

**BEFORE THE SERVICE TRIBUNAL, KHYBER  
PUKHTOON KHEWA, PESHAWAR.**

Service Appeal No. 318 /2019

Habibullah Ex-PS, GPS Sahib Abad, District  
Bajawar.

..... Appellant

**Versus**

Government of Khyber Pukhtoon Khawa through  
Secretary Elementary & Secondary Education,  
Peshawar & others

..... Respondents.

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22nd Feb, 2019

Petitioner

Through

**ASIF ALI SHAH**

Advocates, High Court,  
Chamber: 3-A, Haroon Mansion,  
Khyber Bazar, Peshawar.  
Cell:0333-9006806



**BEFORE THE SERVICE TRIBUNAL, KHYBER  
PUKHTOON KHEWA, PESHAWAR.**

Service Appeal No. 318 /2019

Habibullah Ex-PS, GPS Sahib Abad, District  
Bajawar.

..... Appellant

**Khyber Pakhtukhwa  
Service Tribunal**

**Versus**

Diary No. 272

Dated 22/2/2019

1. Government of Khyber Pukhtoon  
Khawa through Secretary Elementary &  
Secondary Education, Peshawar.
2. Director FATA Elementary & Secondary  
Education, Peshawar.
3. District / Agency Education Officer,  
District Bajawar.
4. Deputy Commissioner / Political Agent,  
District Bajawar at Civil Colony Khar.  
..... Respondents

Filed to-day  
*[Signature]*  
Registrar  
22/2/19

**APPEAL U/S 4 OF THE NWFP  
SERVICE TRIBUNAL ACT, 1974  
AGAINST THE ORDER DATED  
27.03.2010, WHEREBY THE ORDER  
OF DISMISSAL FROM SERVICE HAS  
BEEN PASSED AGAINST THE  
APPELLANT.**

Re-submitted to -day  
and filed.

*[Signature]*  
Registrar  
1/3/19

**Prayer:**

**ON ACCEPTANCE OF THIS APPEAL  
THE ORDER DATED 27.03.2010  
PASSED BY RESPONDENT NO. 03  
MAY PLEASE BE SET-ASIDE AND  
THE APPELLANT BE RE-INSTATED**

## **BACK TO HIS SERVICE WITH ALL BACK BENEFITS.**

.....

### **Respectfully Sheweth:**

1. That the appellant was serving as PST Teacher at GPS Sahib Abad, Bajawar Agency.
2. That the appellant has been serving his department as a teacher by heart and soul and has got at his credit a length of service extending to more than 15 years.
3. That the illegal proceedings were initiated against the appellant on the ground that the appellant is involved in anti-state activities and that's why the appellant left the his home due to the law enforcing agencies.
4. That in 2018 the law enforcing agencies after a through inquiry / investigation exonerate the appellant from all charges and he came back to his home but it was astonishment for the appellant that he was terminated from service vide office notification No. 7052-55 dated: 27.03.2010. **(Copy of order is attached as Annexure-A).**
5. That being arrived of the above said dismissal order the appellant then filed a departmental appeal but no heed was paid to the said appeal. **(Copy of the appellate committee is attached as Annexure-B).**
6. That there being no other remedy in the matter pertaining to the terms and conditions of the services of the appellant this appeal is hereby submitted on the following grounds amongst the others.

### **Grounds:**

- a) That the impugned order of dismissal from service against the appellant is illegal, unlawful, without authority / jurisdiction and being based

on the malafide intentions of the respondent department is liable to be set-aside.

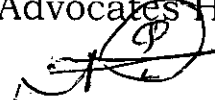
- b) That by receiving the above said impugned letter the appellant was just taken by surprise as neither any notice, nor any show cause or intimation whatsoever was served by the respondent department upon the appellant.
- c) That the appellant was condemned unheard and no chance of hearing / defence whatsoever was provided as described under the prevailing laws to the appellant.
- d) That no enquiry proceedings has enumerated under the law has ever been initiated against the appellant and just Hire and Fire policy was adopted by the respondent department, thereby issuing the termination / dismissal notices of dozens of the people without any justification or without adopting any legal process.
- e) That it seems that the Government wants to fill the above said vacancies by appointing his own blue eyed persons by adopting such an unjustified and un-service of the Civil Employees in bulk, for which neither any example can be quoted throughout the history of the civil servants nor any such procedure is warranted by the prevailing laws as promulgated throughout the country.
- f) That the appellant has been treated discriminately and without any fault at his part, just to create an Environment to harass the civil employees having no political affiliations with the Government parties under the umbrella of an action against the terrorism, whereas the appellant has never been involved in any anti social or any anti Government nor he has committed any act of the misconduct under the relevant disciplinary laws.
- g) That the manner of termination / dismissal from service / as adopted in the above said

cases even not applicable, where the rule of master and servant applies, what to say the application of such a sort cut procedure for the dismissal of civil servants having at their credit spotless service of more than 15 years.

