


FORM OF ORDER SHEET

Court of _____

Case No. - 1769/2022


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/12/2022	<p>The appeal of Mr. Inam Ullah resubmitted today by Mr. Taimur Ali Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____.</p> <p>Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;"> REGISTRAR</p>

The appeal of Mr. Inamullah Ex-Chowkidar GPS Chail Tangi charsadda received today i.e. on 25.11.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Appeal has not been flagged/marked with annexures marks.
- 2- Check list is not attached with the appeal.
- 3- Annexures of the appeal may be attested.
- 4- Annexures-A & E of the appeal are illegible which may be replaced by legible/better one.
- 5- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 3384 /S.T,

Dt. 25/11 /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv.
High Court Peshawar

Respected Sir,

- 1- Removed
- 2- Removed
- 3- Removed
- 4- Better copies of A & E were prepared &
- 5- Removed

Resubmitted after compliance.



8/12/2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

APPEAL NO. 1769 /2022

InamUllah

V/S

The Secretary and others

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2.	Affidavit	-----	08
3.	Copy of the appointment order	A	09
4.	Copy of the applications	B	10-11
5.	Copy of Inquiry Report	C	12-13
6.	Copy of the Departmental Appeal	D	14
7.	Copy of Application and letter dated 08.04.2016	E & F	15-17
8.	Copies of charge Sheet, statement of allegations, inquiry report, absence notice dated 15.03.2017, newspaper notice, removal order dated 15.05.2017, order sheet dated 13.12.2017 and departmental appeal	G,H,I,J,K,L,M&N	18-29
9.	Copy of judgment dated 05.07.2021	O	30-36
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APPELLANT

THROUGH:

(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

APPEAL NO. 1769 /2022

Inam Ullah Ex-Chowkidar,
GPS Chail Tangi, Charsada.

(APPELLANT)

VERSUS

1. The Secretary (E&SE) KPK, Peshawar.
2. The Director of Education (E&SE) KPK, Peshawar.
3. The District Education Officer (M) Charsada.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 06.01.2022 COMMUNICATED TO THE APPELLANT ON 06.01.2022 WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE W.E.F 01.09.2009 RECEIVED BY APPELLANT ON 15.07.2022 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 06.01.2022 MAY KINDLY BE SET ASIDE AND THE RESPONDENTS MAY DIRECTED TO REINSTATE THE APPELLANT WITH ALL BACK AND CONSEQUENTIAL BENEFITS.

Filed on - day
25/11/22
Khyber Pakhtunkhwa
Service Tribunal

Khyber Pakhtunkhwa
Service Tribunal
Petition No. 2062
Dated: 25/11/2022

5. That inquiry was conducted on the issue of leave of the appellant and appointment of Mr. Mushtaq in 2014 in which the inquiry officer recommended that the competent authority did not take any action in time and the authority

4. That the appellant filed many applications for his adjustment no his post and salaries, but the competent authority did not take any action on that applications. (Copy of the applications are attached as Annexure-B)

3. That after the leave, the appellant came to join his duty again, but another person namely Mr. Mushtaq was appointed on his post and the appellant was not adjusted on his post.

2. That while serving in the said capacity, the appellant applied for 2 years leave which was sanctioned by the then ADO Mukhtiar Ahmad.

1. That the appellant was appointed as Chowkidar (BPS-01) in the year 1990 and performed his duty with the entire satisfaction of his superiors and no complaint has been against him regarding his performance. (Copy of the appointment order is attached as Annexure-A)

RESPECTFULLY SHEWETH,

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 06.01.2022 MAY KINDLY BE MODIFIED INTO COMPULSORY RETIREMENT AS THE APPELLANT HAS MORE THAN 19 YEAR YEARS OF SERVICE. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MATY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

OR

may take action against the responsible officer.(Copy of Inquiry Report is attached as Annexure-C)

6. That time and again the appellant visited the concerned office for his grievances and lastly the appellant was informed that his service records has been misplaced and orally told him that he has been terminated from service on 05.02.2016, therefore the appellant filed departmental appeal against the termination order which was not responded within the statutory period of ninety days.(Copy of the Departmental Appeal is attached as Annexure-D)
7. That as the appellant was only verbally informed that he was terminated from service, but not hand over the copy of that termination order, therefore he also filed application to DEO (M) Charsadda under RTI Act for provision of all documents including termination order, but the DEO (M) on his application responded on 08.04.2016 that all the documents of the appellant was misplaced and no record of the appellant is available in the concerned office.(Copy of Application and letter dated 08.04.2016 are attached as Annexure-E&F)
8. That after the statutory period of 90 days, the appellant filed service appeal No. 687/2016 in this Honorable Service Tribunal and during the proceeding of the case the department submitted the record of the appellant on 13.12.2017 in which charge sheet along with statement of allegations dated 24.12.2016, inquiry report dated 20.01.2017 absence notice dated 15.03.2017, newspaper notice and removal order dated 15.05.2016 were present and handed over to the appellant on 13.12.2017 due to which the appellant withdraw that service appeal and filed departmental appeal on 27.12.2017 against the removal order, which was not responded in the statutory period of ninety days.(Copies of charge Sheet, statement of allegations, inquiry report,

absence notice dated 15.03.2017, newspaper notice, removal order dated 15.05.2017, order sheet dated 13.12.2017 and departmental appeal are attached as Annexure-G,H,I,J,K,L,M&N)

9. That the appellant then filed service No. 606/2018 in the Honorable Service Tribunal which was decided on 05.07.2021 in which the appeal of the appellant was allowed and the matter was remanded back to the respondents with direction to conduct a de-novo inquiry into the matter by providing appropriate opportunity of defense to the appellant strictly in accordance with law and rules.(Copy of judgment dated 05.07.2021 is attached as Annexure-O)
10. That without reinstating the appellant into service and if reinstated that reinstatement order was not communicated to the appellant, without issuing charge sheet to the appellant and without conducting inquiry and if inquiry conducted, the appellant was never associated with inquiry proceeding, was again removed from service vide order dated 06.01.2022, however that removal order was never communicated to the appellant and when the appellant went to the concerned office to know the fate of his departmental inquiry on 15.07.2022, he has handed over his removal order dated 06.0.2022 on 15.07.2022, whereby the appellant was removed from service with effect from 01.09.2009. (Copy of order dated 06.01.2022 is attached as Annexure-P)
11. That being aggrieved from the order dated 06.01.2022 received on 15.07.2022 filed departmental appeal on 28.07.2022, which was not responded within the stipulated period of Ninety (90) days.(Copy of departmental appeal is attached as Annexure-Q)

12. That the appellant has no other remedy except to file the instant service appeal in this Honorable Tribunal for redressal of his grievance on the following ground amongst other:

GROUND:

- A) That the removal order dated 06.01.2022 received the appellant on 15.07.2022 and against not taking action on the departmental appeal of the appellant within statutory period of ninety days are against the law, rules, facts and material on record, violation of judgment dated 05.07.2021, therefore not tenable and liable to be set aside.
- B) That the appellant properly applied for leave for two years in 2009 which was sanctioned by the competent authority in that time and after expiry of his leave, he came to join his duty, but another person namely Mr. Mushtaq was appointed on his post and did not adjusted him to perform his duty, which means that the appellant never remain absent from his duty.
- C) That first inquiry was conducted about the leave of the appellant and appointment of Mr. Mushtaq in 2014 in which the inquiry officer recommended that the high ups were responsible for his inefficiency and did not held the appellant guilty.
- D) That in reply to the application dated 08.04.2016 of DEO (M) Charsadda, it was clearly mentioned that the service record of the appellant was misplaced and no record of him is available in the concerned office, which means the appellant was properly applied for leave which was also sanctioned by the competent authority at that time but record about his sanction of leave was misplaced and the as such the appellant should not be punished for the fault of others.

