

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.
AT CAMP COURT D.I.KHAN

Service Appeal No. 690/2016

Date of Institution ... 27.06.2016

Date of Decision ... 28.09.2022

Shafi Ullah S/O Sher Khan. R/O Wanda Noorak Tehsil Paharpur District Dera
Ismail Khan (KPK).

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through the Secretary Education
Peshawar and 02 others.

... (Respondents)

MR. SHAIKH IFTIKHAR-UL-HAQ,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

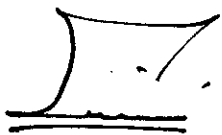
--- For respondents.

KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts as narrated in the instant appeal are that the appellant was appointed as Naib Qasid vide appointment order bearing Endst: No. 4573-76 dated 01.04.2011 against the vacant post of Class-IV at GMS Jhoke Mohana. The appellant submitted charge report and started performing his duty in the concerned school. The appellant also drew his salary with effect from 01.04.2011 till 31.01.2012 from National



Bank of Pakistan Lar Branch Paharpur Dera Ismail Khan. The services of the appellant were terminated vide order dated 31.12.2011, which was challenged by the appellant through filing of departmental appeal, however the same was not responded, therefore, the appellant filed Service Appeal No. 1290/2012 before this Tribunal. The same was disposed of vide order dated 22.02.2016 with the observations that the case is remitted to the respondent-department with the direction to decide the departmental appeal of the appellant within a period of one month. The departmental appeal of the appellant was, however not decided within the time specified in the judgment dated 22.02.2016 of this Tribunal, therefore the appellant submitted the instant service appeal. It was during the pendency of the instant service appeal, that the departmental appeal of the appellant was decided vide order dated 23.01.2017 constraining the appellant to file amended appeal, wherein the order dated 23.01.2017 regarding dismissal of departmental appeal of the appellant was also challenged.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the appellant was appointed as Naib Qasid on regular basis vide appointment order dated 01.04.2011 and he assumed the charge of his post at Government Middle School Jhoke Mohana on the same date; that after fulfillment of all legal and codal formalities, the pay


of the appellant was activated and he received his salary even after his termination from service vide order dated 31.12.2011; that the order of termination of service of the appellant was never communicated to him and it was after gaining knowledge of the same, that he submitted departmental appeal; that the appellant had never remained absent from duty but he was wrongly and illegally terminated from service on the ground of his absence from duty; that the procedure as prescribed in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was not complied with and the appellant was condemned unheard; that the appellant was though appointed as Naib Qasid, however he was deputed for performing his duty as Driver with the then EDO (Elementary & Secondary) Education D.I.Khan; that the appellant was wrongly and illegally terminated from service due to mala-fide intention as he had asked the then EDO (Elementary & Secondary) Education D.I.Khan that he may be relieved to perform his duty in the school; that fundamental rights of the appellant as enshrined in Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 have been violated.

4. On the other hand, learned Deputy District Attorney for the respondents has argued that after taking of the charge of his post, the appellant remained absent from duty, therefore, disciplinary action was taken against him; that the appellant did not attend his duty despite being summoned through show-cause notice as well as publication of absence notice in the newspaper, therefore, ex-parte

action was taken against him in accordance with the relevant rule; that as the appellant had failed to complete his probation period satisfactorily, therefore, he has rightly been terminated from service.

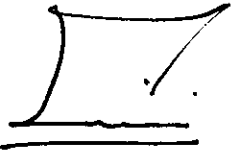
5. Arguments have already been heard and record perused.

6. It is an admitted fact that the appellant was appointed as Naib Qasid vide appointment order dated 01.04.2011 and he assumed the charge of his post in Government Middle School Jhoke Mohana on the same date. The appellant was terminated from service vide order dated 31.12.2011 on the allegations that he remained absent from duty with effect from 02.04.2011. According to the available record, show-cause notice No. 16002 dated 18.11.2011 was issued to the appellant by the then Executive District Education Officer Dera Ismail Khan, which was followed by publication in newspaper "*Daily Darpan*" but the appellant did not attend his duty. According to Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, competent Authority was required to have issued notice to the appellant through registered acknowledgement on his home address but the competent Authority has failed to adopt such procedure. Moreover, as per the *ibid* Rule-9, publication of notice was required to have been made in at least two leading newspapers but in the instant case, publication has been made only in one local newspaper. The competent Authority has failed to comply with provision of Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline)



Rules, 2011, which fact has created material dent in the departmental proceedings taken against the appellant.

7. The appellant had previously challenged the order of his termination through filing of Service Appeal No. 1290/2012 before this Tribunal, which was disposed of vide order dated 22.02.2016 with the directions that the respondent-department shall decide the departmental appeal of the appellant within a period of one month of receipt of the order. The departmental appeal of the appellant was not decided, therefore, he filed an application dated 08.03.2016 to the District Education Officer D.I.Khan requesting therein for decision of his departmental appeal in light of directions of this Tribunal passed vide order dated 22.02.2016. The departmental appeal of the appellant was to be decided by Director Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar being an appellate Authority, however it is strange enough that the same was decided by District Education Officer (Male) Dera Ismail Khan. Moreover, the appellant had filed departmental appeal before the Director Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar, however the impugned order dated 23.01.2017 would show that the application submitted by the appellant on 08.03.2016 for decision of his departmental appeal has been considered as departmental appeal by the District Education Officer (Male) Dera Ismail Khan. Similarly, in his order dated 23.01.2017, District Education Officer (Male) Dera Ismail Khan has mentioned that while deciding Service Appeal bearing



No. 1290/2012 vide order dated 22.02.2016 this Tribunal had issued directions that the appellant shall file departmental appeal before District Education Officer (Male) Dera Ismail Khan. We have minutely gone through the order dated 22.02.2016 passed by this Tribunal in Service Appeal No. 1290/2012 and have observed that no directions for filing of departmental appeal before the District Education Officer (Male) Dera Ismail Khan were given in the said order. All this would show the casual attitude of the concerned District Education Officer (Male) Dera Ismail Khan in discharging of his official duties. The impugned orders are thus not sustainable in the eye of law and are liable to be set-aside.

8. In view of the above discussion, the appeal in hand is accepted by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.09.2022



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT D.I.KHAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN

ORDER
28.09.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Muhammad Kamran, ADEO for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is accepted by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.09.2022



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan



(Salah-Ud-Din)
Member (Judicial)
Camp Court D.I.Khan

26th September, 2022

Learned counsel for the appellant present. Mr. Muhammad Kamran, ADEO alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

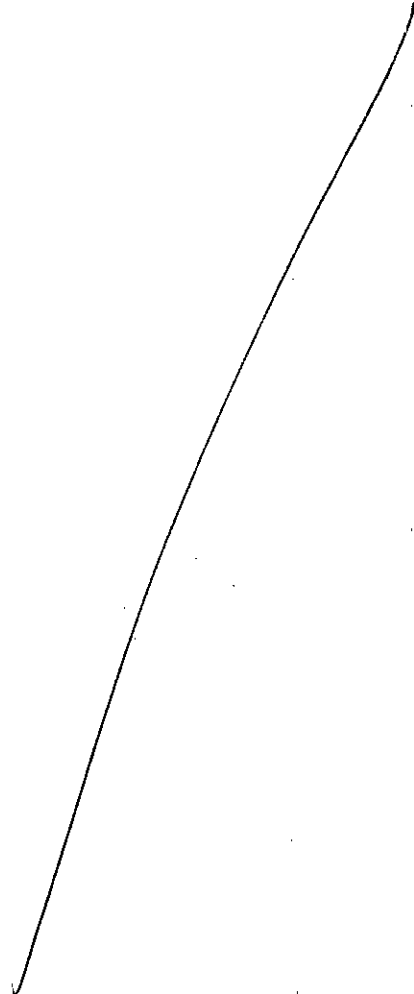
Arguments heard. It is deemed appropriate that original record in respect of the appellant be requisitioned. Mr. Muhammad Kamran, representative of the department present in the court is directed to produce the same positively on 28.09.2022 before the D.B at Camp Court D.I.Khan.



(Salah Ud Din)
Member (Judicial)
Camp Court D.I.Khan



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan



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26.01.2022

Tour to Camp Court D.I.Khan has been cancelled. To come up for the same on 27.06.2022 before S.B.

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Reader

27th June 2022

None for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Kamran Khan, ADEO (Litigation) for respondents present.

Written reply/comments on behalf of the respondents have been submitted which is placed on file. To come up for arguments on 27.07.2022 before S.B at camp court D.I.Khan.

[Handwritten signature]
(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

27.7.22

Due to summer vacation the case is adjourned to 26-9-22 for the same.

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Due to COVID 19 therefore
to come up for the same on 29/9/21

Om
Reader

29.09.2021

Nemo for the appellant. Mr. Usman Ghani, District Attorney
alongwith Mr. Kamran Khan ADO (Litigation) for the respondents present.

Previous date was changed on Reader Note, therefore,
notice be issued to the appellant as well as his counsel and to come up for
amended service appeal on 25.11.2021 before S.B at Camp Court D.I.
Khan.




(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT D.I.KHAN

25.11.2021

Appellant alongwith counsel and Mr. Noor Zaman Khattak, District
Attorney alongwith Mr. Muhammad Kamran, ADO (Legal) for the
respondents present.

Amended Memo of appeal has been submitted by the appellant,
copies whereof have been handed over to representative of the
respondents as well as learned District Attorney. To come up for written
reply/comments on amended Memo of appeal on ²⁶⁻⁰¹⁻²⁰²² before S.B at camp
court, D.I.Khan.

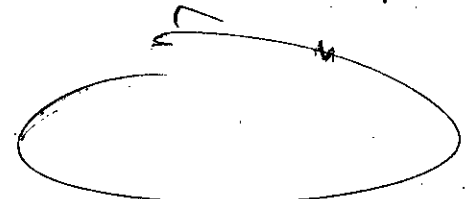


Chairman
Camp Court, D.I.Khan

29.10.2020

Nemo for the appellant. Mr. Muhammad Jan, Deputy District Attorney and Mr. Muhammad Kamran, ADO (Litigation) for the respondents are also present.

Since appellant has not forth come in person nor anyone else representing him has appeared, therefore, amended appeal could not be submitted. It is worth to be noted that the worthy High Court Bar as well as District Bar Associations, D.I.Khan, are observing strike today, therefore, the case is adjourned to 23.12.2020 on which to come up for amended service appeal before S.B at Camp Court, D.I.Khan.



(MUHAMMAD JAMAL KHAN)
MEMBER
CAMP COURT D.I.KHAN

23.12.2020

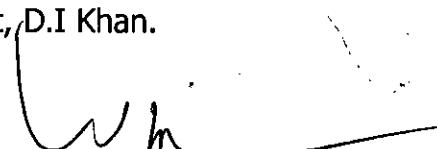
Due to Covid-19, case
is adjourned to 23-02-2021
for the same as before.



23.02.2021

Appellant in person present. Mr. Noor Zaman Khattak, learned District Attorney alongwith Muhammad Kamran ADO for respondents present.

Former requests for adjournment that his counsel is not available today. Adjourned. To come up for amended service appeal on 26.05.2021 before S.B at Camp Court, D.I Khan.



(Atiq-Ur-Rehman Wazir)
Member (E)
Camp Court, D.I.Khan

24/3/2020

Due to COVID-19 the case is adjourned. To come up for the same 20/4/2020 at Camp Court, D.I Khan


Reader

20/4/2020

Due to COVID-19 the case is adjourned. To come up for the same 24/9/2020 at Camp Court, D.I Khan



Reader

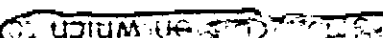



24.09.2020


Counsel for appellant present.

Mr. Muhammad Jan, learned District Attorney alongwith

 Muhammad Karasappa for respondents present.


 Record shows that amended service appeal has not been filed till today, therefore, last chance is given. To come up for

 amended service appeal on 29.10.2020 before S.B. at Camp

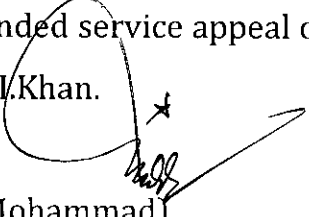
 Court, D.I, Khan.