- h) That the delay is not intentional but when the petitioner was charged with anti-state activities then the petitioner for the sake of his life he fled away and in his absence, without providing opportunity of hearing, terminated from service on presumable grounds.
- i) That in June, 2018 the respondent No.4 issued the character certificate to petitioner of is good moral character, then the appellant was allowed by the law enforcing agencies for the entrance and living in his home land.
- j) That neither the appellant has committed any misconduct as defined under the relevant laws nor he has been treated as according to the law, thereby neglecting and bulldozing the very basic right of the appellant as enumerated in the constitution of the Islamic Republic of Pakistan.

IT IS, THEREFORE, PRAYED THAT ON ACCEPTANCE OF THIS APPEAL THE ORDER OF DISMISSAL FROM SERVICE OF THE APPELLANT DATED 27.03.2010, BEING ILLEGAL, UNLAWFUL WITHOUT JURISDICTION / AUTHORITY AS WELL AS ALSO BEEN UNCONSTITUTIONAL AND AGAINST ALL THE NORMS OF JUSTICE MAY PLEASE BE SET-ASIDE AND THE APPELLANT RE-INSTATED BACK TO HIS SERVICE WITH ALL HIS BACK BENEFITS.

Appellant   
Through  
Asif Ali Shah  
&  
Misbah Ullah  
Advocates High Court.



**BEFORE THE SERVICE TRIBUNAL, KHYBER  
PUKHTOON KHEWA, PESHAWAR.**

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

Habibullah Ex-PS, GPS Sahib Abad, District  
Bajawar.  
..... Appellant

**Versus**

Government of Khyber Pukhtoon Khawa  
through Secretary Elementary & Secondary  
Education, Peshawar & others  
..... Respondents

**APPLICATION FOR CONDONATION OF DELAY**

**Respectfully Sheweth!**

The petitioner most humbly submits as under:-

1. That the above titled appeal is being filed in this August Tribunal, for the disposal of this petition the grounds of main appeal may be consider as integral part of this petition.
2. That the delay is not intentional but when the petitioner was charged with anti-state activities then the petitioner for the sake of his life he fled away and in his absence, without providing opportunity of hearing, terminated from service on presumable grounds.
3. That in June, 2018 the respondent No.4 issued the character certificate to petitioner of is good moral

character, and then the appellant was allowed by the law enforcing agencies for the entrance and living in his home land. (Character certificate is attached)

4. There is no legal impediment in allowing this application.

**IT IS, THEREFORE, MOST HUMBLY PRAYED THAT ON ACCEPTANCE OF THIS APPLICATION THE DELAY MAY KINDLY BE CONDONED.**

**Petitioner**



**Through:**



**Asif Ali Shah**

**&**

**Misbah Ullah**



**Advocates,  
Peshawar**

**Dated:04.05.2018**

**BEFORE THE SERVICE TRIBUNAL, KHYBER  
PUKHTOON KHEWA, PESHAWAR.**

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

Habibullah Ex-PS, GPS Sahib Abad, District  
Bajawar.

..... Appellant

**Versus**

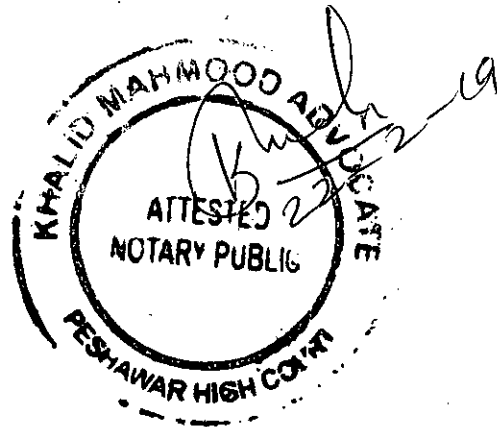
Government of Khyber Pukhtoon Khawa through  
Secretary Elementary & Secondary Education,  
Peshawar & others

..... Respondents.