- E) That after the expiry leave, the appellant also fields many applications for his adjustment and salary after the expiry of leave, but the competent authority took no action on that applications which means that the appellant did not remain absent from his duty but due to non adjustment on his post by the respondent he was unable to perform his duty and should not be punished for the fault of others.
- F) That no charge sheet was communicated to the appellant before passing the impugned order of removal from service, which is violation of law and rules.
- G) That the Honorable Service Tribunal clearly mentioned in the judgment dated 05.07.2021 that the respondents should provide opportunity of defense to the appellant strictly in accordance with law and rules, but despite that the appellant was never associated with the inquiry proceeding which is violation of judgment dated 05.07.2021 of this Honorable Tribunal as well law and rules.
- H) That the appellant was not associated with the inquiry proceeding which is violation of law and rules and such the impugned removal order dated 06.01.202 is liable to be set aside on this ground alone.
- I) That even final show cause notice was not issued to the appellant before passing the impugned order of removal from service.
- J) That the appellant has been condemned unheard and has not been treated according to law and rules.
- K) That the penalty imposed upon the appellant was with retrospective effect which is not permissible under Superior courts judgments.

L) That the appellant has more than 19 years of service and penalty imposed upon the appellant is very harsh, which is passé din violation of law and, therefore, the same is not sustainable in the eyes of law.

M) That the appellant seeks permission of this Honorable Tribunal to advance other grounds and proof at the time of arguments.

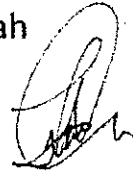
It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Inamullah

APPELLANT

InamUllah

THROUGH:



(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

APPEAL NO. _____/2022

Inam Ullah

(APPELLANT)

VERSUS

The Secretary and others

(RESPONDENTS)

AFFIDAVIT

I, Inam Ullah Ex-Chowkidar, GPS Chail Tangi, Charsadda, do hereby solemnly affirm and declare on oath that the contents of the Appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.

Inamullah
DEPONENT

Inamullah
25/11/22

OFFICE OF THE SUB-DIVISIONAL EDUCATION OFFICER (M) TANGI.

A (9)
- 8
B - 8
C - 8

APPOINTMENT.

M. Inamullah son of late Hasrat Mohammad resident of village chail is hereby appointed as a Chowkidar in B.P.S.No.1 @Rs.500/-PM plus house allowance against the vacant post of Chowkidar with effect from 1.8.1990.

Terms and Conditions:

1. His appointment is purely temporary and will be terminated at any time without any prior notice.
2. His age will not be less than 18 years and not exceed 40 years.
3. His health and age certificate should be obtained from Civil Surgeon concerned.
4. All reports should be sent to all concerned and take charge after usual formalities.

(YAKHA GUL)
SUB-DIVISIONAL EDUCATION OFFICER,
(M) TANGI.

Encl: No. 521-22 /A-12 Class IV dated Tangi the 1/8 /1990.

Copy forwarded for information and necessary action to the :-

1. District Education Officer (M) Charsadda.
2. District Accounts Officer Charsadda.
3. A.S.P. Charsadda.
4. Cashier local office.
5. Candidate concerned.

Attested
M. Imman
Advocate
(M) Imman

SUB-DIVISIONAL EDUCATION OFFICER
(M) TANGI.

9/C-110-139-90-043931

M.Inaullah son of late Hazrat Mohammad resident of village chall is hereby appointed as a Chowkidar in B.P.S.No.1 Rs. 600/-PW allowances against the vacant post of Chowkidar with effect from 1.8.1990.

Terms and Conditions.

1. The Appointment is purely company and will be terminated at any time without any period notion.
2. This are will not be loss then 18 years and not
3. His health and ago certificate should be obtained from Civil Surgeon concerned.
4. report should be want to all concerned and time charge after codal facilitation.

(YAEYA OUL)
SUB DIVISIONAL EDUCATION OF IONF.,
(M) TANGI

Endst: No. 521-22/A-12 Class IV dated – the 1.8./1990.

Copy forwarded for information and necessary action to the:-

1. District Education Officer (M) Charsadda.
2. District Accounts Officer Charsadda.
- 3.
4. Cashier local office.
5. Candidate concerned.

SUB DIVISIONAL EDUCATION OFFICER
(M) TANGI

جنور صاحب - S.D.O سہیل سنگھ اڈھو کھنڈ
B 10

درخواست نمبر مناسب کارروائی

صاحب عالی!

سائل حسب ذیل عرض بیان ہے۔

یہ کہ سائل گورنمنٹ پرائمری سکول تحصیل میں بطور کلاس خور
اعتبات ہے۔

یہ کہ سائل 2009 میں دو سال کی چھٹی پڑھائی میں عربی عرب چلا گیا
اور اس کی چھٹی جناب مختیار احمد صاحب نے منظور کر لی تھی۔
یہ کہ جب سائل چھٹی ملکہ ہوئے لیڈ والین آما اور اپنی ڈیوٹی
دوبارہ شروع کی تو معلوم ہوا کہ اس کا انتخاب بند ہے۔
یہ کہ اب تک سائل ہی ہے جو کہ مذکورہ سکول میں
رہکے اور کسی نئے لائق سرالجام دیا ہے۔ لیکن اس کو انتخاب
میں مل گیا ہے۔

اسلئے آپ صاحبان سے گزارش کی جاتی ہے کہ
آپ سائل کی انتخاب کو لے کر اطمینان حاصل فرمائیں
مشکوٰۃ زجادیں

M. Imran
Adm. cante
15/11/2013

مورخہ 10/1/2013

عین نواز شاہ

Inshallah

العاصم

الحامد للہ و لہ العزت
تفضل سائل صاحب ساکن تحصیل
تفضل سائل صاحب جاگیر ۵

جعفر صاحب - EDO صاحب مردانہ جاگیر

دعوت واسطے گورنمنٹ خواہ

صبا - عالی

مردانہ جاگیر کے بارے میں گورنمنٹ سے

سکول چھیل میں بطور جو کھوار زمینوں پر جو کہ بروز 1.8.1982

کو لکھی گئی ہے۔ اس میں دو سال کی عرصے کے دوران

دی جو کہ اس وقت کے 4.50 جناب احتیاجات کے لئے

منظور کر کے اور اس کی عرصے میں آئے۔

تو معلوم ہوا کہ اس کا نسخہ بند ہے۔ اور اب اس کے

پس سکول میں بطور جو کھوار کام کر رہا ہے۔ لیکن زمین کے

اور اس کے نسخہ نہیں مل رہی ہے۔

سائل کا تقریباً 20 سال سے اس کے چھوٹے چھوٹے

کے ہے اور ان کا پالنے والا سائل کے علاوہ کوئی نہیں ہے۔

اس کے آپ صاحبان سے التماس کی جاتی ہے کہ سائل

کی متوجہ گورنمنٹ کے اہتمامات سے فرمائیں۔

علین لوار کا بھائی

موسم

11/6/2014

Hamidullah

الحاضرین الحاج اللہ ولی حضرت محمد

سائل چھیل سنگل جاگیر

Attested
M. Jinnah
Advocate
(17) Jinnah

Enquiry report against Mr Inamullah Chowkidar GPS Chail Tangi

In compliance with District Education Officer Male Charsadda vide his Notification No1882 dated 25/3/2014 the undersigned processed the enquiry. He attended the relevant stations and asked questions

Summary Mr Inamullah Chowkidar GPS Chail proceeded Saudi Arabia without any leave and Mr Mushtaq was appointed.

