

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 3934/2020

Date of Institution ... 13/09/2020

Date of Decision ... 01/02/2022

Falak Sher Ex-Physical Education Teacher, District Mohmand son of Malak
Rehat Sher R/O Peer Qilla Shabqadar District Charsadda.

... (Appellant)

VERSUS

District Education Officer Mohmand Tribal District and others.

...(Respondents)

Present.

Mr. Fazal Shah Mohmand.
Advocate

... For appellant.

Mr. Muhammad Adil Butt,
Addl. Advocate General,

... For respondents.

MR AHMAD SULTAN TAREEN
MR. ATIQ-UR-REHMAN WAZIR,

... CHAIRMAN
... MEMBER(E)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:- The appellant named above in the heading has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:-

"On acceptance of this appeal the impugned order dated 04.10.2019 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefit."

2. Brief facts of the case as enumerated in the Memorandum of appeal are that the appellant was initially appointed as Physical Education Teacher on

01.10.1995 and since then he performed his duties with honesty and full devotion; that due to militancy initially in the year 2005, the appellant while posted at Government Middle School Sagi District Mohmand was given serious threats and his family members were targeted even; that in the year 2018, the appellant approached the department for permission to join duty and release of salaries vide appeal dated 24.01.208 but with no response where-after he filed Service Appeal No. 878/2018 which was fixed for arguments and in the meanwhile show cause notice was issued to the appellant which he replied in detail refuting the allegations and then he was issued charge sheet but before submission of its reply, the appellant was removed from service on 16.10.2019; that the appellant had withdrawn earlier Appeal No. 878/2018 and submitted departmental appeal against the order dated 04.10.2019 before respondent No. 2 which was not responded despite lapse of statutory period of ninety days, hence the present.

3. After admission of the appeal for regular hearing, the respondents were put on notice. They submitted written reply/comments, refuting the claim of the appellant with several factual and legal objections and asserted for dismissal of appeal with cost.

4. We have heard the arguments and perused the record.

5. Learned counsel for the appellant argued that the impugned order is illegal and *void abinito*; that mandatory provision of law and rules have badly been violated by the respondents; that the appellant has not been treated in accordance with law; that the appellant was not provided opportunity of proper defence; that no proper enquiry was conducted in the matter; that the

Perused

appellant was never provided opportunity of personal hearing and that the appellant had 24 years of service at his credit with unblemished service record. Learned counsel for the appellant prayed that the appeal may be accepted as prayed for.

6. Learned Addl. Advocate General while rebutting the arguments of learned counsel for the appellant contended that the appellant remained absent for more than 13 years without any leave or prior permission of the competent authority; that the appellant went abroad without any authorization or leave from the respondents which show that the appellant was not a devoted official; that the appellant neither informed the respondents about threat received to him nor did he submit any report to any law enforcement agency; that charge sheet and show cause notice were served upon the appellant but he did not bother to submit reply to the same and that the appellant was removed from service after observing all the codal formalities. Learned AAG requested that the appeal may be dismissed with costs.

7. The impugned penalty of removal from service has been imposed upon the appellant on the ground of his willful absence from duty. The appellant admitted his absence from duty from the year 2005 in the facts of his appeal with the reason that due to militancy initially in the year 2005 he was given serious threats and even his family members were targeted. Then in the year, 2018 the appellant approached the department for permission to join duty and release of salary vide letter dated 24.01.2018 and having received no response, he filed Service Appeal No.878/2018. It is there in the facts stated by the appellant that in the meanwhile show cause notice was issued to him which he replied and then a charge sheet was issued to him and before submission of its


Dismissed

reply, he was removed from service on 04.10.2019. The copy of the notification issued for removal of the appellant as annexed with the appeal would reveal that the show cause notice due to willful absence from duty was served upon the appellant under registered post vide No.2700-02 dated 23.0.2019. From this fact it is not difficult to infer that the departmental authority for the first time embarked upon formal disciplinary proceedings against the appellant on 23.08.2019 despite the fact that he was absent from duty from the year, 2005 and the department remained mum about his absence. Obviously, the appellant approached to the department for resumption of duty in 2018 as per his statement in facts of the appeal. The department having been so advised started formal disciplinary action against the appellant during pendency of his service appeal No. 878/2018 which was withdrawn due to the passing of the impugned order presently challenged in the appeal at hands. To our view, both the parties are equally at fault. The department was under obligation to initiate disciplinary proceedings against the appellant on his admitted absence from the year 2005 but omitted. On the other hand, the appellant having admitted the absence though with the reason of his own did not perform the duty as part of his government service. Having become both the parties actually at fault, we deem it appropriate to meet with the ends of justice to settle the dispute in a way that the appellant will not claim the salary and financial benefits of the period of his absence from 2005 till passing of this judgment. The department shall treat the period of his aforementioned absence leave without pay to bridge the service gap.

Dismissed

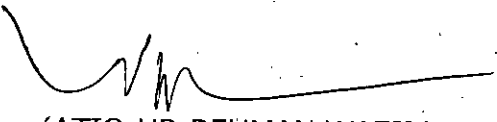

8. With the foregoing observations, the impugned order is set aside. The appellant is reinstated into service but he shall not be entitled to claim the

salary and financial benefits of his absence period since 2005 till his reinstatement. The appeal is partially accepted in the given terms. Parties are left to bear their own costs. File be consigned to the record room.


(ATIQ-UR-REHMAN WAZIR)
Member(E)


(AHMAD SULTAN TAREEN)
Chairman

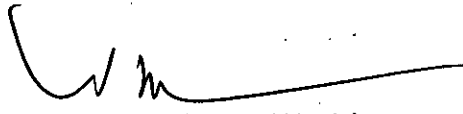
ANNOUNCED
01.02.2022

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	01.02.2022	<p><u>Present.</u></p> <p>Mr. Fazal Shah Momand ... For appellant Advocate</p> <p>Mr. Muhammad Adeel Butt, Asstt. Advocate General ... For respondents.</p> <p>Vide our detailed judgment, this appeal is partially accepted as per Para-8 of the detailed judgment. Parties are left to bear their own costs. File be consigned to the record room.</p> <p> (ATIQ-UR-REHMAN WAZIR) Member(E)</p> <p> CHAIRMAN</p> <p><u>ANNOUNCED</u> 01.02.2022</p>

06.01.2022

Clerk to counsel for the appellant present. Mr. Asif Masood Ali Shah, DDA for the respondents present.

Clerk to counsel for the appellant requested for adjournment on the ground that his counsel is not available today, due to general strike of the bar. Adjourned. To come up for arguments before the D.B on 31.01.2022.



(Atiq-ur-Rehman Wazir)
Member(E)



Chairman

31.01.2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Due to paucity of time, arguments could not be heard. To come up for arguments on 01.02.2022 before the D.B.

(Atiq-Ur-Rehman Wazir)
Member (E)



Chairman

01.06.2021

Appellant alongwith Miss. Rabia Muzaffar, Advocate, present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant submitted rejoinder, copy of which handed over to learned Deputy District Attorney. Adjourned. To come up for arguments before the D.B on 17.09.2021.



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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

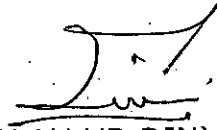
17.09.2021

Mr. Fazal Shah Mohmand, Advocate for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not gone through the record. Adjourned. To come up for arguments before the D.B on 04.11.2021.



(ATIQU UR REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH UD DIN)
MEMBER (JUDICIAL)

04.11.2021

Counsel for the appellant and Mr. Noor Zaman Khattak, Addl. AG for the respondents present.

Learned counsel for the appellant seeks time for prearation. Request is accorded. To come up for arguments on 06.01.2022 before the D.B.



(Rozina Rehman)

Member(J)



Chairman

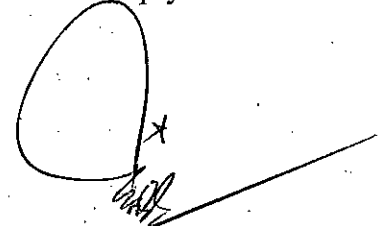
02.10.2020

Junior to counsel for the appellant is present.

Mr. Kabirullah, Khattak, Additional Advocate General for respondents present.

Written reply on behalf of respondent No.3 not submitted. Respondents No. 1 and 2 have already submitted their replies. Last chance is given to respondent No.3 for reply /comments.

Adjourned to 25.11.2020 for written reply of respondent No.3 before S.B.

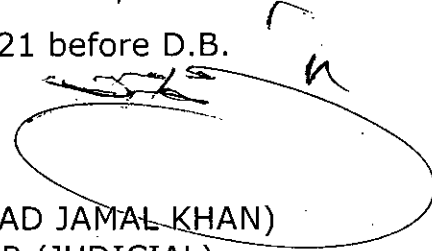


(Mian Muhammad)
Member (E)

25.11.2020

Junior counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Javed, Focal Person, for the respondents are also present.

Written reply on behalf of respondent No. 2 has already been submitted while representative of the remaining respondents is seeking further time for submission of written reply/comments despite the fact that last chance was given to the respondents for submission of written reply/comments vide previous order sheet dated 02.10.2020. Therefore, file to come up for rejoinder and arguments on 01.03.2021 before D.B.



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

01.03.2021

Due to COVID-19, the case is adjourned for the same on 01.06.2021.



READER

24.07.2020

Mr. Fazal Shah Mohmand, Advocate for the appellant and appellant himself are present. Mr. Kabirullah Khattak, Additional AG alongwith representative of the department Mr. Jawad Khan, Focal Person (Litigation) are also present.

Representative of the department request for further time to submit the requisite reply. May do so on next date of hearing. Adjourned to 20.08.2020 for submission of written reply/comments before S.B.