**AFFIDAVIT**

I, Habibullah Ex-PS, GPS Sahib Abad, District Bajawar  
do hereby solemnly affirm and declare on oath that  
contents of the accompanying Appeal are true and  
correct to the best of my knowledge and belief and  
nothing has been kept concealed from this Honorable  
Tribunal.

Deponent.







*Annexure A*

**OFFICE OF THE AGENCY EDUCATION OFFICER BAJAUR AGENCY.**

**DISMISSAL ORDER**

Consequent upon the letter issued by FATA Secretariat Peshawar addressed to Director of Education FATA vide No /FS/E/100-9/Enquiry/ 2827-30, dated 20/3/2010, the services of the following Govt: officials of various Educational Institutions in Bajaur Agency are hereby dismissed with immediate effect due to involvement in anti-state activities as conveyed by the competent authority.

<u>S.No</u>	<u>Name of Teacher /official</u>	<u>Designation</u>	<u>Name of school</u>
1	Abdul Wahab	PTC	GPS Wara Kharkai
2	Muhammad Jamil	CT	GHS Shago Mamund
3	Saifoor Khan	PET	GHS Badan
4	Gul Saced	CT	GHS Malangai
5	Muhammad Sattar	PTC	GPS Damadola
6	Fazli Hakim	PTC	GPS Inam Khwaro
7	Kifayatullah	PTC	GPS Dabar
8	Ayub Khan	CT	GHS Top Mandal
9	Muhammad Wazir	CT	GMS Mano
10	Habibullah	PTC	GPS Sahib Abad
11	Rahim shah	PTC	GPS Tangi No: 2
12	Lal Zada	PTC	GPS Dawri Mandal
13	Hazrat Sadiq	PTC	GPS Soor Dagai
14	Lal Zarin	PTC	GPS Dara
15	Muhammad Sher	PTC	GPS Dara
16	Yar Zaman Khan	PTC	GPS Shahzada Tangi
17	Badshah Muhammad	CT	GHS Nawagai
18	Abdul Fatah	CT	GHS Kotkai Charmang
19	Muhammad	PTC	GPS Chinar Charmang
20	Amanullah	PTC	GPS Dand
21	Stana Gul	PTC	GPS Nawa Killi
22	Shakirullah	C/IV	GPS Baichina
23	Saeed ur Rahman	PTC	GPS Inzarai
24	Badshah Gul	CT	GPS Tang Khatta

**Haji Gul Rahman**  
Agency Education Officer  
Bajaur Agency.

**Endst No: 7052-55 Dated 27/3/2010**

Copy of the above is forwarded to the:

1. Director of Education FATA Peshawar w/r to his remarks No: Nil, dated 25/3/2010 on the body of letter issued by Secretary Admn: & Coordination.
2. Political Agent Bajaur Agency.
3. Head Masters/ Principals of GHS Shago, GHS Badan, GHS Malangai, GHS Top Mandal, GHS Nawagai, GHS Kotkai Charmang for information and necessary action.
4. All concerned.

*Attested*  
*net*

**Agency Education Officer**  
Bajaur Agency.



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
3 بی اس سے آباد

N086934



PAKISTAN

Identity Card

Name  
Habibullah



FATHER'S NAME  
Habib Ur Rahman



Gender (Country of Stay)  
M Pakistan

Identity Number  
21103-2303664-1

Date of Birth  
01.01.1969

Date of Issue  
19.04.2018

Date of Expiry  
19.04.2028


Holder's Signature




Character Certificate.

AS verified by the local elders of the area, that Mr, Habibullah S/C Habib Ur Rahman is a bonafide Resident of Village Sahib Abad near Shah Poshai Salazarai Sagar Agency. He belongs to Tribe Tankari Section Salazarai Sub-Section Millan. He bears good moral character.

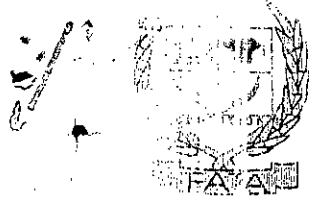
I.E.

1.   
Professor Abdur Raqib  
vill Sahib Abad, Teh  
Salazarai  
21106-2270693-3

2.   
Habibullah S/C  
vill - Gang Tehsil Salazarai  
Buzdar  
21106-120028-8

Political Officer,  
Salazarai.