Proceeding ; The undersigned attended Mr Naveed s/o Inamullah and served him with questionnaire annexed as A-1 and his statement was recorded as Q-1

The undersigned then proceeded to the office of SDEO Tangi and got information through questionnaire

Findings;

- 1 The Chowkidar Mr Inamullah proceeded abroad on 1/9/2009
- 2 The Chowkidar came home from Saudi Arabia on 31/8/2011 on leave
- 3 He again proceeded abroad after 2 months and came home back on 22/9/2013
- 4 A written statement on stamp paper No1389 dated 14/6/2011 duly supported by NIC copy of Inamullah and Safdar which showing request for resignation and appointing Mr Safdar as class teacher in his place on the basis of land donation
- 5 Statement occurring at Sr No2 and writing of stamp paper as quoted at Sr No4 that the Chowkidar Mr Inamullah was in Saudi Arabia and the Stamp paper was got written by Mr Safdar in absence of Inamullah
- 6 It was found that Mr Inamullah spent a lot of time abroad but no notice was found served by the competent authority.
- 7 It is another serious mistake that no action could be processed against him
- 8 It was found that the vacancy was not yet created and Mr Mushtaq was appointed against the vacant post of GPS Chail which is a clear violation of the rules.
- 9 Service book of Mr Inamullah could not be traced to have checked up previous record. The undersigned was not informed whether the SDEO Tangi has reported the willfull absence or otherwise.
- 10 The School Head Master also did not play vital roll in this regard

Recommendations

- 1 The above quoted facts denote violation on the part of the then competent authority in serving notice to the class 1v
- 2 ,the existing authority may take proper actions against the responsible officer/officials.
- 3 The responsible person/persons of the period may bound to justify their silence and appointment of another class 1v without taking actions against the one who violated.
- 4 The existing competent authority can do nothing except to serve the class1v with a notice justify his prolonged absence and the stamp paper written in his absence but with the copy of his NIC found attached and obtained from the office of SDO Taqli
- 5 The ADOs may be directed to be vigilant enough to trace out and promptly reports well

Masal Khan

Principal G H S S Mandani

Enquiry Officer

13

۱۵ - (۱۵) محترم جناب D.E.O صاحب چارسدہ

درخواست بھراد بحالی سروس

14

جناب عالی!

موردمانہ نژادش کیجانی ہے کہ سائل تحکمِ حکیم میں

حکومت چوکیدار گورنمنٹ ڈراماٹری سکول چھیل میں مورخہ 1.8.1989 کو کھرتی ہوئی اور اپنی فریق کو کھوجی سسرانجام بتا رہا۔ سائل نے سال 2009 میں دو سال کی چھٹی لکھی درخواست دی جو کہ اس وقت A.D.O صاحب جناب حاجی محمد احمد نے منظور کر لی اور سائل کو زبانی طور پر آگاہ کیا۔ لیکن جب سائل چھٹی ہونے کے بعد واپس آیا تو معلوم ہوا کہ اس کا تنخواہ بلاگ لیا گیا ہے اور سائل کے خلاف انٹواری شروع ہوئی اور مورخہ 12/7/2014 کو بلا لیا گیا۔ سائل نے انٹواری (Jain) کی۔ انٹواری کے بعد سائل کو بتایا گیا کہ اس کا تمام سروس لیکارڈ گم ہوا ہے۔ اس کے بعد حکم نے ٹال میٹل سے کام لینا شروع کیا اور آفس کار مورخہ 5-2-2016 کو 550 صاحب قس نے زبانی طور پر بتایا کہ اس کو نوکری سے نکالا گیا ہے۔

Attested
Muhammad Aman
Advocate
(M) Aman

اس لئے آپ صاحبان سے نژادش کیجانی ہے کہ سائل کو دوبارہ نوکری پر بحال کر کے سائل کو تمام گزشتہ مراعات دینے کے احکامات صادر فرمادیں۔
عین نژادش ہوگی

مورخہ 23/2/2016

الحاجین
العام اللہ ولہ حضرت محمد
سائل چھیل بھراد، چھیل نئی ضلع چارسدہ
(گورنمنٹ ڈراماٹری سکول چھیل)

To

The District Education Officer,

District Charssada, Khyber Pakhtunkhwa

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Application under Right to Information Act
2013 for the provision of
information/documents of one Mr. Inamullah
S/O Hazrat Muhammad (Chowkidar) in
Government Primary School Chail, Tangi
Charsada

Respected Sir,

With due veneration, it is stated that the applicant needs the below mentioned information under Right to Information Act 2013:

The father of the applicant is "Inamullah S/O Hazrat Muhammad" who has been serving as a "Chowkidar" in "Government Primary School Chail, Tangi, Tehsil and District Charsada", the applicant needs the following detail as per the Right to Information Act 2013 please;

1. Appointment Order of the applicant's father as Chowkidar (Inamullah S/O Hazrat Muhammad)
2. Termination order of Inamullah S/O Hazrat Muhammad (Chowkidar)
3. All relevant documents on which the termination of the applicant has been made
4. Personal file of Inamullah S/O Hazrat Muhammad
5. Charge sheet/inquiry if any against Inamullah S/O Hazrat Muhammad

Attested
M. Imran
Advocate
14/Imran

D: NO 3031
18-3-16

To

The District Education Officer,
District Charsadda, Khyber Pakhtunkhwa

Application under Right to Information Act 2013 for the provision of information/documents of one Mr. Inamullah S/O Hazrat Muhammad (Chowkidar) in Government Primary School Chail, Tangi Charsada

Respected Sir,

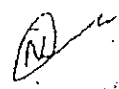
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1. Appointment Order of the applicant's father as Chowkidar (Inamullah S/O Hazrat Muhammad)
2. Termination order of Inamullah S/O Hazrat Muhammad (Chowkidar)
3. All relevant documents on which the termination of the applicant has been made
4. Personal file of Inamullah S/O Hazrat Muhammad.
5. Charge sheet/inquiry if any against Inamullah S/O Hazrat Muhammad

16

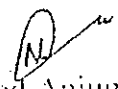
6. Documents relating to any other disciplinary action being taken against the father of the applicant.
 7. Appointment order of the person if appointed on the post of the applicant's father.
 8. Letter No. 659 Dated 6/6/2014 regarding the father of the applicant.
- It is therefore, most humbly requested that the above information may kindly be provided to the applicant as soon as possible please as per the mandate of Right to Information Act, 2013.


(Naveed anjum s/o Inamullah)
(Chowkidar)
17102-2177064-7
Village Chail, P.O Shodag
Tehsil Tangi District Charsada
Cell # 0345 7005491

Dated: 16/ 03/2016

Copy forwarded for information to:

1. Chief Information Commissioner, Khyber Pakhtunkhwa Peshawar
2. Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education, Peshawar.
3. Director Education (Elementary & Secondary Education Peshawar) Khyber Pakhtunkhwa


(Naveed Anjum S/O Inamullah)
17102-2177064-7
Village Chail, P.O Shodag
Tehsil Tangi District Charsada
Cell # 0345 7005491

Dated: 16/ 03/2016

6. Documents relating to any other disciplinary action being taken against the father of the applicant
7. Appointment order of the person if appointed on the post of the applicant's father
8. Letter No. 659 Dated 6/6/2014 regarding the father of the applicant it is therefore, most humbly requested that the above information may kindly be provided to the applicant as soon as possible please as per due mandate of Right to Information Act, 2013.

