED

ACCOUNTS OFFICER (PENSION)

National Bank of Pakistan

Account Statement

Account Title(s) NOOR AZIMA W/O FAIZ ULLAH

Address: VILL: SIVIRIJ SHAGRAM

Town:

District:

City: CHITRAL

Province/State: KH. PAKHTOON

Country: PAKISTAN

13

Postal Code:

Branch Code/Name: 321 Main Branch Chitral

Region Name: Peshawar

Statement of Account

Statement Printing Date: 04-Apr-2015

Product Name: PLS Savings Account

CIF No: 3807355

Account No: 3051573008

IBAN: PK31NBPA0321003051573008

B/F Balance: 0.00

From: 01-Dec-2013

To: 03-Apr-2015

S. No.	Date	Particulars	Instno	Memo	Debit	Credit	Balance
1	09-Jan-2014	CASH	8447426		150,000.00	0.00	600,725.00
2	09-Jan-2014	DR VOUCHER	12060002		125.00	0.00	600,600.00
3	15-Jan-2014	PROFIT/LOSS	22913		0.00	4,463.00	605,063.00
4	03-Jun-2014	TRANSFER	6000052		0.00	238,193.00	843,256.00
5	09-Jun-2014	CASH	8447427		150,000.00	0.00	693,256.00
6	30-Jun-2014	TRANSFER	6000116		0.00	25,462.00	718,718.00
7	16-Jul-2014	PROFIT/LOSS	22919		0.00	21,885.00	740,603.00
8	22-Jul-2014	TRANSFER	6000057		0.00	25,462.00	766,065.00
9	12-Aug-2014	CASH	8447429		50,000.00	0.00	716,065.00
10	03-Sep-2014	SALARY	6000053		0.00	27,724.00	743,789.00
11	30-Sep-2014	CASH	8447430		50,000.00	0.00	693,789.00
12	02-Oct-2014	SALARY	6000060		0.00	29,985.00	723,774.00
13	20-Oct-2014	CASH	8447431		50,000.00	0.00	673,774.00
14	31-Oct-2014	TRANSFER	6000072		0.00	27,724.00	701,498.00
15	01-Dec-2014	SALARY	6000109		0.00	27,724.00	729,222.00
16	31-Dec-2014	TRANSFER	6000085		0.00	27,724.00	756,946.00
17	09-Jan-2015	PROFIT/LOSS	22921		0.00	25,328.00	782,274.00
18	02-Feb-2015	SALARY	6000096		0.00	27,724.00	809,998.00
19	24-Feb-2015	CASH	6		0.00	428,500.00	1,238,498.00
20	24-Feb-2015	CASH	7		0.00	134,350.00	1,372,848.00
21	02-Mar-2015	SALARY	4000088		0.00	27,724.00	1,400,572.00
22	26-Mar-2015	CASH WITHDRAWAL	8447433		75,000.00	0.00	1,325,572.00
23	03-Apr-2015	DEPOSIT			0.00	27,724.00	1,353,296.00

Total 16 Credit transactions of amount: 1,127,696.00

Total 7 Debit transactions of amount: 525,125.00

ATTESTED

ATTESTED







D - 14

Directorate of Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar.

No. 3729 /A-23/MS/Chitral-III

Dated Peshawar the 21/4 /2016.

To

Mr. Shamsud Din, Ex-J/Clerk
GHS Rech, District
Chitral

Subject: - APPEAL FOR RE-INSTATEMENT

I am directed to refer to your appeal dated nil, on the subject cited above and to inform you that your appeal has no weightage. Hence your appeal is regretted under Section 17 read with rule (2), (a) of the E&D Rules 2011.

sdl

Assistant Director (Admn)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endst No. _____/

Copy forwarded to the: -

1. District Education Officer (M) Chitral.
2. PA to Director E&SE local Directorate.
3. Master File.

sdc

Assistant Director (Admn)
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

ATTESTED

ATTESTED

[Signature]

[Signature]

[Signature]

E-15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 463 /2016

Mr. Shams-Ud-Din, Junior Clerk (BPS-11),
Govt: High School Rech, Tehsil Mastuj, District Chitral

..... **APPELLANT**

VERSUS

- 1- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer (M), District Chitral.
- 4- The District Account Officer, District Chitral.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 26-03-2015 WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE WITH IMMEDIATE EFFECT AND AGAINST THE IMPUGNED APPELLATE ORDER DATED 21-04-2016 WHEREBY THE APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 26-03-2015 and 21-04-2016 may be set aside and the respondents may be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:

- 1- That on proper recommendation/approval of Departmental Selection Committee of Elementary and Secondary Education Department Chitral, the appellant was appointed as Junior Clerk in the year 1991. That in response the appellant submitted his charge report and Medical Certificate and started performing his duty at the concern station quite efficiently and up to the entire satisfaction of his superiors.


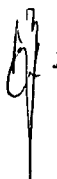
ATTESTED



- 2- That during service the respondent No.3 issued an impugned order dated 26-03-2015 against the appellant whereby major penalty of removal from service was imposed on the appellant on account of baseless allegations of corruption, misconduct and absentia. Copy of the impugned order dated 26-03-2015 is attached as annexure..... **A.**
- 3- That appellant feeling aggrieved from the impugned order dated 26-03-2015 filed Departmental appeal to the appellate authority on 08-04-2015 with documentary proofs but the same was rejected by the appellate authority i.e. respondent No.2 on no good grounds vide impugned order dated 21-04-2016. Copies of the Departmental appeal, supported documents and appellate order are attached as annexure **B, C and D.**
- 4- That appellant having no other remedy filed the instant appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned orders dated 26-03-2015 and 21-04-2016 issued by the respondents is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That no charge sheet and statement of allegation has been served on the appellant before issuing the impugned order dated 26.3.2015.
- D- That no show cause notice has been served on the appellant by the respondent Department before issuing the impugned order dated 26-03-2015 against the appellant.
- E- That no regular inquiry has been conducted before issuing the impugned order dated 26-03-2015 which is as per Supreme Court judgments is necessary before imposition of major punishments on the civil servant.
- F- That no chance of personnel hearing/personnel defense has been given to the appellant before issuing the impugned order dated 26-03-2015.


 ATTESTED


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- G- That the respondent Department acted in arbitrary and malafide manner while issuing the impugned order dated 26-03-2015 against the appellant.
- H- That the respondent No.3 committed gross illegality by not following the prescribed rules while issuing the impugned order dated 26-03-2015.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 29.4.2016

APPELLANT



SHAMS UD DIN

THROUGH:

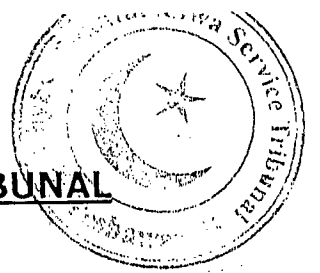


**NOOR MOHAMMAD KHATTAK
ADVOCATE
(0345-9383141)**

ATTESTED



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



APPEAL NO. 463 /2016

N.W.F. Province
Service Tribunal
Diary No. 440
Dated 02/5/2016

Mr. Shams-Ud-Din, Junior Clerk (BPS-11),
Govt: High School Rech, Tehsil Mastuj, District Chitral