09/6/18



**MINUTES OF APPELLATE COMMITTEE REGARDING DISPOSAL OF DEPARTMENTAL APPEALS.**

A meeting of the committee was held on 16/10/2018 at 11.00 AM in the office of Additional Director (Estab.) FATA in order to examine/scrutinize the appeals submitted by various appellants against the dismissal/removal order issued by Agency Education Officers on various grounds mentioned in the impugned orders. The following attended the meeting.

1. Additional Director (Estab) : Chairman.
2. Deputy Director (F/A). : Member.
3. Deputy Director (Colleges). : Member.

The Appellants were provided opportunity of hearing one by one keeping in view the Principles of natural justice. The committee after perusal of the record available and readiate discussion on each issue unanimously agreed to submit the following recommendations for approval of the competent authority.

**1. Shakeela Masih ExPST NWA.**

The appellant was called in person for personal hearing on target dated. She was appointed as per statement on 24/11/2988 and was working as PST teacher at GGPS Ghanshah. The appellant found absent from her actual duty during frequent visit of AEO concerned circle, consequently AEO/DEO Proceeded against the appellant by issuing upon her show Cause Notice through daily Newspaper vide date 20/2/2018, as she not responding after the notice served upon her impose major penalty of 'Compulsory Retirement from service' on 21/3/2018.

The appellant during course of hearing contended that she was suffering from skin disease since 2017. Therefore, she was absent from duty on inquiry from the appellant as to whether she submit any leave application to the DEO concerned? The appellant remained "MUM" and on the contrary request the committee to convert her compulsory retirement order into Medical retirement, from statement of the appellant presumption can be drawn to the fact, that appellant is still not interested in her services, and remained negligent from her services.

**Recommendation.**

1. The compulsory Retirement order dated 21/3/2018 may be ordered as intact.
2. DEO may be directed to provide her benefits of retirement expeditiously as permissible under the rules.

was declared absent from duty. The case of the appellant is time barred, as far as statutory limitation period for appeal is only a month but the appellant case was not properly disposed, therefore may be re-instated without back benefits converting intervening period into leave without pay.

5. Mr. Habibullah Ex-PST.

The appellant appointed in October 1994 and removal order issued in 2010.

Recommendation.

Appeal is badly time barred and recommended to be regretted.

6. Mr. Taj Malook S/O Sarwar Khan, The: Dosali NWD.

The appellant was appeared before the committee out of turn as his case was purely of fresh appointment as TT in recruitment process of 2012-13 in North Waziristan, which were cancelled by competent authority being repungment to law/policy. Committee has been informed, that same case has been forwarded for guidance by District Education Officer, North Waziristan District vide an independent letter No. 5450 dated 08/08/2018.

Recommendation.

Since Appellate Committee is authorized to dispose of appeals in which a particular order has been impugned by Ex-Govt: servant, hence the case is different. It was regretted with the remarks that proper forum may be contacted for the requested disposal.

1. Additional Director (Estab)

2. Deputy Director (F/A).

3. Deputy Director (Colleges)

12/12/18

12/12/18

12/12/18

Attested  
[Signature]



2

**DIRECTORATE OF EDUCATION  
NEWLY MERGED DISTRICTS KPK  
WARSAK ROAD, PESHAWAR, PAKISTAN  
PHONE. 091-9210166, FAX 091-9210216**

No. 14317 / 1 Date Pesh: the 8/11 /2018.  
E-6/KC/Bajaur.

To

The District Education Officer  
Tribal District Bajaur.

Subject:

APPLICATION FOR RE-INSTATEMENT.

Memo;

I am directed to refer to the subject noted above and to enclose find herewith an application in respect of Mr. Habibullah S/O Habib-ur-Rehman Ex-PST Village Sahib Tehsil Salarzai, District Bajaur for detailed report/comments please.

Encl: A. A.

*[Signature]*  
Deputy Director (Estab)

Endst: No. \_\_\_\_\_ /-.

Dated Pesh: the \_\_\_\_\_ /2018.

Copy PA to Director Education NMFD.

Deputy Director (Estab).

*D.No. 99  
dt. 23/11/2018  
[Signature]*

*Hamidullah Jan  
[Signature]*

*Bahramand  
[Signature]*

*Attested  
[Signature]*

*[Signature]  
[Signature]*

*13/12/2018*

Handwritten signature and initials, possibly "MUT" and "D.P.C.P."