(Naveed Anjum s/o Inamullah)

(Chowkidar)

17102-2177064-7

Village Chail, P.O Shodag

Tehsil Tangi District Charsadda

Dated: 16/03/2016

Cell # 03457005491

Copy forwarded for information to:

1. Chief information Commissioner, Khyber Pakhtunkhwa Peshawar
2. Secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education, Peshawar
3. Director Education (Elementary & Secondary Education Peshawar) Khyber Pakhtunkhwa

(Naveed anjum s/o Inamullah)

(Chowkidar)

17102-2177064-7

Village Chail, P.O Shodag

Tehsil Tangi District Charsadda

Dated: 16/03/2016

Cell # 03457005491

دفتري ڈسٹرکٹ ایجوکیشن آفیسر مردانہ ضلع چارسدہ

بجانب: نوید انجم ولد انعام اللہ گاؤں چھیل ڈاکخانہ شوڈاگ، تحصیل تنگی
بجانب: ڈسٹرکٹ ایجوکیشن آفیسر مردانہ ضلع چارسدہ

مضمون: سرورس ریکارڈ

17329 مورخہ 16/1/2016

بجوالہ آپ کی درخواست بتاریخ 16 مارچ 2016 بعنوان بالا آپ کو مطلع کیا جاتا ہے کہ آپ کے والد کی تقریر نامہ
بکثیت چوکیدار اور دوسرا مطلوبہ ریکارڈ سابقہ ایگزیکٹو ڈسٹرکٹ آفیسر چارسدہ کے دفتر سے تعلق رکھتا ہے اور چونکہ وہ دفتر
01/01/2013 سے معدوم ہو چکا ہے اس لئے اس وقت کی تمام ریکارڈ کی عدم دستیابی کی وجہ سے دفتر بذرا آپ کو مطلوبہ دستاویزات مہیا
کرنے سے قاصر ہے، البتہ گورنمنٹ پرائمری سکول چھیل میں بھرتی شدہ چوکیدار کی آرڈر کاپی آپ ایس ڈی ای او (مردانہ) تنگی کے دفتر
سے حاصل کر سکتے ہیں۔

ڈپٹی ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ)
ضلع چارسدہ

Attested
M. Imran Advocate
M. Imran

M. Imran

17329

G (18) (19)

A-1-B

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(14)

CHARGE SHEET

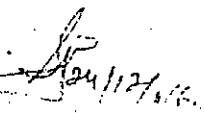
I, Siraj Muhammad DEO (Male) Charsadda, as competent authority, here by charge you, Mr. Inam Ullah (ex.chowkidar of GPS Chail Tangi) as follows:

That you, while posted as chowkidar at GPS Chail Tangi committed the following irregularities:

- (a) That you have been found guilty of habitually absenting yourself from duty without prior approval of leave since October 01, 2009.
- (b) That your son namely Naveed Anjum performed the duties of chowkidar in your absence, as the school was adjacent to your hujra.

2. By reason of the above, you appear to be guilty of absence and misconduct under rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rule 4 of the rules ibid.
3. You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the inquiry officer.
4. Your written defence, if any, should reach to the inquiry officer in the specified period, failing which it shall be presumed that you have no defence 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. A statement of allegations is enclosed.

Dated: 24/12/2016


COMPETENT AUTHORITY

Siraj Muhammad
DEO (Male) Charsadda.

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GOVERNMENT OF KHYBER PAKHTUNKHWA

OFFICE OF THE DEO(M) CHARSADDA:
No. 12794 Dated Charsadda the 24th December 2016

DISCIPLINARY ACTION :

I, Siraj Muhammad(M) Charsadda, as competent authority, am of the opinion that Mr.Inamullah S/O Hazrat Muhammad, Ex Chowkidar of GPS Chail, Tangi, has rendered himself liable to be proceeded against, as he committed the following acts/omissions, within the meaning of rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

- i. He has been found guilty of habitually absenting himself from duty without prior approval of leave since October 01, 2009.
- ii. His son namely Naveed Anjum Performed the duties of chowkidar in his father's absence, as the school was adjacent to the hujra of the accused.

For the purpose of inquiry against the said accused with reference to the above allegations, an Inquiry officer, consisting of the following, is constituted under rule 10(1)(c) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 :

- i. Mr.Ahmad Jan,
Prinicipal, Shaheed Umar Hayat Government Higher Secondary School ,
Charsadda.

The inquiry officer shall, in accordance with the provisions of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriated action against the accused.

The accused alongwith the well conversant representative of the Department ,Mr.Fazal Wahid,SDEO(M) Charsadda, shall join the proceedings on the date, time and place fixed by the inquiry officer.

(Mr. Siraj Muhammad)
District Education Officer(M)
Charsadda/ Competent Authority

ven No. & date.

Copy for information to :

- Mr Ahmad Jan , Principal, Shaheed Umar Hayat Government Higher Secondary School, Charsadda.
- Mr.Fazal Wahid,SDEO(M) Charsadda.
- Mr. Hayat Khan,SDEO(M) Tangi.
- Head Teacher GPS Chail, Tangi.
- Mr.Inamullah, (Ex Chowkidar of GPS Chail), Chail Payan P/O Shodag Tehsil Tangi .
District Charsadda.

District Education Officer(M)
Charsadda.

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TITLE

INQUIRY AGAINST MR. INAM ULLAH CHOWKIDAR GPS CHAIL TANGI

The DEO (Male) Charsadda appointed Mr. Ahmad Jan Principal Govt: Shaheed Umar Hayat Higher Secondary School Charsadda as a inquiry officer vide letter No. 12794/A-12 Dated 24-12-2016 to conduct the inquiry against Mr. Inam Ullah Chowkidar GPS Chail Tangi. The competent authority charged Mr. Inam Ullah Chowkidar as :-

1. He has been found guilty of habitually absenting himself from duty without prior approval of leave since 1-10 2009.
2. His son Namely Naveed Anjum performed the duties of chowkidar in his father's absence as the school was adjacent to the Hujra of the accused. (An-A)

The statement of allegation served upon him as:

1. That you have been habitually absenting yourself from duty without prior approval of leave since 1-10 2009
2. That your son namely Naveed Anjum performed the duties of chowkidar in your absence, as the school was adjacent to your hujra. (An-B)

The inquiry officer issued his letter No. 239-42 dated 24-12-2016 to Mr. Inam Ullah Chowkidar along with a copy of the statement of allegations and charge sheet and asked him to appear before the inquiry office on 2-1-2017 at 10.00 AM along with his written reply in his defense. He was also informed that absence before the inquiry officer will be tantamount to the admission of the charge leveled against him. (An-C)

The proceeding of the inquiry held on 2-1-2017 in the office of the inquiry officer and the departmental representative Mr. Fazli Wahid SDEO (Male) Charsadda appeared before the inquiry officer as prosecutor witness. He recorded his statement in which he admitted on oath that Mr. Inam Ullah S/O Hazrat Muhammad was appointed as chowkidar vide order No. 521-22/A-12 dated 1-12-1990. He further admitted that Mr. Inam Ullah the accused was absent from duty from 1st October 2009 as reflected from the attendance register. The accused Mr. Inam Ullah Chowkidar failed to appear before the inquiry officer to defend his cause. (An-D&E)

The scrutiny of the record provided by the departmental representative Mr. Fazli Wahid SDEO (Male) Charsadda shows that the accused official Mr. Inam Ullah Chowkidar has been willfully absent from his duty w.e.f 1-10-2009 without any information to the department. The competent authority served a show cause notice upon the accused vide 8157 dated 9-9-2014 (An-F-1,2) through the SDEO (Male) Tangi. The reply of the accused official has been received to the office the DEO (Male) Charsadda on 12-9-2014 through the SDEO (Male) Tangi vide No 858 dated 12-9-2014 (An-G-1,2). In which he state that his Ex-Pakistan was sanctioned and he went out of the country when his leave came to closed he returned the country and came to know that

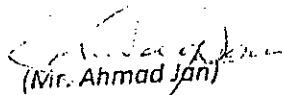
the some other person had been appointed during his period of leave. He had not received any letter from SDEO Tangi to cancel his leave and when he approached the office of SDEO (Male) Tangi for duty, but he received no response.

FINDINGS

1. The absence of the accused from duty w.e.f 1-9-2009 is proved.
2. He has been willfully absent from duty without sanction of the competent authority.
3. The leave that he claims has no documentary proof in the office record and he has been abroad the country.
4. He has made a fabulous story of his leave.
5. No record has been found of the performance of duty of Mr. Naveed Anjum S/O Inam Ullah, the accused.

RECOMMENDATIONS.

Keeping in view his absence record, that the accused Mr. Inam Ullah Chowkidar should be terminated from service after fulfillment of codal formalities.