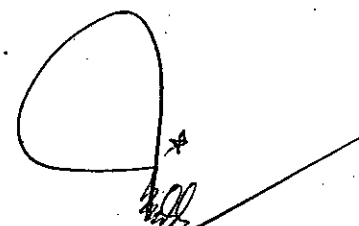

(MUHAMMAD JAMAL KHAN)
MEMBER

20.08.2020

Clerk to counsel for the appellant present. Addl: AG alongwith Mr. Javed, Focal Person for respondents present.

Written reply of respondents No. 1 and 2 submitted. Notice be issued to respondent No.3 for submission of reply/comments.

Adjourned to 02.10.2020 before S.B.


(Mian Muhammad)
Member(E)

02.06.2020

Counsel for the appellant present. Preliminary arguments heard and case file perused. The appellant was appointed as Physical Education Teacher vide office order dated 01.10.1995. That due to militancy in the year 2005, the appellant while posted in Govt: Middle School Sagai, District Mohmand was given serious threats as a result of which he did not perform duty. In the year 2018, the appellant approached respondent-department for permission to join duty and release of salary vide appeal dated 24.01.2018 but the same was not honoured. There-after he filed Service Appeal No. 878/2018 in this Tribunal and during the pendency of the said appeal he was issued charge sheet and show cause notice which he replied. Finally impugned order dated 04.10.2019, vide which he was awarded major penalty of "removal from service". Against the impugned order, he preferred departmental appeal on 16.10.2019 which was not responded within the mandatory stipulated period of ninety days, hence the instant service appeal on 13.03.2020. Learned counsel for the appellant further argued that the appellant has not been treated according to law and rules and condemned unheard as neither he had been afforded the chance of personal hearing nor formal enquiry stands conducted against the appellant.

Points urged need consideration. Service appeal is admitted subject to all legal objections. Appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 24.07.2020 before S.B.

Appellant Deposited
Security & Process Fee
02/6/20

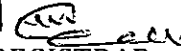
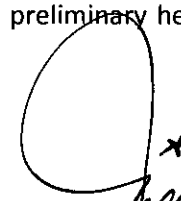
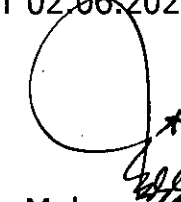
(MAIN MUHAMMAD)
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 3934 /2020


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/03/2020	<p>The appeal of Mr. Falak Sher resubmitted today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>15-05-2020</u>.</p> <p style="text-align: right;"> MEMBER</p>
	15.05.2020	<p>None for the appellant present. Adjourned. To come up for preliminary hearing on 02.06.2020 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member</p>

The appeal of Mr. Falak Sher Ex-PET District Mohmand received today i.e. on 13.03.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Affidavit may be got attested by Oath Commissioner.
- 3- Annexures of the appeal may be flagged.
- 4- Annexure-E of the appeal is illegible which may be replaced by legible/better one.
- 5- Five more copies/sets of the appeal along annexures i.e. complete in all respect may also be submitted with the appeal.

No. 941 /S.T,

Dt. 13/03 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Fazal Shah Mohmand Adv. Pesh.



Resubmitted after removal of the
above objections.

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 3934 /2020

Falak Sher.....Appellant

V E R S U S

DEO & others.....Respondents

I N D E X

S. No	Description of Documents	Annexure	Pages
1.	Service appeal with Affidavit		1-4
2.	Application for condonation of delay with affidavit		5
3.	Copy of Departmental Appeal & Service Appeal	A & B	6-9
4.	Copy of Show cause Notice, Reply, Charge Sheet, Order dated 04-10-2019	C, D, E & F	10-13
5.	Copy of Departmental Appeal	G	14-16
6.	Wakalat Nama		17

Dated:-12-03-2020


Appellant

Through


Fazal Shah Mohmand
Advocate, Supreme Court.

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

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No 3934/2020

Diary No. 1859

Dated 13/3/2020

Falak Sher, Ex Physical Education Teacher, District Mohmand, Son of Malak Rehmat Sher R/O Peer Qilla Shabqadar District Charsadda.

.....**Appellant**

V E R S U S

1. District Education Officer Mohmand Tribal District.
2. Director, Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
3. Secretary, Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.**Respondents**

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 04-10-2019 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

Filed to day
Registrar
13/3/2020

On acceptance of this appeal the impugned Order dated 04-10-2019 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

Registrar
13/3/2020

1. That the appellant was appointed as Physical Education Teacher on 01-10-1995 and since then he performed his studies with honesty and full devotion.
2. That due to militancy initially in the year 2005, the appellant while posted to Govt. Middle school Sagi District Mohmand was given serious threats and his family members were targeted even.
3. That in the year 2018, the appellant approached department for permission to join duty and release of salaries vide appeal dated 24-01-2018 but with no response where after he filed

Service Appeal No. 878/2018 which was ripe for arguments. **(Copy of Departmental Appeal and Service Appeal are attached as Annexure A & B).**

4. That in the meanwhile, Show Cause Notice was issued to the appellant which he replied in detail refuting the allegations, and then he was issued Charge Sheet and before the submission of its reply, the appellant was removed from service on 04-10-2019. The appellant thus withdraw his appeal on 16-10-2019. **(Copy of Show Cause Notice, Reply, Charge Sheet, Order dated 04-10-2019 is enclosed as Annexure C, D, E & F).**
5. That the appellant filed departmental appeal before respondent No 2 which has not been responded so far despite the lapse of more than the statutory period of ninety days. **(Copy of Departmental appeal is enclosed as Annexure G).**
6. That the impugned order dated 04-10-2019 of respondent No 1 is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-

- A. That the impugned Order is illegal, unlawful and void ab-initio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules.
- C. That the impugned order is based on malafide as he was removed when the appellant had filed appeal and which was ripe for arguments.
- D. That the appellant was not provided opportunity of proper defence to present the side of his case and was even not given time to have replied the Charge Sheet.
- E. That no inquiry was conducted in the matter nor were the allegations proved through proper inquiry.
- F. That malafide is also proved from the impugned order wherein it is stated that the appellant did not report for duty while in fact he was not allowed to resume his duties

and for which purpose he had filed departmental as well as service appeal.

- G. That the contention of the appellant regarding peculiar circumstances was never considered.
- H. That the appellant was never provided opportunity of personal hearing.
- I. That the period of alleged absence was regularized by treating the same as leave without pay thus he cannot be punished on this ground again.
- J. That the appellant has about 24 years of service with unblemished service record.
- K. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

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

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

Dated:-12-03-2020


Appellant

Through


Fazal Shah Mohmand
Advocate, Supreme Court.

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2020

Falak SherAppellant

V E R S U S

DEO & others.....Respondents

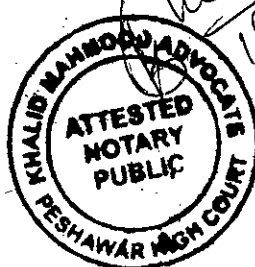
A F F I D A V I T

I, Falak Sher, Ex Physical Education Teacher, District Mohmand, Son of Malak Rehmat Sher R/O Peer Qilla Shabqadar District Charsadda, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

[Signature]
DEPONENT

Identified by

[Signature]
**Fazal Shah Mohmand
Advocate Peshawar**

[Signature]
18-3-2020


BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2020

Falak Sher.....Appellant

V E R S U S

DEO & others.....Respondents

Application for condonation of delay if any

Respectfully Submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the impugned order being void ab-initio, illegal and time factor becomes irrelevant in such cases, furthermore the appellant was assured that his appeal will be decided soon.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit.

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

Dated:-12-03-2020

[Signature]
Appellant

Through

[Signature]
Fazal Shah Mohmand
Advocate, Supreme Court.

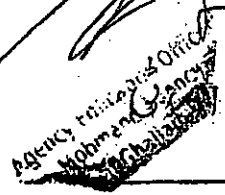
AFFIDAVIT

I, Falak Sher, Ex Physical Education Teacher, District Mohmand, Son of Malak Rehmat Sher R/O Peer Qilla Shabqadar District Charsadda, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



[Signature]
DEPONENT

M. Ali



درخواست برائے بحالی نوکری پی

جناب عالی!

گزارش ہے کہ درخواست گزار کا تعلق پیر قلعہ ٹھنڈا الجھنی سے ہے اور سائل 1995ء میں اپنی پوسٹ پر تعینات ہوا۔ مختلف سکولوں میں ایسا ندری اور دیاننداری سے ڈیوٹی انجام دیے۔ اور آخر میں درخواست گزار کی تعیناتی گورنمنٹ مڈل سکول ساگی بالا میں ہوئی۔ مگر اس ایجنسی اور خصوصاً ساگی بالا میں امن و آمان کی حالات انتہائی خراب تھے۔ اچھے روز راستوں میں ہم دھماکے ہوتے تھے۔ اور سرکاری ایسکادوں کی جسمانی اور ذہنی تکالیف دی جاتے تھے۔ سائل کے گھرو والوں کو گمنام خطوط ملتے تھے جن میں سائل کو بڑے نتائج کے دھمکیاں دی جاتے تھے۔ اچھے روز جسمانی اور ذہنی تکالیف سے تنگ آکر سائل نے مجبوراً نوکری چھوڑ دی۔ سائل کا تعلق ایک غریب گھرانے سے ہے مکانی کا کوئی متبادل ذریعہ نہیں ہے۔

ابھی ان سے استفسار ہے کہ درخواست دہندہ کو دوبارہ اپنی پوسٹ تعیناتی کے احکامات صادر فرمائیں تاکہ مشکور فرمایاں۔

2260 - 2018 - 11

العارض

آج کا تابع در سائل فلک مشیر ولد ملک رحمت شہید پیر قلعہ تکرزئی ٹھنڈا الجھنی

29/1/2018

ATTESTED TO BE TRUE COPY

- 4 - " B " M/11/18 - 7 -

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 878 /2018

Falak Sher, Physical Education Teacher Mohmand Agency
S/O Malik Rehmat Sher R/O Peer Qila Shabqadar District
Charsadda.Appellant

V E R S U S

1. Agency Education Officer, Mohmand Agency, at Ghalanai.
 2. Director Education FATA, FATA Secretariat Warsak Road Peshawar.
 3. Secretary, Education Govt. of KPK Peshawar.
-Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 FOR ADJUSTMENT/POSTING OF THE APPELLANT AGAINST HIS POST AND RELEASE OF SALARIES OF THE APPELLANT W.E.F DECEMBER 2005 TILL DATE, REGARDING WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

On acceptance of this appeal, the respondents may kindly be directed to adjust/post the appellant against his post and release his salaries w.e.f. December 2005 and onwards.