Handwritten signature or initials.

Agency Ed. Officer  
Bajaur Agency

Handwritten initials "MUT"

27/7/2018  
Forwarded to  
Honorable Director  
for Bajaur Province

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**Vakalanama**  
**BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOON**  
**KHEWA, PESHAWAR.**

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

Habibullah Ex-PS, GPS Sahib Abad, District Bajawar..... Appellant

**Versus**

Government of Khyber Pukhtoon Khawa through Secretary Elementary &  
Secondary Education, Peshawar & others

..... Respondents.

KNOW ALL TO WHOM THESE PRESENTS SHALL COME THAT I/We the undersigned do hereby nominate and appoint Mr. Asif Ali Shah Advocate High Court, in the above mention case to do all the following accts, deeds and things or any of them that is to say:

1. To act, appear and plead in the above mentioned case in this court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or in any other stage of its progress untile its final decision.
2. To present pleadings, appeals cross-objection or petitions for execution, review, revision, withdrawal, compromise or other petitions or affidavit or other documents as shall be deemed necessary or advisable for the prosecution / defense of the said case at all its stages.
3. To withdraw or compromise the said case or submit so the arbitration any differences or disputes that shall arise touching or in any manner relating to said cause.
4. To receive moneys and grant receipts therefore and to do all other acts and things prosecution / defense of the case.
5. To employ, authorized any other legal practitioner to assist or exercise the power and authority hereby conferred on the advocate whenever he may think expedient to do so.

And I/We hereby agree to ratify whatever the advocate or his substitute shall do in this behalf.

And I/We hereby agree not to hold the advocate from the court when the said case is called up for hearing.

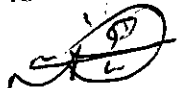
And I / We hereby agree that in the event of the whole or any part of the fee agreed by me / us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution / defense of the said case until and unless the same is paid.

Where for I / we here under set my / ur hand to these presents the contents of which have explained to and understood by me / us, this 15th day of February, 2019.

ACCEPTED subject to the terms & Conditions

Mr. Asif Ali Shah  
Advocate High Court  
Peshawar  
Enrollment No: bc-10-7418  
Contact No. 0333-9006806  
Email: [hcadvocate.asif@gmail.com](mailto:hcadvocate.asif@gmail.com)

  
Appellant  


*Misbahullah*  




**BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOON  
KHAWA, PESHAWAR**



Service Appeal No. 1478 /2010

N.W.F. Service Tribunal  
Service Tribunal  
Distt No. 1714  
Date 04/8/10

Amanullah Ex-TT  
GPS Chargo Salarzai Bajawar Agency .....Appellant

**Versus**

1. Government of Khyber Pukhtoon Khawa through Secretary Elementary & Secondary Education, Peshawar.
2. Director FATA Elementary & Secondary Education, Peshawar.
3. Agency Education Officer, Bajawar Agency.
4. Political Agent Bajawar Agency at Civil Colony Khar. ....Respondents

Recd. No. 4/8/10  
20.04.2010

Appeal u/s 4 of the NWFP Service Tribunal Act, 1974 against the order dated 20.04.2010, whereby the order of dismissal from service has been passed against the appellant.

Recd. No. 4/8/10  
20.04.2010

**Prayer:**

On acceptance of this appeal the order dated 20.04.2010 passed by Respondent No. 3 may please be set-aside and the appellant be re-instated back to his service with all back benefits.

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

**BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOON  
KHAWA, PESHAWAR**



Service Appeal No. 1478 /2010

A.V.F. Services  
Service Tribunal  
Distt No. 1714  
Case No. 1478/10

Amanullah Ex-TT  
GPS Chargo Salarzai Bajawar Agency .....Appellant

**Versus**

1. Government of Khyber Pukhtoon Khawa through Secretary Elementary & Secondary Education, Peshawar.
  2. Director FATA Elementary & Secondary Education, Peshawar.
  3. Agency Education Officer, Bajawar Agency.
  4. Political Agent Bajawar Agency at Civil Colony Khar.
- .....Respondents

Recd. No. 9/172/10  
Date 10/2/10

Handwritten signature  
Date 4/8/10

Appeal u/s 4 of the NWFP Service Tribunal Act, 1974 against the order dated 20.04.2010, whereby the order of dismissal from service has been passed against the appellant.

**Prayer:**

On acceptance of this appeal the order dated 20.04.2010 passed by Respondent No. 3 may please be set-aside and the appellant be re-instated back to his service with all back benefits.

**ATTESTED**

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

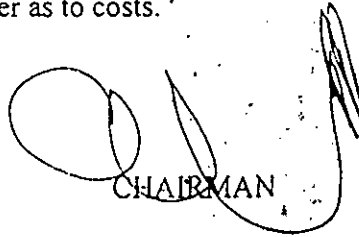
16.3.2011

Counsel for the appellant (Mr.Nawab Ali,Advocate), Mr.Mashal Khan, L.O and Mr.Gul Rehman, AEO with AAG, on behalf of the respondents present. Arguments heard and record perused.

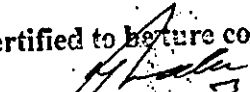
Vide detailed judgment/order of today, placed on connected appeal No. 803/2010 titled 'Bakht Zamin-vs-Secretary(E&SE) Department Peshawar etc.', on the acceptance of the appeal, the impugned order is set aside and the appellant is reinstated in service with consequential/back benefits. However, if deemed appropriate in view of facts and circumstances of the case, the department may initiate denovo departmental proceedings, but strictly in accordance with law by also providing opportunity of defence and hearing to the appellant; and in that case the payment of consequential/back benefits would be subject to the out-come of departmental proceedings/inquiry. There shall, however, be no order as to costs.

ANNOUNCED  
16.03.2011

  
MEMBER

  
CHAIRMAN

Certified to be true copy

  
MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

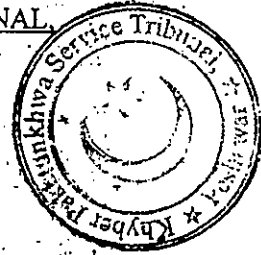
Date of Presentation of Application 24-3-2011  
Number 800  
Copying 6-00  
Urgent 2-00  
Tons 8-00  
In 4  
Latter 24-3-2011  
Date of Order 24-3-2011

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

APPEAL NO. 803/2010

Date of institution ... 21.4.2010

Date of decision ... 16.3.2011



Bakht Zamin S/O Zarif Khan, Village Baghrajai, P.O. Totakan,  
District Malakand.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar.
  2. Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
  3. Secretary Home and Tribal Affairs, Khyber Pakhtunkhwa, Peshawar.
  4. District Magistrate/Commandant Malakand Levies, Malakand.
  5. Executive District Officer (Elementary & Secondary Education), Malakand.
- .....  
(Respondents)

APPEAL UNDER SECTION 4 OF THE NWFP SERVICE TRIBUNALS ACT, 1974 READ WITH SECTION 10 OF THE NWFP(KHYBER PAKHTUNKHWA) REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE, 2000 AGAINST THE OFFICE ORDER NO. 733-40/LC DATED 25.01.2010 WHEREBY THE APPELLANT WAS AWARDED THE MAJOR PENALTY OF REMOVAL FROM SERVICE WITH IMMEDIATE EFFECT, AGAINST WHICH THE DEPARTMENTAL APPEAL DATED 06.02.2010 WAS NOT REPLIED WITHIN 60 DAYS.

Mr. Ijaz Anwar, Advocate. ....

For appellant

Mr. Sher Afgan Khattak, AAG .....

For respondents

Mr. Qalandar Ali Khan  
Syed Manzoor Ali Shah, .....

Chairman

Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN:- This single judgment/order in the appeal in hand will also dispose of 71 similar nature appeals mentioned in the list appended to the judgment/order, as common questions of law and facts are involved, requiring simultaneous disposal.

2. The appellant in the instant appeal and appellants in the connected appeals, listed separately, were Government servants and had rendered services for varying periods, mostly in the Education Department, before their services were dispensed with/terminated on the sole ground of their alleged involvement in the anti-state/subversive activities. They have assailed, through separate appeals, their removal/dismissal from service on the ground that though there was no evidence of their involvement in the alleged activities, they were subjected to the stern major penalty on mere allegations without adopting procedure prescribed by law, including service of charge sheet and statement of allegations or show cause notice and conducting proper inquiry

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar.

against them, and thereby providing them the opportunity of defence and hearing. They further alleged that their departmental appeals were also dealt with in an unjust manner either by not responding to them or by summarily disposing of the same by the Appellate Authority in violation of law.

3. In their written reply/comments, the respondents defended the impugned action against the appellants on the ground of their involvement in anti-state activities on the basis of information received by the department from relevant quarters. The respondents further contended that in view of the nature of the case, there was no need of inquiry or further proceedings, for which the authorities had ample powers to dispense with the requisite procedure.

4. Arguments of the learned counsel for the appellants and learned AAG heard and record perused.

5. It is not disputed, even by the respondents, that the appellants were Government servants and had rendered service for considerable period, and that their services were dispensed with/terminated abruptly on the sole charge of their involvement in anti-state/subversive activities on the basis of information emanating in almost all the cases from the Home Department, without any supporting document. It is also not disputed that the impugned action was taken under the NWFP (Khyber Pakhtunkhwa) Removal from Service (Special Powers) Ordinance, 2000 (hereinafter referred to as the Ordinance, 2000), but without complying with even mandatory provisions of the law, and without furnishing any reason, let alone justifiable reasons, to dispense with the service of show cause notice under section-3(2)(b)(ii) of the Ordinance 2000, and also not complying with the mandatory provision of inquiry in accordance with the provisions of section 5(4) of the Ordinance 2000. There is nothing on record to show that any evidence was available with the authority to dispense with the requisite inquiry proceedings. At least, the appellants should have been served with a show cause and provided with opportunity of defence and hearing against the proposed action before passing the impugned order against them. As such, the appellants have not been dealt with in accordance with law in violation of Article 4 of the Constitution of Pakistan, 1973. Likewise, the departmental appeals of the appellants have either not been responded to within the statutory period or rejected / filed summarily in violation of section 24-A(2) of the General Clauses Act, 1897.

It is, indeed, shocking to note that in some of the cases the appellants were cleared and given clean chit by the concerned agencies as well as by their departments after their arrest and interrogation not only once but a number of

times in several cases; but even then they were subjected to the harsh penalty of dismissal / removal from service on the basis of an unsubstantiated information by the Home Department; in most of the cases, through a single and joint order, in an indifferent and callous manner, without caring for the families of the appellants who were being deprived of their livelihood for no fault on their part, or for that matter, apparently, on the part of their bread earners.

7. There is also an element of discrimination as a number of similarly placed Government servants have been reinstated in service by their departments while taking into consideration the law and order situation prevailing in Malakand Region, particularly Swat, which made it next to impossible for the Government Servants to perform their duties. Besides, this Tribunal has also accepted appeals of Government servants who had confronted similar situation and were deprived of their service in the same circumstances. Needless to say that if the department was or is in possession of any evidence implicating the appellants in offences against State, there was and there is nothing to preclude them from making that a basis for proceedings against the appellants, but in accordance with law; as, to be dealt with in accordance with law is the inalienable constitutional right of every citizen, wherever he may be, and the Government servants, as such, are no exception.

8. As a sequel to the foregoing discussion, on the acceptance of the appeals, the impugned orders are set aside and the appellants are reinstated in service with consequential/back benefits. However, if deemed appropriate in view of facts and circumstances of the case, the department may initiate denovo departmental proceedings, but strictly in accordance with law by also providing opportunity of defence and hearing to the appellants; and in that case, the payment of consequential/back benefits would be subject to the outcome of departmental proceedings/inquiry. There shall, however, be no order as to costs.

ANNOUNCED

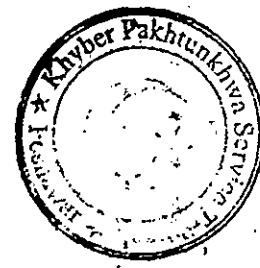
16.03.2011 (SYED MANZOOR ALI SHAH) MEMBER

(QALANDAR ALI KHAN) CHAIRMAN

Certified to be true copy

IK  
 16/3/2011  
 Peshawar

LIST OF CONNECTED APPEALS



<u>S.No.</u>	<u>Appeal No.</u>	<u>Name of appellant</u>
1.	676/2010	Ahmad Rashid
2.	763/2010	Hazrat Rehman
3.	764/2010	Rahim Said
4.	811/2010	Esa Khan
5.	813/2010	Fatah-ul-Islam
6.	825/2010	Muhammad Nisar
7.	957/2010	Muhammad Alam
8.	958/2010	Maulana Muhammad Rehman
9.	959/2010	Habibullah
10.	961/2010	Ahmad Zeb
11.	963/2010	Qari Riaz Ahmad
12.	984/2010	Asfandyar
13.	986/2010	Hassan Zada
14.	987/2010	Muhammad Iqbal
15.	989/2010	Inam-ur-Rehman
16.	990/2010	Muhammad Jamal
17.	991/2010	Gul Farin
18.	992/2010	Muhammad Siraj
19.	993/2010	Muhammad Salah
20.	1009/2010	Saeedullah
21.	1074/2010	Afareen
22.	1075/2010	Saranzeb
23.	1096/2010	Ansar Ali
24.	1097/2010	Mujeeb-ur-Rehman
25.	1098/2010	Said Johar
26.	1099/2010	Shahab-ul-Islam
27.	1100/2010	Fazali Rehman
28.	1101/2010	Noor-ul-Amin
29.	1102/2010	Bashir Ahmad
30.	1103/2010	Gohar Rehman
31.	1104/2010	Nasrullah Jan
32.	1105/2010	Anwar-ul-Haq
33.	1106/2010	Siddiqullah
34.	1108/2010	Naeem Ahmad
35.	1141/2010	Ashraf Ali
36.	1271/2010	Anwar Zareen
37.	1297/2010	Muhammad Jamil
38.	1298/2010	Amanullah
39.	1299/2010	Badshah Gul
40.	1300/2010	Satana Gul
41.	1301/2010	Abdul Fateh
42.	1302/2010	Gul Saeed
43.	1303/2010	Hazrat Sadiq
44.	1304/2010	Yar Zaman Khan
45.	1305/2010	Kifayatullah

**ATTESTED**

**DEAFINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar





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

Service Appeal No.318/2019

Mr. Habibullah Ex PST.....**Appellant**

**Versus**

The Government of Khyber Pukhtoon Khwa Through  
Secretary Elementary & Secondary Education &  
others.....**Respondents**

**COMMENTS ON BEHALF OF THE RESPONDENT NO.3**

**Respectfully Sheweth:-**

**Preliminary Objection:**

- a. That the appellant has got no cause of action to file the instant appeal
- b. That the appellant has not come to this Hon'ble Tribunal with clean hands.
- c. That the appellant is badly time barred.
- d. That the appellant has concealed material facts from the Hon'ble Tribunal
- e. That the appellant is not maintainable in the present form
- f. That the conduct of appellant estopped himself to bring the instant appeal.

**ON FACTS:-**

1. No comments pertains to record.
2. No comments pertains to record.
3. Incorrect. That the appellant was disappeared from his services since long therefore the competent authority dismissed from his services.
4. Incorrect. That the appellant self-admitted that he was not performed his duties since long and was dismissed from services vide Notification NO.7052-55 dated 27.03.2010, the appellant was absent from his duty since long which was a matter of grave concern and anxiety and shows his disobedience, willfulness and negligence towards his duty.
5. Incorrect. That the appellant filed a departmental appeal of the above said dismissal order after long period which was badly time barred.

**G R O U N D S**

- A. Incorrect. That the appellant was absent from his duties since long which was against the law, facts and norms of natural justice.
- B. Incorrect. That the appellant was disappeared from his services therefore the competent authority was directed by the Secretary Admin & Coordination to dismiss his services.

- C. Incorrect. That the appellant is not performing his duty in since long which is a matter of grave concern and anxiety and shows his disobedience, willfulness and negligence towards his duty.
- D. Incorrect. That the appellant was disappeared from his duty which was the utter violation of law and rules.
- E. Incorrect. That the appellant was disappeared from his duty and the appellant self-admitted that he was left his home.
- F. Incorrect. That the appellant is not performing his duty in since long which is a matter of grave concern and anxiety and shows his disobedience, willfulness and negligence towards his duty.
- G. Incorrect. That the appellant was not performed his duty which is the utter violation of the law and rules.
- H. Incorrect. That the appellant was disappeared from his duty and the appellant self-admitted that he was left his home.
- I. No comments pertains to record.
- J. Incorrect. That the respondents also seek permission to advance other grounds and proofs at the time of arguments.

In light of the above stated facts it is requested that the case of the appellant may be order as dismissed and obliged.



**District Education Officer**  
Bajour at Khar  
**Respondent No.3**

**AFFIDAVIT**

It is stated on oath that the contents of this **comment** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.



**DEPONENT**