(Mr. Ahmad Jan) 20/01/2017
Inquiry Officer
GOVT; SHAHEED UMAR HAYAT HIGHER
SECONDARY SCHOOL CHARSADEA

نوٹس غیر حاضری

22

آپ انعام اللہ ولد حضرت محمد سکنہ چھیل تنگی چوکیدار گورنمنٹ پرائمری سکول چھیل تنگی ضلع چارسدہ۔
آپ بغیر کسی اطلاع کے مورخہ 01/09/2014 سے ڈیوٹی سے مسلسل غیر حاضر رہے۔ آپکو ڈیوٹی پر حاضری کے لئے اظہار وجوہ کے نوٹس نمبر 8157 مورخہ 09/09/2014 کو آپ کے گھر کے پتہ پر بھیجے گئے۔ جس میں آپ کو جلد از جلد ڈیوٹی کے لئے حاضر ہونے اور غیر حاضری کی وجہ بیان کرنے کو کہا گیا ہے۔ لیکن تا حال آپ کی طرف سے کوئی جواب موصول نہیں ہوا اور ابھی تک ڈیوٹی سے غیر حاضر ہے۔ اس لئے آپکو بذریعہ نوٹس ہذا آخری بار اطلاع دی جاتی ہیں۔ کہ اس نوٹس کے اشاعت کے 15 دن کے اندر اندر زبردستی کے دفتر دوران اوقات کار حاضر ہو کر اپنی غیر حاضری کے معقول وجہ بیان کریں بصورت دیگر آپ کے خلاف حکومت خیبر پختونخوا E&D رولز 2011 کے تحت حاصل کردہ اختیارات بروئے کار لاتے ہوئے یکہ طرفہ کارروائی کی جائے گی۔ جو آپ کی ملازمت سے برخاستگی پر منتج ہو سکتی ہے۔

15/3/2014

المستتر (سراج محمد)

ڈسٹرکٹ ایجوکیشن آفیسر (مردانہ) چارسدہ

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Departmental Examination Roll No.

APPLICATION FOR THE POST OF
 DIVISION
 Instructions

- Use Capitol Letters; Attach Attested Photocopy
- Personal Information
- Name
- NIC
- Domicile (Indicate District)
- Age
- Permanent Address
- Personal contact
Phone No. (Area Code Number)
- Academic Background
- Qualification (Starting from Last Degree held)

Field	Year Awarded	Degree Held

سری	مقام
1	مقام
2	مقام
3	مقام

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHARSADDA

NOTIFICATION

(Handwritten signature and date)
24

01. WHEREAS, Mr. Inam Ullah Chowkidar GPS Chail Tangi Charsadda was proceeded under the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 on the charges of his willful absence from duty since:- 01.09.2009.
02. AND WHEREAS, Mr. Inam Ullah was sent a statement of allegations alongwith a charge sheet under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 Vide DEO (Male) Charsadda No. 12794 dated 24.12.2016
03. AND WHEREAS, Mr. Inam Ullah Chowkidar GPS Chail Tangi Charsadda failed to appeared before the enquiry officer Vide Principal Govt: Shaheed Umar Hayat Higher Secondary School Charsadda No. 239-42 dated 26.12.2016.
04. AND WHEREAS, Mr. Inam Ullah Chowkidar GPS Chail Tangi Charsadda the enquiry officer found that you have been willfully absent since 01.09.2009.
05. AND WHEREAS, Mr. Inam Ullah Chowkidar GPS Chail Tangi Charsadda had been called for personal hearing by the DEO (Male) Charsadda in his office on dated 04.02.2017 through letter vide No. 15719 dated 31.01.2017.
06. AND WHEREAS, Mr. Inam Ullah Chowkidar GPS Chail Tangi Charsadda was finally informed through news paper on 20.03.2017 to resume duty but he could not report for duty.
07. AND WHEREAS, Mr. Inam Ullah Chowkidar GPS Chail Tangi Charsadda signed the attendance sheet for personal hearing on dated 01.04.2017 but did not appear before the DEO (Male) Charsadda.
08. AND WHEREAS, I the competent authority DEO (Male) Charsadda after having considered the charges and evidence on record of the view that the charges against Mr. Inam Ullah Chowkidar GPS Chail Tangi Charsadda have been proved.
09. AND WHEREAS, in exercise of the power conferred under section 14 of Khyber Pakhtunkhwa Govt: servants (Efficiency & Discipline) Rules, 2011, I being the competent authority DEO (Male) Charsadda is pleased to impose the major penalty of removal from service upon Mr. Inam Ullah Chowkidar GPS Chail Tangi Charsadda with effect from 01.09.2009.

(SIRAJ MUHAMMAD)
-DISTRICT EDUCATION OFFICER-
(MALE) CHARSADDA.

Endst: No. 26754-68 /Dated Charsadda the 15 / 5 /2017

Copy forwarded for information to the:-

1. Director (E&SE) Khyber Pakhtunkhwa Peshawar.
2. District Account Officer Charsadda.
3. SDEO (Male) Tangi.
4. Head Master GPS Chail Tangi.
5. Official Concerned.
6. Office File.

(Handwritten signature and date)
15/5/17

DISTRICT EDUCATION OFFICER

BEFORE THE HONOURABLE K.P.K SERVICE TRIBUNAL

PESHAWAR

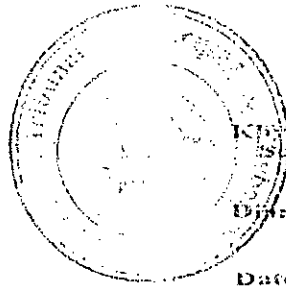
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Appeal No. 687 /2016

Inamullah

S/o Hazrat Mohammad

R/o Village Chail Tehsil Tangi, District Charsadda (Chowkidar GPS Chail, Shodag).....Appellant



Khyber Pakhtunkhwa Service Tribunal

Distt No. 658

Dated 22-6-2016

VERSUS

14/10/
22/10/2016
Peshawar.

1. Director Elementary and Secondary Education, ^{E&S} Peshawar.
2. Secretary Education Govt of KPK.
3. District Education Officer Charsadda (MALE)

.....Respondents.

SUBJECT:- APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE TERMINATION OF APPELLANT, WHERE IN IN THE APPELLANT WAS ORALLY INFORMED THAT HIS SERVICE BOOK (RECORD) HAS BEEN MISPLACED, AND INFORMED HIM THAT HIS SERVICE HAS BEEN TERMINATED ON 05.02.2016. MOREOVER THE APPELLANT HAS A SEDULIOUR AND LONG SERVICE RECORD OF MORE THAN 20 YEARS, BUT HIS SERVICE HAS BEEN FINISHED WITH A SINGLE STORKE OF PEN.

Filed to day
[Signature]
22.6.16
Registrar

Re-submitted to day
and filed.

ATTESTED

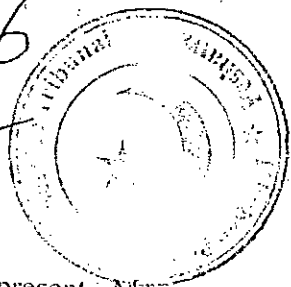
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22/6/16

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K.P.K. Service Tribunal
Peshawar

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A. No. 687/2016
Inamullah vs Govt



13.12.2017

Learned counsel for the appellant present. Mr. Kabir Ullah Khattak, Additional Advocate General, for the respondents present and submitted copy of relevant record which also includes order dated 15.05.2017 whereby the appellant has been awarded major penalty of removal from service. Learned counsel for the appellant stated that since he came to know about the afore mentioned order dated 15. 5.2017 today as such he sought withdrawal of the present appeal. Consequently the present appeal is hereby dismissed as withdrawn. File be consigned to the record room.

Announced

13-12-2017

(Gul Zeb Khan) M. Hamid Nigal

Member Member

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Date of Presentation 02-05-18
Number of...
Copies 6-800
Urgency
Total
Name
Date of... 02-05-18
Date of... 02-05-18

To

The Director (E&SE),
Khyber Pakhtunkhwa, Peshawar.

~~23~~
3 N (27)

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 15.05.2017, RECEIVED BY THE APPELLANT ON 13.12.2017 WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE.