Respectfully Submitted:-

1. That the appellant was appointed as Physical Education Teacher on 01-10-1995 and was posted to Gvt. Middle School Habibzai Mohmand Agency, where he took his charge on 02-10-1995. (Copy of Charge Report is enclosed as Annexure A).
2. That since then he performed his duties with honesty and full devotion and to the entire satisfaction of his high ups and was transferred time and again.

1

ATTESTED
TO BE TRUE COPY

- 8 -

3. That in the year 2005, the appellant while posted to Govt. Middle School Sagi Mohmand Agency, due to militancy in Tribal areas of the country and more particularly, in Mohmand Agency, the appellant was given serious threats of abduction and murder, and even the cousin of the appellant namely Malik Sikandar Ali Sher was killed by the militants. Even almost all the Schools were closed due to law and order situation in the area, thus the appellant was unable to have performed his duties which forced the appellant to save his life and was shifted from Mohmand Agency.

4. That after the restoration of peace in the area, the appellant time and again approached respondents for his posting/adjustment against his post but of no use and at last he submitted departmental appeal before respondent No 1 vide Diary No 2260 dated 24-01-2018 which has not been responded so far despite the lapse of the statutory period of ninety days. (Copy of departmental appeal is enclosed as Annexure B).

5. That this action of the respondents of not posting/adjusting the appellant against his post and not releasing his salaries, is against the law, facts and principles of justice on grounds inter alia as follows:-

G R O U N D S :-

- A. That the omissions and commissions of respondents are illegal, unlawful, without lawful authority and of no legal effect.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant is not been treated according to law and rules.
- C. That the service of the appellant is still intact, therefore he is entitled to be adjusted/posted against his post and his salaries released forth with. Even law and rules are very much clear on the point.
- D. That the circumstances forcing the appellant to save his life no more exist which were due to circumstances compelling in nature and were beyond the control of the appellant as well. It is also

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worthwhile to mention here that by now the appellant is able to perform his duties.

-9-

- E. That the appellant being in service is entitled to posting/adjustment and release of salaries as well.
- F. That the appellant has about 23 years of service with unblemished service record with no complaint during his entire service career.
- G. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

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

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

Falak Sher
Appellant

Dated:-27-04-2018.

Through

Fazal Shah Mohmand
Fazal Shah Mohmand
Advocate, Peshawar

A F F I D A V I T

I, Falak Sher, Physical Education Teacher Mohmand Agency S/O Malik Rehmat Sher R/O Peer Qila Shabqadar District Charsadda, do hereby solemnly affirm and declare on oath that the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Falak Sher
DEPONENT

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OFFICE OF THE DISTRICT EDUCATION OFFICER
MOHMAND TRIBAL DISTRICT

Ph. No. ☎: 0924-290180

FAX ☎: 0924290180

Email ✉: - deomohmand@gmail.com

Endst.No. 2703 /dated. 23/08 /2019



-10-

Subject: - SHOW CAUSE NOTICE

Memo;

I, (JADDI KHAN KHALIL, DEO MOHMAND), as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Falak Sher S/O Rahmat Sher PET as follow:

I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

- (a) Absent from duty.
- (b) Misconduct.

As a result thereof, I, as competent authority, have tentatively decided to impose upon you the major penalty under rule 4 of the said rules.

You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whither you desire to be heard in person.

If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

(JADDI KHAN KHALIL)
COMPETENT AUTHORITY
District Education Officer
Mohmand Tribal District

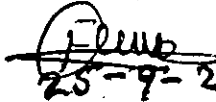
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بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر ضلع مہمند

عنوان: جواب شوکا ز نوٹس

جناب عالی! گزارش ہے کہ میرے خلاف شوکا ز نوٹس میں لگائے گئے الزامات سراسر غلط اور بے بنیاد ہیں۔ میں غیر حاضر نہیں ہوں اور نہ ہی (Misconduct) کا کبھی مرتکب ہوا ہوں۔ محکمہ میری پوسٹنگ نہیں کر رہا تھا جس کے لیے میں نے محکمانہ اپیل دائر کی ہے، جس میں آئندہ تاریخ پیشی مورخہ 27/09/2019 مقرر ہے۔ چونکہ میری سروس اپیل زیر تجویز ہے لہذا میرے خلاف کسی قسم کی کارروائی نہ صرف غیر قانونی ہے بلکہ توہین عدالت کے زمرے میں شمار ہوگی۔ بدیں وجہ میرے خلاف محکمانہ کارروائی ختم کی جائے۔

لہذا استدعا ہے کہ میرے خلاف شوکا ز نوٹس فائل کر کے مجھے الزامات سے بری فرما کر محکمانہ کارروائی ختم کی جائے۔


25-9-2019
فلک شیر (PET) ولد رحمت شیر

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"E"

-12-

**DISTRICT EDUCATION OFFICER
TRIBAL DISTRICT MOHMAND**

PIL.#.0924-290180/FAX.#.0924-290180
No. 2808(C/Sheet) Dated/ 13/09/2019

CHARGE SHEET.

1. I, Juddi Khan District Education Officer Tribal District Mohmand, as competent authority under Khyber Pakhtunkhwa Government Servants Efficiency and Disciplinary Rules 2014, do hereby charge you, Mr. Ealak Sher PET as follows:-
 - a. That you had been reported by the local Community for irregularity and incapability on different dated.
 - b. Show cause notice was served upon you vide this office No. 2703 on dated 23.08/2019, therein you were directed to report to your duty and mend your ways and submit your reply through your personal contact with this office, but you turned your ears deaf.
 - c. After enquiring about you it has come into the notice of the undersigned that you have been abroad since long with different names and information which is a matter of great concern, anxiety and fraud.
2. By the reason given above, you are guilty of misconduct/incapability/irregularity under section (b) of rules 4 of the said rules and have rendered yourself liable to the penalties specified in rule 4 (b) of the rules.
3. You are therefore required to submit your written defense within seven days after the receipt of this charge sheet to the undersigned.
4. Your written defense, if any, should reach the undersigned within seven days, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. Statement of allegation described in Para 1 (Serial-No. a, b & c) above.

**District Education Officer,
Tribal District Mohmand
(The competent Authority)**

Encls: No. 2809-14 (Charge Sheet) Dated 13/09/2019.

1. Director of Education (NMD) KP Peshawar.
2. Deputy Commissioner Mohmand.
3. ADEO concerned.
4. ADEO (M & E).
5. Pay Clerk Local Office for the stoppage of salary.
6. Office record only

**District Education Officer,
Tribal District Mohmand**

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**DISTRICT EDUCATION OFFICER
TRIBAL DISTRICT MOHMAND**

Ph#0924-2901080/Fax#0924-290180
No. 2808(C/Sheet) Dated: 13/09/2019

CHARGE SHEET

1. Jaddi Khan District Education Officer Tribal District Mohmand as competent authority under Khyber Pukhtunkhwa Government Servants Efficiency and Disciplinary Rules 2011. I, do hereby charge you, Mr. Falak Sher PET as follows:-
 - a. That you have been reported by the local community for irregularity and incapability on different dated.
 - b. Show cause notice was served upon you vide this office No. 2730 on dated 23/08/2019, therein you were directed to report to your duty and mend your ways and submit your reply through your personal contact with this office but you turn your ears deaf.
 - c. After enquiring about you it has come into the notice of the undersigned that you have been abroad since long with different names and information which is a matter of great concern, anxiety and fraud.
2. By the reason given above, you are guilty of misconduct / incapability /irregularity under section (b) of the said rules and have rendered yourself liable to the penalties specified in Rule 4(b) of the rules.
3. You're, therefore, required to submit your written defense within seven days after the receipt of this charge sheet to the undersigned.
4. Your written defense, if any, should reach the undersigned within the seven days, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. Statement of allegation described in Para No. 1 (serial: a, b & c) above.

**District Education Officer,
Tribal District Mohmand
(The Competent Authority)**

Endse No. 2809-14 (Charge Sheet) Dated: 13/09/2019

1. Director of Education (NMD) KP Peshawar.
2. Deputy Commissioner Mohmand.
3. ADEO Concerned.
4. ADEO (M &E).
5. Pay Clerk local office for the stoppage of salary.
6. Office record only.

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**Director Education Officer,
Tribal District Mohmand.**

(A)

-14-
"G"

**BEFORE THE DIRECTOR ELEMENTARY AND SECONDARY
EDUCATION KP PESHAWAR**

**Subject: Departmental appeal against the order dated
04.10.2019 whereupon the appellant has been
removed from service**

Respected Sir,

1. That the applicant was appointed as Physical Education Teacher on 01.10.1995 and since then preferred his studies with honesty and full devotion.
2. That due to militancy nitially in the year 2005, the appellant while posted to Govt. Middle School Saql Mohmand Agency was given serious threats and his family members were targeted even.
3. That in the year 2018, the appellant approached department for permission to join duty and release of salaries vide appeal dated 24.01.2018 but was not responded whereafter he filed service appeal No. 878/2018 which was ripe for arguments. (Copies of Departmental Appeal and Service Appeal are attached as Annexure "A" & "B").

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17/10/19

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4. That in the meanwhile, Show Cause Notice was issued to the appellant which the appellant replied in detail refuting the allegations, then he was issued charge sheet and before the submission of its reply, the appellant was removed from service on 04.10.2019. The appellant thus withdraw his appeal on 16.10.2019. (Copy of order dated 04.10.2019 is enclosed as Annexure "C").
5. That the impugned order dated 04.10.2019 is illegal, unlawful, without lawful authority, besides being void
6. That the appellant has been denied treatment according to law which is his fundamental right as per law of the land.
7. That the appellant was not provided opportunity to present and defend the side of his case.
8. That no charge sheet was issued to the appellant as prior to its reply, the appellant was removed from service.
9. That no inquiry was conducted while the appellant denied allegations of absence in his reply to Show Cause Notice.

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- 10. That the appellant was not offered opportunity of personal hearing.
- 11. That malafide is proved from the fact that the appellant was removed from service when his appeal was fixed for final arguments.

It is, therefore prayed that the impugned order dated 04.10.2019 may be set aside and the appellant may kindly be reinstated in service with all back benefits.

Appellant

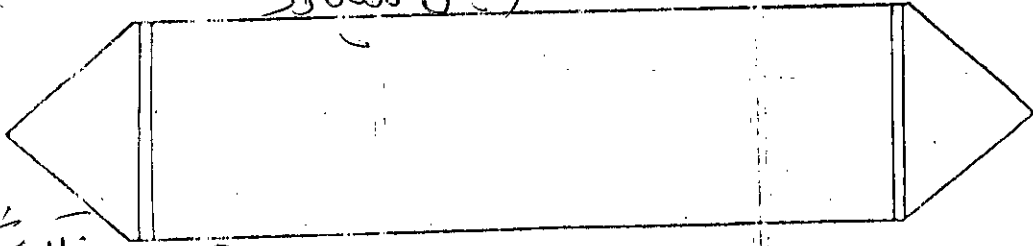


Falak Sher
Ex-Physical Education Teacher
District Mohmand S/o Malik
Rehmat Sher R/o Peer Qilla,
Shabqadar District Charsadda.

Date: 16.10.2019

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بعدالت سرورس لٹریچر



2020ء بمطابق ملک شہر

ملک شہر بنام DEO و غیر

مورخہ	-----
مقدمہ	-----
دعویٰ	-----
جرم	-----

باعث تحریر آئندہ

مظفر الدولہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب ابھی دکل کاروائی متعلقہ
آن مقام سینا کیلئے سینا ASAC راجعہ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دینے جواب دی اور انہاں دعویٰ اور
 بسورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور سنوخی
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بسورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے اہراہ یا اپنے بجائے لقرر کا اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا سائنٹ
 پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائد التوا نہ نہرہ کے سم ہر ہر ہوگا
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب باہر ہوں گے۔ کہ پیروی
 مذکور کریں۔ لہذا وکالت نامہ لکھنیا کہ سند ہے۔

Handwritten signature or mark on the right margin.

المزوم _____ ماہ _____ 2020ء

Attested & Accepted
Handwritten signature

Accepted
Handwritten signature

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 3934/2020

FALAK SHER S/O Mala Rahmat Sher, EX-PET Distt: MOHMAND

..... **PETITIONER**

VERSUS

1. DISTRICT EDUCATION OFFICER, MOHMAND AND OTHERS

..... **Respondents**

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S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1	PARAWISE COMMENTS and affidavit	1-3
3	Copy Application dated 24.1.2018	A	4
4	Copy of service appeal	B	5-7
5	Copy of travel history	C	8-9
6	Copy of the show cause	D	10
7	Copy of charge sheet	E	11
	Copy of personal hearing	F	12
8	Copy of removal order	G	13

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 3934/2020

FALAK SHER S/O Malak Rahmat Sher, EX-PET Distt: MOHMAND

PETITIONER

VERSUS

2. DISTRICT EDUCATION OFFICER, MOHMAND AND OTHERS

Respondents

Para-wise comments on behalf of respondent No: 1 & 2

Respectively Sheweth:

Preliminary Objection

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant case is a time barred.
3. That the appellant has not come to this Honourable Tribunal with clean hands.
4. That the appellant has concealed material facts from this Honourable Tribunal.
5. That the appellant is estopped by His own conduct to bring the instant appeal.

On Facts:

1. Incorrect. Hence denied. The appellant has not performed his duty as he admitted in his previous appeal and was absent for more than 13 years (2005-2018). The appellant submitted an application to the respondent where the appellant prayed for re-instatement of service while in 2018 the appellant brought an appeal No.878/2018 before this Honorable Tribunal in which the appellant prayed for the re-adjustment and release of salaries. It is also pertinent to mention over here that the appellant visited abroad without any authorization (Leave) from the respondents which show that how the appellant is devoted in performing his duties. **(Copy of the Application, Service Appeal and travel history are attached as annexure A,B and C)**
2. Incorrect. Hence denied. The appellant did not inform the respondent about any threat nor did he submit any report to any law enforcement agencies/department.
3. Incorrect. Hence denied. The appellant did not file any application for release of his salaries nor he bother to inform the respondent about his willful absence during the **statutory period**. It shows and substantiate that the appellant was willfully absent during these 13 years (2005-2018) and in fact was abroad. therefore, he didn't bring any application for the

4. Incorrect. Hence denied. The respondent followed all the codal formalities and as such a show cause notice was issued to the appellant on dated 23-8-2019 but no response from the appellant. Then a charge sheet was issued vide Endst.No. 2809-14 on dated: 13-9-2019 but even then no response from appellant side. Then for personal hearing a letter Vide Endst: No. 2965-69 dated: 24-9-2019 was issued where by the Appellant was asked for personal hearing before the competent authority but again the appellant failed to appear. It shows that how the appellant was interested in performing his duties. Beside the above letters the DEO Mohmand called via phone to the appellant and asked to personally appear before the DEO office to defend himself but again he failed. At last after following all the codal formalities, the District Education Officer Mohmand Vide Endst. No. 5189-9 dated 04-10-2019 removed the appellant from service. So, the plea of the appellant that no opportunity was provided is baseless. **(Copy of the show cause, charge sheet, Personal Hearing, and removal order attached as D,E,F and G)**

5. That the respondent followed all the codal formalities and thus the appellant has no right to bring the instant appeal.

Grounds

- A. Incorrect. Hence denied. The removal order of the appellant by the respondent is in accordance with law.
- B. Incorrect. Hence denied. The respondent followed all the codal formalities and treated the appellant in accordance with law, therefore, no provision of law has been violated
- C. Incorrect. Hence denied. As elucidated in para 1, 3 and 4.
- D. Incorrect. Hence denied. Opportunity was provided to the appellant as elucidated in above Para but the appellant didn't bother to avail or respond the show cause and charge sheet issued to him.
- E. Incorrect. Hence denied. the conduct and admission of the appellant that he was absent for more than 13 years are sufficient grounds for his removal but despite that the respondent followed all the codal formalities and number of opportunities were given to the appellant to defend

himself but he deaf his ear and thus removed from service by the respondent.

F. Incorrect hence denied. In fact the appellant filed an application for reinstatement on service which was quiet irrelevant as he was not removed from service at that time. **(copy of the application is attached as annexure A)**

G. Incorrect. Hence denied. In fact the appellant was abroad and visited abroad with different names and passport which shows how the appellant is abiding the law but committed forgery.

H. Incorrect hence denied. As elucidated in above para D.

I. Incorrect, hence denied.

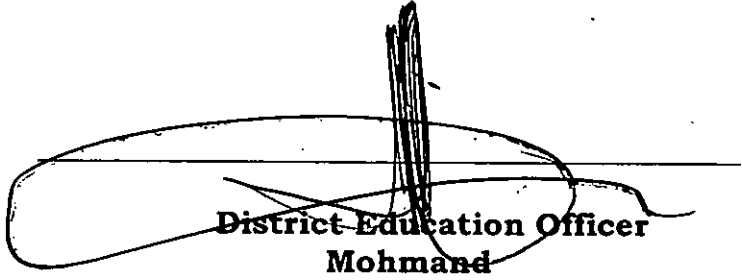
J. Incorrect. Hence denied. As elucidated in above para 1, 3, and 4.

K. That the respondents seek permission to present some other grounds at the time of arguments of the appeal.

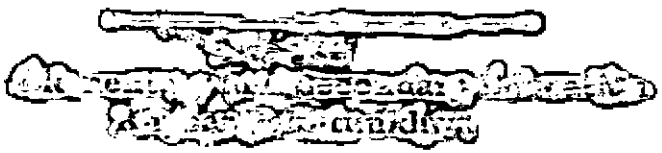
Pray:

In light of the above factual and legal position, it is humbly prayed that the instant appeal be dismissed with cost.

Respondent NO. 1.


**District Education Officer
Mohmand**



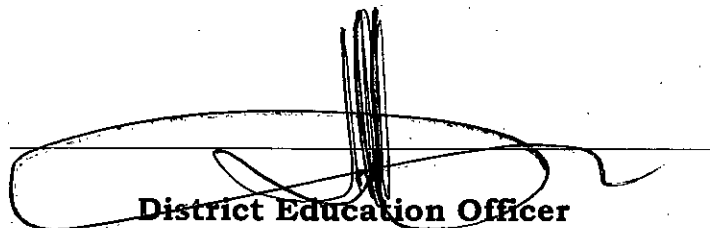


AFFIDAVIT

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✓ The above respondent do hereby declare and affirm on oath that the above comments are true and correct to the best of our Knowledge and belief and that nothing has been concealed from this Honorable Tribunal.

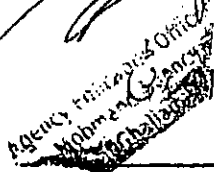
Respondent NO. 1.


**District Education Officer
Mohmand**

~~Respondent NO. 1~~

~~Respondent NO. 1~~

M. Ali



خدمت جنا AEO صاحبہ سندھ ایجنسی
Annex درخواست برائے بجالی نوکری بی

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A

جنا عالی!

گزارش ہے کہ درخواست گزار کا تعلق پیر قلعہ سندھ ایجنسی سے ہے اور سائل 1995ء میں اپنی پوسٹ پر تعینات ہوا۔ مختلف سکولوں میں ایسا ندری اور دیاننداری سے ڈیوٹی انجام دے۔ اور آخر میں درخواست گزار کی تعیناتی گورنمنٹ مڈل سکول ساگی بالا میں ہوئی۔ مگر اس ایجنسی اور خصوصاً ساگی بالا میں امن و آمان کی حالات انتہائی خراب تھے۔ آٹھ روز راستوں میں ہم دھماکے ہوتے تھے۔ اور سرکاری ایسکاڑوں کی جسمانی اور ذہنی تکالیف دی جاتے تھے۔ سائل کے گھر والوں کو گناہ خصوصاً ملتے تھے جس میں سائل کو تبرکے نتائج کے دھمکیاں دی جاتے تھے۔ آٹھ روز جسمانی اور ذہنی تکالیف سے تنگ آکر سائل نے فوراً نوکری چھوڑ دی۔ سائل کا تعلق ایک غریب گھرانے سے ہے مکانی کا کوئی متبادل ذریعہ نہیں ہے۔

لہذا صاحبان سے استدعا ہے کہ درخواست دہندہ کو دوبارہ اپنی پوسٹ تعیناتی کے احکامات صادر فرمائیں تاکہ مشکل دورانی ہو۔

D-2260 - 2260

24/1/18

الیزا رضی

آپ کا تابع درخواست فیک مشینر و لکٹر محمد شہیر پیر قلعہ تکرئی
سندھ ایجنسی

29/1/2018

Annex - 'B' - 11/11/18



5

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 878 /2018

Falak Sher, Physical Education Teacher Mohmand Agency
S/O Malik Rehmat Sher R/O Peer Qila Shabqadar District
Charsadda.Appellant

V E R S U S

1. Agency Education Officer, Mohmand Agency, at Ghalanai.
 2. Director Education FATA, FATA Secretariat Warsak Road Peshawar.
 3. Secretary, Education Govt. of KPK Peshawar.
-Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 FOR ADJUSTMENT/POSTING OF THE APPELLANT AGAINST HIS POST AND RELEASE OF SALARIES OF THE APPELLANT W.E.F DECEMBER 2005 TILL DATE, REGARDING WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

On acceptance of this appeal, the respondents may kindly be directed to adjust/post the appellant against his post and release his salaries w.e.f. December 2005 and onwards.

Respectfully Submitted:-

1. That the appellant was appointed as Physical Education Teacher on 01-10-1995 and was posted to Gvt. Middle School Habibzai Mohmand Agency, where he took his charge on 02-10-1995. (Copy of Charge Report is enclosed as Annexure A).
2. That since then he performed his duties with honesty and full devotion and to the entire satisfaction of his high ups and was transferred time and again.

3. That in the year 2002, the appellant while posted to Govt Middle School Sargi Mohmand Agency, due to militancy in Tribal areas of the country and more particularly in Mohmand Agency, the appellant was given various threats of abduction and murder, and even the cousin of the appellant namely Malik Sikkandar Ali Sher was killed by the militants. Even almost all the schools were closed due to law and order situation in the area, thus the appellant was unable to have performed his duties which forced the appellant to save his life and was shifted from Mohmand Agency.

4. That after the restoration of peace in the area, the appellant time and again approached respondents for his posting/adjustment against his post but of no use and at last he submitted departmental appeal before respondents No 1 vide D.O. No 2309 dated 24-01-2018 which has not been responded so far despite the lapse of the statutory period of ninety days. (Copy of departmental appeal is enclosed as Annexure B).

5. That this action of the respondents of not posting/adjusting the appellant against his post and not relieving his salaries, is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND 2:-

A. That the commissions and commissions of respondents are illegal, unlawful, without lawful authority and of no legal effect.

B. That mandatory provisions of law and rules have been violated by the respondents and the appellant is not being treated according to law and rules.

C. That the service of the appellant is still intact, therefore he is entitled to be adjusted/posted against his post and his salaries released forth with. Even law and rules are very much clear on this point.

D. That the circumstances forcing the appellant to save his life no more exist which were due to circumstances compelling in nature and were beyond the control of the appellant as well. It is also

(6)


3. That in the year 2005, the appellant while posted to Govt. Middle School Sagi Mohmand Agency, due to militancy in Tribal areas of the country and more particularly, in Mohmand Agency, the appellant was given serious threats of abduction and murder, and even the cousin of the appellant namely Malik Sikandar Ali Sher was killed by the militants. Even almost all the Schools were closed due to law and order situation in the area, thus the appellant was unable to have performed his duties which forced the appellant to save his life and was shifted from Mohmand Agency.

4. That after the restoration of peace in the area, the appellant time and again approached respondents for his posting/adjustment against his post but of no use and at last he submitted departmental appeal before respondent No 1 vide Diary No 2260 dated 24-01-2018 which has not been responded so far despite the lapse of the statutory period of ninety days. **(Copy of departmental appeal is enclosed as Annexure B).**

5. That this action of the respondents of not posting/adjusting the appellant against his post and not releasing his salaries, is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-

- A. That the omissions and commissions of respondents are illegal, unlawful, without lawful authority and of no legal effect.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant is not been treated according to law and rules.
- C. That the service of the appellant is still intact, therefore he is entitled to be adjusted/posted against his post and his salaries released forth with. Even law and rules are very much clear on the point.
- D. That the circumstances forcing the appellant to save his life no more exist which were due to circumstances compelling in nature and were beyond the control of the appellant as well. It is also

- * - 

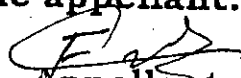
(7)

worthwhile to mention here that by now the appellant is able to perform his duties.

- E. That the appellant being in service is entitled to posting/adjustment and release of salaries as well.
- F. That the appellant has about 23 years of service with unblemished service record with no complaint during his entire service career.
- G. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.


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

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


Appellant

Dated:-27-04-2018.

Through


Fazal Shah Mohmand
Advocate, Peshawar

A F F I D A V I T

I, Falak Sher, Physical Education Teacher Mohmand Agency S/O Malik Rehmat Sher R/O Peer Qila Shabqadar District Charsadda, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.


D E P O N E N T

Annex - 'C'

8



OFFICE

FEDERAL INVESTIGATION AGENCY
INTEGRATED BORDER MANAGEMENT SYSTEM
FIAHQ G - 9/4 PESHAWAR MOR, ISLAMABAD
Fax No: 051-9107225, Tel No: 051-80412210
R-11 (TRAVEL HISTORY)



TRAVEL HISTORY FOUND ON: 1710104175071

Required By: District Education Officer, Khyber Triabi
District Jamrud

Department: NIL

Diary No: 22/dated-17-07-2019

Letter Number: 2273

Request Date: 17-Jul-2019

Query Date: 02-Aug-2019

TRAVELER'S CNIC/NIC
1710104175071

PERSONAL INFORMATION:

NAME: ZOB AIR IRSHAD
FATHER/HUSBAND NAME: HAJI MUHAMMAD IRSHAD

BIRTH DATE: 01-JAN-1979
NATIONALITY: Pakistan

TRAVEL DETAILS:

S.NO	TRAVEL DATE	FLIGHT_NO	TRAVEL STATUS	PASSPORT NO	SITENAME	REMARKS	USER	DESTINATION
1	07-Jul-05 10:42:16	SV-795	Departing	KD173744	PESHAWAR INTERNATIONAL		SHAHER YAR	
2	11-Feb-17 6:57:14	QR608	arriving	KG988822	Peshawar International Airport		Muhammad Imtiaz	

M. Y. A. of
A. Irshad
17/8/19

D. No. 217
17/8/2019

(Signature)
CHECKED

SNO	NAME	FATHERNAME	PASSPORT NO	CNIC	TRAVELDATE	DOB	NATIONALITY
1	EALAK SHER	RAHMAT SHER	KD173744	1710104175071	07-Jul-2005 10:42:16	06-Aug-69	PAK-Pakista
2	ZOBAIR IRSHAD	HAJI MUHAMMAD IRSHAD	KG366622	1710104175071	11-Feb-2017 06:57:14	01-JAN-1979	Pakistan

Next



OFFICE OF THE DISTRICT EDUCATION OFFICER
MOHMAND TRIBAL DISTRICT

Ph. No. ☎: 0924-290180

FAX ☎: 0924290180

Email ✉: - deomohmand@gmail.com

Endst.No. 2703 /dated. 23/08/2019



(10)

Annex - "D"

Subject: - SHOW CAUSE NOTICE

Memo;

I, (JADDI KHAN KHALIL, DEO MOHMAND), as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do hereby serve you, Falak Sher S/O Rahmat Sher PET as follow:

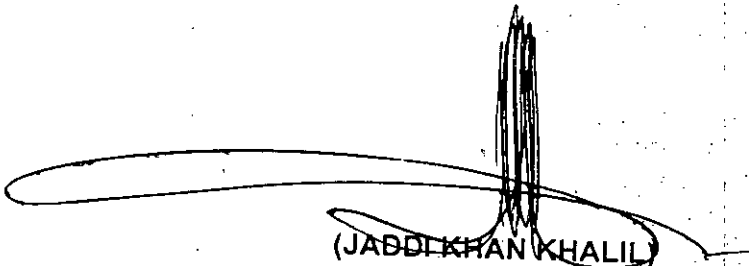
I am satisfied that you have committed the following acts/omissions specified in rule 3 of the said rules:

- (a) Absent from duty.
- (b) Misconduct.

As a result thereof, I, as competent authority, have tentatively decided to impose upon you the major penalty under rule 4 of the said rules.

You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whither you desire to be heard in person.

If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.


(JADDI KHAN KHALIL)
COMPETENT AUTHORITY
District Education Officer
Mohmand Tribal District

DISTRICT EDUCATION OFFICER
TRIBAL DISTRICT MOHMAND

PH.#.0924-290180/FAX.#.0924-290180
No. 2808(C/Sheet) Dated/ 13/09/2019

PESED

Annex - "E"

11

CHARGE SHEET.

1. Juddi Khan District Education Officer Tribal District Mohmand, as competent authority under Khyber Pakhtunkhwa Government Servants Efficiency and Disciplinary Rules 2014, do hereby charge you, Mr. Ealak Sher PET as follows:-
 - a. That you had been reported by the local Community for irregularity and incapability on different dated.
 - b. Show cause notice was served upon you vide this office No. 2703 on dated 23/08/2019, therein you were directed to report to your duty and mend your ways and submit your reply through your personal contact with this office, but you turned your ears deaf.
 - c. After enquiring about you it has come into the notice of the undersigned that you have been abroad since long with different names and information which is a matter of great concern, anxiety and fraud.
2. By the reason given above, you are guilty of misconduct/incapability/irregularity under section (b) of rules 4 of the said rules and have rendered yourself liable to the penalties specified in rule 4 (b) of the rules.
3. You are therefore required to submit your written defense within seven days after the receipt of this charge sheet to the undersigned.
4. Your written defense, if any, should reach the undersigned within seven days, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. Statement of allegation described in Para 1 (Serial No. a, b & c) above.

District Education Officer,
Tribal District Mohmand
(The competent Authority)

Encl: No 2809-14 (Charge Sheet) Dated 13/09/2019.

1. Director of Education (NMD) KP Peshawar.
2. Deputy Commissioner Mohmand.
3. ADEO concerned.
4. ADEO (M & E).
5. Pay Clerk Local Office for the stoppage of salary.
6. Office record only

District Education Officer,
Tribal District Mohmand

**DISTRICT EDUCATION OFFICER
TRIBAL DISTRICT MOHMAND**

Ph#0924-2901080/Fax#0924-290180
No. 2808(C/Sheet) Dated: 13/09/2019

Better Copy

11-A

CHARGE SHEET

1. Jaddi Khan District Education Officer Tribal District Mohmand as competent authority under Khyber Pukhtunkhwa Government Servants Efficiency and Disciplinary Rules 2011. I, do hereby charge you, Mr. Falak Sher PET as follows:-
 - a. That you have been reported by the local community for irregularity and incapability on different dated.
 - b. Show cause notice was served upon you vide this office No. 2730 on dated 23/08/2019, therein you were directed to report to your duty and mend your ways and submit your reply through your personal contact with this office but you turn your ears deaf.
 - c. After enquiring about you it has come into the notice of the undersigned that you have been abroad since long with different names and information which is a matter of great concern, anxiety and fraud.
2. By the reason given above, you are guilty of misconduct / incapability / irregularity under section (b) of the said rules and have rendered yourself liable to the penalties specified in Rule 4(b) of the rules.
3. You're, therefore, required to submit your written defense within seven days after the receipt of this charge sheet to the undersigned.
4. Your written defense, if any, should reach the undersigned within the seven days, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. Statement of allegation described in Para No. 1 (serial: a, b & c) above.

**District Education Officer,
Tribal District Mohmand
(The Competent Authority)**

Endse No. 2809-14 (Charge Sheet) Dated: 13/09/2019

1. Director of Education (NMD) KP Peshawar.
2. Deputy Commissioner Mohmand.
3. ADEO Concerned.
4. ADEO (M & E).
5. Pay Clerk local office for the stoppage of salary.
6. Office record only.

**Director Education Officer,
Tribal District Mohmand.**

Ammer - " F "
 ≡

12

DISTRICT EDUCATION OFFICER
TRIBAL DISTRICT MOHMAND
P.NO.0924290180 FAX:0974290180
No. _____ (ADEO (M&E) Dated/ ___/09/2019

1 Mr. Falak Sher PET

Subject PERSONAL HEARING

Re: Memo

You have been reported that you were remained absent from your school duty for the last several years, on account of which Show cause Notice was served upon you Vide Letter No 2703 on dated 23/08/2019, but instead of submitting reply you turned your ears deaf which is a matter of great concern anxiety, negligence and violation of Civil Servants conduct Rules.

Charge Sheet was served upon you Vide Letter No. 2809 on dated 13/09/2019, therein you were again directed by the undersigned to show solid and justifiable proofs for your absenteeism, but again no response from your side which means you have no proofs to defend you.

Now again you are strictly directed for the last time to appear before the undersigned on dated 28/09/2019 for personal hearing with tenable and justifiable proofs on the mentioned date positively.

In case of failure, action as per E & D rules 2011 will be initiated against you which can lead to serious ramifications.

(JADDI KHAN KHALIL)
District Education Officer,
Tribal District Mohmand.

- 2965-69
- Encls: No. _____ ADEO (M&E) Enquiry Dated 24/09/2019.
1. Director E&SE KP Khyber Pukhtunkhwa
 2. Director of Education (NMD) Secretariat Peshawar.
 3. Deputy Commissioner Tribal District Mohmand.
 4. ADEO concerned.
 5. Office record only

District Education Officer
Tribal District Mohmand
13

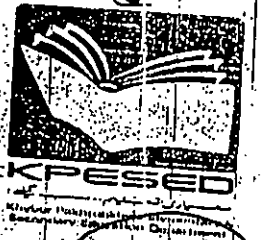


OFFICE OF THE DISTRICT EDUCATION OFFICER
MOHMAND TRIBAL DISTRICT

Ph. No. : 0924-290180

FAX : 0924290180

Email : deomohmand@gmail.com



NO. / DATED / 2019

-13-

NOTIFICATION

Annex - G

1. WHEREAS Mr. Falak Sher PET GMS Habib Zai Tehsil Safi (As per his service book record) was found willfully absent from duty during monitoring visit of the ADEO Mr. Abdul Sattar on dated 14/06/2019.
2. AND WHEREAS the accused was proceeded against under Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules 2011, for the charge of "willful absence from duty" as mentioned in the show cause notice served upon him under registered post at his home/School address vide No: 2700-02 dated 23.08.2019.
3. AND WHEREAS Mr. Falak Sher PET GMS Habib Zai Tehsil Safi did not report to his duty within stipulated period of time and turned his ears deaf.
4. AND WHEREAS Charge sheet was served upon Mr. Falak Sher PET GMS Habib Zai Tehsil Safi Tribal District Mohmand vide No: 2809-14 on dated 13/09/2019 through registered post at his home/school address therein the accused was directed to submit reply in his defense through personal contact with the office.
5. AND WHEREAS the accused failed to put any defense in written and did not appear to be heard in person within fifteen days.
6. AND WHEREAS the undersigned personally called the absent teacher and warned the absent teacher to appear before the DEO office to defend himself.
7. AND WHEREAS the absent teacher Mr. Falak Sher promised that he will appear before the undersigned but again the said teacher failed to fulfill his promise.
8. AND WHEREAS the absent teacher has been called by the undersigned for personal hearing vide No. 2965-69 on dated 24/09/2019 but again all in vain.
9. AND WHEREAS it has also been proved that the said teacher travelled abroad with different names and D.O.B which means that the said teacher deliberately concealed the fact from high authorities which is a matter of forgery.
10. AND WHEREAS the competent authority, the District Education Officer Tribal District Mohmand, after having considered the charges, evidence on record and facts of the case, is of the view that the charge of wilful and unauthorized absence against the accused official has been proved.
11. NOW THEREFORE, in exercise of the Powers conferred under Rules-4.1. (b) iii of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, the competent Authority, District Education officer Tribal District Mohmand is pleased to impose major penalty of "Removal from service" upon Mr. Falak Sher PET GMS Habib Zai Tehsil Safi Tribal District Mohmand with immediate effect on account of his wilful absence from duty. The wilful and unauthorized absent period will be treated as leave without pay.

(JADDI KHAN KHALIL)
COMPETENT AUTHORITY
District Education Officer
Mohmand Tribal District

Encl's No. 5189-95 Dated: 09/10/2019

Copy forwarded to the:

1. Deputy Commissioner District Mohmand at Ghalanai
2. District Accounts officer Mohmand at Ghalanai
3. PA to Director (E & SE) Khyber Pukhtun Khwa Peshawar.
4. ADEO concerned for entry in his service book.
5. Accountant local office for stoppage of his pay forth with
6. Pay clerk local office for entry in his service book.
7. Official concerned.

District Education Officer
Mohmand Tribal District

4/10/2020

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 3934/2020


Falak Sher.....**Appellant.**

V E R S U S

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

Rejoinder

REPLICATION ON BEHALF OF THE APPELLANT.

P. O. F.

01/06/21

REPLY TO PRELIMINARY OBJECTIONS.

All the objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action and locus standi to bring the present appeal, the appellant has approached this honorable tribunal with clean hands, has concealed nothing from this honorable tribunal and the appellant is not estopped by his conduct to file instant appeal.

REPLY TO FACTS/GROUNDS:

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules. In the circumstances the appellant has been deprived of his rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land. Respondents have admitted that the appellant absence from duty was not willful and deliberate rather the same happened due to militancy and severe/grave circumstances in the initial year 2005 which were beyond the control of the appellant as well. Later in 2018 appellant approached respondents for joining of duty but with no response shown from where after the appellant filed service appeal for it. Show Cause Notice was issued to him which the appellant replied in detail refuting the allegations, then was issued charge sheet and before the submission of its reply, the appellant was

removed from service on dated 04-10-2019 and thus the appellant had to withdraw his appeal on 16-10-2019. Never provided opportunity of personal hearing even no inquiry was conducted nor the appellant was given proper time to have replied to the Charge Sheet and the contention of the appellant regarding peculiar circumstances was never considered. Hence, the impugned order is based on malafide as he was removed when the appellant had filed service appeal and which was ripe for arguments. Thus the impugned order is illegal, unlawful and void and the period of alleged absence was regularized by treating the same as leave without pay thus he cannot be punished on this ground and as such time factor becomes irrelevant in such eventuality and hence the impugned order as such is not tenable in the eye of law or liable to be struck down.

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

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

Dated:-03-03-2021



Appellant

Through



Fazal Shah Mohmand

Advocate,

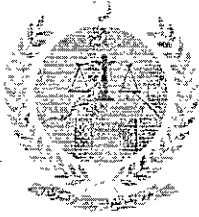
Supreme Court of Pakistan.

AFFIDAVIT

I, Falak Sher, Ex Physical Education Teacher, District Mohmand, S/O Malak Rehmat R/O Peer Qilla Shab Qadar District Charsadda, (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



DEPONENT



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No: 2139 /ST Dated: 04/7 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To,

The District Education Officer Mohmand,
Tribal District.

Subject: JUDGMENT IN SERVICE APPEAL NO. 3934/2020 OF Mr. FALAK SHER VS DEO, MOHMAND.

I am directed to forward herewith a certified copy of Judgement dated 1.02.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As Above.


(WASEEMAKHTAR)

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

-1-

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 878/2018

Member District Forum
Peshawar

651
Date 02/15/2018

Falak Sher, Physical Education Teacher Mohmand Agency
S/O Malik Rehmat Sher R/O Peer Qila Shabqadar District
Charsadda.Appellant

V E R S U S

- order sheet
21/05/19
01. District Education Officer, District Mohmand
1. Agency Education Officer, Mohmand Agency, at
Ghalanai. Director Elementary and Secondary Chagber Parham Chag.
Peshawar
02.
2. Director Education FATA, FATA Secretariat Warsak Road
Peshawar.
03.
3. Secretary, Education Govt. of KPK Peshawar.
.....Respondents

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT
1974 FOR ADJUSTMENT/POSTING OF THE
APPELLANT AGAINST HIS POST AND RELEASE OF
SALARIES OF THE APPELLANT W.E.F DECEMBER
2005 TILL DATE, REGARDING WHICH
DEPARTMENTAL APPEAL OF THE APPELLANT HAS
NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE
OF STATUTORY PERIOD OF NINETY DAYS.**

PRAYER:-


Filed to-day
Registrar.
2/5/18


On acceptance of this appeal, the respondents may kindly be directed to adjust/post the appellant against his post and release his salaries w.e.f. December 2005 and onwards.

Respectfully Submitted:-

1. That the appellant was appointed as Physical Education Teacher on 01-10-1995 and was posted to Gvt. Middle School Habibzai Mohmand Agency, where he took his charge on 02-10-1995. (Copy of Charge Report is enclosed as Annexure A).
2. That since then he performed his duties with honesty and full devotion and to the entire satisfaction of his high ups and was transferred time and again.

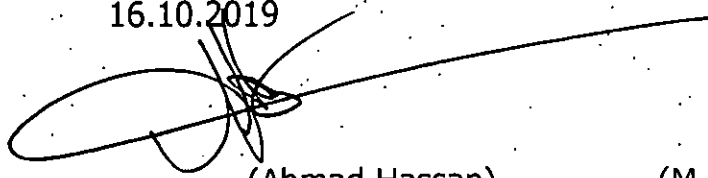
27.09.2019 Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments 16.10.2019 before D.B.

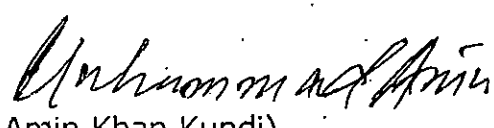

(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

16.10.2019 Counsel for the appellant present. Addl: AG alongwith Mr. Javed Khan, Focal Person for respondents present. Perusal of record reveals that the appellant filed the present service appeal for directions to ^{the} department for adjustment/ posting of the appellant and release his salaries w.e.f December 2005 and onward. Today the representative of the respondents has furnished ^a copy of removal order of the appellant dated 04.10.2019, copy of the same was also handed over to the learned counsel for the appellant. In view of the above order, the present appeal has become infructuous. File be consigned to the record room.

Announced:
16.10.2019


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

4 copies of signatures

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 3934/2020

Falak Sher.....**Appellant.**

V E R S U S

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

REPLICATION ON BEHALF OF THE APPELLANT.

REPLY TO PRELIMINARY OBJECTIONS.

All the objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action and locus standi to bring the present appeal, the appellant has approached this honorable tribunal with clean hands, has concealed nothing from this honorable tribunal and the appellant is not estopped by his conduct to file instant appeal.

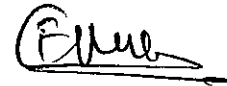
REPLY TO FACTS/GROUNDS:

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules. In the circumstances the appellant has been deprived of his rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land. Respondents have admitted that the appellant absence from duty was not willful and deliberate rather the same happened due to militancy and severe/grave circumstances in the initial year 2005 which were beyond the control of the appellant as well. Later in 2018 appellant approached respondents for joining of duty but with no response shown from where after the appellant filed service appeal for it. Show Cause Notice was issued to him which the appellant replied in detail refuting the allegations, then was issued charge sheet and before the submission of its reply, the appellant was

removed from service on dated 04-10-2019 and thus the appellant had to withdraw his appeal on 16-10-2019. Never provided opportunity of personal hearing even no inquiry was conducted nor the appellant was given proper time to have replied to the Charge Sheet and the contention of the appellant regarding peculiar circumstances was never considered. Hence, the impugned order is based on malafide as he was removed when the appellant had filed service appeal and which was ripe for arguments. Thus the impugned order is illegal, unlawful and void and the period of alleged absence was regularized by treating the same as leave without pay thus he cannot be punished on this ground and as such time factor becomes irrelevant in such eventuality and hence the impugned order as such is not tenable in the eye of law or liable to be struck down.

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

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



Appellant

Dated:-03-03-2021

Through



Fazal Shah Mohmand

Advocate,

Supreme Court of Pakistan.

AFFIDAVIT

I, Falak Sher, Ex Physical Education Teacher, District Mohmand, S/O Malak Rehmat R/O Peer Qilla Shab Qadar District Charsadda, (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



DEPONENT

D.F.A

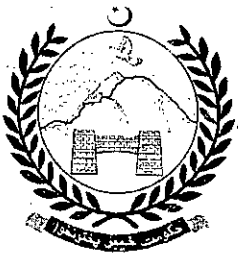
16.10.2019

Counsel for the appellant present. Addl: AG alongwith Mr. Javed Khan, Focal Person for respondents present. Perusal of record reveals that the appellant ~~was~~ filed the present service appeal for directions to department for adjustment/ posting of the appellant and release his salaries w.e.f December 2005 and onward. Today the representative of the respondents has furnished copy of removal order of the appellant dated 04.10.2019, copy of the same was also handed over to the learned counsel for the appellant. In view of the above order, the present appeal has become infructuous. File be consigned to the record room.

Announced:
16.10.2019

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member



OFFICE OF THE DISTRICT EDUCATION OFFICER
MOHMAND TRIBAL DISTRICT

Ph. No. ☎ : 0924-290180

FAX ☎ : 0924290180

Email ✉ : - deomohmand@gmail.com

NO. _____ / DATED _____ / 2019



NOTIFICATION


1. **WHEREAS** Mr. Falak Sher PET GMS Habib Zai Tehsil Safi (As per his service book record) was found willfully absent from duty during monitoring visit of the ADEO Mr. Abdul Sattar on dated 14/06/2019.
2. **AND WHEREAS** the accused was proceeded against under Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules 2011, for the charge of "willful absence from duty" as mentioned in the show cause notice served upon him under registered post at his home/School address vide No: 2700-92 dated 23.08.2019.
3. **AND WHEREAS** Mr. Falak Sher PET GMS Habib Zai Tehsil Safi did not report to his duty within stipulated period of time and turned his ears deaf.
4. **AND WHEREAS** Charge sheet was served upon Mr. Falak Sher PET GMS Habib Zai Tehsil Safi Tribal District Mohmand vide No: 2809-14 on dated 13/09/2019 through registered post at his home/school address therein the accused was directed to submit reply in his defense through personal contact with the office.
5. **AND WHEREAS** the accused failed to put any defense in written and did not appear to be heard in person within fifteen days.
6. **AND WHEREAS** the undersigned personally called the absent teacher and warned the absent teacher to appear before the DEO office to defend himself.
7. **AND WHEREAS** the absent teacher Mr. Falak Sher promised that he will appear before the undersigned but again the said teacher failed to fulfill his promise.
8. **AND WHEREAS** the absent teacher has been called by the undersigned for personal hearing vide No. 2965-69 on dated 24/09/2019 but again all in vain.
9. **AND WHEREAS** it has also been proved that the said teacher travelled abroad with different names and D.O.B which means that the said teacher deliberately concealed the fact from high authorities which is a matter of forgery.
10. **AND WHEREAS** the competent authority, the District Education Officer Tribal District Mohmand, after having considered the charges, evidence on record and facts of the case, is of the view that the charge of willful and unauthorized absence against the accused official has been proved.
11. **NOW THEREFORE**, in exercise of the Powers conferred under Rules-4.1. (b) iii of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, the competent Authority, District Education officer Tribal District Mohmand is pleased to impose major penalty of " **Removal from service** " upon Mr. Falak Sher PET GMS Habib Zai Tehsil Safi Tribal District Mohmand with immediate effect on account of his willful absence from duty. The willful and unauthorized absent period will be treated as leave without pay.

(JADDI KHAN KHALIL)
COMPETENT AUTHORITY
District Education Officer
Mohmand Tribal District

Endst. No. 5189⁹⁵ Dated 09/10/2019

Copy forwarded to the:

1. Deputy Commissioner District Mohmand at Ghalanai
2. District Accounts officer Mohmand at Ghalanai
3. PA to Director (E & SE) Khyber Pukhtun Khwa Peshawar.
4. ADEO concerned for entry in his service book
5. Accountant local office for stoppage of his pay forth with
6. Pay clerk local office for entry in his service book.
7. Official concerned


District Education Officer
Mohmand Tribal District

بہ اے کے ٹریبونل - کھبر پختونخوا

285/11
E.P. No.



Not Moral Turpitude

Appel No. 1689/2010

Date of institution -- 20.09.2010
Date of decision - 13.06.2011

Muhammiad Irshad, MA, MEd. Ex C.T. Government High School Kolka, District Manshira (Appellant)

VERSUS

1. Secretary to Government of KPK, Elementary and Secondary Education Department Peshawar.
2. Director Elementary and Secondary Education, Department KPK, Peshawar.
3. Executive District Officer; (Elementary and Secondary Education) KPK, District Manshira (Respondents)

Appeal under section 4 of the KPK Service Tribunals Act, 1974 for the release of salary of the appellant with effect from 2.10.2009 i.e when the appellant undergone his conviction, the departmental appeal dated 20.5.2010 has not been responded despite the lapse of ninety days.

Mr. Ijaz Anwar Advocate For Appellant
Mr. Fahim Iqbal Khattak For Respondents

SYED MANZOOR ALI SHAH MEMBER
MR. KHALID HUSSAIN MEMBER

JUDGMENT

1. SYED MANZOOR ALI SHAH, MEMBER: This appeal has been filed by the appellant for the release of salary of the appellant with effect from 2.10.2009 i.e when the appellant undergone his conviction.

2. Brief facts of the case as per memo of appeal are that the appellant is serving in the education Department. He was initially appointed as C.T in the year 1997 in BPS 14. He was later on allowed BPS 15. While serving in the said capacity, the appellant was falsely implicated in a criminal case under section 302/324/148 /149 PPC on 27.9.2007. FIR No. 267, P.S Oghi. In the mean time the appellant was arrested in the criminal case on 28.9.2007. When this information was conveyed to the respondents, the appellant was suspended from service. He was however, allowed subsistence

Attested [Signature]

[Signature]
M.A.M.Ed S.E.T(17)
G.H.S Kolka (Manshira)

ATTESTED
[Signature]
Khyber Pakhtunkhwa Service Tribunal Peshawar

Khyber Pakhtunkhwa Service Tribunal Peshawar

allowance is admissible under rules. The criminal case proceeded and the trial commenced. After the conclusion of the trial, the learned Additional Sessions Judge Manshra at Oghi vide his judgment and order dated 19.9.2009 convicted the appellant under Section 324 PPC and sentenced him to suffer three years R.I with compensation of Rs. 10,000, with addition the appellant was also convicted under Section 324 r/w 337 (1) (2) PPC and sentenced one year imprisonment as Tazir. He was also liable to Daman amounting to Rs. 5000/- The appellant filed criminal appeal No. 112/2009 in the Peshawar High Court Abbottabad Bench. Similarly a criminal Revision was also filed for the enhancement of sentence to the appellant. Both the appeal and revision were heard together but both were dismissed, maintaining the judgment of learned additional Section Judge Manshra at Oghi Vide appellate judgment and order dated 10.5.2010. The appellant served out the sentence and was released on 2.10.2009. After dismissal of his appeal on 20.5.2010 he submitted his appeal for the release of his salary and permission to join his duty, however, no action was taken on the representation of the appellant despite the lapse of ninety days. Hence, the instant appeal.

3. Arguments heard and file perused.

4. The learned counsel for the appellant argued that the appellant has been denied salary without any lawful justification. Withholding of salary is a punishment, however, while withholding the salary no right of hearing was provided to him. The appellant was convicted u/s 324 PPC, the same does not amount conviction in the case of moral turpitude, hence, the appellant is entitled to the salary and arrears. The appellant was illegally implicated in a criminal case. The allegations leveled were not of heinous in nature. Hence, entitling the appellant to the reinstatement with arrears of pay. The appointment of the appellant is still intact, hence, the respondents department is bound to allow the appellant to join his duty and to release his salary. He prayed that on acceptance of this appeal the respondents be directed to release the salary of the appellant with effect from 2.10.2009 with all arrears.

5. The A.G.P argued that the appellant has been convicted in a murder case and sentenced to punishment. Hence is liable, under the jurisdiction of service law, to be

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Signature
Tajwar Ali Khan
B.A M.Ed S.E.T(17)
G.H.S Kollka (Manserra)

terminated with no further benefits. With-holding of salary is punishment in such a criminal case, while the case of appellant is substantially enough to hold back his salary. The appellant has been charged under Section 392/324 PPC which is as per with other sections in the manner of service rules and is adequate to withhold the salary. The appellant was criminally sentenced to punishment and fined, which is sufficient enough to hold back the service benefits under the rules. The appellant will possibly meet the termination, as provided under the rules, and hence, has no right to claim any salary. He prayed that the appeal may be dismissed.

6. In view of the above, the Tribunal while agreeing with the arguments put forth by the learned counsel for the appellant accepts the appeal. The respondents are directed to release the salary of the appellant w.e.f. 20.5.2010, the date he reported his arrival for duty after serving out the sentence as no duty was performed by the appellant till 20.5.2010, hence, claim for arrears etc is denied (No work no pay). No order as to costs. File be consigned to the record.


ANNOUNCED,
13.06.2011.

(KHALID HUSSAIN)
MEMBER.

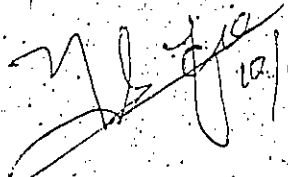
(SYED MANZOOR ALI SHAH)
MEMBER.

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 1-7-2011
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 Date of Delivery of Copy 1-7-2011

Attested

 Mansoor Ali Khan
 J.A.M.E.S.T (17)
 G.H.S Kollia (Manserra)

Received on
 Dated 10-10-2011
 Muhammad Inam


 10/10/2011

مذکورہ کی طرف سے

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

285/11
E.P.No.



Not Moral Turpitude

Appeal No. 1689/2010

Date of institution -- 20.09.2010
Date of decision - 13.06.2011

Muhammad Irshad, MA, Mcd, Ex.CT, Government: High School Kolka, District
Manshra (Appellant)

VERSUS

1. Secretary to Government of KPK, Elementary and Secondary Education Department Peshawar.
2. Director Elementary and Secondary Education, Department KPK, Peshawar.
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Khyber Pakhtunkhwa Service Tribunal Peshawar

Khyber Pakhtunkhwa Service Tribunal Peshawar

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Tafar Ali Khan
M.A M.Ed S.E.T(17)
G.H.S Kollka (Manserra)

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ANNOUNCED.
13.06.2011.

(KHALID HUSSAIN)
MEMBER.

(SYED MANZOOR ALI SHAH)
MEMBER.

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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M.A. RAO S.E.T (17)
G.A. S. Kotlika (Manserra)

Received on
Dated 10-10-2011
Muhammad Inam

10/10/2011

Before the honorable K P Service Tribunal Peshawar

Service Appeal No 3934/2020

Falak Sher
Appellant

vs

DEO Peshawar
Respondents

Application for foregoing the benefits of absence period


Respectfully submitted;

- ① - That the titled service appeal is pending before this honorable Tribunal is filed for today is 1st 2nd 2022
- ② - That the appellant is ready not to claim the salaries etc of the pre alleged absence periods in case of his reinstatement.

It is therefore requested that on acceptance of the service appeal, the appellant will not claim service benefits of absence period.

Dated 1-2-2022

Through Appellant


Fozal Shah Mohammad
Advocate Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 3934/2020

Falak Sher.....**Appellant.**

V E R S U S

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

Rejoinder/

REPLICATION ON BEHALF OF THE APPELLANT.

REPLY TO PRELIMINARY OBJECTIONS.

All the objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action and locus standi to bring the present appeal, the appellant has approached this honorable tribunal with clean hands, has concealed nothing from this honorable tribunal and the appellant is not estopped by his conduct to file instant appeal.

REPLY TO FACTS/GROUNDS:

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules. In the circumstances the appellant has been deprived of his rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land. Respondents have admitted that the appellant absence from duty was not willful and deliberate rather the same happened due to militancy and severe/grave circumstances in the initial year 2005 which were beyond the control of the appellant as well. Later in 2018 appellant approached respondents for joining of duty but with no response shown from where after the appellant filed service appeal for it. Show Cause Notice was issued to him which the appellant replied in detail refuting the allegations, then was issued charge sheet and before the submission of its reply, the appellant was

removed from service on dated 04-10-2019 and thus the appellant had to withdraw his appeal on 16-10-2019. Never provided opportunity of personal hearing even no inquiry was conducted nor the appellant was given proper time to have replied to the Charge Sheet and the contention of the appellant regarding peculiar circumstances was never considered. Hence, the impugned order is based on malafide as he was removed when the appellant had filed service appeal and which was ripe for arguments. Thus the impugned order is illegal, unlawful and void and the period of alleged absence was regularized by treating the same as leave without pay thus he cannot be punished on this ground and as such time factor becomes irrelevant in such eventuality and hence the impugned order as such is not tenable in the eye of law or liable to be struck down.

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

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

Dated:-03-03-2021



Appellant

Through



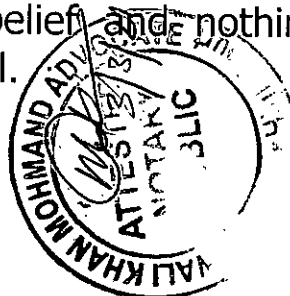
Fazal Shah Mohmand

Advocate,

Supreme Court of Pakistan.

AFFIDAVIT

I, Falak Sher, Ex Physical Education Teacher, District Mohmand, S/O Malak Rehmat R/O Peer Qilla Shab Qadar District Charsadda, (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



DEPONENT