APPELLANT

F-18

VERSUS

- 1- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer (M), District Chitral.
- 4- The District Account Officer, District Chitral.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 26-03-2015 WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE WITH IMMEDIATE EFFECT AND AGAINST THE IMPUGNED APPELLATE ORDER DATED 21-04-2016 WHEREBY THE APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 26-03-2015 and 21-04-2016 may be set aside and the respondents may be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

R/SHEWETH:
ON FACTS:

ATTESTED

g

Brief facts giving rise to the present appeal are as under:

- 1- That on proper recommendation/approval of Departmental Selection Committee of Elementary and Secondary Education Department Chitral, the appellant was appointed as Junior Clerk in the year 1991. That in response the appellant submitted his charge report and Medical Certificate and started performing his duty at the concern station quite efficiently and up to the entire satisfaction of his superiors.

g
Filed to-day
2/5/16

19

Name of
Case/
Proceeding

Order or other proceedings with signature of Judge or Magistrate



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 463/2016

Date of Institution ... 02.05.2016
Date of Decision ... 09.02.2018

Shams Ud Din, Junior Clerk (BPS-11), Government High School Rech, Tehsil Mastuj, District Chitral.
(Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
2. The Director, Elementary & Secondary Education Department,
3. The District Education Officer (Male), District Chitral.
4. The District Account Officer, District Chitral.
(Respondents)

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER.-

ATTESTED

Learned counsel for the appellant Mr. Riaz Pinda Kheil,
learned Assistant Advocate General for the respondents
present.

ATTESTED

2. The appellant has filed the present service appeal u/s
4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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20

against the respondents and made impugned the order dated 26.03.2015 whereby he was removed from service. The

appellant has also challenged the order dated 21.04.2016 whereby departmental appeal of the appellant was regretted.

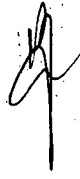
3. Learned counsel for the appellant argued that the appellant was removed from service without adhering to the legal requirements. Further argued that the appellant was removed on the ground of corruption, misconduct and absence from duty under E&D rules without issuance of any charge sheet, statement of allegation and show cause notice.

5. As against that learned Assistant Advocate General while opposing the present appeal, controverted the arguments of the learned counsel for the appellant and stated that the impugned orders were validly issued.

6. Arguments heard. File perused.

7. The appellant "Ex-Junior Clerk" was removed from service on the ground of corruption, misconduct and absence from duty. Learned AAG remained unable to rebut the argument of Learned counsel for the appellant that the appellant was removed from service without issuance of any charge sheet, statement of allegations and show cause

Dawar



ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED



notice. In the given circumstances when the impugned order of removal from service has been issued without adhering to the legal requirements/codal formalities, both the impugned orders are not tenable in the eyes of law.

8. In the light of above, the impugned orders are set aside and the respondent department is directed to conduct denovo proceedings against the appellant. The appellant is reinstated into service without back benefits as the issue of back benefits shall be subject to the outcome of denovo proceedings. The present appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

Announced
09.02.2018

sd/- M. Hameed Nighal
Member

sd/- Gulzar Khan
Member

Certificate to be true copy
MEMBER
K.P. Singh
Surat, Gujarat,
Peshwar

Date of Presentation of Application 26-02-2018
Number of Words 1500
Copying Fee 10.00
Urgent 2.00
Total 12.00
Name of Copyist [Signature]
Date of Completion of Copy 26-2-18
Date of Delivery of Copy 26-2-18

ATTESTED

[Signature]

[Signature]

G-92



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
CHITRAL
PHONE NO.0943-412627 EMAIL ADDRESS:
deomalechitral@gmail.com.

OFFICE ORDER.

Whereas Enquiry Committee constituted vide No. 16433-35/EB (M) /E-2/Enquiry dated 18/12/2014 to probe the official misconduct of Mr. Shams Ud Din Junior Clerk GHS Rech .
Whereas in the light of the recommendation of enquiry committee Mr. Shams Ud Din S/O Ghulam Sakhi Junior Clerk GHS Rech was removed from service vide office order no. 5062-68/EB (M)/D-3/ dated Chitral the 26/03/2015.
Whereas the said JC filed a case in Service Tribunal Khyber Pakhtunkhwa Peshawar against the removal from service order.
Whereas Khyber Pakhtunkhwa Service Tribunal Peshawar accepted the plea of Mr. Shams Ud Din vide Service Appeal No. 463/2016 dated 09/02/2018 with the direction to conduct De-novo enquiry regarding the grant of back benefits.
Whereas in the light of De-novo enquiry report/ recommendation and No. 1721/Lit-II dated Peshawar the 09/04/2018 received from the Director E&SED , Mr. Shams Ud Din Junior Clerk is hereby re-instated in to Govt service with immediate effect without back benefits and hereby posted at Govt High School Domil District Chitral.

(Ihsan-Ul-Haq)
District Education Officer,
(Male) Chitral.

Endst: No. 7832-38 /EB (M) A-7/ Apptt: MS dated Chitral the 14/4 /2018.

Copy forwarded to the:-

1. The Honorable Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar with ref to judgment Service Appeal NO. 463/2016 dated 09/02/2018 for information, please.
2. Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar with re to his No. 1721-22/(lit-II) dated 09/04/2018 for information, please.
3. District Accounts Officer Chitral for information, please.
4. District Monitoring Officer (IMU) Chitral for information, please.
5. Head Master Govt High School Domil for information and further n/ action.
6. DEMIS of local office for information.
7. Official concerned for information.

ATTESTED


District Education Officer,
(Male) Chitral.





بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر صاحب مردانہ چترال

مضمون: درخواست بمردانہ نظر ثانی بر بحالی بحیثیت جونیئر کلرک برائے حکم نامہ سروس ٹریبونل محرومہ 09-02-2018 از تاریخ برخاستگی

یعنی مورخہ 26-03-2015 سے

عرض مودبانہ یہ ہے

- 1- یہ کہ فدوی مورخہ 26-03-2015 کو غیر قانونی طور پر اس وقت کے ڈی، ای، او صاحب نے سروس سے برطرف کیا تھا۔
- 2- یہ کہ فدوی نے اس کے خلاف سروس ٹریبونل پشاور میں سروس اپیل نمبر 463/2016 دائر کی۔
- 3- یہ کہ مورخہ 09-02-2018 کو سروس ٹریبونل پشاور نے واضح طور پر حکم نامہ جاری کی جو ذیل میں دوبارہ تحریر میں لائی جاتی ہے

Para NO 7. Learned AAG Remained unable to rebut that the argument of learned counsel for the appellant that the appellant was removed from service with out issue of any charge sheet, statement of allegations and show cause notice. In the given circumstances when the impugned order of removal from service has been issued without adhering to the legal requirment/codal formalities, both the impugned order are not tenable in the eye of law.

Para No8. The appellant is reinstated into service without back benefits as the issue of back benefits shall be subject to out come of the denove proceeding.

- 4- حضور والا: درجہ بالا تحریر شدہ حکم نامہ واضح ہے۔ اس میں کوئی ابہام نہیں ہے۔ معزز عدالت نے قرار دیا ہے۔ کہ جو بھی کیا گیا ہے۔ وہ غیر قانونی ہے۔ اور معزز عدالت نے فدوی کو Re-instated کے لفظ سے بحال کیا ہے
- 5- یہ کہ محکمے کے طرف سے جو انکوائری کمیٹی مقرر کی گئی تھی انہوں نے مجھے بلائے بغیر انکوائری رپورٹ جمع کی ہے۔ جو کہ قابل اعتراض غیر قانونی اور بدینتی پر مبنی ہے۔
- 6- جناب والا: لہذا درخواست ہے کہ عدالتی حکم کے بموجب فدوی کی بحالی کا حکم نامہ 26-03-2015 سے جاری فرما کے دیا یا جات دلوانے کا حکم صادر فرمائے جائے۔

فیصلہ عدالت اور تقرر نامہ لف ہے۔

عین نواز ہوگی!

ATTESTED

نقطہ
عریضے شمس الدین
جونیئر کلرک گورنمنٹ ہائی سکول دیمل چترال

مورخہ: 09-05-2018



I-24

**OFFICE OF THE DISTRICT EDUCATION
OFFICER (MALE) CHITRAL**
PHONE NO. 0943-412627
EMAIL ADDRESS: deomalechitral@gmail.com

CORRIGENDUM.

This office order regarding re-instatement into service issued vide No. 7832-38/EB (M)/A-7/Apptt: /MS dated 14/04/2018 , in respect of Mr. Shams Ud Din S/O Ghulam Sakhi Junior Clerk Gout High School Domil may be read as with effect from his removal from service i.e. 26/03/2015 , instead of with immediate effect.

Note:-

Necessary entry to this effect should be made in his service book and other official records.

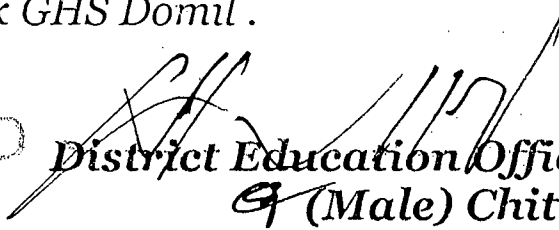
(Ihsan-Ul-Haq)
District Education Officer,
(Male) Chitral.

Endst: No. 10684-88 /EB (M) A-7/Apptt: /MS dated 10 / 5 /2018.

Copy to the:-

1. Honorable Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar for information, please.
2. Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar for information, please.
3. District Accounts Officer Chitral for information, please.
4. Headmaster GHS Domil for necessary action.
5. Shams Ud Din Junior Clerk GHS Domil .

ATTESTED


District Education Officer,
(Male) Chitral.





OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) CHITRALPH: 094341262 E-Mail:
deomalechitral@gmail.com

J-25

CORRIGENDUM

Office order issued vide Endst: No.10684-88/EB (M) A-7/Apptt: /MS dated 10-05-2018 is withdrawn and the previous order issued vide Endst: No. 7832-38/EB (M) A-7/Apptt/MS dated Chitral the 14-04-2018 is hereby restored which re-instates the ex-J/Clerk Mr. Shams-Ud-Din S/O Ghulam Sakhi with immediate effect.

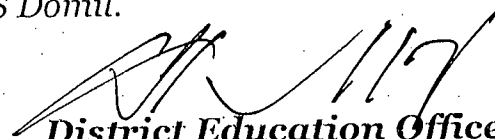
Necessary entry to this effect should be made in his service book and other official records.

(Ihsan-Ul-Haq)
District Education Officer,
(Male) Chitral.

Endst: No. 13318-22 /EB(M)A-7/Apptt/MS dated 11/6 /2018.

Copy to the;

1. Honorable Register Khyber Pakhtunkhwa Service Tribunal Peshawar for information, please.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar for, Information, please.
3. District Accounts Officer Chitral for information please.
4. Headmaster GHS Domil for necessary action.
5. Shams-Ud-Din Junior Clerk GHS Domil.


District Education Officer,
(Male) Chitral.

ATTESTED





ATTESTED

To

K-26

The Director,
Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.

Subject: DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 11-06-2018

R/Sir,

Most respectfully it is stated that I am working as Junior Clerk under the control of DEO (Male) Chitral. I was removed from service against which I filed service appeal before the Service Tribunal which was properly allowed by the Honourable Tribunal by ordering to re-instate me vide judgment dated 9.2.2018. After my re-instatement in to service the Department Conducted denevo inquiry was conducted and vide order dated 10-05-2018 I was re-instated into service from the date of my removal i.e. 26-03-2015.

But astonishingly, I received another order dated 11-06-2018 the said order dated 10.5.2018 is withdrawn and my reinstatement from the date of my removal was converted into immediate effect.

Therefore, it is most kindly requested to cancel the order dated 11-06-2018 and re-instate me into service with all back benefits i.e. 26-03-2015 I shall be very thankful to you for this kindness.

Thanking you in anticipation

Yours Obediently,

Shams-ud-Din
D. 06/07/2018
SHAMS-UD-DIN s/o Ghulam Sakhi,
Junior Clerk, DEO (M) Chitral

ATTESTED

[Signature]

[Signature]

33

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHITRAL

PHONE NUMBER 0943412627.

Email address: deomchitral@gmail.com.

L-27

REVISED NOTIFICATION/CORRIGENDUM.

Office order issued vide this office Endst: No. 7832-38/EB (M) A-7/Apptt:/MS dated 14/04/2018 & Corrigendum No. 10684-88/EB (M) A-7/Apptt:/MS dated 10/05/2018 is modified with reference to the letter received from the Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar vide his No. 2600/F.No. A-23/MS/Chitral-III dated 07/12/2018, as under:

The service in respect of Mr. Shams Ud Din S/O Ghulam Sakhi Junior Clerk is hereby re-instated with effect from 26/03/2015. However the absence period with effect from 26/03/2015 to 09/02/2018 is hereby converted into Extra Ordinary Leave (without pay)

Note:

Necessary entry to this effect should be made in his service book and other official records.

(Ihsan-Ul-Haq)
District Education Officer
(Male) Chitral

Endst: No. 29202 /EB (M) A-7/Apptt: /MS Dated 21/12/2018.

Copy forwarded to the:

1. Honorable Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar for his kind information.
2. Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar for information, please.
3. District Accounts Officer Chitral for information, please.
4. Headmaster GHS Domil for information & further necessary action, please
5. Shams Ud Din Junior Clerk GHS Domil, for information.

District Education Officer
(Male) Chitral

4

To

The Director,
Elementary & Secondary Education Department,
Khyber Pakhtunkhwa, Peshawar.

M-28

Subject: DEPARTMENTAL APPEAL FOR MODIFYING THE ORDER
DATED 21.12.2018 TO THE EXTENT OF BACK BENEFITS.

Respected Sir,

Most respectfully it is stated that I am the employee of your good self Department and is working as Junior Clerk in Government High School Domil, Chitral. During service I was removed from service vide order dated 26.3.2015 on the basis of certain allegations against which I filed service appeal No. 463/2016 and the same was allowed in my favor vide judgment dated 09.02.2018. After my re-instatement into service the Department conducted Denovo inquiry and vide order dated 10.05.2018 I was re-instated into service from the date of my removal i.e. 26.03.2015. But later on the said order dated 10.5.2018 was withdrawn and the appellant was re-instated into service with immediate effect i.e. 11.06.2018. I was feeling aggrieved from the order dated 11.06.2018 filed Departmental appeal before Your good self which was allowed vide order dated 21.12.2018 and the appellant is re-instated into service w.e.f. 26.03.2015 but the intervening period w.e.f. 26.03.2015 has been converted into Extra Ordinary Leave without pay.


Respected Sir,

It is also pertinent to mention that the Directorate of Anti-Corruption acquitted me from all the allegations leveled against me and issued a Non Involvement Certificate vide dated 12.11.2018. After the acquittal from the allegations I am fully entitle for all the back benefits w.e.f. 26.03.2015 till date while I have been re-instated without back benefits vide order dated 21.12.2018.

It is therefore, most humbly requested that on acceptance of this Departmental appeal the impugned order dated 21.12.2018 may very kindly be modified/rectified to the extent of back benefits.

Dated: 04.01.2019.

APPELLANT


SHAMS-UD-DIN
(Junior Clerk)

Govt: High School Domil, Dist: Chitral



VAKALATNAMA

Before the KP Service Tribunal, Peshawar

No. _____/2019

Shams-ud-Din

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt:

(RESPONDENT)
(DEFENDANT)

I/We *Shams-ud-Din*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2019

Shams

CLIENT

M
ACCEPTED
NOOR MOHAMMAD KHATTAK

KAMRAN KHAN
&
M
MIR ZAMAN SAFI
ADVOCATES

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No: 559/2019

Shams-ud-Din, Junior Clerk, Government High School Damel, Tehsil
& District Chitral

(Appellant)

VERSUS

1. Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&S) Department, Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer (M) District Chitral.
4. District Accounts Officer Chitral.

(Respondents)

PARAWISE COMMENTS ON BEHALF OF
RESPONDENT NO.4

Respectfully Sheweth:

Preliminary Objections:

- A. That the Appellant has no cause of action against the respondent.
- B. That the Appellant has no locus standi.
- C. That the instant appeal is not maintainable.
- D. That the Appellant has not come to this Court with clean hands.

ParaWise Reply:

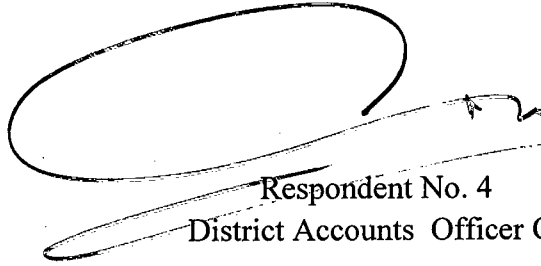
- Para1: Para No.1 Pertains to records, hence needs no comments.
- Para 2 &3: Needs no comments, respondent No. 2 is in better position to answer it.
- Para 4: Para No. 4 also relates to respondent No.2.
- Para 5: Incorrect, that the appellant was regularized without back benefits as per order of the Court and respondents have no authority to modify the Court Order.
- Para 6: That the re-instating order of the department/ respondent No.3 dated 10/05/2018 was not according to the Court order.
- Para 7: Correct, Order of re-instating of the appellant dated 11/06/2018 was according to Court order.
- Para 8: Hence appeal is being devoid of merits be dismissed.

Grounds :

- a. Relates to respondent No 3 and he can better answer the same.
- b. Incorrect, the appellant has been treated in accordance to the Court Order 9/2/2018.
- c. Para .C relates to respondent No.3 and replying respondent needs no comments.
- d. Para D relates with Honorable Court, hence needs no comments
- e. Para E relates with Honorable Court, needs no comments.
- f. Para F pertains to record and respondent No. 3 will be in better position to answer it.
- g. Para G relates to department / respondent No 3 and he will be in better position to answer.
- h. Para H is incorrect, the appellant has been treated according to the Court Order.
- i. Para I relates to the Court, needs no comments.

Keeping in view the above mentioned facts, it is humbly prayed that the appeal in hand, having no merits, may kindly be dismissed with cost.

Dated : 16 / 8 / 19



Respondent No. 4
District Accounts Officer Chitral

AUTHORITY LETTER

Mr. Abdul Qadir Accounts Officer of this office is hereby authorized to attend the Honorable service tribunal Khyber Pakhtunkhwa Peshawar in connection with the case Shamsud Din VS District Accounts Officer & others.

*District Accounts Officer,
Chitral*

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal NO 559 / 2019 .

Shams-ud-Din ... (Appellant)

Versus

Secretary Education etc(Respondents)

(Affidavit)

I, Abdul Qadir son of Abd-ul- Sattar
Chitral do hereby solemnly affirm and declare that the contents of the
accompanying application are true and correct to the best of my knowledge
and belief and nothing has been kept secret from this august Court.

Deponent: _____



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO.569/2019

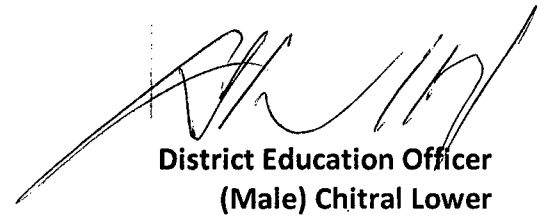
Shams Ud Din Junior Clerk GHS Domil Chitral.....appellant

Versus

Secretary Education (E&SE) Department KPK and others.....Respondents

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1	Para wise comments	1-3
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3	Copy of the application	"A"	5
4	Copy of corruption charges & Inquiry Reports.	"B"	6-13
5	Copy of inquiry De-novo report	"C"	14
6	Copy of SCMR 2003 (228)	"D"	15-18


District Education Officer
(Male) Chitral Lower

BEFORE THE KHYBER PAKHTUN KHAWA SERVICE TRIBUNAL PESHAWAR.

SA NO, 569/2019

Shams-Ud-Din Junior Clerk GHS Domil

Chitral.....APPELLANT

VERSUS.

Govt:of Khyber Pakhtunkhawa through Secretary Education and
Others.....Repondent

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO, 01 TO 03.

Preliminary Objections:-

1. That the Appellant has got no cause of action/locus standi to file the instant appeal.
2. That the instant appeal is not maintainable in the Eyes of Law, hence liable to be dismissed.
3. That the appellant has not come to this Honorable Tribunal with clean hands.
4. That the appellant has been Estopped by his own conduct to file the instant appeal.
5. That the present petition is based on malafide intentions, hence liable to be dismissed.

FACTS:-

1. Para to the extent of appointment and submission of arrival report pertains to record, however service record is not satisfactory. The fact is that the appellant was removed from Service based on the written complaints made against him by the Syed Abdul Latif Cousin of the late teacher Faiz-Ullah AT. Copy of the said application is attached as Annexure....."A".
2. Correct up to the extent that the appellant was removed from Service due to his miss conduct and corruption charges. Copy of the corruption charges are attached as Annexure....."B".
3. Correct, however the same appeal was rejected by the Higher Authority of the department.
4. Pertains to tribunal judgment.
5. The respondents Department after receiving of judgment of service tribunal, the appellant was re instated into service in compliance of the aforesaid judgment.
6. Pertains to record.
7. Correct up to the extent that the appeal was accepted and was re-instated in to Service with effect from 26/03/2015.

Back benefits were subject to the enquiry report as was ordered by the Honorable Court of Service Tribunal vide his judgment order dated 9/02/2018 under Denovo proceeding, but it is important to mention here that the Denovo proceeding was carried out with the remarks that,

“The Appellant does not deserve any back benefits”. Copy of the enquiry report is attached as Annexure.....”C & D”.

8. The detail of this Para has been given at S.No, 7, hence no comments.

GROUND:-

A

That the order dated 21/12/2018 is not against fact law & rule rather is well according to rule, fact & law, the findings of the enquiry report regarding payment of the back benefits has not been recommended by the committee.

Moreover regarding Civil Service the Supreme court has issued clear cut judgment under 2003 SCMR228 Supreme court of Pakistan that when there is no work there is no pay.

B The detail of this Para has been given in ground “A” hence needs no comments.

C That the respondent Deptt: has not acted in arbitrary regarding payment of back benefits to the appellant. He has been treated according to rules and facts.

D. In Correct, the impugned order in according to law and liable to be upheld.

E In Correct, before passing impugned order, all the codel formalities including principle of natural justice was followed.

F. Para to the extent of exoneration subject to proof and pertains to record, however the appellant is not entitled for back benefit in the light of various judgment of superior Courts.


G. In Correct. Denovo inquiry was conducted in strict compliance of E&D rules 2011.

H. That the appellant is not entitled for any back benefits. The detail has been given at ground A of the comments.

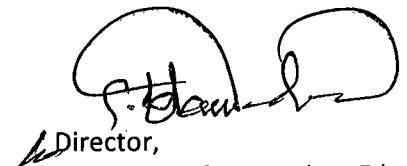
I. Legal, however the respondent Deptt: also seeks permission to advance other grounds and proof at the time of arguments.

It is therefore requested that the instant appeal may graciously be dismissed, please.

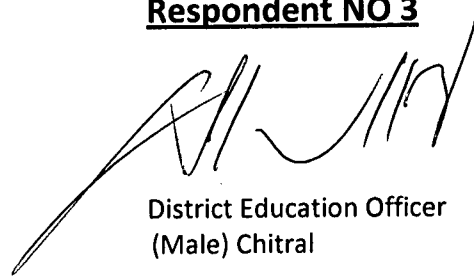
Respondents No 1


Secretary,
Elementary & Secondary Education
Department Khyber Pakhtunkhwa
Peshawar.

Respondents 2


Director,
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.

Respondent NO 3


District Education Officer
(Male) Chitral

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO.569/2019

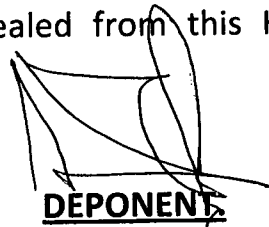
Shams Ud Din Junior Clerk GHS Domil Chitral.....appellant

Versus

Secretary Education (E&SE) Department KPK and others.....Respondents

AFFIDAVIT

I, **Dr. Abdul Malik**, Deputy District Education Officer (Male) Chitral Lower do hereby solemnly affirm and state on oath that the whole contents are true and correct regarding **SA No, 569/2019 Titled Shamsud Din Junior Clerk Versus Secretary E&SED Khyber Pakhtun Khawa Peshawar and others** to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.


DEPONENT

07/12/2019

(Dr.Abdul Malik)
Deputy District Education Officer
(Male) Chitral
CNIC NO, 21201-6011737-5

بخدمت افسر صاحب ڈی او ایف ڈی

Annexure A

میں نے آپ سے گزارش کی کہ اگر آپ کے پاس کوئی نوٹس یا نوٹس
میں سے متعلق کوئی نوٹس ہے تو اسے اپنے نوٹس میں
درج فرمائیے۔ اس کے ساتھ ساتھ اسے اپنے نوٹس میں
14 تاریخ کو اپنی نوٹس میں اس کی کاپی بھی
اپنے نوٹس میں لے کر اپنے نوٹس میں لے کر
اپنے نوٹس میں لے کر اپنے نوٹس میں لے کر

میں نے آپ سے گزارش کی کہ اگر آپ کے پاس کوئی نوٹس
میں سے متعلق کوئی نوٹس ہے تو اسے اپنے نوٹس میں
درج فرمائیے۔ اس کے ساتھ ساتھ اسے اپنے نوٹس میں
14 تاریخ کو اپنی نوٹس میں اس کی کاپی بھی
اپنے نوٹس میں لے کر اپنے نوٹس میں لے کر
اپنے نوٹس میں لے کر اپنے نوٹس میں لے کر

میں نے آپ سے گزارش کی کہ اگر آپ کے پاس کوئی نوٹس
میں سے متعلق کوئی نوٹس ہے تو اسے اپنے نوٹس میں
درج فرمائیے۔ اس کے ساتھ ساتھ اسے اپنے نوٹس میں
14 تاریخ کو اپنی نوٹس میں اس کی کاپی بھی
اپنے نوٹس میں لے کر اپنے نوٹس میں لے کر
اپنے نوٹس میں لے کر اپنے نوٹس میں لے کر

الحاج

محمد عبداللطیف

District Education Officer
(Male) Chitral

خدمت اقدس صاحب ڈی. ای. او صاحب ضلع حیدرآل
صاحب والا۔

بعد آداب گزارش ہے کہ سبزہ کا حجاج داد بھائی
مولانا حفیظ اللہ مرحوم محکمہ تعلیم میں 26 سال سے سرکاری ٹیچر
کی حیثیت سے ملازمت سرانجام دیکر گذشتہ سال اللہ
2014 کو ایک روڈ ایکسیڈنٹ میں اس کی ڈیپ ہونے
مرحوم اپنے بوڑھے والدین اور 9 بھائیوں کا واحد کفیل تھا اور تنخواہ
کے علاوہ کوئی اور ذریعہ آمدنی نہیں تھا،

مرحوم کی وفات سے لیکر اب تک بھی گذشتہ 16 مہینوں سے انکی
بیوہ کو 10 مہینہ راج سے حیدرآل ان کے حقوق بعد از مرگ کے تسلیم
میں حیدرآل لائی گئی اور ان کا متعلقہ فلک ان کو تسلی دیکر واپس
کرتا رہا۔ ابھی تک اس کا G.P فنڈ بھی ڈیمانڈ نہیں کیا گیا
اسلئے اب تک مرحوم کے متعلقین کو کچھ بھی نہیں ملا ہے۔ مرحوم کے 6
بچے زیر تعلیم ہیں لیکن ان کی فیس گذشتہ 6 مہینے سے واپس لادیں
ان کے والدین کے پاس دعائیہ تک کیا گیا ہے نہیں ہیں۔
نیا بہنیں انتخاب سے گزارش ہے کہ صاحب والا مرحوم کے متعلقین
کی داد رسی فرما کر تاہات شکر گزاروں کا موقع بخش دے۔

العارض
عبد اللطیف حجاج داد بھائی
مرحوم حفیظ اللہ A.T

Director Education Office
(Male) Lower Chitral

Page - 6

Annexure B

Annexure B

Name of Enquiry Officers:-

1. Mr. Sahibur Rahman,
Principal GHSB Booni.
2. Mr. Sadiquillah,
(B&AO) local Office.

Authorized Officer:-

District Education Officer (Male) Chitral.

TITLE OF ENQUIRY:-

Absenteeism/Corruption

Date & Place:-

2-7/02/2015 GHS Rech

For
S.No - 6

Subject:-

ENQUIRY REPORT AGAINST MR. SHAMSUD DIN JUNIOR
CLERK GHS RECH

Memo:-

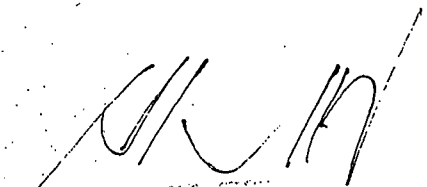
With reference to your Office order No, 16433-35/EB (M) dated 18/12/2014 on the subject cited above. The following comprehensive report is submitted for your perusal and onward necessary action.

A. Procedure taken:-

1. Meeting with Incharge Headmaster.
2. Distribution of questionairs to Incharge Headmaster, other staff and widow of late Faizullah AT of the School.
3. Taking of the written consents.
4. Checking of attendance register and other relevant register i.e TA/DA AND Fire wood charges register maintained in the Office of DEO for said School.
5. Letter sent to concerned clerk to attend before the enquiry committee vide No, 2252 dated 9/2/2015 through TSC vide No, 2311 dated 12/2/2015 through TSC, but he has not appear before the enquiry committed and nor submitted any written statement in his defense.

B. Findings:-

1. During scrutiny of the various records, various relevant documents, and written statement of the Incharge Headmaster, Widow of Late Faizullah AT, Teaching Staff and Class-IV Servants the following pin points are drawn. (Annexed(A) vide page No, 4, 6, 8, & 9).
 - a. The above mentioned clerk Mr. Shamsud Din has remained absent from his duty with effect from August 2013, but he has signed in some months in attendance register, October, 2013 May 2014, Nov, 2014. The Incharge Headmaster of the School and other staff is of opinion, that the clerk concerned has signed in attendance register as bogus according to their statements (Annexed B) page No, 4 to 30.


District Education Officer
(Male) Chitral

(Contd) PTO

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OFFICE OF THE
DISTRICT EDUCATION OFFICER
(MALE) CHITRAL.

NO. 5003 /EB (M)/ D-3/D/Cases/ MS.

Dated Chitral the 26/4 /2014

To:- Shamsud Din J/C,
GHS: Rech R/O Dawashish Jughur.

Subject: - NOTICE.

Memo: You are directed to appear before the undersigned for personal hearing along with documentary proof for further action with immediate effect

ok
District Education Officer
(Male), Chitral.

Endst: No. 5004

Copy to the Head Master GHS: Rech.

ok
24/4/14
District Education Officer
(Male), Chitral.

*no book, please
check
De Jughur 26
- 5003 MS
20/5/14*

[Signature]
District Education Officer
(Male) Lower Chitral

(8)

No - 2055

Dated - 09-07-2014

172

From :

The H-M GHS Hone/D.D.O G.H.S Rechi
District Chitral.

To

Mr. Shamsud-Din,
Junior clerk G.H.S Rechi Chitral.

Subject :

DIS OBEDIENCE OF DUTY PERFORMANC

- 1 - It has repeatedly been observed that you not obeying the orders & instructions of seni officers. In this connection you were previous been instructed to go before honourable D.E. (E&S) Chitral personally but you have not met the D.E.O So far. Also your behaviour an misconduct apperantly indicate your poor perf
- 2 - In view of the above, you are hereby str directed to meet the honourable D.E.O urgen otherwise you may be suspend from the se and your request will not be entertained.

Copy to the

Honourable D.E.O (Males) (E&S)

District Chitral.


Head Master
GHS Hone Chitral

DFA

(166)

(9)

O/D The DBO (M) Chitral
NO. _____ dated — 2014

To,

Mr. Shamsud-Din,
JIL G.H.S. Rech, Chitral.

Subject:- PENALTY/DEDUCTION OF TWO INCREMENTS.

Memo:-

With reference to the notice issued to you vide this office no. 5003/EB (M)/D-3/D-cases/MS dated 26-4-2014, you was directed to appear before the undersigned for personal hearing along with document proof on your behalf, but you remained failed to appear.

As a result of your negligence and mis-conduct, your 2 increments are retrenched/deducted from your basic pay as penalty with immediate effect.

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

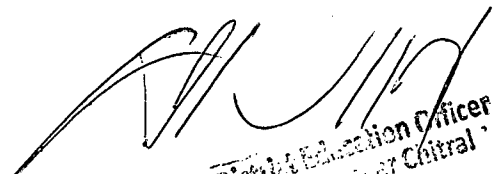
Enclt: No. _____


dated — 2014.

DBO (M)
Chitral

cc to the:-

1. Head master, G.H.S Rech, for information.
2. Drawing & Disbursing officer, G.H.S Rech to retrench/deduct 2 increment from Mr. Shamsud-Din, JIL.
3. D.A.O. Chitral for information.


District Education Officer
Chitral


DBO
09/6/14

11

مفتی محمد سعید الدین صاحب
۴ بی سکول لہج

کتاب

محدث: جناب ڈی ای او

سکول انڈر سیرینی سکندراں جتہ 07

مکمل جواب طلبی

یادداشت: بحوالہ ۱ جناب کا سرورسہ نمبر ۹۳۰۱ مورخہ ۲۴ ستمبر ۲۰۱۳

مذوری اپنی صفائی میں درج ذیل شکایات کرنا چاہتا ہے۔

۱۔ یہ کہ مذوری کو دفتر تعلیم کی طرف سے کورٹ ڈیوٹی تفویض کی گئی تھی

اور مذوری کسٹمرز کی پیروی کرتا رہا ہے۔ اس لیے اپنے اہل ڈیوٹی

اسٹیشن سے دور رہا۔

۲۔ بعد میں مذوری کا مالی معاملات کے سلسلے میں متعلقہ ہیڈ ماسٹر سے

مسادرت ہو گئی ہے۔ اور معاملات کچھ یا کچھ ہیں۔ اب مذوری کورٹس

کی پیروی کی ڈیوٹی بھی چھوڑ دی ہے۔ لہذا آئندہ اپنے اسٹیشن

پلی 4745 پرچ میں اپنے فرائض اہتمامی دیانت داری سے ادا کرتا

رہوں گا۔ اور آئندہ ہیڈ ماسٹر یا دفتر کو کسی قسم کی شکایت

کا موقع نہیں دوں گا۔

لہذا التماس ہے کہ مذوری کی سابقہ کوتاہیوں کو درگزر

فرما کر مذوری پر احسان فرمایا جائے۔

تقدیم 3-12-2013

Handwritten signature

Handwritten signature

محمد سعید الدین صاحب

4745-11

Call explanation

non observance

bt

Forwarded in original
with the 10 marks that
man seems to be a
his actions done previously
he may be given a
chance.

Handwritten signature

شوکار نوٹس

(12)

آپ شمس الدین جونز کلرک ہائی سکول رنج کے خلاف بحوالہ چھٹی نمبر 1-708 محرمہ بیس ستمبر ۲۰۱۳ از ہیڈ ماسٹر کی جانب سے
رپورٹ پر اچکو بحوالہ اس دفتر لیٹر نمبر 9300 محرمہ چوبیس ستمبر ۲۰۱۳ ہدایت کی گئی تھی کہ فوراً اپنی ڈیوٹی پر حاضر ہو جائیں۔ مگر آپ ایسا کرنے میں
ہے۔

بعد ازاں ہیڈ ماسٹر کی طرف سے دوسرا لیٹر نمبر 813 محرمہ پانچ اکتوبر ۲۰۱۳ پر اچکو اس دفتر لیٹر نمبر 9848 محرمہ سات اکتوبر
کو اپنی تنخواہ روک دی گئی اور ساتھ یہ ہدایات کی گئی کہ آپ ڈیوٹی پر حاضر ہو جائیں اور ساتھ اپنی غیر حاضری کی وضاحت کریں مگر آپ ناکام رہے۔ اپنی
بیر حاضری کی وجہ سے اچکی ہیڈ ماسٹر کی طرف سے دوسرا لیٹر بحوالہ نمبر 817 محرمہ تیس اکتوبر ۲۰۱۳ پر آپ کے خلاف یہ شکایت کی گئی کہ آپ نہ ڈیوٹی پر
یا نہ غیر حاضری کی وضاحت کی۔ اس پر دفتر ہذا کی طرف سے ایک لیٹر بحوالہ نمبر 10533 محرمہ آٹھ نومبر ۲۰۱۳ کو آپ کے گھر کے پتے پر ارسال کی گئی
تیرہ نومبر کو دفتر میں حاضر ہو جائیں۔ آپ دفتر میں حاضر ہوا لیکن اپنے اوپر لگائے گئے الزامات کو تسلیم کر کے غبن شدہ رقم واپس کرنے کا وعدہ کیا۔ تاہم نہ
اس پر دفتر ہذا کی طرف سے ایک لیٹر نمبر 10697 محرمہ اوبیس نومبر ۲۰۱۳ آپ کے سکول کے ڈی۔ ڈی۔ او۔ کے نام ارسال کی گئی کہ وہ
بند کرے۔ اس پر آپ نے اپنے ہیڈ ماسٹر کے تھرو اپنا جواب ارسال کیا کہ اور یہ وضاحت کی کہ اس وقت ایسا موقع نہیں دوں گا اور ہیڈ ماسٹر اپنے ریٹائرمنٹ
رش کی کہ اچکو ایک اور موقع دیا جائے۔ اس پر دفتر ہذا کی طرف سے ایک لیٹر آپ کے گھر کے پتے پر ارسال کی گئی جس میں یہ وضاحت کی گئی کہ آپ کا جواب
ا۔ اپ فوراً پی۔ ٹی۔ سی۔ کے رقم اپنے سکول کے PTC اکاؤنٹ میں جمع کر کے رسید پیش کریں اور ساتھ FWC کے رقم بھی حوالہ کریں۔ بعد ازاں آپ کے
لیٹر ضیاء الرحمن کی طرف سے پیش کیا گیا۔ جس میں اچکو مورخہ آٹھ نومبر سے دفتر سے بھی غیر حاضر دیکھا گیا تھا۔ اور آپ کے ڈی۔ ڈی۔ او۔ نے بینک کے
نواہ بند کر کے ایک لیٹر دفتر ہذا کو ارسال کی۔ اچکو ایک بار پھر بحوالہ نمبر EB (M)/D-3/D/Cases /462 محرمہ اکیس جنوری ۲۰۱۳ آپ کے گھر کے
بج دی گئی تھی کہ آپ اس نوٹس کے اشاعت کے تیس دن کے اندر خود زبردست خط کے سامنے ضرور کراہی اس طویل غیر حاضری کی وضاحت کریں۔ مگر
رہوئے اور نہ ہی غیر حاضری کی وضاحت کی۔

آچکو آخری بار تنبیہ کی جاتی ہے کہ آپ اس نوٹس کی اشاعت کے پندرہ (15) دنوں کے اندر اندر اپنی
ڈیوٹی پر حاضر ہو جائیں اور اپنی غیر حاضری کی وجہ بتائیں۔ بصورت دیگر آپ کے خلاف حکومت خیر پختونخوا کے
ڈی رولز ۲۰۱۱ کے مطابق یکطرفہ کارروائی عمل میں لائی جائے گی۔ جس میں ملازمت سے برخاستگی بھی شامل ہے۔

(نثار محمد)

ضلعی۔ تعلیمی۔ آفیسر

(مردانہ) ضلع چترال۔

4

District Education Officer
(Office) Lower District

13

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHITRAL.

A-4

OFFICE ORDER.


As reported by the Enquiry Committee dated 19-02-015, Mr. Shamsud Din S/O Ghulam Sakhi Junior Clerk Govt: High School Rech Tehsil Mastuj District Chitral is involved in corruption, misconducts and absent from duty since long period.

Therefore under the conduct and disciplinary rules No. 4(6) Major Penalty section iii removal from service page No. 1320 Esta Code volume No. 2 E&D rules 2011, being a competent authority, Shamsud Din S/O Ghulam Sakhi resident of Jughoor District Chitral is hereby removed from service with immediate effect.

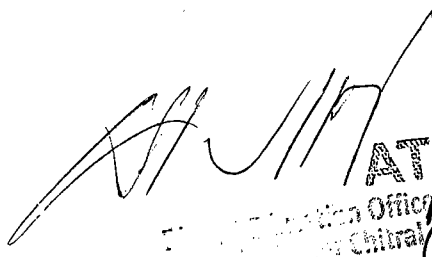
(Moin-ud-Din Khattak)
District Education Officer,
(Male) Chitral.

Endst: No. 5062-68 /EB/(M) D-3, Dated Chitral the 26/03 /2015.
Copy of the above is forwarded for information to the:-

1. Director of Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. District Accounts Officer, Chitral.
3. The Manager National Bank Chitral.
4. Incharge Headmaster Govt: High School Rech.
5. Mr. Iftikhar Ahmad DDO GHS Rech/Headmaster, GHS Hone.
6. Accounts Officer (Local Office).
7. Mr. Shamsud Din Junior Clerk GHS Rech, Village Jughoor Tehsil: & District Chitral.


District Education Officer,
(Male) Chitral.

ATTESTED


District Education Officer,
Chitral.

38

From:

- (7) (19)
1. Nasir ullah : Principal GHSS Shagram
2. Karim Nazar: Head Master GHS Werkup

Annexure C

332



To: District Educaiton Officer (Male) Chitral

Subject: Denovo inquiry/ Back benefit

Memo: with reference to your office order No: 3565-67/EB(M) E-2/ inquiry dated 2-3-2018 on the subject cited above, we the members of inquiry committee, underwent the following procedure to come to the conclusion.

1. We visited the school, met Head Master and other staff and gain access to records.
2. According to the record kept by the Govt: School Rech, the appellant Mr. Shams ud Din JC had been working there form 2012 till his termination in 2015. Attendance register reveals that the appellant has his obviously bogus signature during the first few months. But later he has, usually remained absent from his duty and remained totally absent from 01-12-2013 till his termination on 26-03-2015. Office copies show that he had been served on explanation calls time and again by the then Head Master with no gain. Interestingly he had been drawing salary, TADA and fire wood allowance despite his absence from duty.
3. As he has been removed from service seemingly after fulfilling codad formalities on 26-03-2015, yet he has been restored by honorable service tribunal on 09-02-2018. During the above mentioned period i.e form 26-03-2015 to 09-02-2018, he did not benefit to his respective department and legally and morally does not deserve to be salaried . Because salary is only admissible to a servant for his services.

Recommendation:

1. His salary during his termination period ie from 26-03-2015 to 09-02-2018 is proposed not to be paid.
2. TADA, FWC and other liabilities need to be investigated by the finance department to reach a clear cut conclusion as why and how he had drawn them?
3. His service may be restored and his posting is recommended to be placed in a station other than GHS Rech.

Nasir Ullah Principal GHSS Shagram

Head Master Karim Nazar GHS Werkup

Ullah 8-3-2018
Principal
Govt. Higher Secondary
School Shagram, Chitral

[Handwritten signature]

[Handwritten signature]
Principal
Govt. Higher Secondary
School Shagram, Chitral

[Handwritten signature]

parties and have also perused the record of the case. It may be pointed out that under the Rules, the said items are liable to duty tax/royalty and for such purpose publication was made under the Rules and in open auction petitioner being highest bidder was given contract and there is nothing on record to show that any Government department is exempted from tax/duty; thus the contention of Syed Ayyaz Zahoor, Advocate/for the petitioners has substance. Admittedly the petitioners are extracting Bajri, sand, stone crush from Hub River and other parts of District Lasbela which is liable to payment of royalty, therefore, petition is allowed as prayed for. Respondent to pay tax in future and also to pay arrears i.e. w.e.f. 24-2-2001 on the material already extracted by them.

(6) Petition is allowed in the above terms with no order as to costs."

The impugned judgment is not open to exception, as it is well-reasoned and based on the law. There is no material irregularity or illegality.

8. For the facts and reasons stated hereinabove, were are of the considered view, that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

Q.M.H./M.A.K./C-64/S

Petition dismissed.

2003 S C M R 228

[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah
and Tanvir Ahmed Khan, JJ

Syed NIAZ HUSSAIN SHAH BUKHARI, TECHNICIAN
(PROCESS)—Petitioner

versus

OIL AND GAS DEVELOPMENT CORPORATION LIMITED through
Chairman, OGDC Head Office, Islamabad—Respondent

Civil Petition For Leave to Appeal No.51 of 2002, decided on 11
September, 2002.

(On appeal from judgment dated 2-11-2001 passed by the Federal
Service Tribunal, Islamabad, in Appeal, No.1076(R)CE of 2000)

Annex
(D)

Annexure

(16A)

16

2003] Niaz Hussain Shah Bukhari v. Oil and Gas Development 229
Corpn. Ltd. (Syed Deedar Hussain Shah, J)

(a) Civil service—

---Pay, entitlement to---When there is no work, there is no pay.
[p. 231] C

(b) Civil service—

---Salary, refund of---Civil servant after obtaining stay order against his transfer was allowed to continue his duties at original place, where he was paid salary for about three years.---Authority deducted from salary of civil servant the amount paid to him as salary for the period when he remained absent from duty---Service Tribunal dismissed appeal of civil servant---Validity---Civil servant had not performed his duties either at original place or at transferred place, thus, was not entitled to salary---Period for which refund of salary was effected from civil servant was the period for which, he had not worked---When there was no work, there was no pay---Recovery had rightly been effected from civil servant---Impugned judgment was not open to exception as there was no jurisdictional error or misconstruction of facts and law---No substantial question of law of public importance as envisaged under Art. 212(3) of the Constitution was made out---Supreme Court dismissed petition for leave to appeal in circumstances---Constitution of Pakistan (1973), Art. 212(3). [pp. 230, 231] A, B, C, D, E & F

Sadiq Muhammad Warraich, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record (absent) for Petitioner.

Sardar Muhammad Aslam, Dy. A.G. and M.S. Khattak, Advocate-on-Record for Respondent.

Date of hearing: 11th September, 2002.

JUDGMENT

SYED DEEDAR HUSSAIN SHAH, J.—Petitioner seeks leave to appeal against that judgment of the Federal Service Tribunal, Islamabad (hereinafter referred to as the Tribunal) passed in Appeal No.1076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

2. Briefly stated that facts of the case are that on 4-7-1994, the petitioner was transferred from Missa Kiswal to Peer Koh. He felt that transfer order so issued was mala fide and he was punished being the Union Official of the respondent/Corporation, therefore, he approached the NIRC for restraining the order under Regulation 32 of NIRC Procedure and Functions and Regulations, 1974 and a stay order against his transfer to Peer Koh was granted and he was allowed to continue and perform his duties at Missa Kiswal and also paid his salary that after about 3 years the

District Education Officer
M. S. Khattak

been paid to him as salary, during the period he worked at Missa Kiswal on the strength of the stay order of NIRC.

3. Feeling aggrieved, the petitioner approached the Tribunal by way of appeal, which was dismissed. Hence, this petition.

4. We have heard Ch. Sadiq Mohammad Warriach, learned counsel for the petitioner, who, inter alia, contended that that petitioner's absence from duty from 2-7-1994 to 8-8-1994 and 5-10-1994 to 10-9-1996 was wrongly treated as Extra Ordinary Leave (EOL) and the Office Memorandum dated 13-2-1999 issued by the respondent/Head Office may be cancelled; that the Tribunal had not exercised its jurisdiction fairly and the recovery/deduction of the amount already drawn by the petitioner from the respondent is unwarranted.

5. Sardar Muhammad Aslam, learned Dy.A.G. vehemently controverted the contention of the learned counsel for the petitioner and pointed out that no doubt NIRC issued an injunction to the petitioner but the same was re-called by the Tribunal on 18-8-1996. He has also referred to the appeal of the petitioner which is at page 57 of the paper book, in which he has stated as under:

"I had reported for duty at Pirkoh Gas Field. Therefore, regularizing the period of stay, ordered by the Court as E.O.L is injustice with me."

On his application office submitted summary to the Chief Personnel Officer of the respondent/Corporation, which reads as under:

"(70) Reference para-180/N, it is submitted that as per message No.MK.1331 dated 26-11-1999 (P-244/Cor.) O.M.(F), Missa Kiswal, Mr. Niaz Hussain Shah was relieved from Missa Kiswal Oil Field, for Pirkoh Gas Field. He neither reported at Pirkoh nor at Missa Kiswal Oil Field, after getting stay order from NIRC. O.M.(F), Missa Kiswal Oil Field, did not confirm whether he performed any official duty during his stay (off & on) at Missa Kiswal. Mr. Niaz Hussain neither claimed any field benefit like messing/D.A. and Rota facilities nor paid by the Location Incharge due to his non-performance of any duty.

"(71) In view of above, if approved by Manager (Personnel), his request may be regretted in the light of earlier decision as per para 141-A

Lower C/please.

The perusal of the above document shows that the petitioner did not perform his usual duties and was not entitled to salary as claimed by him.

recovery has already been effected from the petitioner and that Office Memorandum referred to hereinabove was entirely in accordance with the O.G.D.C. Service Regulations, 1974. It was also pointed out by him that the petitioner in due course of service has already been promoted to his Managerial post.

7. We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his duties as mentioned hereinabove and recovery was rightly effected from him; thereafter, he was promoted to the post of Manager. The impugned judgment is entirely based on proper appreciation of the material available with the Tribunal. We further find that there is no jurisdictional error or misconstruction of facts and law. The impugned judgment is not open to exception.

8. Moreover, a substantial question of law of public importance, as envisaged under Article 212(3) of the Constitution, is not made out.

9. For the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

S.A.K./N-100/S

Petition dismissed.

2003 S C M R 231

[Supreme Court of Pakistan]

*Present: Qazi Muhammad Farooq, Rana Bhagwandas
and Abdul Hameed Dogar, JJ*

MUHAMMAD YASEEN---Appellant

versus

THE STATE---Respondent

Criminal Appeal No.109 of 2002, decided on 19th September, 2002.

(On appeal from the judgment dated 31-5-2002 of the Lahore High Court, Lahore, passed in Criminal Appeal No.207 of 1996 and Murder Reference No.134 of 1996).

~~Higher Tribunal
(Maly Lower Court)~~

District Education Officer