Respected Sir,

1. That the appellant was appointed as chowkidar (BPS-01) in the year 1989 and performed his duty with the entire satisfaction of his superiors and no complaint has been against him.
2. That while serving in the said capacity, the appellant applied for 2 years leave which was sanctioned by the then ADO Mukhtiar Ahmad.
3. That after the leave, the appellant came to join his duty again but another person namely Mr. Mushtaq was appointed on his post and the appellant was not adjusted on his post.
4. That the appellant filed many applications for adjustment on his post and salary, but the competent authority did not take any action on that applications.
5. That the inquiry was conducted on the issue of leave of the appellant and appointment of Mr. Mushtaq in 2014 in which the inquiry officer recommended that the competent authority did not take any action in time and the authority may take action against the responsible officer.
6. That on the basis inquiry, show cause was issued to the appellant in 2014 which was duly replied by the appellant in which he denied the allegation of absence.
7. That time and again the appellant visited the concerned office for his grievances and lastly the appellant was informed that his service recorded has been misplaced and orally told him that he has been terminated from service on 05.02.2016, therefore the appellant filed departmental appeal against the termination order which was not responded within the statutory period-of ninety days.
8. That as the appellant was only verbally informed that he was terminated from service, but not hand over the copy of that termination order, therefore he also filed application to DEO (M) charsadda under RTI Act for provision of all documents including termination order but the DEO (M) on his application responded on

08.04.2016 that all the documents of the appellant was misplaced and no record of him is available in the concerned office.

9. That after the statutory period of 90 days, the appellant service appeal No. 687/2016 in the KPK, Service Tribunal and during the proceeding of the case the respondent department submitted the record of the appellant on 13.12.2017 in which charge sheet dated 24.12.2016, inquiry report dated 20.01.2017, absence notice dated 15.03.2017, newspaper notice and the removal order dated 15.05.2016 were present and handed over to the appellant on 13.12.2017 due to which the appellant withdraw that appeal and wants to file the instant departmental appeal against the removal order dated 15.05.2017 on the following grounds. *(copy of documents are attached as Annexure A).*

GROUND:

- A) That the impugned order dated 15.05.2017 received by appellant on 13.12.2017 during pendency of appeal No.687/2016 is against the law, rules, facts and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant properly applied for leave for two years in 2009 which was sanctioned by the competent authority in that time and after expiry of his leave, he came to join his duty but another person Mr. Mushtaq was appointed on his post and did not adjusted him to perform his duty, which means that the appellant never remain absent from his duty.
- C) That first inquiry was conducted against the appellant in 2014 in which the inquiry officer recommended that the high ups were responsible for his inefficiency and did not held the appellant guilty.
- D) That in reply to the application dated 08.04.2016 of DEO (M) Charsadda it clearly mentioned that the service record of the appellant was misplaced and no record of him is available in the concerned office, which means that the appellant should not be punished for the fault of others.
- E) That the record submitted during the pendency of service appeal No. 687/2016 by the responded department also shows that no proper procedure was adopted before passing the impugned order of removal from service as inquiry proceeding was initiated against the appellant during the pendency of service appeal No.687/2016 and also served absence notice along with newspaper notice knowing the fact by the competent authority that service appeal is pending before the KPK, Service Tribunal which means that the whole procedure against the appellant is against the law and rules and therefore the impugned order is liable to be set aside, on this ground alone.

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- F) That the appellant was verbally informed that his service record was misplaced and verbally told him that his service was terminated on 05.02.2016, therefore he filed service appeal No.687/2016 in the Service Tribunal against that termination order and during the pendency of the case the departmental inquiry was initiated against the appellant and also served absence notice, which means that one sided inquiry was conducted against the appellant without providing chance of defence to him which is not permissible under the law as on one side he was engaged in service appeal and the competent authority know about the fact of the case, but on the other hand the competent authority removed him from service on basis of absence.
- G) That no action was taken on the 1st inquiry conducted in 2014 and the appellant was removed from service on the basis of 2nd inquiry in 2017 during the pendency of service appeal which shows the malafide of the competent authority.
- H) That the appellant also many applications for his adjustment and salary after the expiry of leave, but the competent authority took no action on those applications.
- I) That no charge sheet was served to the appellant before passing the impugned order of removal from service which is violation of law and rules.
- J) That even final show cause notice was not issued to the appellant before passing the impugned order of removal from service.
- K) That the appellant has been condemned unheard and has not been treated according to law and rules.
- L) That the appellant has more than 28 years of service and was removed from service for no fault on his part.)

It is therefore, most humbly requested that on acceptance of this departmental appeal the impugned order dated 15.05.2017 may be set aside and reinstate the appellant with all back and consequential benefits.

90
Date: 27/12/2017

Inam Ullah
Appellant
Inam Ullah, Ex- Chowkidar
Village Chail, Tehsil Tangi,
District Charsadda.
0344-8457302

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



APPEAL NO. 606 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 615

Dated 24-4-2018

Inam Ullah Ex-Chowkidar,
GPS Chail Tangi, Charsadda.

(APPELLANT)

VERSUS

1. The Secretary (E&SE) KPK, Peshawar.
2. The Director of Education (E&SE) KPK, Peshawar.
3. The District Education Officer (M) Charsadda.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 15.05.2017 COMMUNICATED TO THE APPELLANT ON 13.12.2017 WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

File to-day
Registrar
24/4/18

Re-submitted to -day
and filed.

Registrar
4/5/18

THAT THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 15.05.2017 MAY KINDLY BE SET ASIDE. THE RESPONDENTS MAY PLEASE BE DIRECTED TO REINSTATE THE APPELLANT WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

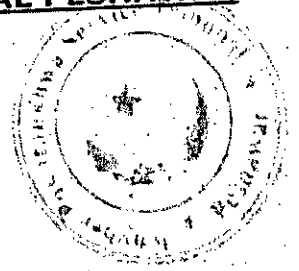
ATTESTED
Registrar
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 606/2018

Date of Institution ... 24.04.2018
Date of Decision ... 05.07.2021



Inam Ullah Ex-Chowkidar, GPS Chail Tangi, Charsadda. ... (Appellant)

VERSUS

The Secretary Elementary & Secondary Education Khyber Pakhtunkhwa and
two others. ... (Respondents)

MR. TAIMUR ALI KHAN
Advocate

SCANNED
KPS
Peshawar

... For Appellant

MR. KABIRULLAH KHATTAK
Additional Advocate General

... For Respondents

MR. SALAH-U-DIN
MR. ATIQ UR REHMAN WAZIR

... MEMBER (JUDICIAL)
... MEMBER (EXECUTIVE)

JUDGMENT

Mr. ATIQ UR REHMAN WAZIR MEMBER (E):-Brief facts of the case are that the appellant while serving as Chowkidar in a government school, was proceeded against in absentia on the charges of absence from duty and ultimately removed from service vide order dated 15-05-2017. The appellant filed departmental appeal, which was not responded to; hence, the instant service appeal with prayers that the impugned order dated 15-05-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Written reply/comments were submitted by respondents.

ATTESTED.