 Since appellant has not appeared in person for

 (Litigation) for the respondents.

 (Muhammad Karasappa) (Rozina Rehman)
Member (E) Member (J)
Camp Court, D.I Khan Camp Court, D.I KHAN

authority to decide the departmental appeal but again the departmental authority has not decided the departmental appeal within stipulated period, therefore, the appellant filed service appeal. Now the respondent-department has submitted impugned order of dismissal of departmental appeal with reply/comments, challenging the departmental appeal order in the present service appeal is necessary and it is a well settled law that the amendment in appeal is to be granted liberally and at any time, therefore, for just decision of the case, we allow the application and direct the appellant to file amended service appeal on 24.03.2020 before S.B at Camp Court D.I.Khan.


(Mian Mohammad)
Member
Camp Court D.I.Khan


(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan

26.02.2020

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present.

On 27.11.2019, learned counsel for the appellant submitted application for amendment which was fixed for reply and arguments for today. Arguments on the said application heard.

Learned counsel for the appellant contended that the appellant was previously imposed major penalty of dismissal from service. It was further contended that the appellant challenged the said dismissal order through departmental appeal but the same was not decided, therefore, after stipulated period, the appellant filed service appeal which was partially accepted and with the consent of the parties the respondent-department was directed to decide the departmental appeal within a period of one month of the receipt of order after giving full opportunity of hearing to the appellant vide judgment dated 22.02.2016. It was further contended that after stipulated period, the departmental authority has not decided the departmental appeal as per direction of this Tribunal, therefore, the appellant again filed present service appeal. It was further contended that during the submission of comments, the respondent-department submitted the order of departmental authority whereby the departmental appeal of the appellant was dismissed therefore, challenging the departmental authority order in the present service appeal through amendment in service appeal is necessary and prayed for acceptance of application.

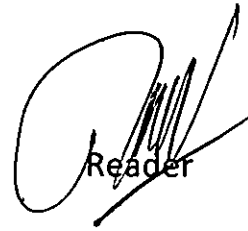
On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and prayed for dismissal of application.

Perusal of the record reveals that the appellant was dismissed from service. The appellant challenged the same through departmental appeal but the same was not decided within the stipulated period, therefore, the appellant preferred service appeal which was disposed of with the consent of the parties with the direction to departmental

MR

22/10/2019


Since tour to D.I.Khan has been cancelled .To come for the same on 27/11/2019.


Reader

27.11.2019


Counsel for the appellant and Mr. Ziäullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant submitted an application for amendment in appeal on the ground mentioned in the application. Copy of said application is handed over to learned Deputy District Attorney. Case to come up for reply and arguments on the said application on 29.01.2020 before D.B at Camp Court D.I.Khan.


(Hussain Shah)
Member
Camp Court D.I.Khan


(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan

29.01.2020

Clerk to counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Kamran, ADO (Litigation) for the respondents present. Clerk to counsel for appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to general strike of the Khyber Pakhtunkhwa Bar Council. Adjourned to 26.02.2020 for reply and arguments on the amendment in appeal application before D.B at Camp Court D.I.Khan.


(Hussain Shah)
Member
Camp Court D.I.Khan


(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan

25.06.2019

Counsel for the appellant and Mr. Farhaj Sikandar, District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 23.09.2019 for arguments before D.B at Camp Court D.I.Khan.



(Hussain Shah)

Member
Camp Court D.I.Khan



(Muhammad Amin Khan Kundi)

Member
Camp Court D.I.Khan

23.09.2019

Clerk to counsel for the appellant present. Mr. Farhaj Sikandar, DDA for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike of the bar. Adjourn. To come up for arguments on 24.09.2019 on before D.B at camp court D.I.Khan.



Member



Member

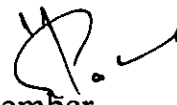
Camp Court D.I.Khan

24.09.2019

Counsel for the appellant present. Mr. Farhaj Sikandar, learned Deputy District Attorney for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned on the payment of cost Rs. 1000/- which to be paid by the appellant to the respondents. To come up arguments on 22.10.2019 before D.B at Camp Court, D.I.Khan.




Member



Member

Camp Court, D.I.Khan

25.02.2019 Learned counsel for the appellant and Mr. Farhaj Sikandar learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 26.03.2019 before D. B at Camp Court D.I.Khan.

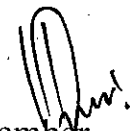

Member


Member


26.03.2019 Counsel for the appellant and Mr. Farhaj Sikandar, District Attorney alongwith Muhammad Kamran, ADO for the respondents present.

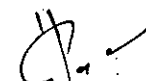
It is already passed 4.00 P.M. Adjourned to 23.04.2019 before the D.B at camp court, D.I.Khan.


Member


Member
Camp Court, D.I.Khan

23.04.2019 Appellant in person and Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Kamran, ADO for the respondents present. Due to strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Adjourn. To come up for arguments on 25.06.2019 before D.B at Camp Court D.I.Khan.


(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan


(M. Hamid Mughal)
Member
Camp Court D.I.Khan

Service Appeal No. 690/2016

12.09.2018


12th September has been declared as public holiday on account of 1st Muharram therefore, the case is adjourned for the same on 26.11.2018 before D.B at Camp Court D.I.Khan.


Reader
Camp Court D.I.Khan

26.11.2018

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Kamran, ADO for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 18.12.2018 before D.B at Camp Court D.I.Khan.


(Ahmad Hassan)
Member
Camp Court D.I.Khan


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan


18.12.2018


As per direction of the worthy Chairman Khyber Pakhtunkhwa Service Tribunal, D.I.Khan tour dated 18.12.2018 has been rescheduled and the case is re-fixed for 27.12.2018.

Reader

27.12.2018

Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents present. Learned counsel for the appellant submitted rejoinder. Adjourned. To come up for arguments on 25.02.2019 before D.B at Camp Court D.I.Khan.


(Hussain Shah)
Member
Camp Court D.I.Khan


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

25.05.2018 As per direction of the Hon'able Chairman tour to D.I.Khan is rescheduled. To come up for arguments on 20.06.2018 instead of 25.06.2018. Notices be issued to the parties accordingly.


Member

20.06.2018

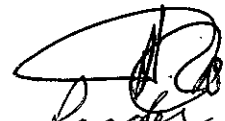
Neither the appellant nor his counsel present. Mr. Muhammad Kamran ADO (Litigation) alongwith Mr. Usman Ghani, learned District Attorney for the respondents present. Adjourned. To come up for arguments on 27.08.2018 before the D.B. at camp court D.I.Khan.


Member


Chairman
Camp Court, D.I.Khan

27.08.2018

*Counsel for the appellant present.
Mr. Kamran ADO for respondent present.
Tour is hereby cancelled, therefore
the case is adjourned for the same on
12.09.2018 before D.B at camp court D.I.Khan.*


Reader

Service Appeal No. 690/2016

30.11.2017

Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Kamran, ADO (litigation) for the respondents also present. Written reply on behalf of respondents not submitted. Learned District Attorney requested for further adjournment. Adjourned. To come up for written reply/comments on 25.01.2018 before S.B at Camp Court D.I.Khan.



(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

25.01.2018

Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Muhammad Kamran, ADO (litigation) for the respondents also present. Written reply on behalf of respondents submitted. Adjourned. To come up for rejoinder and arguments on 13.03.2018 before D.B at Camp Court D.I.Khan.




(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

13.03.2018

Counsel for the appellant and Addl. AG alongwith Muhammad Kamran, ADO for the respondents present. Counsel for the appellant seeks adjournment to file rejoinder. To come up for rejoinder and arguments 25.06.2018 before D.B at camp court. D.I.Khan.



Member




Chairman
Camp court, D.I.Khan

22.02.2017

Mr. Shaikh Iftikhar-ul-Haq learned counsel for appellant and Mr. Farhaj Sikandar, Government Pleader for respondents present. He submitted that earlier this Tribunal decided service appeal of the appellant by remitting the service appeal with direction to decide the service appeal of the appellant strictly in accordance with law and rules. That within stipulated period no order was issued and consequent upon they again approached this Service Tribunal and in the meanwhile during the pendency of this service appeal another order on departmental appeal has been issued by the respondents, maintaining the earlier order of removal from service. The learned counsel for appellant was also of the view that since the order was not issued within stipulated period, so they can approach this Hon'ble Tribunal.

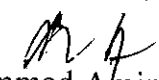
Points agitated are sufficient for admission, subject to clarification of ^{legal status of} subsequent orders at the time of final arguments. The appellant is directed to deposit the security and process fee within 10 days there-after notices be issued to the respondents for written reply/comments for 26.07.2017 before S.B at Camp Court D.I.Khan.

Appellant Deposited
Security & Process Fee


(ASHFAQUE TAJ)
MEMBER
Camp Court D.I.Khan

26.07.2017

Appellant alongwith his counsel present. Mr. Muhammad Kamran, ADO alongwith Mr. Farhaj Sikandar, District Attorney for the respondents also present. Written reply by respondents not submitted. Representative of respondent-department requested for time for submission of written reply. Adjourned. To come up for written reply/comments on 29.11.2017 before S.B. at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

690/2016

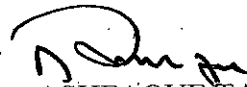
24.10.2016

Counsel for the appellant present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 23.01.2017 before S.B at Camp Court D.I.Khan.

Member
Camp Court D.I.Khan

25.01.2017

Counsel for appellant and Mr. Muhammad Kamran, ADO (litigation) alongwith Mr. Farhaj Sikandar, Government Pleader for respondents present. Representative of respondent-department submitted copy order dated 23.01.2017 vide which in compliance of order of this Tribunal the departmental appeal of appellant has been decided and his services have been terminated and the termination order has been maintained. The learned counsel for appellant seeks some time to ponder about future course of action as another final order has emerged to the effect that whether he would file a fresh service appeal or would amend the same one. Adjournment granted. To come up for further proceedings on 22.02.2017 before S.B at Camp Court D.I.Khan.


ASHFAQUE TAJ
MEMBER
Camp Court D.I.Khan

25.07.2016

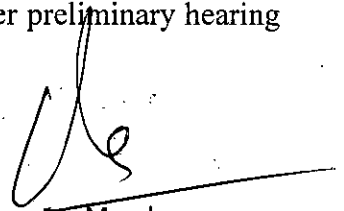
Tour programme of D.I. Khan scheduled for 25.07.2016 and 26.7.2016 is hereby cancelled, therefore the case is adjourned to 29.8.16 for preliminary hearing. Parties be informed accordingly.



Member

29.08.2016

Counsel for the appellant present and requested for adjournment in order to argue the point of maintainability of the instant appeal as prima facie the appeal seems time barred. Request accepted, however, pre-admission notice be issued to the learned GP to assist the Court. To come up for further preliminary hearing on 27.09.2016.

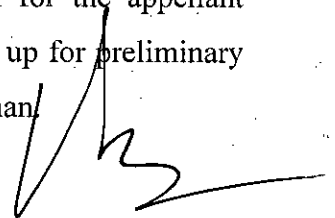


Member

Camp court D.I.Khan

27.09.2016

Counsel for the appellant and Mr. Farhaj Sikander, Government Pleader for the respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 24.10.2016 before S.B at Camp Court D.I.Khan.



Member



Camp Court D.I.Khan

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 690/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	27/06/2016	<p>The appeal of Mr. Shafiullah received today by post through Shaikh Iftikhar-ul-Haq Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;">  REGISTRAR </p>
2-	28-6-16	<p>This case is entrusted to Touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>26-7-16</u></p> <p style="text-align: right;">  CHAIRMAN </p>

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

Service Appeal No. 690 /2016

Shafi Ullah

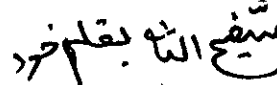
VERSUS

Govt; of KPK etc

INDEX

<u>S.NO</u>	<u>PARTICULARS</u>	<u>ANNEXURE</u>	<u>PAGE NO.</u>
1	Grounds of Service appeal along with affidavit.	-	1-4
2	Copy of appointment order.	"A"	-5-
3	Copy of charge report along with medical certificate of the appellant.	"B & C"	6-8
4	Copy of impugned order dated 31/12/2011 & Departmental appeal along with application for condonation of delay.	"D, E & F"	9-13
5	Copy of order of Service Tribunal dated 22/02/2016	"G"	14-16
6	Copy of application 08/03/2016	"H"	17
7	Wakalatnama		18

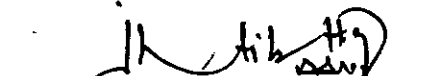
Your Humble Appellant



Shafi Ullah

Through Counsel

Dated: 22/06/2016


Sheikh Iftikhar Ul Haq
Advocate High Court,
Dera Ismail Khan.

1

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

Service Appeal No. 690 /2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 673

Dated 27-6-2016

Shafi Ullah S/o Sher Khan R/o Wanda Noorak Tehsil
Paharpur District Dera Ismail Khan (KPK).

.....(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through the secretary Education Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male), Elementary & Secondary Education Dera Ismail Khan.

.....(Respondents)

**SERVICE APPEAL UNDER SECTION 4
OF KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT 1974 AGAINST THE
ORDER DATED 31/12/2011, ISSUED /
PASSED BY RESPONDENT NO. 3
WHEREBY THE SERVICE OF THE
APPELLANT WAS TERMINATED DUE
TO ALLEGED ABSENCE FROM
SERVICE FROM 02/04/2011 VIDE
ORDER NO. 17876-80, IN VIOLATION
OF LAW, RULES AND NOTHING BUT
MALAFIDES.**

PRAYER:-

**ON ACCEPTANCE OF THE INSTANT
APPEAL THE IMPUGNED ORDER
RESPONDENT NO. 3 MAY BE SET-ASIDE
AND APPELLANT MAY BE ALLOWED TO
CONTINUE HIS SERVICES IN YOUR
INCUMBENCY AS NAIB QASID BPS-1
WITH ALL BACK BENEFITS.**

Respectfully Sheweth:-

Filed to-day

Registrar

27/6/16 1-

The appellant very humbly submits as under:-

That the appellant was appointed as Naib Qasid BPS-1 (Class-IV) vide appointment order Endst No. 4573-76 dated DIKhan the 01/04/2011 at G.M.S

Jhok Mohana Dera Ismail Khan. Copy of appointment order is enclosed as Annexure "A".

2- That on 02/04/2011 the appellant in pursuance of said appointment letter reported to the said G.M.S Jhok Mohana Dera Ismail Khan after clearing the medical fitness. Charge report along with medical certificate of the appellant are enclosed as Annexure "B & C".

3- That the appellant since day first has been punctual, dedicated committed performing his duties regularly and honestly and no complaint was ever made or heard against him during the course of his services.

4- That the appellant from the date of appointment i.e 01/04/2011 till 31/01/2012 drew his monthly salaries from National Bank of Pakistan Lar Branch the Paharpur Dera Ismail Khan.

5- That when the appellant came into the knowledge that the service of appellant has been terminated vide Endst No. 17876-80 dated 31/12/2011 of impugned order the appellant submitted departmental appeal on 27/06/2012 along condonation of delay which was not accepted with stipulated period. Copy of impugned order dated 31/12/2011 & Departmental appeal along with application for condonation of delay are enclosed as Annexure "D,E & F" respectively.

6- That the appellant approached Service Tribunal wherein the Honourable Service Tribunal were pleased to remit the same to the authority. Copy of order of Service Tribunal dated 22/02/2016 is enclosed as Annexure "G".

7- That the appellant submitted application to the Department along with judgment / order of this Honourable Tribunal for decision in the light of letter inspirit of the judgment of this Honourable Tribunal on 08/03/2016 which was not responded within stipulated period (Copy of Application enclosed as Annexure "H"), hence the instant appeal amongst other on the following grounds:-

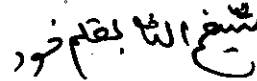
3

GROUND:-

- a)** That impugned order dated 31/12/2011 of respondent No. 3 is against law, admitted realities and is violative of the principle of justice.
- b)** That the appellant is a regular government servant and without fulfillment of legal and codal formalities the services of appellant were terminated by the E.D.O (Education) D.I.Khan.
- c)** That during service the appellant, no charge sheet, show cause notice and enquiry regarding the termination of appellant issued by the respondents.
- d)** That the appellant has been subjected to injustice in the matter of his termination from service and as the said discrimination smacks of malafides, the impugned order merit annulment.
- e)** That the Counsel of the Appellant may very graciously be allowed to add further grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may be accepted as prayed for.


Your Humble Appellant



Shafi Ullah

Through Counsel

Dated: 22/06/2016


Shalkh Iftikhar Ul Haq
Advocate High Court,
Dera Ismail Khan.

4

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

Service Appeal No. _____/2016

Shafi Ullah

VERSUS

Govt; of KPK etc

AFFIDAVIT

I,
Shafi Ullah S/o Sher Khan R/o Wanda Noorak Tehsil
Paharpur District Dera Ismail Khan (KPK), the appellant, do
hereby solemnly affirm declared on oath that contents of the
above **Appeal** are true and correct to the best of my
knowledge and nothing has been concealed from this
Honourable Tribunal.

شفی اللہ بھٹو
DEPONENT

ABDUL M. LAGARI
Oath Commissioner D I Khan
Date: 22/8/2016

(S)

"A" 9

OFFICE OF THE EXECUTIVE DISTRICT OFFICER (E & S E)

DIKHAN

Ann-A"

APPOINTMENT ORDER

Mr. Shafi Ullah S/o Sher Khan is hereby appointed against vacant post of class IV servant (as N/Q) at GMS Jhoke Mohana in BPS-1 (2970-90-5670) plus usual allowances in the interest of public service with immediate effect on the following term & conditions.

TERMS & CONDITIONS.

1. His service will be consider as regular but without pension / gratuity in the terms of section 19 of the Khyber Pakhtoonkhawa civil servants act 1973 amended in 2005.
2. He will contribute to CPF @ Rs,10% of the minimum of pay and 10 % contribution will be made by the Govt.
3. He will be Governed by such rules and regulations as may be prescribed by the Govt: from time to time for the category to which he belongs.
4. His appointment made purely temporary & liable to termination at any time without assigning any reason.
5. One month pay will be forfeited to Govt: in case of resignation before the date of resignation.
6. His original certificates/degrees will be got verified by this office. All expenses will be born by the candidate.
7. He is required to join the post with in 15 days failing which the appointment order will stand cancel automatically.
8. The appointment is made subject to the condition that the candidate is permanent Domiciled DIKhan.
9. He is required to produce health and age certificate from the medical perintendent DIKhan.
10. Large report should be submitted to all concerned.
11. No TA / DA etc is allowed.

Sd/-
EXECUTIVE DISTRICT OFFICER
E & S EDUCATION DIKHAN

ATTESTED

Endst.No. 45-73-76 / 1

Dated DIKhan the 01/04/2011.

Copy of the above is forwarded to the:-

1. District Coordination Officer DIKhan.
2. Principal/Headmaster /Headmistress/Dy: DO (M&F) concerned:
3. District Accounts Officer DIKhan.
4. Official concerned.

C/L

01-04-11

EXECUTIVE DISTRICT OFFICER
E & S EDUCATION DIKHAN

6

Ann - B - 10

چارج رپورٹ

پیس کمی سے تفریح الٹا نے سی جالی لاسٹ

سے جو کہ آج مورخہ 01/04/2011 قبل بعد از دوپہر بموجب حکم نمبری 76-573

حورم د 01/04/2011 آمدہ از دفتر EDO دیکو اسٹیشن خان

تبدیل ہوا ہے کالری کور پوسٹ کا چارج سنبھال لیا ہے۔

مقام گورنمنٹ حوالہ سیکل جنرل حورم د

مورخہ 01/04/2011

چارج گرنند
شیخ اسرار احمد

ATTESTED
چارج دہندہ

(7)

تفصیل اشیاء بقایا (باز مہ جارج وہنڈہ)

نمبر شمار	نام اشیاء	تعداد اشیاء	کل قیمت	بوسیدہ	گمشدہ	کیفیت

مقام گورنمنٹ سکول کھنڈہ جرجانہ

مدرسہ جارج وہنڈہ

نمبر

جناب عالی! چارج رپورٹ پر توجہ خدمت عالیہ برائے ضروری اوقاف ارسال ہیں۔

ہیڈ ماسٹر گورنمنٹ سکول کھنڈہ

ہر قسم کے ایکویشن ڈیپارٹمنٹ کے تمام فارم اور دستاویزات ہر روز یک عیشیت آرٹ پیو ایسی پر دستیاب ہے 0966-733981

8

Ann- "C" "

Form No. 4

MEDICAL CERTIFICATE

Name of Official..... Mr. Shafi Ullah
 Caste or Race..... Muslimat
 Father's Name..... Mr. Shafiq Khan
 Residence..... Wanda, District Poonch, District
 Teh. Pothohar, Distt. D.Khan
 Date of Birth..... 20/07/1987
 Exact height by measurement..... 5' 7"
 Personal marks of identification..... Scar mark on R.D. eye brow
 Signature of the Official.....
 Signature of.....
 head of office..... He took over charge on 01/4/2011 (P.N)

Seal of Office: D.O.....

ATTENDED

I do hereby certify that I have examined Mr. Shafi Ullah
 a candidate for employment in the Office of the Education Deptt.
 and can not discover that he has any disease communicable or other constitutional
 effication or bodily infirinity except N/A

I do not consider this as disqualification for employment in the office of the
 Education. His age according to his own statement 23⁰⁶/₁₂ year and
 by appearance about 23⁰⁶/₁₂ years.

LEFT HAND THUMB AND FINGER IMPRESSIONS..... 04/12/11

Medical Superintendent
 Civil Hospital, D.K. Khan

8

Ann- C " "

Form No. 4

MEDICAL CERTIFICATE

Name of Official..... Mr. Shafi Ullah
 Caste or Race..... Musawat
 Father's Name..... Mr. Shafiq Khan
 Residence..... Wanda, District Poonch, Jammu & Kashmir
 Teh. Pothohar, Distt. D.Khanna
 Date of Birth..... 20/07/1987
 Exact height by measurement..... 5' 2"
 Personal marks of identification..... Scar mark on R.D. Eye brow
 Signature of the Official..... [Signature]
 Signature of.....
 Head of office..... He took over charge on 04/11/2011 (P.N.)

Seal of Officer D.O

ATTENDED

I do hereby certify that I have examined Mr. Shafi Ullah
 a candidate for employment in the Office of the Education Deptt.
 and can not discover that he had any disease communicable or other constitutional
 effection or bodily infirinity except N.I.C.

I do not consider this as disqualification for employment in the office of the
 Education Deptt. His age according to his own statement 23^{06/12} year and
 by appearance about 23⁶/₁₂ years.

LEFT HAND THUMB AND FINGER IMPRESSIONS..... 04/12/11

[Signature]
 Medical Superintendent
 Civil Hospital, D.Khanna

(ELEMENTARY & SECONDARY EDUCATION)
DERA ISMAIL KHAN

ORDER:-

9

Annexure
"D"

Under the provision of powers delegated E/D rules 1973/2011.

The services of Mr: Shafi ullah N/Q GMS Jhoke Mohana DIKhan is hereby terminated w.c.f the date of absent from his duty i.e 02-04-2011, as despite Show case Notice issued to him in daily local newspaper Darpan. Neither you have reported nor he resume the duty till to date.

NOTE:

Necessary entry to this effect should be made in his service book./

-sd/-


Executive District Officer
(E&Se) Education DIKhan.

Endst: No. 172767-80

Dated DIKhan the 31/12/2011

Copy of the above is forwarded for information:

1. The District Accounts officer DIKhan.
2. The Accountant Middle Section is directed to stop his salaries through source as well as Bank and the pay of absent period should be recovered.
3. The District Officer (Male) (E & Se) DIKhan.
4. Head Master GMS Jhoke Mohana DIKhan.
5. The official concerned.



Executive District Officer
(E & Se) Education DIKhan.

10

Ann - E

14

BEFORE THE HONOURABLE DIRECTOR
ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA

Peshawar

Appeal # _____

Departmental appeal against the order dated 31.12.2011 issued/passed by Executive District Officer (Education) D.I.Khan, whereby the services of the appellant are terminated due to absentee (allegedly) from services from 02.04.2011 (allegedly) vide order # 17876-80. The order passed by the E.D.O (Education) is illegal, arbitrary, against the service rules, structure and liable for cancellation.

Prayer: On acceptance of the instant appeal the services of appellant may graciously be restored and the order of termination dated 31.12.2011 may kindly be cancelled.

Respectfully Sheweth:-

Appellant humbly submits as under:-

1. That the appellant has been recruited as Naib Qasid in BPS-I (Class-IV) on 01.04.2011 at Government Middle School, Jhok Mohana, Tehsil Paharpur, District D.I.Khan
2. That the appellant has performing his duties most honestly and regularly and no complaint either from public or teachers has been lodged against him.
3. That the appellant was drawing monthly salary since 01.04.2011 till 31.01.2012 from National

ATTESTED

(2)
11

15

Bank of Pakistan, Larr Branch, Tehsil Paharpur,
District D.I.Khan.

4. That the appellant is a regular Government Servant and without fulfilment of legal and codal formalities, the services of appellant were terminated by the E.D.O (Education), District D.I.Khan.
5. That it is alleged by the E.D.O (Education), District D.I.Khan, ^{That} notices in respect of absence from the duties were published/promulgated in the daily newspapers "Darpan", D.I.Khan. It is worth mentioning that in fact no notice was published regarding the absentee of the appellant from the services in the daily newspaper "Darpan", D.I.Khan.
6. That the appellant used to reside in village Noorak which is situated at a barren place away from D.I.Khan city approximately fifty kilometres and the daily newspaper "Darpan" is not being circulated there.
7. That the appellant was performing his duties till 12.06.2012 and till then the appellant was not informed properly from either source (verbal or in writing) by the School Staff or E.D.O Education, D.I.Khan regarding the absentee or termination order.
8. That the school record regarding the attendance has been either misappropriated or destroyed or misplaced by the Education Department including the E.D.O Education, D.I.Khan and for this act appellant has approached to the Anti-Corruption Department against the responsible officials.


ATTESTED

9. That the Education Department especially E.D.O Education, D.I.Khan has terminated the services of the appellant malafidely, at the instance of his relative namely Tauqeer Shah with whom the appellant has some personal grudges.
10. That on 23.05.2012 the termination order was conveyed to Accounts Officer, D.I.Khan and the appellant was informed, by his friends on 26.06.2012 regarding his termination.

It is therefore, humbly prayed that on acceptance of the instant appeal, the appellant's services may graciously be restored since his date of termination along with all back benefits including salaries etc and the order of termination may kindly be cancelled and the appellant may kindly be given an opportunity of personal hearing.

Dated: 27.6.2012

Yours Humble Appellant,

Shafi Ullah s/o Sher Khan

r/o Wandha Noorak, Tehsil Paharpur,

District D.I.Khan

ATTESTED

Note: Record in respect of termination, appointment etc is enclosed herewith consisting of 11 sheets.

4 (13) E/17

Annexure
F

BEFORE THE HONOURABLE DIRECTOR
ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA

Appeal # _____

APPLICATION FOR CONDONATION OF DELAY OF PERIOD SINCE
ORDER OF TERMINATION TILL NOW

Respectfully Sheweth:-

1. That the appellant has not received any sort of notice prior to the order of his termination.
2. That no written letter was received by the appellant from the competent authority, showing his absence from duty.
3. That the appellant got the knowledge of his termination on 22.06.2012.
4. That the department has concealed the order of termination from the appellant.
5. That for the ends of justice, the period of condonation of delay may please be condoned.

• It is therefore, prayed that on acceptance of instant application, the period of delay, since order of his termination, may kindly be condoned and he may be given a chance of personal hearing.

Dated: 27.6.2012

Yours Humble Appellant,

Shafi Ullah

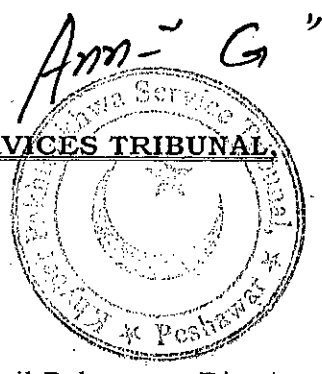
Shafi Ullah s/o Sher Khan

r/o Wandha Noorak, Tehsil Paharpur,

District D.I.Khan

ATTESTED

14



**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR**

Service Appeal No. 1290 /2012

Shafi Ullah s/o Sner Khan r/o Wanda Noorak Tehsil Paharpur, District
D.I.Khan KPK.

..... (APPELLANT)

W.F. Province
Service Tribunal
No. 1256
Date 21-11-12

*Restored
vide order dt
25-2-2014*

VERSUS

- 21. Government of KPK through Secretary Education Peshawar.
- 22. Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
- 23. District Coordination Officer D.I.Khan.
- 24. Executive District Officer (Education) Elementary & Secondary D.I.Khan.
- 25. District Accounts Officer D.I.Khan.
- 26. Head Master Govt Middle School Jhok Mohana D.I.Khan.

..... (RESPONDENTS)

APEAL UNDER SECTION 4 OF THE NWFP SERVICES TRIBUNAL ACT, 1974, AGAINST THE ORDER DATED 31.12.2011, ISSUED/PASSED BY RESPONDENT NO. 4 WHEREBY THE SERVICE OF THE APPELLANT WAS TERMINATED DUE TO ALLEGED ABSENCE FROM SERVICE FROM 02.04.2011 VIDE ORDER NO 17876-80, IN VIOLATION OF LAW, RULES AND NOTHING BUT MALAFIDES.

ATTESTED

SECRETARY
Khyber Pakhtunkhwa
Service Tribunal

[Signature]
21/11/12

PRAYER

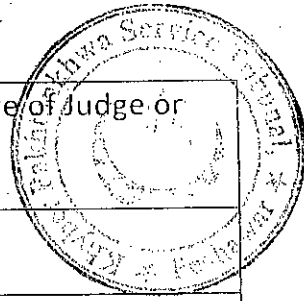
On acceptance of this appeal, impugned alleged order dated 31.12.2011 (which has no existence at all) may be set at naught as illegal whimsical capricious against the services laws and rules even against rules of natural justice and respondents may

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

[Signature]
30/11/12

*Restored vide
order dt 23-4-12*

15



No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	22.02.2016	<p style="text-align: center;"><u>BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR</u> <u>CAMP COURT, D.I.KHAN</u></p> <p style="text-align: center;">Appeal No. 1290/2012</p> <p style="text-align: center;">Shafi Ullah Versus Government of KPK through Secretary Education Peshawar etc.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER.</u> - Counsel</p> <p>for the appellant (Sheikh Ifikharul Haq, Advocate) and Government Pleader (Mr. Farhaj Sikandar) with Muhammad Nawaz, SDEO Paroa for the respondents present.</p> <p>2. During pro and contra arguments, the parties agreed that as departmental appeal of the appellant has not been decided, therefore, the respondent department may be directed to decide the same within a period of one month of the receipt of this order. Since facts involved in the case, as revealed from the record, necessitates decision of such departmental appeal, therefore, the case is remitted to the respondent department with the direction to decide the same within a period of one month of the receipt of this order, to be decided strictly in accordance with law and rules after</p>

ATTESTED

CLERK
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

16

giving full opportunity of hearing to the appellant. The appeal is disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
22.02.2016.

Sd/- PIR Bakhsh Shah,
Member

Sd/- Abdul Latif,
Member

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 02-03-2016
 Number of Words 1200
 Copying Fee 8-00
 Urgent 2-00
 Total 10-00
 Name of Copyist AM
 Date of Completion of Copy 02-03-2016
 Date of Delivery of Copy 02-03-2016

خدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر ڈیڑھ اسماعیل خان

Ann-H

عنوان: درخواست عہدہ فیلڈ فرائیڈ کے لئے برائیل

فلپائن میں برائیل فیلڈ فرائیڈ کے لئے درخواست دہندہ ڈیڑھ اسماعیل خان

ڈیڑھ اسماعیل خان کو برائیل ڈیڑھ اسماعیل خان مورخہ

22.2.2016 - اور من ایڈریس کی اپیل منظور فرمائیں

من ایڈریس کی نوکری کے لئے درخواست دہندہ ڈیڑھ اسماعیل خان کو

جناب عالی: سائل / ایڈریس حسب ذیل ہے

1۔ یہ کہ ایڈریس حکم خدا میں نائب قاعد کے طور

پر ڈیڑھ اسماعیل خان کے لئے ہے

2۔ یہ کہ ایڈریس کو مورخہ 31-12-2011 کو بغیر وجوہ

کے Terminate کیا گیا۔ جس کے خلاف من ایڈریس

نے اپیل کی ہے۔ جس کو Stipulated period

فیلڈ نہیں کیا گیا۔ جس کے خلاف من ایڈریس

نے سروس ٹریبونل سے اپیل کی۔ اور جناب محرم

سروس ٹریبونل نے مورخہ 22.2.2016 کو فیصلہ کیا ہے کہ

من ایڈریس کی فیلڈ اپیل Departmental Appeal

بہتاز فردہ شوقی (Personal Hearing) کی ہے

Received

Office of the District Officer

Diary No. 108

Date: 10/1/2016

Officer

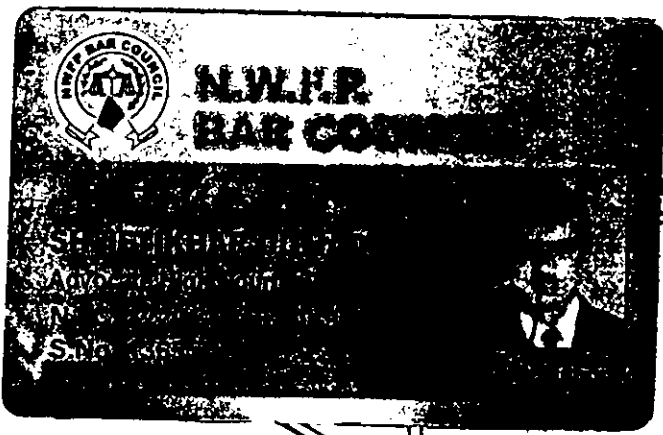
کے اندر فیصلہ کیا جائے۔

بھرا اس کے لئے کہ من اہل بیت و فرقت
ہذا ہے عنوان و شرح حدیث منظور
فرما کر من اہل بیت کا اصل منظور فرما کر
من اہل بیت کی تو کبریٰ بمعنی تمام
یہاں فرمائے گا صلح ہوا اور فرما کر
شکور و حسین فرما دین

میرا 08.3.2016
شیخ الحدیث و لہ شرفان مکنتہ و ائدہ نورک
ڈالمانہ و ائدہ قدس غسل ساڈ نور
صلح و لہ اسماعیل فان ما لعم نائب ناصر
گورنمنٹ عدل مکوں جمعہ کو فرمائے
عبدالملک

03459808302

شیخ الحدیث



18

وکالت

کورت
فیس

Before the K.P.K Service Tribunal

Appellant: Shahjahan vs Govt of K.P.K
Service Appeal

vs K.P.K Service Tribunal Act 1974

باعث تحریر آنکہ

P. I. Khan مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے بیرونی وجہاً دی برائے پیشی یا تفریق مقدمہ عام

Shahjahan vs Govt of K.P.K

و حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا بذراذریعہ رو برو عدالت حاضر ہوتا رہوں گا اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ بیرونی غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر بقیہ کے علاوہ یا پچھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیرونی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر بقیہ کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا پچھری کے اوقات کے آگے یا پیچھے پیش ہونے پر مظہر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا سخت نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ کو کل ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرض دعوی یا جواب دعوی یا درخواست اجراء اسمائے ذگری نگرانہ ایسی نگرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر ثالثی یا راضی نامہ و فیصلہ برطرف کرنے اقبال دعوی کا بھی اختیار ہو گا اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکور بیرون از پچھری صدر بیرونی مقدمہ مذکور نظر ثانی اپیل و نگرانی و برآمدگی مقدمہ یا مستوفی ذگری یک طرفہ یا درخواست حکم اتنا ہی یا ترقی یا کرائی جس از فیصلہ اجرائے ذگری بھی صاحب موصوف کو بشرط ادا کی علیحدہ مختام بیرونی کا اختیار ہو گا اور تمام ساختہ پر داخستہ صاحب موصوف مثل کردہ ز خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی یا بصورت درخواست نظر ثانی اپیل نگرانی یا دیگر معاملہ و مقدمہ مذکورہ کسی دوسرے وکیل یا بیرونی کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور دیے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التزام پڑے گا وہ صاحب موصوف کا حق ہو گا مگر صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پردی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے
22/ جن 22

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

Accepted
Shahjahan

شیخ الکاظم خرد

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 690/2016

Shafi Ullah

VS

Government of KPK

JOINT COMMENTS ON BEHALF OF RESPONDENTS

Preliminary Objections

- 1 That the appellant did not appear before the DEO(M) DIKhan for personal hearing on 08.10.2016.
- 2 That the appeal is not maintainable and incompetent in the eyes of law in its present form.
- 3 That the appellant is stopped by his own conduct to file this appeal.
- 4 That the appellant has got no cause of action.
- 5 That the appellant has got no locus standi.
- 6 The appellant has not come to the Honourable Tribunal with clean hands and has suppressed all relevant facts.
- 7 That the appeal is barred by law of limitations.
- 8 That the appeal is bad on account of mis-joinder / non-joinder of necessary parties.
- 9 That the appeal is bad in eyes of law in its present form.
- 10 That the appellant has concealed the material facts from Tribunal.
- 11 The Honourable Service Tribunal has no jurisdiction to entertain the instant appeal.
- 12 That the departmental presentation of appellant in the judgment of service appeal No. 1290/2012 decided on 22.02.2016 was dismissed by the respondent No. 3. While the service appeal was filed on 22.06.2016.

Objection on Facts

- 1 This Para is correct to the extent that the appellant was appointed as Class-IV dated 01.04.2011 as Naib Qasid in BPS-I as GMS Jhoke Mohana DIKhan.
- 2 This Para is correct to the extent that appellant has prepared his Medical Fitness certificate from the office of MS DHQ DIKhan.
- 3 Incorrect / not admitted. Strongly denied. After the submission of arrival report and medical certificates the appellant remained absent from the duty from date of appointment. There is no proof of his attendance in the school register of GMS Jhoke Mohana DIKhan. The appellant was illegally, without performing duty drawn his monthly salary.
- 4 The appellant has illegally drawn his monthly salary without performing his duty in the said school. Therefore the DEO(M) DIKhan has endorsed the termination order dated 31.12.2011 on 23.01.2017 to the Director Anticorruption to loge the FIR against those DDOs who unlawfully release the salary of the ghost employee.
- 5 Incorrect / not admitted. The service appeal No. 1290/2012 of the appellant was decided on 22.02.2016 with direction to respondent No. 3 to decide the departmental appeal of the appellant within one month. The respondent No. 3 has decided the departmental appeal of the appellant and dismissed.


6 As discussed above.

7 The appeal of the appellant was dismissed after the proper procedure. The respondent No. 3 has conducted the personal hearing of the appellant on 08.10.2016 but the appellant did not appear on the same date and time. Then the respondent No. 3 has issue another date to the appellant but the appellant comes late to the office of the DEO(M) DIKhan. Finally the personal hearing of the appellant was conducted in the office of DEO(M) DIKhan on 15.11.2016. After adopting the legal procedure the respondent No. 3 has decide the appeal of the appellant on 23.01.2017. (Annexure A)

Objection on Ground

- a) Incorrect / not admitted. The impugned order of the appellant was upheld by the DEO(M) on 23.01.2017.
- b) Incorrect hence denied. It is clear from the order dated 23.01.2017 that all the codal formalities were observed before the issuance of the Dismissal Order dated 31.12.2011. The appellant was a ghost employee and he did not attend the personal hearing at that time. Therefore the Education Department has given the notice in the News Paper for the personal hearing of the appellant but in vain. (Annexure B)
- c) Incorrect/ not admitted. The show cause notice was served upon appellant, called for personal hearing but appellant did not reply the show cause notice and did not appear before the respondent No. 3 for personal hearing.
- d) Incorrect / not admitted. As discussed above.
- e) That the Counsel of respondents may kindly be allowed to raise additional grounds during the course of hearing.


In view of above submission, it is humbly prayed that service appeal of appellant may kindly be dismissed with cost.


Secretary

Elementary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar


Director

Elementary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar


District Education Officer (Male)
Dera Ismail Khan

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BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 690/2016

Shafi Ullah

VS

Government of KPK

JOINT COMMENTS ON BEHALF OF RESPONDENTS

Preliminary Objections

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- 8 That the appeal is bad on account of mis-joinder / non-joinder of necessary parties.
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- 4 The appellant has illegally drawn his monthly salary without performing his duty in the said school. Therefore the DEO(M) DIKhan has endorsed the termination order dated 31.12.2011 on 23.01.2017 to the Director Anticorruption to loge the FIR against those DDOs who unlawfully release the salary of the ghost employee.
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- 25
- 6 As discussed above.
 - 7 The appeal of the appellant was dismissed after the proper procedure. The respondent No. 3 has conducted the personal hearing of the appellant on 08.10.2016 but the appellant did not appear on the same date and time. Then the respondent No. 3 has issue another date to the appellant but the appellant comes late to the office of the DEO(M) DIKhan. Finally the personal hearing of the appellant was conducted in the office of DEO(M) DIKhan on 15.11.2016. After adopting the legal procedure the respondent No. 3 has decide the appeal of the appellant on 23.01.2017. (Annexure A)

Objection on Ground

- a) Incorrect / not admitted. The impugned order of the appellant was upheld by the DEO(M) on 23.01.2017.
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- d) Incorrect / not admitted. As discussed above.
- e) That the Counsel of respondents may kindly be allowed to raise additional grounds during the course of hearing.

In view of above submission, it is humbly prayed that service appeal of appellant may kindly be dismissed with cost.

Secretary
Elementary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar

Director

Elementary & Secondary Education Department
Khyber Pakhtunkhwa Peshawar

Vetted
District Attorney
D.I.Khan

District Education Officer (Male)
Dera Ismail Khan

Before the honorable Service Tribunal KPK Peshawar

Service Appeal No. 690/2016.

Shafi Ullah vs Govt: of KPK

Affidavit:

I Muhammad Kamran Khan Legal representative of DEO (M) DIKhan do hereby solemnly affirm and declared on Oath that contents of written reply of above mentioned Service Appeal are correct to the best of my Knowledge and nothing has been concealed from this Honorable Court.


Dependent

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BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK
PESHAWAR

Service Appeal No 690/2016


Shafi Ullah

VS

Government of KPK

Authority

I District Education Officer (M) DIKhan do hereby authorized Mr. Muhammad Kamran Khan Legal Representative to attend Honourable Service Tribunal KPK Peshawar DIKhan Bench on behalf of respondents in connection with submission of para wise comments and till the decision of the service appeal.


District Education Officer (Male)
Dera Ismail Khan

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**OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN**

ORDER

WHEREAS you Mr. Shafi Ullah, (Naib Qasid BPS-1) Government Middle School Jhoke Mohana Tehsil & District DIKhan were proceeded for having committed the following gross irregularities of willful absence which constitute inefficiency, disobedience and misconduct under rule 3 sub rules (a), (b) & (d) of the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) rules, 2011.

AND WHEREAS, the Head Master GMS Jhoke Mohana reported your absence from duty w.e.f 02.04.2011 to 10.11.2011 without any application / prior permission sanctioned of the Competent Authority dated 10.11.2011.

AND WHEREAS a show cause notice was served upon you vide Executive District Education officer No. 16002 dated 18.11.2011.

AND WHEREAS, no reply of show cause was submitted by you within time.

AND WHEREAS, an absence notice through **DAILY DARPAN** regarding your absence duty was published on 11.12.2011 directing you to resume your duties, and the stipulated period has been expired on 26.12.2011. You failed to submit your reply / absentee reason.

AND WHEREAS, last show cause notice was served by the then EDO DIKhan vide No. 16620 dated 07.12.2011 in which directed you to submit your reply within fifteen days and your failed to submit reply of show cause notice.

AND WHEREAS, the then EDO DIKhan being a competent authority in exercise of powers delegated E&D Rules 1973/2011 has **TERMINATED** you vide No. 17876-80 dated 31-12-2011.

AND WHEREAS, you filed Service Appeal No. 1290/2012 before the Honourable Service Tribunal Khyber Pakhtunkhwa for reinstatement of service. Which was decided on 22.02.2016 with direction to file the departmental appeal before the DEO(M) DIKhan as competent authority.

AND WHEREAS, you were summoned vide this office letter No. 21929-38 dated 10.11.2016 for personal hearing on 15.11.2016 before the committee, and during personal hearing you have failed to defend yourself. The committee upheld your termination order dated 31.12.2011.

NOW THEREFORE, the termination order vide No. 17876-80 dated 31.12.2011 was in accordance with law, rule and based on facts. So the **departmental appeal dated 08.03.2016 is dismissed.**

D/c
DISTRICT EDUCATION OFFICER
(M) DERA ISMAIL KHAN

Endst: No. 1337-41

Dated DIKhan the 23-1-2017

Copy forwarded to the:-

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar with the request to initiate inquiry against those DDOs who unlawfully released salaries to a ghost official and inflicted huge loss to the government Exchequer.
2. Director Anticorruption Khyber Pakhtunkhwa Peshawar with the request to initiate proceeding to lodge FIR against DDOs who released salaries to the ghost employees without performing of any type of duties.
3. District Comptroller of Accounts Dera Ismail Khan
4. Dy: District Education Officer (M) with direction to recover the salary drawn by the ghost employee
5. Mr. Shafi Ullah S/O Sher Khan Wanda Norak PO Wanda Maddat Tehsil Pahrpur DIK

D/c
DISTRICT EDUCATION OFFICER
(M) DERA ISMAIL KHAN

شوکاز نوٹس

29

مستفیج اللہ نامہ اصد گورنر، ایڈا سکول جھوک موہانڈ ڈیرہ اسماعیل ایک بار پہلے
آپ کو شوکاز نوٹس دفتر ہذا کی طرف سے بھیجا گیا ہے۔ تا حال آپ حاضر نہیں ہوئے لہذا 15 دن کے
اندرا اندر اپنی غیر حاضری کی وجہ بیان کریں۔ ورنہ آپ کے خلاف E/D رولز 2011ء کے تحت ایک
طرفہ کارروائی عمل میں لائی جائے گی۔

[Handwritten Signature]
سید فیروز خان شاہ

EDO(E&Se) DIKhan

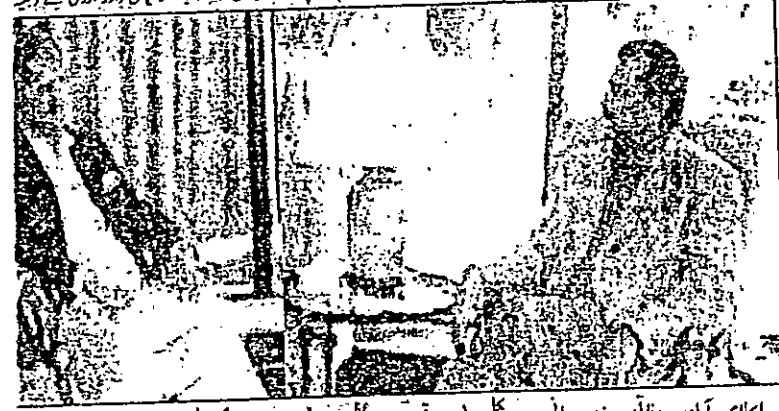
18620 Date 27/12/2011

[Handwritten Signature]
District Officer (DDO)
(E&S) Education DIKhan

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سایکل MS کی پھوکی پھوکی بالیسی افراد کو ڈرو

سابق ایم ایس گل پٹی نے پھر جاؤ اور کوسو کوسو سے آؤں کسے اگر ہم اللہ کو اور ڈرو ہے۔ ایم ایس گل پٹی نے کہا کہ وہ لوگوں کو ڈرو ہے اور ڈرو ہے۔



اسلام آباد وفاقی وزیر پانی و بجلی نوید قمر وزیراعظم ہفت روزہ گیلانی سے ملاقات کر رہے۔

وہاڑی: مسافر وین اور ٹرک میں تصادم
14 ماہ جن 15 ذی

گرہ جانہ میں پانی کی عدم فراہمی پر احتجاجی مظاہرہ
16 جن 16 ذی

4 سالہ بچی موٹر سائیکل کی ٹکڑے سے زخمی

شیراز لی لی ہسپتال سے گزرتے ہوئے ایک موٹر سائیکل نے ٹکڑے مار دیے۔

کوئٹہ یونیورسٹی نے موٹر سائیکل سوار کے خلاف رپورٹ درج کر لی۔

ذرا سا ٹیکل مان (جس کا نام پورٹل ہو گیا) سے ٹکڑے مار دیے گئے۔

آنے والی 4 سالہ بچی موٹر سائیکل کی ٹکڑے سے زخمی ہو گئی۔

بچی، بچہ بھی امداد کیلئے ذرا ہسپتال میں لایا گیا۔

ذرا کے کوئی ٹکڑے کوئٹہ یونیورسٹی (پتہ نمبر 17) پر لایا گیا۔

مضرت گوشت کی فرودخت، متعلقہ محکمہ خاموش

کار اور لڑکا فرودخت اور کھانا کھانے سے بیمار ہو گیا۔

مضرت گوشت کی فرودخت اور کھانا کھانے سے بیمار ہو گیا۔

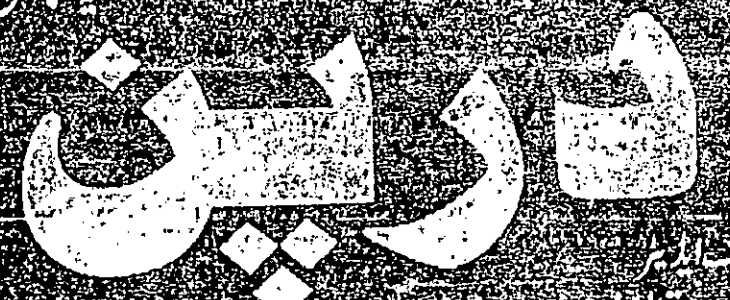
کار اور لڑکا فرودخت اور کھانا کھانے سے بیمار ہو گیا۔

ڈیڑھ سائیکل اور لہو سے نیک وقت شائع ہونے والا کثیر الاشاعت ہفت روزہ اخبار

ABC CERTIFIED

Daily **DAI** REG. NO 2001

پہلا سائیکل اخبار



Registered No: 1372

جلد نمبر 5

اتوار 11 دسمبر 2011ء محرم الحرام 1432ھ صفحات 4 قیمت 5 روپے

نمبر نمبر 307

معدنیہ کا جدید سرگرم اور تندرست خاندان

انجینئر خورشید سرکاری گاڑی پر ڈرائیور اور تین خاصہ داروں کے ہمراہ جا رہے تھے کہ نا معلوم افراد نے انہیں گولی مار دی۔

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BEFORE THE HONORABLE SERVICE TRIBUNAL,
KPK, PESHAWAR

Service Appeal No. 690/2016

Shafiullah Versus Govt. of KPK

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth:

Appellant humbly submit as under,

REJOINDER TO PRELIMINARY OBJECTIONS:-

1. That para#1 is incorrect. The respondents authority did not provide to the appellant the opportunity of personal hearing.
2. That Para#2 is incorrect. The appellant is aggrieved person hence, again the impugned order the appeal is maintainable and competent.
3. That Para#3 is incorrect. Furthermore, the respondents authority did not explained that how the appellant estopped by conduct.
- 4/5. That Para#4 & 5 is incorrect. The appellant being aggrieved person has locus standi and cause of action.
6. That Para#6 is incorrect. The respondent authority did not explained that how the appellant has not come to this Tribunal with unclean hands. Thus, para is misformulated.
7. That Para#7 is incorrect. The appeal is well within a time as per service rules & laws. Thus this Para is misconceived.
8. That Para#8 is incorrect. The respondent authority has not explained that how the misjoinder and non-joinder has been made thus this para is misconstructured.
9. That Para#9 is incorrect. The answering respondent has not explained that how the appeal is bad in the instant form, hence, Para is denied.

10. That Para#10 is incorrect. The answering respondent had not given the facts which have been concealed. Thus this Para is misformulated.

11. That Para#11 is incorrect. The appellant is an aggrieved civil servant and thus this honorable tribunal has got jurisdiction to entertain the instant appeal

12. That Para#12 is incorrect. This Honorable tribunal converted the service appeal into departmental appeal on 22/02/2016 which was not decided by the respondent authority within stipulated period hence, the appellant submitted the service appeal within time. Moreover, the respondent authority has not conveyed the dismissal order of representation to the appellant. Hence, this Para is misconceived.

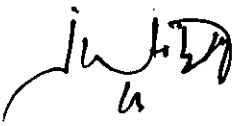
REJOINDER OF OBJECTION ON FACTS:-

1. Para#1 needs no reply as not denied.
2. Para#2 needs no reply as not denied.
3. Para#3 is vehemently denied. The appellant never remained absent throughout his service. Actually after arrival report the services of the appellant was transferred by the then EDO (E & SE) D.I.Khan, Syed Firoz Hussain Shah as a special duty of VIP Driver with Syed Firoz Hussain Shah because the appellant is VIP Driver and all the proceedings of transferring the duty of the appellant was in the knowledge of respondent authority including the incharge of GMS Jhok Mohana D.I.Khan and thus the respondent authority released the monthly salary of the appellant, thus the appellant never remained absent from his duty and perform his duties with full satisfaction of superiors and the monthly salary was released against the performing of his duty. Furthermore, the appellant requested the then EDO Syed Firoz Shah to give permission to perform his duty on his own station instead of driving with you being their nearby station/village as the appellant arranged marriage at that time due to this the authority/EDO Firoz shah become annoyed and the appellant was humiliated due to some ulterior motive which cannot be explained in this appeal and the appellant reserve the

right of suing in a competent forum: Thus, this para is misconceived.

4. Para#4 is denied. As stated in Supra Paras the appellant perform his duties with the EDO D.I.Khan as a Driver being VIP Driver and monthly salary was released against their duties and it is not possible that without duty the respondent authority released the salaries of the appellant for such a longest period in respect of release of salary the record is enclosed as AR/1. Moreover, the appellant was not a ghost employee and the appellant was made escape goat being a pity employee and no proceedings whatsoever has been done against the then EDO Syed Firoz Shah, SDEO and In-Charge of GMS Jhok Mohana, D.I.Khan.
5. Para#5 is denied. The respondent authority has not decided the departmental appeal of the appellant within the stipulated period as directed by this honorable tribunal and if the departmental appeal has been anyhow be decided by the respondent authority that is not in the knowledge of the appellant and not conveyed to the appellant, thus this para is misformulated.
6. Para#6 needs no reply as not denied.
7. Para#7 is vehemently denied. The respondent authority never charge sheeted the appellant and never provided the statement of allegation to the appellant and no inquiry whatsoever was conducted against the appellant and no opportunity of personal hearing was given to the appellant, the whole proceedings (although not admitted) was done at the back door of the appellant and not sustainable in the eyes of service law & rules.

REPLY ON GROUNDS:-

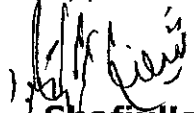
- 
- I. Para # A is denied, the impugned order dated 23/01/2017 was never provided to the appellant, thus the impugned order are against law facts and circumstances of the case.
 - II. Para # B is denied, no codal formalities whatsoever including charge sheet, statement of allegation, show cause notices has been done by the respondent authority and the alleged daily newspaper Dirpan is not well known newspaper and is not being

read/available in the market and the respondent authority have not conducted any inquiry against the appellant, thus this para is misformulated and denied.

- III. Para # C is denied. No show cause notice was served and no personal hearing was given to the appellant.
- IV. Para # D is denied. Needs no reply as not denied by the respondent authority.
- V. Para # E, the counsel for appellant urged additional grounds during the course of hearing.

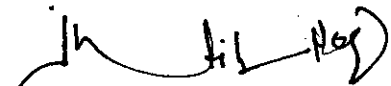
It is therefore humbly prayed, that the appeal of the appellant may kindly be accepted as prayed for in appeal and
Order End: 1337-14 dated 23.1.2017 may be set at naught/set aside.
Dated: 18/12/2018

Appellant



Shafiullah

Through counsel



Sheikh Iftikhar-UI-Haq

Advocate High Court

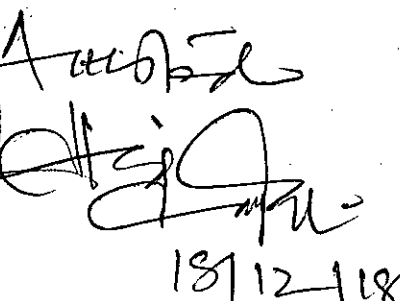
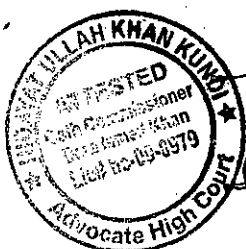
AFFIDAVIT

I, **Sheikh Iftikhar-UI-Haq AHC**, counsel for appellant, do hereby solemnly affirm and declare on Oath that contents of the written statement are true and correct as communicated to me by my clients and nothing has been deliberately concealed from this Hon'ble Court.

Dated: 18/12/2018



Deponent



18/12/18

PAYROLL SYSTEM
AMENDMENT FORM
SINGLE EMPLOYEE ENTRY

OFFICE OF THE D. O (M) E&S Education
FOR THE MONTH OF 10/12 2012

DDO Code (Cost Center) 016030 Description

Personal Number 201554 Employee Name Shahid Malik

Grade (Pay Scale Group) N/D 0 1/1 D

FORM PAY02
Date: 10/12/12
Page No: 103

National ID Card Number _____
Salary Status Start Stop

GENERAL DATA CHANGE		CHANGE IN PAYMENTS / DEDUCTIONS					Remarks
Info Type	Field ID	New Contents	Wage Type	Amount	Effective Date		
		Pay Stopped	117 (Inactive)		10/12/12	Terminated from service	
		TERMINATION	117 (Inactive)	10/12/12	10/12/12	one year notice	
						copy of E&S	
						other attached	

Prepared By _____
Executive District Officer (E&S) Education
D. I. Khan

Audited By _____
District Officer (M) (E&S) Edu: D. I. Khan

Entered/Verified By _____

H 20

SR:1

D. I. Khan

F Sec:002 Month:April 2012
DI6030 -D O (S&L) M DIK (TEN)
Min: Education Schools
MTN:
CPF #:
Old #:

Pers #: 99597428 Rank:
Name: SHAFI ULLAH
Des.: NAIR QASID
NE No.: 1210320E3303E
NI Interest Free
01 Regular / Contract

DI6030

PAYS AND ALLOWANCES:	
0001-Basic Pay	4,950.00
1000-House Rent Allowance	891.00
1210-Convoy Allowance 200E	950.00
1300-Medical Allowance	1,000.00
1999-Integrated Allowance (200E)	300.00
1971-Adhoc Allowance 2011@ 15%	445.00
1973-Adhoc Allowance 2011@ 50%	1,485.00

Gross Pay and Allowances 9,921.00

DEDUCTIONS:

CPF Balance	8,112.00	
3501-Benevolent Fund		Subtr: 312.00
3511-Addl Group Insurance		120.00
3604-Group Insurance		3.00
3663-EEF MWF Fund		58.00
		10.00

Total Deductions 503.00

9,418.00

	D. O. B	LFP Quota:	
	20.10.1937	M. R. P LARR BRANCH	N. S. P LARR BRANCH
01 Years 01 Months 001 Days		2008-6	
Government Contribution To CPF :		312.00	

ATTESTED

جنابہ "EDO" صاحب (رہنما) ایڈیشن ری ای جی

بھوالہ لٹرٹری 4-10201 بتاریخ 12-7-17 جس میں حافظ

کلاس فور جی پی ایس کالا گٹھ سے جی ایم ایس جھوک موہانہ

ٹرانسفر کی گئی ہے۔ جی ایم ایس جھوک موہانہ میں صرف دو عدد پوسٹ کلاس فور جی

میں ہیں پر وہ کلاس فور کافی عرصہ سے تصنیف میں ایکے سے لاکھ

تک سکول صفا میں نہ ہی کوئی نسیبے vacant پوسٹ ہے اور نہ ہی

کوئی ایڈیشنل پوسٹ ہے۔ لہذا حافظ ذلیل کلاس فور کو کسی اور سکول میں ٹرانسفر کیا جائے

Date: 12-8-12.

DD/Supt (M)

Magician the terminal
wall of Shafiullah: Ashad
15/2/12

(2486
3304)

Office of the EDO (E.S.) F.A.M.
Dairy No. 3304
Dated 16-8-12

AEc VII
16/8

ATTESTED

Before The K.P.K Service Tribunal Peshawar
D. I. Khan

In Service Appeal No _____

Shafi ulan

v/s

Govt of K.P.K

Subject: Application for submission
of Amended appeal.

Respected Sir,

The appellant humbly
submits as under.

- ① That the above titled appeal
is pending adjudication in
this Honble Tribunal.
- ② That during the pendency
of appeal, the answering respondent
submitted the dismissal order
of departmental appeal vide
order Encl. No, 1337-41- dated
23.1.2017, which is necessary
to be challenged in
this appeal. Because for

the sake of justice the amendment is necessary. Because the impugned order is required to be challenged in this appeal for the fruitful result of the case and without challenged the said, the very purpose of the appeal will not be fulfilled. Moreover, amendment can be allowed at any stage under the law and verdict of superior court. Because due to this amendment the nature and nonamendature did not change.

③ This honorable has vast and extensive jurisdiction to entertain the instant application.

It is therefore humbly pray the instant application may kindly be accepted as per subjects and contents. your humble petitioner

Verification of contents of application
 are correct. Sh. J. J. J.
 28.11.2019 Sh. J. J. J.

Before The K.P.K Service Tribunal Peshawar
D. I. Khan

In Service Appeal No _____

Shafi ulman

V/S

Govt of K.P.K

Subject: Application for submission
of Amended appeal.

Respected sir,

The appellant humbly
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① That the above titled appeal
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② That during the pendency
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submitted the dismissal order
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order Endst. No, 1337-41- dated
23.1.2017, which is necessary
to be challenged in
this appeal. Because for

the sake of justice the amendment is necessary. Because the impugned order is required to be challenged in this appeal for the fruitful result of the case and without challenged the said, the very purpose of the appeal will not be fulfilled. Moreover, amendment can be allowed at any stage under the law and verdict of superior court. Because due to this amendment the nature and non-remedature did not change.

③ This Honble has vast and extensive jurisdiction to entertain the instant application.

It is therefore humbly pray the instant application may kindly be accepted as per subjects and contents.
your humble petitioner

Verification
the contents of application
are correct
Date
28.11.2019
Through Counsel
Sh. J. K. Singh
Sh. J. K. Singh

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

SERVICE APPEAL No. 690/2019

Shafi Ullah

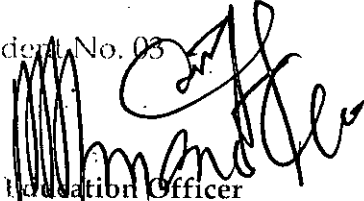
VS

Government of KPK

Index

S No.	Description of documents	Description of annuexure	Page No.
01	Reply of service appeal		1-4
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03	Annexure		7-9
04	Authority		10

Respondent No. 03


District Prosecution Officer
(Male) Dera Ismail Khan

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

SERVICE APPEAL No. 690/2019

Shafi Ullah VS Government of KPK

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS 1 to 3.

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action / locus standi.
2. That the appellant has not come to the honorable tribunal with clean hands.
3. That the appellant has filed the service appeal on malafide objectives.
4. That the instant appeal is against the prevailing laws and rules.
5. That the appeal is barred by the doctrine of laches.
6. That the instant appeal is illegal and against the facts.
7. That the service appeal is not maintainable in its present form.
8. That the appellant has concealed the material facts from the honorable tribunal.
9. That the appeal is badly time barred.
10. That the appellant did not complete his probation period satisfactory, so he was terminated from service.

OBJECTION ON FACTS

The Respected No. 3 humbly submits as under

Respectfully Sheweth

1. Para pertains to the appointment of appellant as a class IV on 01-04-2011 at GMS Jhoke Mohana D.I.Khan.
2. Para pertains to the medial and charge report of appellant.
3. Incorrect / not admitted. There is no proof of appellant attendance at GMS Jhoke Mohana.
4. Para pertains to the salary of appellant from 01-04-2011 to 31-01-2012. Moreover there is no proof of appellant attendance in the office of the DEO Male D.I.Khan.
5. Para pertains to the termination order dated 31-12-2011 and departmental appeal on 27-06-2012 which is badly time barred.
6. Para pertains to the service to the appeal of appellant in the service tribunal order 22-02-2016. The Departmental Appeal disposed of in compliance of order of this H.T.
7. Para pertains to the service appeal No. 1290/2012 which was decided on 22-02-2016 with direction to decide the departmental appeal of appellant which was decided on 23-01-2017 in which departmental appeal of appellant was dismissed (Annexure A).
8. Incorrect / not admitted. Para strongly denied the appellant has not filed any departmental presentation to the appellate authority. So appellant has got no cause of action and locus standi. The appellant filed service appeal No. 690/2019 after the laps of two years. So appeal is not maintainable.

Grounds

- a. Incorrect / Not admitted the para is refuted. Impugned order dated 31-12-2011 and order dated 23-01-2017 are according to law and natural principal of justice.
- b. Incorrect / not admitted. As replied above.
- c. Incorrect / not admitted. A proper procedure under the law and rules was adopted before termination of service the appellant.
- d. Incorrect para is strongly denied.
- e. That the council for respondent may be graciously allowed to raise the further grounds during the course of arguments.

So it is humbly prayed that appeal of appellant may kindly be dismissed with cost.



Respondent No.1
The Secretary E&SE KPK
Peshawar

Respondent No.2
The Director E&SE KPK
Peshawar

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

SERVICE APPEAL No. 690/2019

Shafi Ullah

VS

Government of KPK

COMMENTS ON BEHALF OF RESPONDENTS.

Preliminary Objections

1. That the appellant has got no cause of action / locus standi.
2. that the appellant has not come to the honorable tribunal with clean hands.
3. That the appellant has filed the service appeal on malafide objectives.
4. that the instant appeal is against the prevailing laws and rules.
5. That the appeal is barred by the doctrine of leeches.
6. That the instant appeal is illegal and against the facts.
7. That the service appeal is not maintainable in its present form.
8. That the appellant has concealed the material facts from the honorable tribunal.
9. That the service appeal is badly time barred.

10. That the appellant did not complete his probation period satisfactorily, so he was terminated from service.

Objection on Facts

The respondent No. 3 humbly submits as under

Respectfully Sheweth

1. Para pertains to the appointment of appellant as a class iv on 01-04-2011 at GMS Jhoke Mohana D.I.Khan.
2. Para pertains to the medical and charge report of appellant.
3. Incorrect / not admitted. There is no proof of appellant attendance at GMS Jhoke Mohana.
4. Para pertains to the salary of appellant from 01-04-2011 to 31-01-2012. Moreover there is no proof of appellant attendance in the office of the DEO Male D.I.Khan.
5. Para pertains to the termination order dated 31-12-2011 and departmental appeal on 27-06-2012 which is badly time barred.
6. Para pertains to the appeal of appellant in the service tribunal order 22-02-2016. *The DA disposed off in compliance of order of this H.T.*
7. Para pertains to the service appeal No. 1290/2012 which was decided on 22-02-2016 with direction to decide the departmental appeal of appellant which was decided on 23-01-2017 in which departmental appeal of appellant was dismissed (Annexure A).
8. Incorrect / not admitted. Para strongly denied the appellant has not filed any departmental presentation to the appellate authority. So appellant has got no cause of action and local

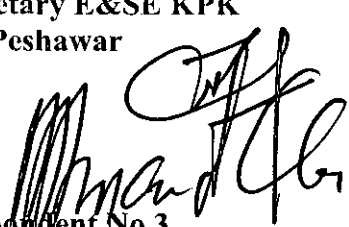
standi. The appellant filed service appeal No. 690/2019 after the laps of two years. So appeal is not maintainable.

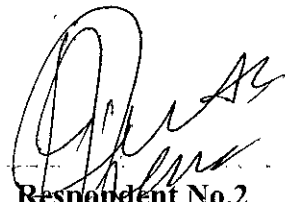
Grounds

- a. Incorrect / Not admitted. the para is refuted. Impugned order dated 31-12-2011 and order dated 23-01-2017 are according to law and natural principal of justice.
- b. incorrect / not admitted. As replied above.
- c. incorrect / not admitted. A proper ~~method~~ ^{procedure under The Law and Rules before} was adopted for termination of service ~~against~~ ^{of} the appellant.
- d. Para is strongly ~~rebutted~~ ^{denied}.
- e. That the council for respondent may be graciously allowed to raise the further grounds during the course of arguments.


So it is humbly prayed that appeal of appellant may kindly be dismissed with cost.

Respondent No.1
The Secretary E&SE KPK
Peshawar


Respondent No.3.
District Education Officer
(M) D. I. Khan


Respondent No.2
The Director E&SE KPK
Peshawar

*Vetted subject to necessary
Correction. Annex all relevant documents
and record and News papers copies.*


Assistant Advocate General
Khyber Pakhtunkhwa
Services Tribunal Peshawar

8/12/2021

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

SERVICE APPEAL No. 690/2019

Shafi Ullah

VS

Government of KPK

Affidavit

I Mr: Muhammad Kamran Khan ADEO Litigation (M) D.I.Khan do solemnly affirm and declare on oath that contents of written reply are correct to the best of my knowledge and nothing has been concealed from this honorable Court



[Signature]
Depoent

27/6/22

**OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DERA ISMAIL KHAN**

ORDER

WHEREAS you Mr. Shafi Ullah, (Naib Qasid BPS-1) Government Middle School Jhoke Mohana Tehsil & District DIKhan were proceeded for having committed the following gross irregularities of willful absence which constitute inefficiency, disobedience and misconduct under rule 3 sub rules (a), (b) & (d) of the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) rules, 2011.

AND WHEREAS, the Head Master GMS Jhoke Mohana reported your absence from duty w.e.f 02.04.2011 to 10.11.2011 without any application / prior permission sanctioned of the Competent Authority dated 10.11.2011.

AND WHEREAS a show cause notice was served upon you vide Executive District Education officer No. 16002 dated 18.11.2011.

AND WHEREAS, no reply of show cause was submitted by you within time.

AND WHEREAS, an absence notice through **DAILY DARPAN** regarding your absence duty was published on 11.12.2011 directing you to resume your duties, and the stipulated period has been expired on 26.12.2011. You failed to submit your reply / absentee reason.

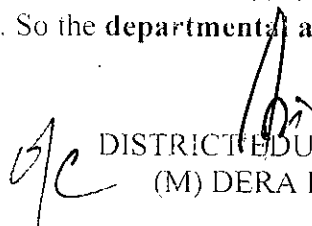
AND WHEREAS, last show cause notice was served by the then EDO DIKhan vide No. 16620 dated 07.12.2011 in which directed you to submit your reply within fifteen days and your failed to submit reply of show cause notice.

AND WHEREAS, the then EDO DIKhan being a competent authority in exercise of powers delegated E&D Rules 1973/2011 has **TERMINATED** you vide No. 17876-80 dated 31-12-2011.

AND WHEREAS, you filed Service Appeal No. 1290/2012 before the Honourable Service Tribunal Khyber Pakhtunkhwa for reinstatement of service. Which was decided on 22.02.2016 with direction to file the departmental appeal before the DEO(M) DIKhan as competent authority.

AND WHEREAS, you were summoned vide this office letter No. 21929-38 dated 10.11.2016 for personal hearing on 15.11.2016 before the committee, and during personal hearing you have failed to defend yourself. The committee upheld your termination order dated 31.12.2011.

NOW THEREFORE, the termination order vide No. 17876-80 dated 31.12.2011 was in accordance with law, rule and based on facts. So the **departmental appeal dated 08.03.2016 is dismissed.**

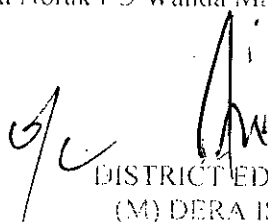

DISTRICT EDUCATION OFFICER
(M) DERA ISMAIL KHAN

Endst: No. 1337-41

Dated DIKhan the 23-1-2017

Copy forwarded to the:-

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar with the request to initiate inquiry against those DDOs who unlawfully released salaries to a ghost official and inflicted huge loss to the government Exchequer.
2. Director Anticorruption Khyber Pakhtunkhwa Peshawar with the request to initiate proceeding to lodge FIR against DDOs who released salaries to the ghost employees without performing of any type of duties.
3. District Comptroller of Accounts Dera Ismail Khan
4. Dy: District Education Officer (M) with direction to recover the salary drawn by the ghost employee
5. Mr. Shafi Ullah S/O Sher Khan Wanda Norak PO Wanda Maddat Tehsil Pahrpur DIK


DISTRICT EDUCATION OFFICER
(M) DERA ISMAIL KHAN

پاکستان سمیٹ کی صوبائی کوارڈینیٹرز مس نوزیہ اور زرعی آفیسر انور خان بخٹی زمینداروں سے مخاطب ہیں

مکان برائے فروخت

رقبہ 11 مرلے نزد ہنوں اڈہ ڈیرہ اسماعیل خان

پتہ مکان نمبر e/7701 تھہیم آباد

رابطہ کیلئے: محمد فرقان محلہ تھہیم آباد ڈیرہ

رابطہ نمبر 0321-9610846

حج کی سعادت حاصل کرنے پر مبارکباد

پہاڑ پور (پورہ پورٹ) ڈاکٹر حاج محمد داکھی نے اپنے عزیز عیال کی قارون کو حج کی سعادت حاصل کرنے پر مبارکباد پیش کرتے ہیں۔ اللہ تعالیٰ ان کو ایسے بڑا دولت مند بنائے۔ ان کی سعادت نصیب فرمائیں۔ ان خیالات کا ذکر حج ایوان اللہ، بنگلہ ڈی ڈی اور (بقیہ نمبر 32 پر)

سٹیم کو کوئی خطرہ نہیں، پاک فوج بھی آنے کا

صدر آزاد کی نسبت برکاتی ہمارا دوست بات بھی ہوا ہے، آئے

حکومت نہیں جائے گی، سمیت کے ایکشن بھی ہوں گے، ان اور

اسلام آباد (سی ایم ایس) پاکستان مسلم لیگ کے صدر فوج آ

سینئر چوہدری جماعت حسین نے کہا ہے کہ سٹیم کو کوئی پوری کرنا

خطرہ نہیں ہے نہ کوئی آ رہا ہے اور نہ تو جارہا ہے، پاک

☆..... شوکاز نوٹس☆

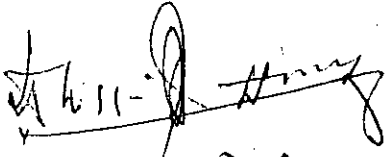
مسعی شفیع اللہ نائب قاصد گورنمنٹ مڈل سکول جھوک موہانہ سکنہ گاؤں وانڈہ نورک ڈاکخانہ وانڈہ مدت ڈیرہ اسماعیل خان ایک بار پہلے بھی آپ کو شوکاز نوٹس دفتر ہذا کی طرف سے بھیجا گیا ہے تا حال آپ حاضر نہیں ہوئے لہذا 15 دن کے اندر اندر اپنی غیر حاضری کی وجہ بیان کریں۔ ورنہ آپ کے

دستخط
سید نواز حسین شاہ
EDO (E & S)
D.I.KHAN

خلاف E/D رولز 2011ء کے تحت یکطرفہ کارروائی عمل میں لائی جائیگی۔

شوکار نوٹس

مسمی شفیع اللہ نائب قاصد گورنمنٹ ڈل سکول جھوک موہانہ ڈیرہ اسماعیل خان، آپ مورخہ 12 اپریل 2011ء سے مسلسل غیر حاضر ہیں۔ اور آپ کے ہیڈ ماسٹر نے غیر حاضری کی تحریری رپورٹ ارسال کی ہیں۔ اور انکوری بھی ہوئی ہیں۔ لہذا آپ کو مطلع کیا جاتا ہے۔ کہ 15 دن کے اندر اندر اپنی غیر حاضری کی وجہ بیان کریں۔ ورنہ آپ کے خلاف E/D رولز 2011ء کے تحت ایک طرفہ کارروائی عمل میں لائی جائے گی۔


سید فیروز حسین شاہ

EDO(E&Se) DIKhan

no 16002 date 18-11-2011

BEFORE THE HONOURABLE SERVICE TRIBUNAL KPK PESHAWAR

SERVICE APPEAL No. 690-2019

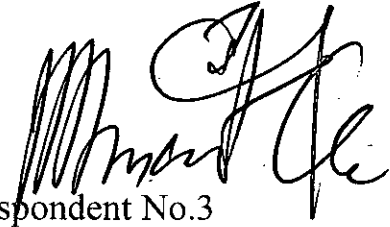
Shafi Ullah

VS

Government of KPK

Authority

I District Education Officer (M) D.I.Khan do hereby authorized Mr: Muhammad Kamran Khan to attend the honorable Service Tribunal KPK Peshawar on behalf of respondent in connection with submission para wise comments till the decision of service appeal.



Respondent No.3
District Education Officer
(M) D.I.Khan

AMENDED APPEAL

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

Service Appeal No. _____/2019

Shafi Ullah

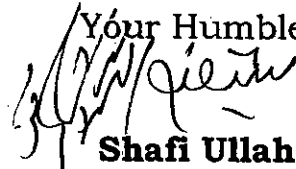
VERSUS


Govt; of KPK etc

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25-11-21
Dated: ~~26/11/2019~~

Your Humble Appellant

Shafi Ullah
Through Counsel


Shaikh Iftikhar Ul Haq
Advocate High Court,
Dera Ismail Khan.

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AMENDED APPEAL

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

Service Appeal No. _____/2019

**Shafi Ullah S/o Sher Khan R/o Wanda Noorak Tehsil
Paharpur District Dera Ismail Khan (KPK).**

.....(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through the secretary Education Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male), Elementary & Secondary Education Dera Ismail Khan.

.....(Respondents)

**SERVICE APPEAL UNDER SECTION 4
OF KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT 1974 AGAINST THE
ORDER DATED 31/12/2011, ISSUED /
PASSED BY RESPONDENT NO. 3
WHEREBY THE SERVICE OF THE
APPELLANT WAS TERMINATED DUE
TO ALLEGED ABSENCE FROM
SERVICE FROM 02/04/2011 VIDE
ORDER NO. 17876-80, IN VIOLATION
OF LAW, RULES AND NOTHING BUT
MALAFIDES and also against the office
order bearing Endst; No. 1337-41 dated
23/01/2017 vide which the
departmental appeal of the appellant
referred by this Honourable Tribunal
Was dismissed.**

PRAYER:-

Shafi Ullah

**ON ACCEPTANCE OF THE INSTANT
APPEAL THE IMPUGNED ORDER
BEARING ENDST; NO. 17876-80 DATED
31/12/2011 PASSED BY THE
RESPONDENT NO. 3 AND ALSO OFFICE
ORDER BEARING ENDST; NO. 1337-41
DATED 23/01/2017 MAY GRACIOUSLY
BE SET ASIDE AND APPELLANT MAY BE**

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**ALLOWED TO CONTINUE HIS SERVICES
IN YOUR INCUMBENCY AS NAIB QASID
BPS-1 WITH ALL BACK BENEFITS.**

Respectfully Sheweth:-

The appellant very humbly submits as under:-

- 1- That the appellant was appointed as Naib Qasid BPS-1 (Class-IV) vide appointment order Endst No. 4573-76 dated DIKhan the 01/04/2011 at G.M.S Jhok Mohana Dera Ismail Khan. Copy of appointment order is already enclosed in main appeal as **Annexure "A"**.
- 2- That on 02/04/2011 the appellant in pursuance of said appointment letter reported to the said G.M.S Jhok Mohana Dera Ismail Khan after clearing the medical fitness. Charge report along with medical certificate of the appellant already enclosed in the main appeal as **Annexure "B & C"**.
- 3- That the appellant since day first has been punctual, dedicated committed performing his duties regularly and honestly and no complaint was ever made or heard against him during the course of his services.
- 4- That the appellant from the date of appointment i.e 01/04/2011 till 31/01/2012 drew his monthly salaries from National Bank of Pakistan Lar Branch the Paharpur Dera Ismail Khan. Actually the appellant was performing the duty as Driver at that time with District Education Officer (Syed Feroz Shah) now died on their direction.
- 5- That when the appellant came into the knowledge that the service of appellant has been terminated vide Endst No. 17876-80 dated 31/12/2011 of impugned order the appellant submitted departmental appeal on 27/06/2012 along condonation of delay which was not accepted with stipulated period. Copy of impugned order dated 31/12/2011 & Departmental appeal along with application for condonation of delay are already enclosed in main appeal as **Annexure "D,E & F"** respectively.

6- That the appellant approached Service Tribunal wherein the Honourable Service Tribunal were pleased to remit the same to the authority. Copy of order of Service Tribunal dated 22/02/2016 is already enclosed in the main appeal as Annexure "G".

7- That the appellant submitted application to the Department along with judgment / order of this Honourable Tribunal for decision in the light of letter in spirit of the judgment of this Honourable Tribunal on 08/03/2016, which was not responded within stipulated period. Then under the service Laws, Rules & Policy, the appellant submitted the instant service appeal before this Honourable Tribunal and during the pendency the service appeal, the answering respondents filed the order bearing Endst; No. 1337-41 dated 23/01/2017 vide which the departmental appeal of the appellant referred by this Honourable Tribunal Was dismissed. (Copy of Application is already enclosed in the main appeal as Annexure "H").

8- That as today during the course of arguments the Government pleader has taken the stance that the appellant has not challenged the order bearing Endst; No. 1337-41 dated 23/01/2017, which ~~were~~ necessary to be challenged in this Honourable Tribunal, because in the attendance circumstances the very grievances / purposes cannot be redressed. Hence, for the sake of justice the amendment in the appeal is mandatory and necessary for the sake of justice as amendment can be made at any stage just for not deprived the appellant on the technical knock out, hence th amended appeal inter alia, amongst other on the following grounds:-

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Note: The copy of order No. 1337-41 dated 23.1.2017 is Annexed with reply.

GROUND:-

a) That impugned orders dated 31/12/2011 & 23/01/2017 of respondent No. 3 are against law, admitted realities and are violative of the principle of justice.

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- b)** That the appellant is a regular government servant and without fulfillment of legal and codal formalities the services of appellant were terminated by the E.D.O (Education) D.I.Khan.
- c)** That during service the appellant, no charge sheet, show cause notice and enquiry regarding the termination of appellant issued by the respondents. Moreover, the appellant never remained absence from duty as the appellant were performing the detailment on the orders / directions of respondent No. 3.
- d)** That the appellant has been subjected to injustice in the matter of his termination from service and as the said discrimination smacks of malafides, the impugned orders merit annulment.
- e)** That the Counsel of the Appellant may very graciously be allowed to add further grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may be accepted as prayed for.

Your Humble Appellant


Shafi Ullah

Through Counsel


Shaikh Iftikhar Ul Haq
Advocate High Court,
Dera Ismail Khan.

Dated: 25/11/2019

AMENDED APPEAL

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.

Service Appeal No. _____/2019

Shafi Ullah

VERSUS

Govt; of KPK etc

AFFIDAVIT

I, **Shafi Ullah** S/o Sher Khan R/o Wanda Noorak Tehsil Paharpur District Dera Ismail Khan (KPK), the appellant, do hereby solemnly affirm declared on oath that contents of the above **Appeal** are true and correct to the best of my knowledge and nothing has been concealed from this Honourable Tribunal.


DEPONENT