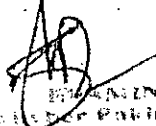
Mr. Atiq ur Rehman Wazir
Member (Executive)
Khyber Pakhtunkhwa Service Tribunal
Peshawar

Mr. Salah-U-Din
Member (Judicial)
Khyber Pakhtunkhwa Service Tribunal
Peshawar

03. Arguments heard and record perused.

04. Learned counsel for the appellant has contended that the appellant was penalized for unauthorized absence, who however, submitted proper application to the competent authority for grant of two years leave and the appellant was assured that his leave will be sanctioned and after assurance by the concerned office, the appellant proceeded on long leave, but after expiry of the leave, the appellant came to know that another person was employed in his place; that the appellant filed numerous applications to the competent authority for his adjustment but no action whatsoever, was taken on such applications. Learned counsel for the appellant further added that finally the appellant filed departmental appeal, which was also not responded to. Learned counsel for the appellant explained that disciplinary proceedings were conducted in absence of the appellant, neither the appellant was associated in the disciplinary proceedings nor opportunity of personal hearing was afforded to the appellant; that issuance of impugned order dated 15-05-2017 during pendency of the instant appeal and not taking action on the departmental appeal of the appellant are against law, rules and facts. Learned counsel for the appellant argued that disciplinary proceedings were initiated against the appellant during pendency of the instant appeal, which means that one sided inquiry was conducted. Learned counsel for the appellant further argued that the appellant was not treated in accordance with law; that the appellant is having 28 years of service and penalty imposed upon the appellant is harsh; that where gravity of charge was of lesser degree and circumstances reflected absence of bad faith and willfulness, which amounted to mere negligence, then minor punishment might be a preferred course, which may be a source of reformation for the appellant. Reliance was placed on 2013 SCMR 817 and 2015 PLC (CS) 117. Learned counsel for the appellant pointed out

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ATTORNEY AT LAW
SRI LANKA BAR COUNCIL
KORONADA ROAD
COLOMBO 07

that the instant case does not involve any charge of misappropriation of funds or tampering with record or overt misconduct committed during the course of his service, but the appellant was punished for overstay in his long leave, which does not commensurate with guilt of the appellant. Reliance was placed on CP No. 464-P of 2017. Learned counsel for the appellant prayed that keeping in view his long and unblemished service, the impugned order dated 15-05-2017 may be set aside and the appellant be re-instated with all back benefits.

05. Learned Additional Advocate General appeared on behalf of official respondents has contended that as is evident from his travel history, the appellant served in Saudi Arabia since 2007 and finally came back in 2016. Learned Additional Advocate General further contended that the appellant was a habitual absentee and he was properly proceeded against, but he did not appear before the inquiry officer. Learned Additional Advocate General added that mere submission of application for leave by the appellant would not mean that leave has been granted in his favor, rather he was duty bound to enquire from the department himself about the fate of his request for grant of leave. Reliance was placed on 2009 SCMR 1121. Learned Additional Advocate General further added that as per recommendations of the inquiry, he was rightly removed from service by fulfilling all the codal formalities. Learned Additional Advocate General prayed that the instant appeal being devoid of merit may be dismissed.

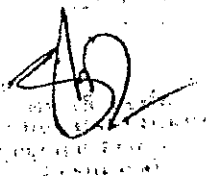
06. We have heard learned counsel for the parties and have perused the record. Record reveals that the appellant first departure to Saudi Arabia was on 10-08-2007 and last arrival to Pakistan is 09-11-2016. In between is his arrival to home country after intervals. It was in 2009 when the appellant submitted application for two years leave and proceeded to Saudi Arabia under the

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Secretary
Government of Punjab
Lahore

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impression that he has been granted such leave. The appellant surfaced in 2013 and submitted an application dated 01-10-2013 and again another application with interval of ten months on 11-08-2014 to the concerned authority with a request for release of his salary, but nothing is available on record to show that any action was taken on his applications. Placed on record is an inquiry report ordered vide notification dated 25-03-2014, which has recommended that the appellant was abroad for so many years but the concerned authorities at that particular time never took any notice of his absence, including head master of the concerned school. The report further reveals that the appellant was still on the roll of the school, as no adverse order was issued to this effect against the appellant, but another person namely Mushtaq was appointed in his place. The inquiry officer held the competent authority responsible for not serving notice of absence to the appellant and recommended initiation of disciplinary proceedings against the responsible officers/officials of that particular period to justify their silence on the issue and appointment of another person in his place inspite of the fact that the appellant was not removed from service. Record is silent as to whether any action was taken on recommendations of such inquiry, but the appellant was still adamant and submitted another application dated 23-02-2016 to District Education Officer with the request that he was verbally informed by DEO on 05-02-2016 that he has been removed from service, hence he may be reinstated in service with all back benefits. Such application was termed as departmental appeal, which was not responded to. The appellant filed another application dated 16-03-2016 under right to information Act for provision of notification of removal from service as well as other record, which was responded vide letter dated 08-04-2016 with remarks that such record is not available, as




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office of Executive District Officer has ceased to function w.e.f 01-01-2013, where the relevant record was lying and no such record is available with them.

07. We have observed that it was upon submission of appeal by the appellant, when the competent authority came to know that the appellant is still on the roll of the school; hence, disciplinary proceedings were initiated on his back in a haphazard manner, inspite of the fact that his salary was stopped with effect from his absence and virtually he was no more on strength of the school as well as another person was also appointed in his place. The proceedings so conducted were against a person who was no more on their strength but the respondents had committed a fatal mistake by not removing him expressly before appointment of another person in his place, which shows that only codal formalities have been fulfilled for the purpose to conceal their misdeeds. Needless to mention that the appellant was not associated with the disciplinary proceedings. Placed on record is an inquiry report, charge sheet/statement of allegations and show cause notice, which shows that action has been initiated under rule 11 of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011, but publication of his absence in newspaper shows that action was initiated under rule 9 of the rules ibid. Record is silent as to whether charge sheet/statement of allegations and showcause notice was served upon the appellant or it was only kept on file to fulfill the formalities.

08. It was noticed that the respondents did not follow the prescribed procedure for inquiry as laid down in Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 and it appears that they have just fulfilled a formality in order to cover their own slackness. We have been observing that in the instant case as well as in numerous other cases, the respondents did not

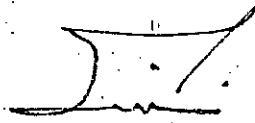
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Secretary, Government Servants
Khyber Pakhtunkhwa

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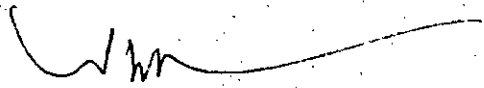
bother to follow the relevant provisions of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011, resulting in serious flaws in the disciplinary proceedings.

09. in view of the above discussion, the appeal in hand is allowed and the matter is remanded back to the respondents with directions to conduct a de-novo inquiry into the matter by providing appropriate opportunity of defense to the appellant strictly in accordance with law and rules. Respondents are further directed to probe into the slackness of officers/officials, who made violations as mentioned above and fix responsibilities against the defaulting officers/officials within a period of 120 days. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
05.07.2021




(SALAH-U-DIN)
MEMBER (JUDICIAL)



(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)

Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal
Registrar

Date of Presentation of Application	25/7/21
Number of Words	26/00
Copying Fee	26/-
Pages	-
Total	26/-
No. of Pages	-
Date of Delivery of Copy	26/7/21
	26/7/21

Date of Presentation of Application

Date of Delivery of Copy

Date of Delivery of Copy

P (37)

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHARSAJDA
NOTIFICATION

1. WHEREAS, Mr. Inam Ullah Ex-Chowkidar GPS Chil Tangi Charsadda was willful absent from duty since: - 01.09.2009.
2. AND WHEREAS, in exercise of the power conformed under section 14 of the Khyber Pakhtunkhwa Govt. Servant (efficiency and Disciplinary) rules, 2011, competent authority the then DEO (Male) Charsadda was pleased to impose the major penalty of removal from service upon Mr. Inam Ullah Ex-chowkidar GPS Chil Tangi Charsadda w.e.f 01.09.2009 vide Endst: No. 26754-68 dated 15.05.2017.
3. AND WHEREAS, Mr. Inam Ullah Ex-Chowkidar GPS Chil Tangi Charsadda submitted appeal before the Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar vide W/P No. 606/18 dated 24.04.2018.
4. AND WHEREAS, the Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar issued orders with the directions to conduct a de-novo inquiry into the matter by providing appropriate opportunity of defence to the appellant strictly in accordance with law and rules. Respondent were further directed to probe into the slackness of officers/officials who made violations and to fix responsibilities against the defaulting officers/officials.
5. AND WHEREAS, Mr. Inam Ullah Chowkidar GPS Chil Tangi Charsadda was reinstated into service for the purpose of de-novo enquiry vide Endst: No. 13239-44 dated 25.09.2021.
6. AND WHEREAS, the DEO (Male) Charsadda constituted an enquiry committee vide this office notification Endst: No: 15028-34 dated 28.10.2021.
7. AND WHEREAS, show cause notice was served upon Mr. Inam Ullah Chowkidar GPS Chil Tangi Charsadda vide Endst: No. 16016-21 dated 17.11.2021.
8. AND WHEREAS, Mr. Inam Ullah Chowkidar GPS Chil Tangi Charsadda was called for personal hearing on 15.12.2021 vide letter No. 17238 dated 09.12.2021.

(Signature)

Received on
15/12/2022

Inam Ullah
15/12/2022

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AND WHERE AS, according to the enquiry report, reply of show cause notice and personal hearing the charges against Mr. Inam Ullah Chowkidar GPS Chail Tangi Charsadda have been proved.

10. AND WHERE AS, in exercise of the power conferred under section 14 of Khyber Pakhtunkhwa Govt: servants (Efficiency & Discipline) Rules, 2011. I being the competent authority DEO (Male) Charsadda is pleased to impose the major penalty of removal from service upon Mr. Inam Ullah Chowkidar GPS Chail Tangi Charsadda with effect from 01.09.2009.

(UMAR ZAMAN)
DISTRICT EDUCATION OFFICER,
(MALE) CHARASADDA.

Endst: No. 136-41 /Dated Charsadda the 06 / 01 /2022

Copy forwarded for information to the:-

1. Director (E&SE) Khyber Pakhtunkhwa Peshawar.
2. District Account Officer Charsadda.
3. SDEO (Male) Tangi Charsadda
4. Head Master GPS Chil Tangi Charsadda
5. Official Concerned.
6. Office File.

06/01/2022
DISTRICT EDUCATION OFFICER,
(MALE) CHARASADDA.
c
Amu

Q 39

To

The Worthy Director Elementary and Secondary Education,
Khyber Pakhtunkhwa, Peshawar.

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 06.01.2022 RECEIVED BY THE APPELLANT ON 15.07.2022, WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE WITH EFFECT FROM 01.06.2009.

RESPECTED SIR,

1. That the appellant was appointed as Chowkidar (BPS-01) in the year 1990 and performed his duty with the entire satisfaction of his superiors and no complaint has been against him regarding his performance.
2. That while serving in the said capacity, the appellant applied for 2 years leave which was sanctioned by the then ADO Mukhtiar Ahmad.
3. That after the leave, the appellant came to join his duty again, but another person namely Mr. Mushtaq was appointed on his post and the appellant was not adjusted on his post.
4. That the appellant filed many applications for his adjustment on his post and salaries, but the competent authority did not take any action on that applications.
5. That inquiry was conducted on the issue of leave of the appellant and appointment of Mr. Mushtaq in 2014 in which the inquiry officer recommended that the competent authority did not take any action in time and the authority may take action against the responsible officer.
6. That time and again the appellant visited the concerned office for his grievances and lastly the appellant was informed that his service record has been misplaced and orally told him that he has been terminated from service on 05.02.2016, therefore the appellant filed departmental appeal against the termination order which was not responded within the statutory period of ninety days.
7. That as the appellant was only verbally informed that he was terminated from service, but not hand over the copy of that termination order, therefore he also filed application to DEO (M) Charsadda under RTI for provision of all documents including termination order, but the DEO (M) on his application responded on

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28-7-2022

Admn

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08.04.2016 that all the documents of the appellant was misplaced and no record of the appellant is available in the concerned office.

- 8. That after the statutory period of 90 days, the appellant filed service appeal No. 687/2016 in the KP Service Tribunal and during the proceeding of the case the department submitted the record of the appellant on 13.12.2017 in which charge sheet along with statement of allegations dated 24.12.2016, inquiry report dated 20.01.2017, absence notice dated 15.03.2017, newspaper notice and the removal order dated 15.05.2016 were present and handed over to the appellant on 13.12.2017 due to which the appellant withdraw that appeal and filed departmental appeal 27.12.2017 against the impugned removal order, which was not responded in the statutory period of ninety days.
- 9. That the appellant then filed service No.606/2018 in the Honorable Service Tribunal which was decided on 05.07.2021 on which the appeal of the appellant was allowed and the matter was remanded back to the respondents with direction to conduct a de-novo inquiry into the matter by providing appropriate opportunity of defense to the appellant strictly in accordance with law and rules.
- 10. That without reinstating the appellant into service and if reinstated that reinstatement order was not communicated to the appellant, without issuing charge sheet to the appellant and without conducting inquiry and if inquiry conducted, the appellant was never associated with inquiry proceeding, was again removed from service vide order dated 06.01.2022, however that removal order was never communicated to the appellant and when the appellant went to the concerned office to know the fate of his departmental on 15.07.2022, he has handed over his removal order dated 06.01.2022 on 15.07.2022, whereby the appellant was removed from service with effect from 01.09.2009. **(Copy of order dated 06.01.2022 is attached as annexure-A)**
- 11. That the appellant being aggrieved from the order dated 06.01.2022 received by him on 15.07.2022 wants to file departmental appeal on the following ground.

GROUNDS:

- A) That the removal order dated 06.01.2022 received by appellant on 15.07.2022 is against the law, rules, facts and material on record violation of judgment dated 05.07.2021, therefore not tenable and liable to be set aside.
- B) That the appellant properly applied for leave for two years in 2009 which was sanctioned by the competent authority in that time and after expiry of his leave, he came to join his duty, but another person namely Mr. Mushtaq was appointed on his post and did not adjusted

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him to perform his duty, which means that the appellant never remain absent from his duty.

- C) That first inquiry was conducted about the leave of the appellant and appointment of Mr. Mushtaq in 2014 in which the inquiry officer recommended that the the high ups were responsible for his inefficiency and did not held the appellant guilty.
- D) That in reply to the application dated 08.04.2016 of DEO (M) Charsadda, it was clearly mentioned that the service record of the appellant was misplaced and no record of him is available in the concerned office, which means the appellant was properly applied for leave which was also sanctioned by the competent authority at that time but record about his sanction of leave was misplaced and the as such the appellant should not be punished for the fault of others.
- E) That after the expiry leave, the appellant also fields many applications for his adjustment and salary after the expiry of leave, but the competent authority took no action on that applications which means that the appellant did not remain absent from his duty but due to non adjustment on his post by the respondent he was unable to perform his duty and should not be punished for the fault of others.
- F) That no charge sheet was communicated to the appellant before passing the impugned order of removal from service, which is violation of law and rules.
- G) That the KP Service Tribunal clearly mentioned in the judgment dated 05.07.2021 that the respondents should provide opportunity of defense to the appellant strictly in accordance with law and rules, but despite that the appellant was never associated with the inquiry proceeding which is violation of judgment dated 05.07.2021 of the KP Service Tribunal as well law and rules.
- H) That the appellant was not associated with the inquiry proceeding which is violation of law and rules and as such the impugned removal order dated 06.01.2022 is liable to be set aside on this ground alone.
- I) That even final show cause notice was not issued to the appellant before passing the impugned order of removal from service.
- J) That the appellant has been condemned unheard and has not been treated according to law and rules.
- K) That the penalty imposed upon the appellant was with retrospective effect which is not permissible under Superior courts judgments.
- L) That the appellant has more than 28 years of service and penalty imposed upon the appellant is very harsh, which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.

(42)

It is, therefore, most humbly requested that on accepting the departmental appeal of the appellant, the order dated 06.01.2022 may kindly be set aside and the appellant may be reinstated into his service with all back and consequential benefits on the basis of above submission and facts and circumstances.

Dated: 28-7-2022.

Yours obediently

Inam Ullah
Inam Ullah, Ex-Chowkidar
GPS Chail Tangi, Charsadda.

VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal, Peshawar

Imran Ullah (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Education (Respondent)
(Defendant)

I/We, _____

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2021

Imran Ullah
(CLIENT)

ACCEPTED

TAIMUR ALI KHAN
Advocate High Court
BC-10-4240
CNIC: 17101-7395544-5
Cell No. 0333-9390916

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar