

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 64/2018

Date of Institution ... 17.01.2018
Date of Decision ... 02.02.2022

Qalash Khan Ex-Chowkidar Government Primary School
Morogah Tehsil Dasu District Kohistan.

... (Appellant)

VERSUS

District Education Officer (Male) Kohistan and two others.

... (Respondents)

Fazal Shah Mohmand,
Advocate

... For appellant.

Muhammad Riaz Paindakhel,
Assistant Advocate General

... For respondents.

Salah-Ud-Din

... Member (J)

Rozina Rehman

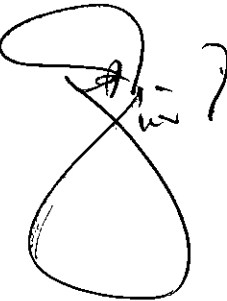
... Member (J)

JUDGMENT

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

"On acceptance of instant appeal, the impugned order dated 11.05.2012 of respondent No.1 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service all back benefits".

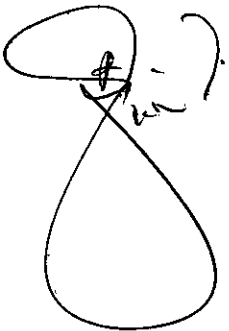
2. Brief facts of the case are that appellant was appointed as Chowkidar. During his service, he was implicated in a criminal case vide FIR No.47 dated 22.07.2006 registered at Police Station Dasu Kohistan U/S 302/324/148/149 PPC. Consequently, he alongwith two



other teachers being charged with the appellant in the same case were dismissed from service. The appellant was also involved in another criminal case registered under Article-13AO who was later on acquitted by the competent court of Law. After earning acquittal, he filed departmental appeal which was not responded to, hence, the present service appeal.

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

4. Fazal Shah Mohmand Advocate learned counsel appearing on behalf of appellant, inter-alia, argued that impugned orders are illegal and *void ab-initio* as the appellant was not treated according to law and rules. That the appellant was discriminated as no charge sheet and show cause notice were communicated to the appellant and no proper inquiry was conducted in the matter. He submitted that the appellant was not provided any opportunity of personal hearing and he was condemned unheard. It was further argued that co-employee Izzat Noor who was dismissed from service alongwith the appellant filed Service Appeal which was allowed and the said co-employee namely Izzat Noor Ex-PST was reinstated into service vide order of the District Education Officer (Male) Kohistan dated 25.05.2018. He, therefore, requested for acceptance of the instant service appeal.

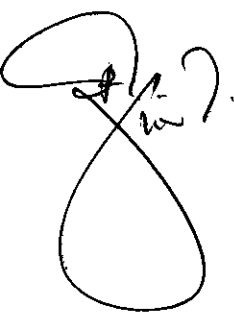


5. Conversely, learned AAG submitted that appellant was appointed as Chowkidar who was charged in a murder case whereafter, he became absconder and remained absent from duty w.e.f 22.07.2006 to 11.05.2012. He contended that the appellant willfully absented himself for more than five years and that after fulfillment of all codal formalities, appellant was dismissed from service according to law.

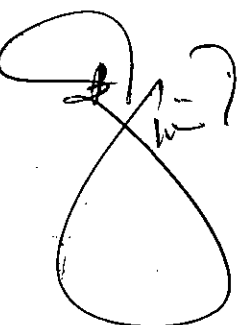
6. Perusal of record would reveal that appellant was appointed as Chowkidar and he was performing his duty in GPS Morogah. During his service, he was implicated in case FIR No.47 dated 22.07.2006 registered at Police Station, Dasu Kohistan U/S 302/324/148/149 PPC as well as in case FIR No.56 registered Under Article-13AO. Admittedly, no charge sheet and statement of allegations were issued and served upon appellant. Similarly, no show cause notice was issued and it was on 11.05.2012 when appellant Qalash Khan alongwith Muhammad Nabi PST and Izzat Noor PST were dismissed from service due to absence from School duty without any information. The present appellant was acquitted on 16.02.2015 by the learned Sessions Judge, Kohistan in murder case. He was acquitted in case FIR No.56 by the learned Senior Civil Judge, Kohistan vide order dated 23.06.2016 and soon after earning acquittal he filed departmental appeal before the authority on 07.07.2016. The impugned order is silent in respect of the involvement of appellant in any criminal case rather he was dismissed from service on the allegations of absentia. The order was passed on 11.05.2012 but the appellant was not proceeded against departmentally in accordance



with law. Izzat Noor who was also dismissed from service alongwith the present appellant Qalash Khan on 11.05.2012 filed Service Appeal No.42/2016 which was allowed by this Tribunal vide judgment dated 26.12.2017 with direction to the Department to hold de-novo proceedings. Accordingly, he was reinstated into service conditionally for the purpose of de-novo inquiry. On 07.03.2018 proper inquiry was conducted. In view of the inquiry report, Mr. Izzat Noor Ex-PST GPS Koat Gali Jalkoat, Dasu was reinstated into service against vacant post as PST. His absence period from 12.11.2007 to 10.05.2012 was converted into extraordinary leave without pay. The intervening period w.e.f 11.05.2012 to 06.03.2018 was treated as extraordinary leave without pay vide order of the District Education Officer Kohistan dated 25.05.2018. Case of the present appellant is at par with co-employee (Izzat Noor) as both were dismissed vide same order dated 11.05.2012 and both were involved in one and the same FIR. It has been held by superior fora that all the acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Reliance is placed on Chairman Agricultural Development Bank of Pakistant and another Vs. Mumtaz Khan reported in PLD 2010 Supreme Court 695, wherein, it was held by the Apex Court that all acquittals are certainly honorable for the reason that the prosecution had not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. Cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof, all these acquittals were also held honorable. So



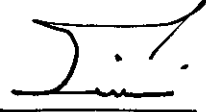
far as the point of limitation is concerned, as per record appellant was dismissed from service vide order dated 11.05.2012 w.e.f 12.11.2007 and on the allegations of absentia. As per record appellant was involved in two different criminal cases vide FIR No.656 and 47. He was acquitted in FIR No.47 on the strength of compromise on 16.02.2015 while in case FIR No.656 he was acquitted vide order dated 23.06.2016. He filed appeal on 07.07.2016. We have observed that soon after getting acquittal, he filed appeal within 14 days. It would have been a futile attempt on the part of the appellant to challenge his dismissal from service before earning an acquittal in the relevant criminal cases and thus in the peculiar circumstances of this case, we have found it to be unjust and oppressive to penalize the appellant for not filing his departmental appeal before earning his acquittal in the criminal case. The competent authority badly failed to follow the relevant law on the point. He was proceeded against on the allegations of absentia but the procedure in case of absence prescribed by the law was not properly followed by the competent authority. His involvement in the criminal case is evident from the record but he was dismissed from service by imposing upon him major penalty of dismissal from service but again proper procedure in shape of conducting proper inquiry as prescribed by the law was not properly followed by the competent authority.



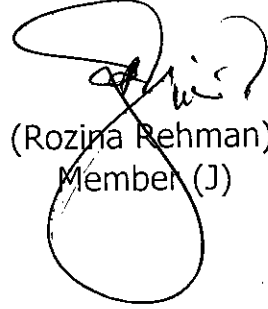
7. In view of the above, instant service appeal is accepted. Consequently the impugned order is set aside; appellant is reinstated into service. The absence period and intervening shall be treated as

leave without pay. Parties are left to bear their own costs. File be
consigned to the record room.

ANNOUNCED.
02.02.2022



(Salah-ud-Din)
Member (J)



(Rozina Rehman)
Member (J)

Order
02.02.2022

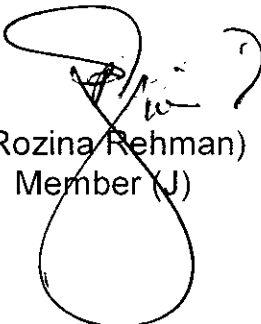
Appellant present through counsel.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General alongwith Muhammad Siddique Litigation Officer for respondents present.

Vide our judgment of today of this Tribunal placed on file, instant service appeal is accepted. Consequently the impugned order is set aside; appellant is reinstated into service. The absence period and intervening shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.


ANNOUNCED.
02.02.2022


(Salah-Ud-Din)
Member(J)


(Rozina Rehman)
Member (J)

30.03.2021


Due to non availability of the concerned D.B, the case is adjourned to 30.06.2021 for the same.



Reader

30.06.2021

Nemo for the appellant. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Previous date was changed on the basis of Reader Note, therefore, notice for prosecution of the appeal be issued to the appellant as well as his counsel and to come up for arguments before the D.B. on 01.11.2021.


(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

01.11.2021

Counsel for appellant present.

Javid Ullah, learned Assistant Advocate General for respondents present.

The learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 02.02.2022 before D.B.


Chairman

Six, noted for 1/11/2021
call for AGs

26.08.2020

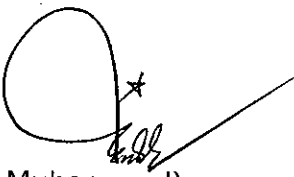
Due to summer vacation case to come up for the same on 02.11.2020 before D.B.


Reader

02.11.2020

Junior to counsel for the appellant and Usman Ghani, District Attorney Muhammad Siddique, ADo for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 13.01.2021 for hearing before the D.B.


(Mian Muhammad)
Member


Chairman

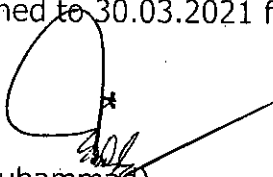
13.01.2021

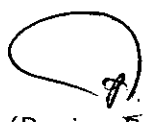
Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Muhammad Amin DEO for respondents present.

Former made a request for adjournment as issue involved in the instant case is pending before Larger Bench of this Tribunal.

Adjourned to 30.03.2021 for arguments, before D.B.


(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

12.12.2019

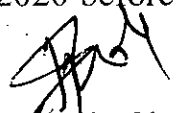
Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 18.02.2020 before D.B.



Member


Member

18.02.2020

Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Junior to counsel for the appellant requested for adjournment on the ground that senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 07.04.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

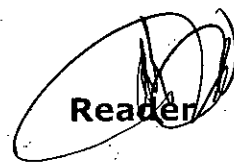
7.4.2020

Due to COVID 19, the case is adjourned to 1-7-2020 for same as before.



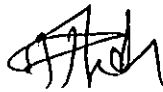
01.07.2020

Due to COVID-19, the case is adjourned to 26.08.2020 for the same.


Reader

17.06.2019

Clerk to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Clerk to counsel for the appellant seeks adjournment as counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 09.08.2019 before D.B.



Member




Member

09.08.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 02.10.2019 before D.B.



Member



Member

02.10.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Adjournment requested. Adjourn. To come up for arguments on 12.12.2019 before D.B.



Member



Member


12.11.2018


Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on ~~12~~.12.2018.


READER

12.12.2018

Learned counsel for the appellant and Appellant with counsel and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Shah Wali Ullah KPO present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourn. To come up for arguments on 04.02.2019 before D.B.


Member


Member

04.02.2019

Counsel for the appellant present. Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Shah Wali Ullah, Computer Operator for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 22.04.2019 for arguments before D.B.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

22-4-2019

The Bench is incomplete

Therefore the case is adjourned

to 17-6-2019


Reader

02.07.2018

Junior counsel for the appellant and Mr. Muhammad Jan. DDA present. Representative of the respondents department is also absent. Therefore, fresh notices be issued to the respondents department to attend the Court positively. Written reply not submitted despite last opportunities. Requested for further adjournment. Another last opportunity is further extended subject to payment of cost of Rs. 1000/- which shall be borne by respondents from their own pockets. To come up for written reply/comments on 03.08.2018 before S.B.



Member

03.08.2018

Appellant is not in attendance, however, Mr. Fazal Shah Mohmand, advocate counsel for the appellant present. Mr. Hameed Ur Rehman, AD (Lit) alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply/comments not submitted and made a request for adjournment. Granted. The respondents are directed to submit the same on the next date. To come up for written reply/comments on 18.09.2018 before S.B.



Chairman

18.09.2018

Counsel for the appellant present. Mr. Hameed Ur Rehman, AD (Lit) alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply on behalf of the respondents submitted which is placed on file. Cost of Rs.1000/- also paid by the respondents. Case to come up for arguments on 12.11.2018 before D.B.




03.04.2018

None present on behalf of appellant. Mr. Kabir Ullah Khattak, Additional AG for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 17.04.2018 before S.B.


Member

17.04.2018

None present on behalf of appellant and his counsel. Mr. Kabir Ullah Khattak, Addl: AG present. Representative of the respondent department is also absent. Therefore fresh notices be issued to the appellant and his counsel as well as respondent department to attend the court positively. Written reply not submitted. Requested for adjournment. Adjourned. Last opportunity is granted. To come up for written/comments on 09.05.2018 before **S.B.**


Member

09.05.2018

The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on **02.07.2018** before S.B.


Reader

29.01.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. The appellant joined the Education Department as Chowkidar on 1997. An FIR was lodged against him and thereafter he was dismissed from service vide order dated 11.05.2012. That the appellant was also involved in another criminal case under Section-13-AO registered on 14.08.2006 at P.S Dasu Kohistan but was subsequently acquitted by the competent court of law. He preferred departmental appeal on 07.07.2016 which was not responded within stipulated period, hence, the instant service appeal on 17.01.2018. Learned counsel for the appellant when confronted on the point that departmental appeal as well service appeal are time barred invited attention to the judgment of this Tribunal dated 26.12.2017 passed in service appeal no. 42/2016 involving similar issue. He has also submitted an application for condonation of delay. As the impugned order dated 11.05.2012 has been issued with retrospective effect, hence, the same is void ab-initio and no limitation runs against a void order.


Appellant Deposited
Security Process Fee

Points urged need consideration. Admit subject to limitation. Appellant is directed to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 19.03.2018 before S.B.


(AHMAD HASSAN)
MEMBER

19.03.2018

Appellant absent. Clerk of the counsel present on behalf of appellant. Mr. Kabir Ullah Khattak Additional AG for the respondent present. Written reply not submitted. Learned Additional AG requested for adjournment. Adjourned. To come up for written reply/comments on 03.04.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 64/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17/1/2018	<p>The appeal of Mr. Qalash Khan presented today by Mr. Fazal Shah Mohmand Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"><i>for Someth</i> REGISTRAR</p>
2-	19/01/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>29/01/18.</u></p> <p style="text-align: right;"><i>[Signature]</i> (MEMBER)</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 64 /2018

Qalash Khan.....Appellant

V E R S U S

DEO & others.....Respondents

I N D E X


S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-5
2.	Application for condonation of delay with affidavit		6-7
3.	Copy of FIR	A	8-8/A
4.	Copy of Order dated 11-05-2012	B	9-
5.	Copies of Judgments	C & D	10-12
6.	Copy of departmental appeal	E	13
7.	Copies of Judgments dated 26-12-2016	F	14-17
8.	Wakalat Nama		18

Dated:-15-01-2018

قلاش خان

Appellant

Through


Fazal Shah Mohmand
Advocate Peshawar.

Cell# 0301 8804841

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar

Email:- fazalshahmohmand@gmail.com

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BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 64 /2018

Qalash Khan Ex Chowkidar Govt. Primary School Morogah Tehsil
Dasu District Kohistan.....Appellant **Pakhtukhwa Service Tribunal**

V E R S U S

Diary No. 55

Dated 17-1-2018

1. District Education Officer (Male) Kohistan.
2. Director, Elementary and Secondary Education Govt. of KPK Peshawar.
3. Secretary, Elementary and Secondary Education Govt. of KPK Peshawar.....Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 11-05-2012 PASSED BY RESPONDENT NO 1 WHERE BY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND AGAINST WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF MORE THAN THE STATUTORY PERIOD.

PRAYER:-

On acceptance of this appeal the impugned orders dated 11-05-2012 of respondent No 1 and may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That the appellant was appointed as Chowkidar in the year 1997 and since then he performed his duties with honesty and full devotion.

Filed to day
[Signature]
Registrar

2. That on 22-07-2006 the appellant while posted to Govt. Primary School Morogah was falsely involved in criminal case vide FIR No 47 dated 22-07-2006 U/Ss 302/324/148/149 PPC of Police

2

Station Dasu Kohistan. **(Copy of FIR enclosed as Annexure A).**

3. That consequently the appellant along with two other Teachers being charged with the appellant was dismissed from service by respondent No 1 vide Office Order dated 11-05-2012. **(Copy of Order dated 11-05-2012 is enclosed as Annexure B).**
4. That the appellant was also involved in another criminal case U/S 13AO on 14-08-2006 of Police Station Dasu Kohistan. It is pertinent to mention here that the appellant was acquitted from the murder case by the Court of competent jurisdiction vide Order and Judgment dated 16-02-2015 and was acquitted from the other case vide Order and Judgment dated 23-06-2016. **(Copies of Judgments are enclosed as Annexure C & D).**
5. That after acquittal, the appellant filed departmental appeal before respondent No 2 on 07-07-2016 which was processed but with no response so far. **(Copy of departmental appeal is enclosed as Annexure E).**
6. That the impugned order dated 11-05-2012 of respondent No 1 is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-

- A. That the impugned order is illegal and void abinitio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has

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not been treated according to law and rules and the appellant did nothing that amounts to misconduct.

- C. That no charge sheet and show cause notice were communicated to the appellant.
- D. That no inquiry was conducted in the matter to have find out the true facts and circumstances.
- E. That even proceedings mandatory in case of absence were never adopted and no notice was issued in this respect.
- F. That exparte action has been taken against the appellant and he has been condemned unheard.
- G. That the impugned order is not maintainable being passed with retrospective effect.
- H. That even otherwise the absence from duty was neither willful nor deliberate rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- I. That the impugned order is not speaking order and thus not tenable in the eyes of law.
- J. That there is misapplication of law as the law mentioned in the order of respondent No I is not applicable in case of the appellant.

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- K. That even the two teachers charged with the appellant in the same FIR and dismissed vide the same Order has been reinstated by this honorable Tribunal vide Order and Judgment dated 26-12-2017. **(Copy of Order and Judgment dated 17-12-2017 is enclosed as Annexure F).**
- L. That the appellant was not provided the opportunity of personal hearing and the impugned order is defective as well.
- M. That the appellant did nothing that would amount to misconduct.
- N. That the appellant has about 15 years of service with unblemished service record and is jobless since his illegal dismissal from service.
- O. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

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

Dated:-15-01-2018

Through

کوشمان
Appellant


**Fazal Shah Mohmand,
Advocate, Peshawar**

5

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2018

Qalash Khan.....Appellant

V E R S U S

DEO & others.....Respondents

A F F I D A V I T

I, Qalash Khan Ex Chowkidar Govt. Primary School Morogah Tehsil Dasu District Kohistan, **(The Appellant)** do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by


Faza Shah Mohmand
Advocate Peshawar



قلاش خان
DEPONENT

6

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2018

Qalash Khan.....Appellant

V E R S U S

DEO & others.....Respondents

Application for the condonation of delay if any.

Respectfully submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral part of this application.
3. That the impugned order being void abinitio, illegal and time factor becomes irrelevant in such cases, furthermore departmental appeal of the appellant has yet not been decided and the appeal is as such within time.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit besides similarly placed employees have ben reinstated by this honorable Tribunal.

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

Dated:-15-01-2018

قلاش خان

Appellant

Through

فازل شاہ محمد

**Fazal Shah Mohmand,
Advocate, Peshawar**

7

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2018

Qalash Khan.....Appellant


V E R S U S

DEO & others.....Respondents

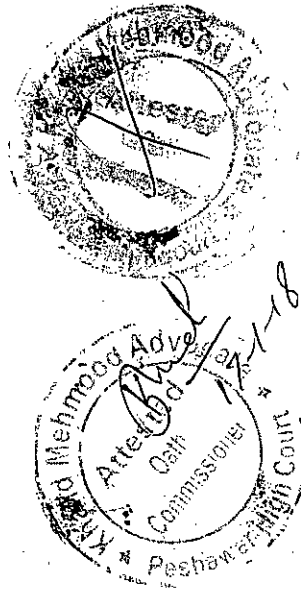
A F F I D A V I T

I, Qalash Khan Ex Chowkidar Govt. Primary School Morogah Tehsil Dasu District Kohistan, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by


Fazal Shah Mohmand
Advocate Peshawar

Qalash Khan
DEPONENT



فرد ہوتے حال لفتنہ ہر فرسٹ سیرک لفتن فیشنل کو رٹو لوسٹوار کم
 صفحت باسیں 641 کنسل RHC داسر کو رٹو لوسٹوار کم
 سے سیرسٹ ہوتے قسم مالہ کی جائے خاکر فراسٹ لوسٹوار کم
 دست لٹن نہایت طاکو ارسال فٹانہ ہے عفرم درنا لوسٹوار کم
 کرجی مع اہل فراسٹ لوسٹوار کم لفتن فیشنل لوسٹوار کم
 حاشہ فراسٹ لوسٹوار کم رٹو لوسٹوار کم لوسٹوار کم
 گناہ داسر 22-7-06 کاروائی فٹانہ رٹو لوسٹوار کم
 عفرم لوسٹوار کم مالہ خاکر لوسٹوار کم فراسٹ لوسٹوار کم
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H.C. P. D. D.
 22-7-06

دستخط
 محمد

اطلاع کے لیے اطلاع دہندہ کا دستخط و گام یا اس کی سرانجام دہندہ کا اطلاع کا دستخط اور آئینہ ہوگا جو کہ جوت الفیت
 سرخ روشنی سے بالقابل نام پر ایک لزم یا مشنر علی الترتیب واسطے باشندگان علاقہ غیر اور انشا افغانستان جہاں سوزوں ہوں۔ لکھنا ہے

Handwritten: 1599-1603 B

(9) "B"

**OFFICE OF THE EXECUTIVE DISTRICT OFFICER, ELEMENTARY
AND SECONDARY EDUCATION DISTRICT KOHISTAN.**

Phone & Fax No. 0998-407128

OFFICE ORDER.

The following PST teachers/Chowkidar of E&S Education are hereby dismissed from Services due to their prolong absence from school duties without any information/ leave, with effect from the date of their absence mentioned against each, in public interest, as reported by the Deputy District Officer, (M) E&S Education Kohistan

- | | | |
|----|--|----------------|
| 1. | Mohammad Nabi PST GPS Chortoo Jalcoat. | WEF 16.12.3003 |
| 2. | Izzat Noor PST GPS Koat Gali Jalcoat | WEF 12.11.2007 |
| 3. | Qalash Khan Chowkidar GPS Morogah. | WEF 12.11.2007 |

Handwritten: Jullis
Executive District Officer,
E & S Education Kohistan.

E/No.17/Esstt: 1599-1603 /EDO dated 11/5 /2012. 9

Copy forwarded to:

1. The District Coordination Officer, Kohistan.
2. The P.S to Secretary to Govt: of Khyber Pakhtunkhwa, E&S Education
3. The P.A to Director, E&S Education Khyber Pakhtunkhwa.
4. The District Accounts Officer, Kohistan.
5. The Deputy District Officer, (M) E&S Education Kohistan.

Handwritten: Jullis
Executive District Officer,
E & S Education Kohistan.

Handwritten: D/A for m/a

Handwritten: CTC

بیٹھنے سے قبل شہزاد علی کو قید کر دیا جائے گا۔
نمبر: 302/324/148/149

10

Present: Mr. Muhammad Nazir Naib Court for state.
Mr. Muhammad Aslam Advocate alongwith accused on bail.

At very out-set learned counsel appearing on behalf of accused drew attention of this court towards compromise effected between the parties at bail stage and submitted that the same be taken into consideration for the purpose of decision of main case. In the light of above position I perused record which revealed that accused stand charged in FIR for commission of offences U/S 302/324/148/149 PPC and was released on bail through order dated 08-12-2014 on basis of compromise. The statements of LR's of deceased and complainant towards compromise were recorded at bail stage wherein they stated to have waived off their right of Qisas/Diyat as have forgiven the accused in the name of Almighty Allah. The compromise effected at bail stage appears genuine and free from any coercion, undue influence and duress. The offences with which accused stand charged in FIR are compoundable according to 2nd schedule of Cr.P.C and the legal heirs of deceased/victim can compound the same U/S 345 Cr.P.C.

It is almost settled that compromise effected at bail stage can be taken into consideration for disposal of main case. wisdom in this regard can be derived from case of Syed Sabir Hussain Shah and another VS Syed Ifukhar Hussain Shah and another (NLR 1996 Criminal 179) wherein bail was granted at bail stage on basis of compromise and at trial stage complainant tried to resile therefrom but the same was not permitted by Hon,ble Peshawar High Court Bench Abbottabad and observed.

" In my opinion once a compromise has been effected it cannot be withdrawn and I am also clear in my mind that it is incompetent for any person, once having entered into a valid composition /compromise to withdraw from the same"

Above view of Hon,ble Peshawar High Court was upheld by Hon,ble Supreme Court in a judgment reported as 1998 SCMR 466.

For what has been stated above and while respectfully following the law laid down in above judgments compromise effected at bail stage is acceded to and accused facing trial namely Izzat Noor etc stand discharged on basis of compromise. They are on bail, their bail bonds stand cancelled and their sureties are relieved of the liabilities upon bonds. Case property be kept intact till expiry of period of Appeal/Revision. File be consigned to record room after completion.

Order Announced.
16-02-2015

(SARDAR MUHAMMAD IRSHAD)
Sessions Judge,
Kohistan.

Certified to be True Copy

[Signature]

Executive
District & Sessions Judge
Kohistan at Dera
Authorized Under Section 75, Act 1973

CTK
16/2

No. 1354
Date of presentation of application 19-12-2014
No. of page 01
Copying fee
Urgent fee
TOTAL
Name of Copyist M. S. Azeem
Date of examination of copy 19-12-2015
Date of delivery of copy 19-12-2015

ATTESTED
Advocate

2
16-02-2015

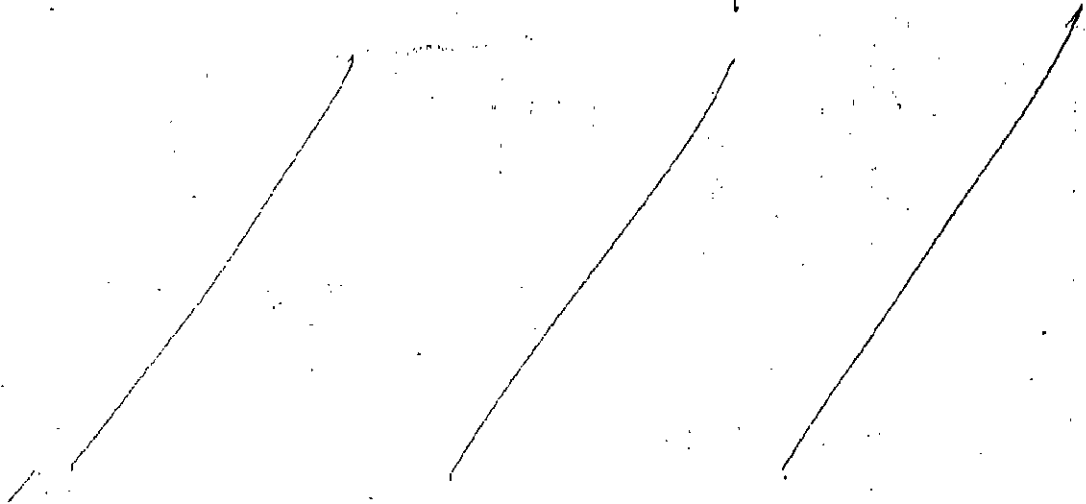
"D"

(11)

کیا ت میں سزا دی جاوے گی۔ جو جیل خانہ
مقدمہ نمبر 9/02
سرکار، بیگ کلاشن طان

جلد نمبر 56
صفحہ 206
14/06
1340 خانہ داسو

CTC
علی



جلد 15
23-6-06

مقدمہ نمبر 9/02 کی طرف میں منظور کیا گیا ہے۔ کہ مقدمہ نمبر 9/02
کی رولت آسپا کی طرف سے۔ کہ یہ مقدمہ نمبر 9/02 کی طرف سے منظور کیا گیا ہے۔
مقدمہ نمبر 9/02 کی طرف سے منظور کیا گیا ہے۔ کہ یہ مقدمہ نمبر 9/02 کی طرف سے
مقدمہ نمبر 9/02 کی طرف سے منظور کیا گیا ہے۔ کہ یہ مقدمہ نمبر 9/02 کی طرف سے
مقدمہ نمبر 9/02 کی طرف سے منظور کیا گیا ہے۔ کہ یہ مقدمہ نمبر 9/02 کی طرف سے
مقدمہ نمبر 9/02 کی طرف سے منظور کیا گیا ہے۔ کہ یہ مقدمہ نمبر 9/02 کی طرف سے
مقدمہ نمبر 9/02 کی طرف سے منظور کیا گیا ہے۔ کہ یہ مقدمہ نمبر 9/02 کی طرف سے
مقدمہ نمبر 9/02 کی طرف سے منظور کیا گیا ہے۔ کہ یہ مقدمہ نمبر 9/02 کی طرف سے

Senior Civil Judge
JM, Kohistan

Authorised Signatory

کیا ت میں سزا دی جاوے گی۔ جو جیل خانہ
مقدمہ نمبر 9/02
سرکار، بیگ کلاشن طان

12

مکمل 15
 23-6-06
 (6)

کا حکم نامہ سے مدافعت کو سنبھالنے کے لیے درخواستیں
 مہینہ گلیاں گانا ہے۔ ضمانتیں کرنا یہ ضمانتیں سے سبکدوش
 کیا گیا ہے۔ حال ہی میں کوئی گارنٹی نہ کیا گیا ہے۔ عمل کیا
 کرنا ہے۔ وکیل و افضل نصیر

گورنمنٹ
 ڈپٹی سیکریٹری
 گورنمنٹ

23-6-06

Deputy District Judge
 District of Dassi
 Kohistan of Dassi
 Authorized Under Section 75 Acts Order



CTC
 علی

No. 60
 Date of presentation of application 11-01-2018
 No. of pages 08
 Court fees ✓
 Court charges ✓
 Name M. Iqbal P.S.
 Date of filing of application 11-01-2018
 Date of delivery of copy 11-01-2018

"E"

(13)

BEFORE THE DIRECTOR ELEMENTARY & SECONDARY
EDUCATION, PESHAWAR

Subject: Appeal against the Order dated 11.05.2012 whereby I
have been dismissed from service

Respected submitted:

1. That I was appointed as Chowkidar in the year 1997 and in the year 2006 was falsely involved in criminal cases of murder and 15 Arms Act. That I was acquitted from the criminal cases on 16.02.2015 and 23.06.2016.
2. That my dismissal order is illegal as no charge sheet and show cause notice was issued nor any inquiry was conducted in the matter. Furthermore, the order is with retrospective effect which is not tenable in the eyes of law.

It is, therefore, requested that the dismissal order dated 11.05.2012 may kindly be set aside, I may be reinstated in service with all back benefits.

Dated: 07.07.2016

Appellant

قلاش خان
Qalash Khan

Ex-Chowkidar

GGPS Morogah

Tehsil Dasu District Kohistan.

CTL
[Signature]

(B) "F" (14) (B)

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 42 /2016.

Izzat Noor Ex Primary School Teacher, Govt. Primary School Chortoo
Jalkoat S/O Gul Mashal R/O Sew P/O Kamila Tehsil Dasu District
Kohistan.....**Appellant**

W. P. Province
Service Tribunal
Slary No. 31
Dated 11-1-2016

V E R S U S

1. Director, Elementary and Secondary Education Govt. of KPK Peshawar.
2. District Education Officer (Male) Kohistan.
3. Secretary, Elementary and Secondary Education Govt. of KPK Peshawar.....**Respondents**

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER DATED 23-12-2015 PASSED BY
RESPONDENT NO 1 WHERE BY DEPARTMENTAL
APPEAL OF THE APPELLANT FILED AGAINST THE ORDER
DATED 11-05-2012 OF RESPONDENT NO 2 HAS BEEN
REJECTED/FILED.**

PRAYER:-

On acceptance of this appeal the impugned orders dated 23-12-2015 of respondent No 1 and Order dated 11-05-2012 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That the appellant joined the respondent Department as Primary School Teacher (herein after referred to as PST) on 30-06-1997, remained posted to various Stations and since then he performed his duties with honesty and full devotion.
2. That the appellant while lastly posted to Govt. Primary School Koat Gali Jalkot District Kohistan, was falsely involved in a murder case vide FIR No 47 dated 22-07-2006 U/Ss 302/324/148/149 PPC of Police Station Dassu and was suspended. (Copy of FIR is enclosed as Annexure A).
3. That the appellant along with two others was dismissed from service by respondent No 2 vide Order dated 11-05-2012. (Copy of Order dated 11-05-2012 is enclosed as Annexure B).

ATTESTED

CTC
4/6

[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.

Appeal No. 42/2016

Date of Institution... 11.01.2011

Date of decision... 26.12.2017



Izzat Noor Ex-Primary School Teacher, Government Primary School, Chortoo,
Jalkoat son of Gul Mashal R/O Sew Post office Kamila Tehsil Dasu, District
Kohistan. ... (Appellant)

Versus

1. Director, Elementary and Secondary Education, Government of Khyber
Pakhtunkhwa, Peshawar and 2 others. ... (Respondents)

MR. Fazal Shah Mohmand,
Advocate.

For appellant.

MR. Muhammad Jan,
Deputy District Attorney

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - This judgment shall also
dispose of another connected appeal No. 43/2016 Muhammad Nabi as in both the
appeals common questions of law and facts are involved.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellants were dismissed from service on 11.05.2012 due to his
absence against which they filed departmental appeals (undated) which were
rejected on 23.12.2015 and thereafter, they filed the present service appeals on
11.01.2016.

ATTESTED

[Signature]
MEMBER
Khyber Pakhtunkhwa Service Tribunal

CIC
[Signature]

(16)

ARGUMENTS

3. The learned counsel for the appellants argued that absence of the appellants was due to their involvement in a criminal case in which they were acquitted by learned trial court and thereafter they filed departmental appeals. That the impugned order has been given retrospective effect. That no proceedings under the relevant law in force for the time being i.e. Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 were conducted. That the appellate authority rejected departmental appeal under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 whereas the cases were covered by the RSO mentioned above. That the impugned order was given retrospective effect which was a void order.

4. On the other hand the learned Deputy District Attorney argued that the appeal was time barred as the impugned order was passed on 11.05.2012 and the appellants filed departmental appeals according to para-4. of the appeal on 28.12.2012 and thereafter as per para-6 of the appeal they filed second departmental appeals after acquittal. That the appellants admitted their absence from duty in his memorandum of appeals.

CONCLUSION

5. This Tribunal in a number of cases delivered judgments that retrospective orders are void orders on the basis of judgment of the august Supreme Court of Pakistan reported as 1985-SCMR-1178. The present orders are also void orders and no limitation shall run against void orders. The department has also not complied with the relevant rules in the case of absence. The department has also not taken into consideration involvement of the appellant in criminal case.

6. As a result of the above discussion, this appeal is accepted and the department is directed to hold denovo proceedings within a period of 90 days of the

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17

receipt of this judgment in accordance with the rules, failing with the appellants shall be reinstated in service. Parties are left to bear their own costs. File be consigned to the record room.

Announced
26-12-2017

sd/- Niaz Muhammad Khan
Chairman

Confidential
Future copy
Khan
Munshiwa
Munshiwa
Munshiwa
Munshiwa

sd/- Gulzar Khan
Member

Date of Presentation of _____ 10-01-2018

Number of _____ 1200 _____

Copying Fee _____ 8-0 _____

Urgent _____ 2-0 _____

Total _____ 10-0 _____

Name of _____ _____

Date of _____ 10-01-2018

Date of Delivery of Copy _____ 10-01-2018

CTC
e/y

(18)

VAKALATNAMA

IN THE COURT OF Service Tribunal Peshawar

IN RE: _____

Qalash Khan

Petitioner/Plaintiff/Appellant/Complainant

VERSUS

Deo 4 others.

Respondents/Defendant /Accused

FIR No. _____

Dated: _____

Charge U/s _____

Police Station: _____

KNOW ALL to whom these presents shall come that the undersigned appoint:

Fazal Shah Mohmand Advocate Supreme Court to be the Advocate for the Appellant in the above mentioned case, to do all the following acts, deeds and things or any of them, that is to say;

- 1) To act and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or execution or in any other stage of its progress until its final decision.
- 2) To sign, verify and present pleadings, appeals, cross - objections, petitions for execution, review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of said case in all its stages.
- 3) To withdraw or compromise in the said case or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- 4) To receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said case.
- 5) To engage any other Legal practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the promises.

AND I hereby agree not to hold the Advocate or its substitute responsible for the result of the said case in consequence of his absence from the court when the said case is called up for hearing.

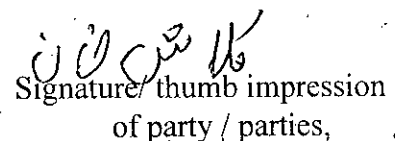
AND I hereby that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid, He shall be entitled to withdraw from the prosecution of the said case until the same is paid.

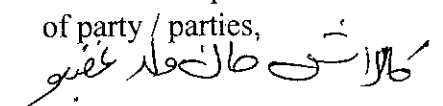
IN WITNESS WHEREOF I hereunto set my hand to these presents the contents of which have been explained to and understood by me, this 16 day of Jan 2018

Accepted By



Fazal Shah Mohmand
Advocate, Supreme court
of Pakistan .


Signature/ thumb impression
of party / parties,



APPEAL NO 64 OF 2018

Qalash Khan Qalash Khan Class-IV GPS Morogah District Kohistan.....Appellant

VERSUS

1. District Education Officer Male Kohistan
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
3. Govt of Khyber Pakhtunkhwa through Secretary (E&S) Education Peshawar

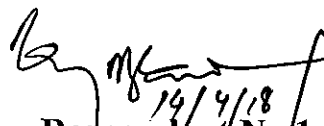
Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS NO. 1,2 & 3.

INDEX

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2	Copy of leave Rules	A	6
3	Copy of dismissal Order	B	7
4	Copy of final Notice	C	8

Dated 10/4/2018


14/4/18
Respondent No 1
District Education Officer,
(Male) Kohistan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO 64 OF 2018

Qalash Khan Class-IV GPS Morogah District Kohistan ----- Appellant

VERSUS

1. District Education Officer Male Kohistan
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
3. Govt of Khyber Pakhtunkhwa through Secretary (E&S) Education Peshawar

Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS NO. 1,2 & 3.

Respectfully Sheweth:

PRILIMINARY OBJECTIONS:-

- I. That the appellant did not come to this Honorable Tribunal with clean hands.
- II. That the appellant has got no cause of action /locus standi to file the Instant appeal
- III. That the appellant has been estopped to file the instant appeal by his own conduct.
- IV. That the present appeal is not maintainable due to non-joinder and mis-joinder of necessary parties.
- V. That the appellant has concealed the material facts from this Honorable Tribunal, hence appeal is liable to be dismissed without any further proceeding.
- VI. That the instant appeal is not maintainable U/S-4 of KP Service Tribunal Act 1974.
- VII. That the appeal is badly time barred .

Factual Objections:

1. Para No.1 is correct to the extent of the appointment of the appellant, and the remaining Para is incorrect, hence denied.
2. Para No.2 relates to the record of the appellant
3. Para No.3 is correct, further stated that the appellant was appointed as Chowkidar in 1997 and with a continuous service less than 10 years has been charged in a murder case vide FIR No.47 dated 22-07-2006 U/Ss 302/324/148 /149 PPC of Police station Dassu Kohistan and became absconder and after that did not perform his duty w.e.f. 22-07-2006 to 11-05-2012 (the date of dismissal) and in this way the appellant absented himself from his duty w.e.f. 22-07-2006 to till date and during that period the appellant never applied for any kind of leave **or permission**. In this way the appellant willfully absented himself for more than five years 10 months and 22 days on the date of dismissal. **According to the leave rules of civil servants Rule 12 (1) extra ordinary leave may be granted outside leave account on each occasion to a maximum period of five years at a time provided the civil servant to whom such leave is granted has been in continuous service for a period of not less than 10 year. In case a civil servant not completed 10 years of continuous service extra ordinary leave without pay for a maximum period of 2 years may be granted at the discretion of leave sanctioning authority.** That the appellant willfully absented himself for a period more than 5 years 10 months and 22 days with a continuous service less than 10 years, hence the service of the appellant has automatically been ceased as per leave rule **(Copy of leave Rules is annexed as annexure-A)**. Consequently the competent authority after fulfillment of all codal formalities dismissed the appellant from service under Khyber Pakhtunkhwa Government servants (Efficiency & Disciplinary) Rules 2011 vide order Endstt: No.1599- 1603 dated 11-05-2012 **(Copy of Removal order is annexed as annexure-B)**.
4. Para No.4 is correct to the extent that the appellant was involved in another Criminal Case U/S 13AO on 14-08-2006 of police Station Dassu Kohistan and remained absconder and he did not perform his duty w.e.f. 22-07-2006 to 11-05-2012 (the date of dismissal) . it is further stated that Para No.4 relates to the personal matter of the appellant and if he performed his school duty then he never be removed from service.

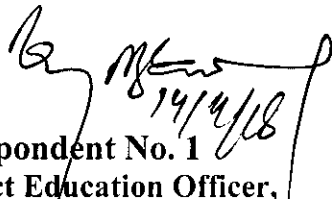
5. In correct, strongly denied with the facts that the appellant has never filed any departmental appeal before the appellant authority so far, as per the official record of this office.
6. In correct, strongly denied an enquiry was conducted, however, the appellant did not appear before the enquiry so a final notice was served on the appellant vide No.1371-72 dated 03-05-2012, but he did not respond the notice, hence the competent authority after fulfillment of all codal formalities dismissed the appellant from service under Khyber Pakhtunkhwa Government servants (Efficiency & Disciplinary) Rules 2011 vide order Endstt: No.1599- 1603 dated 11-05-2012. **(Copy of Final Notice is annexed as annexure 2).**

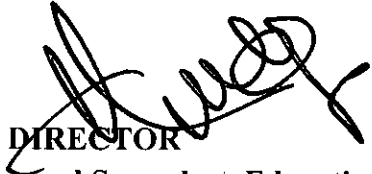
GROUNDS


- A. Incorrect, strongly denied that the **order dated 11-05-2012** of respondent No.1 is according to law, facts, norms and natural justice and the appellant was dismissed from service after fulfilling of all codal formalities as stated in Para 3 of factual objections.
- B. The Para "B" is incorrect hence denied detailed reply has been given in Para No. 3 of Factual objections.
- C. Incorrect strongly denied that the appellant was remained absconder and after fulfillment of all the codal formalities he was dismissed from service by the competent authority.
- D. Incorrect strongly denied that as stated in Para No.3 above of Factual objections.
- E. Incorrect strongly denied with the facts that final notice was issued to the appellant vide No.1371-72 dated 03-05-2012, but he did not respond the notice.
- F. Incorrect strongly denied as stated in Para 3 of factual objections.
- G. Incorrect strongly denied that the appellant dismissed from service after fulfilling of all codal formalities being a Competent Authority under Efficiency & Disciplinary rule 2011.
- H. Incorrect strongly denied as stated in Para 3 of factual objections.
- I. Incorrect strongly denied that the competent authority has proceeded against the appellant as per prescribed law and rules.
- J. Incorrect, strongly denied that the order dated 11-05-2012 of respondent No.1 is according to law, facts, norms and natural justice and the appellant was dismissed from service after fulfilling of all codal formalities as stated in Para 3 above of factual objections.

- K. Incorrect strongly denied with the facts that the mentioned another two teachers whose appeals were accepted and the department is directed to hold denovo proceedings having different in nature cannot be compared with the appellant's case.
- L. Incorrect strongly denied with the facts that final notice was issued to the appellant vide No.1371-72 dated 03-05-2012, but he did not respond the notice.
- M. Incorrect strongly denied.
- N. Incorrect strongly denied, as stated in Para No.3 of facts.
- O. That the respondents seek permission for arguing the other points at the time of arguments

It is therefore, in the light of above stated facts and circumstances, Very humbly prayed that the appeal in hand may please be dismissed with cost.


14/4/18
Respondent No. 1
District Education Officer,
(Male) Kohistan


DIRECTOR
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar


SECRETARY
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO 64 OF 2018

Qalash Khan Class-IV GPS Morogah District Kohistan... Appellant

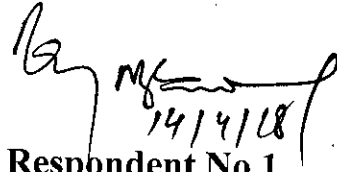
VERSUS

1. District Education Officer Male Kohistan
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
3. Govt of Khyber Pakhtunkhwa through Secretary (E&S) Education Peshawar

Respondents

AFFIDAVIT.

I, Raj Mohammad Khan DEO (Male) Kohistan do hereby solemnly affirm and declare that the contents of Parawise comments in the above titled case are true and correct to the best of my knowledge and belief, and that nothing, material has been suppressed from this Honorable Tribunal.


14/4/18

Respondent No.1
District Education Officer,
(Male) Kohistan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO 64 OF 2018

Qalash Khan -----Appellant

VERSUS

1. District Education Officer Male Kohistan
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
3. Govt of Khyber Pakhtunkhwa through Secretary (E&S) Education Peshawar

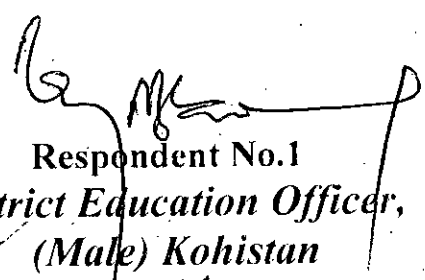
Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS NO. 1, 2 & 3.

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Dated 24.03.2018


Respondent No.1
District Education Officer,
(Male) Kohistan
7/4/18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO 64 OF 2018

Qalash Khan

Appellant

VERSUS

1. District Education Officer Male Kohistan
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
3. Govt of Khyber Pakhtunkhwa through Secretary (E&S) Education Peshawar

Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS NO. 1,2 & 3.

Respectfully Sheweth:


PRILIMINARY OBJECTIONS:-

- I. That the appellant did not come to this Honorable Court with clean hands. *To: bench*
- II. That the appellant has got no cause of action /locus standi to file the Instant appeal
- III. That the appellant ~~is~~ *has been* estopped to ~~sue~~ *file the instant appeal* through his own conduct *by his own conduct*
- IV. That the present appeal is not maintainable due to mis-joinder and non-joinder of necessary parties.
- V. That the appellant has concealed the material facts from this Honorable *To: bench* Court, hence appeal is liable to be dismissed without any further proceeding.
- VI. That the appellant ~~has~~ *That the instant appeal is not maintainable u/s 4 of* been removed from Service after *K.P. Service Tribunal ACT 1979* Completions of all codal formalities vide order Endstt: No.1599-1603 dated 11-05-2012; hence appeal is liable to be dismissed.
- VII. That the appeal is ~~time bared~~ *badly* hence ~~not maintainable and liable to be~~ *dismissed*

714/18

Factual Objections:

1. Para No.1 is correct to the extent of appointment of the appellant, and the remaining Para is incorrect, hence denied.
2. Para No.2 relates to the record of the appellant
3. Para No.3 is correct, further stated that the appellant was appointed as Chowkidar in 1997 and with a continuous service less than 10 years has been charged in a murder case vide FIR No.47 dated 22-07-2006 U/Ss 302/324/148 /149 PPC of Police station Dassu Kohistan and became absconder and after that did not perform his duty w.e.f. 22-07-2006 to 11-05-2012 (the date of dismissal) and in this way the appellant absented himself from his duty w.e.f. 22-07-2006 to till date and during that period the appellant never applied for any kind of leave ^{or permission} ~~without pay~~. In this way the appellant willfully absented himself for more than five years 10 months and 22 days on the date of dismissal. **According to the leave rules of civil servants Rule 12 (1) extra ordinary leave may be granted outside leave account on each occasion to a maximum period of five years at a time provided the civil servant to whom such leave is granted has been in continuous service for a period of not less than 10 year. In case a civil servant not completed 10 years of continuous service extra ordinary leave without pay for a maximum period of 2 years may be granted at the discretion of leave sanctioning authority.** That the appellant willfully absented himself for a period more than 5 years 10 months and 22 days with a continuous service less than 10 years, hence the service of the appellant has automatically been ceased as per leave rule **(Copy of leave Rules is annexed as annexure-A).** Consequently the competent authority after fulfillment of all codal formalities dismissed the appellant from service under Khyber Pakhtunkhwa Government servants (Efficiency & Disciplinary) Rules 2011 vide order Endstt: No.1599- 1603 dated 11-05-2012 **(Copy of Removal order is annexed as annexure-B).**
4. Para No.4 is correct to the extent that the appellant was involved in another Criminal Case U/S 13AO on 14-08-2006 of police Station Dassu Kohistan and remained absconder and he did not perform his duty w.e.f. 22-07-2006 to 11-05-2012 (the date of dismissal) . it is further stated that Para No.4 relates to the personal matter of the appellant and if he performed his school duty then he never be removed from service.



5. In correct, strongly denied with the facts that the appellant has never filed any departmental appeal before the appellant authority so far, as per the official record of this office.
6. In correct, strongly denied ~~with the facts that~~ a final notice was served ~~up~~ on the appellant vide No.1371-72 dated 03-05-2012, but he did not respond the notice, hence the competent authority after fulfillment of all codal formalities dismissed the appellant from service under Khyber Pakhtunkhwa Government servants (Efficiency & Disciplinary) Rules 2011 vide order Endstt: No.1599- 1603 dated 11-05-2012. (Copy of Final Notice is annexed as annexure "C")
- An order of appellant was ordered However the appellant did not appear before the competent authority so the order was issued.*

GROUNDS

- A. Incorrect, strongly denied that the order dated 11-05-2012 of respondent No.1 is according to law, facts, norms and natural justice and the appellant was dismissed from service after fulfilling of all codal formalities as stated in Para 3 of factual objections.
- B. The Para "B" is incorrect hence denied detailed reply has been given in Para No. 3 of Factual objections.
- C. Incorrect strongly denied that the appellant was remained absconder and after fulfilled ~~not~~ all the codal formalities he was dismissed from service by the competent authority.
- D. Incorrect strongly denied that as stated in Para No.3 above of Factual objections.
- E. Incorrect strongly denied with the facts that final notice was issued to the appellant vide No.1371-72 dated 03-05-2012, but he did not respond the notice.
- F. Incorrect strongly denied as stated in Para 3 of factual objections.
- G. Incorrect strongly denied that the appellant dismissed from service after fulfilling of all codal formalities being a Competent Authority under Efficiency & Disciplinary rule 2011.
- H. Incorrect strongly denied as stated in Para 3 of factual objections.
- I. Incorrect strongly denied that the competent authority has proceeded against the appellant as per prescribed law and rules.
- J. Incorrect, strongly denied that the order dated 11-05-2012 of respondent No.1 is according to law, facts, norms and natural justice and the appellant was dismissed from service after fulfilling of all codal formalities as stated in Para 3 above of factual objections.

- K. Incorrect strongly denied with the facts that the mentioned another two teachers whose appeals were accepted, and the department is directed to hold denovo proceedings having different in nature cannot be compared with the appellant's case.
- L. Incorrect strongly denied with the facts that final notice was issued to the appellant vide No.1371-72 dated 03-05-2012, but he did not respond the notice.
- M. Incorrect strongly denied.
- N. Incorrect strongly denied, as stated in Para No.3 of facts.
- O. That the respondents seek permission for arguing the other points at the time of arguments

It is therefore, in the light of above stated facts and circumstances, Very humbly prayed that the appeal in hand may please be dismissed with cost

[Signature]
 Respondent No. 1
 District Education Officer,
 (Male) Kohistan

DIRECTOR
 Elementary and Secondary Education
 Khyber Pakhtunkhwa Peshawar

SECRETARY
 Elementary and Secondary Education
 Khyber Pakhtunkhwa Peshawar

please ruled

please ruled
D. A. K. I.

[Signature]

9/4/18

ruled subject to correction

Amicus Affidavit and AAG

Approved

[Signature]

9/4/18

AAG

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

APPEAL NO 64 OF 2018

Qalash Khan -----

Appellant

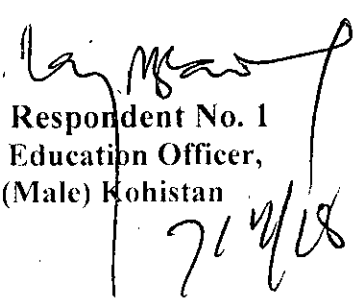
VERSUS

1. District Education Officer Male Kohistan
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
3. Govt of Khyber Pakhtunkhwa through Secretary (E&S) Education Peshawar

Respondents

AFFIDAVIT.

I, Mr. Raj Muhammad Khan DEO (Male) Kohistan do hereby solemnly affirm and declare that the contents of Parawise comments in the above titled case are true and correct to the best of my knowledge and belief, and that nothing, material has been suppressed from this Honorable court.


Respondent No. 1
District Education Officer,
(Male) Kohistan

7/12/18

service, disabled by injury, ailment or disease contracted in course or in consequence of duty or official position.

2) The leave salary during disability leave shall be equal to full pay for the first one hundred and eighty days and on half pay for the remaining period.

12. Extraordinary leave (Leave without pay)-(1) Extraordinary leave may be granted outside leave account on each occasion up to a maximum period of five years at a time; provided that the civil servant to whom such leave is granted has been in continuous service for a period of not less than ten years. In case a civil servant has not completed ten years of continuous service, extraordinary leave without pay for a maximum period of two years may be granted at the discretion of the leave sanctioning authority. This leave can be granted irrespective of the fact whether a civil servant is a permanent or temporary employee.

2) The maximum period of extraordinary leave without pay combined with leave on full pay and leave on half pay shall be subject to the limit of 5 years prescribed in FR-18, i.e. the maximum period of extraordinary leave without pay that would be admissible to a civil servant who has rendered continuous service for a period of not less than 10 years shall be 5 years less the period of leave on full pay and leave on half pay so combined.

3) Extraordinary leave may be granted retrospectively in lieu of absence without leave:

4)* Notwithstanding anything to the contrary contained in the preceding sub-rules, the Finance Department may in cases of individual hardship, grant extra-ordinary leave in excess of the maximum leave admissible to a civil servant under sub-rule(1) or sub-rule(2), as the case may be. *Added vide No.FD.SO(SR-IV)5-54/80.Vol-IV dated 6-7-1999.

CLARIFICATION.

i) Extra ordinary leave (Leave without pay) of 5 years is admissible to a Government servant for 'each spell' of 10 years of continuous service. If, however, a civil servant has not completed 10 years of continuous service on each occasion/time, Extra Ordinary leave (leave without pay) for maximum period of two years may be granted at the discretion of the Competent Authority.

ii) Maximum leave availed during one continuous period of 10 years should also not exceed 5 years. The cases already decided need not be reopened.

No. FD/SO(SR-IV)5-54/80/Vol-III, dated 31.7.91.

13. Leave on Medical Certificate. Leave applied for on medical certificate shall not be refused. The authority competent to sanction leave may, however, at its discretion, secure a second medical opinion by requesting the Civil Surgeon or the Medical board to have the applicant medically examined. The existing provisions contained in Supplementary Rules 212,213 and Rules 220 to 231 for the grant of leave on medical grounds will apply.

14. Leave preparatory to retirement-The maximum period up to which a Civil Servant may be granted leave preparatory to retirement shall be 365 days only. It may be taken subject to availability in the leave account, either on full pay or partly on full pay and partly on half pay, or entirely on half pay, at the discretion of the Civil Servant and it will not extend beyond the age of superannuation.

Amended B

**OFFICE OF THE EXECUTIVE DISTRICT OFFICER, ELEMENTARY
AND SECONDARY EDUCATION DISTRICT KOHISTAN.**

Phone & Fax No. 0998-407128

⑨ "B"

OFFICE ORDER

The following PST teachers/Chowkidar of E&S Education are hereby dismissed from Services due to their prolong absence from school duties without any information/ leave, with effect from the date of their absence mentioned against each, in public interest, as reported by the Deputy District Officer, (M) E&S Education Kohistan

1. Mohammad Nabi PST GPS Chortoo Jalkoat WEF 16.12.2003
2. Izzat Noor PST GPS Koat Gali Jalkoat WEF 12.11.2007
3. Qalash Khan Chowkidar GPS Morogah WEF 12.11.2007

Judis
Executive District Officer,
E & S Education Kohistan.

E/No.17/Esstt: 1599-1603 /EDO dated 11/5/2012. 9

Copy forwarded to:

1. The District Coordination Officer, Kohistan.
2. The P.S to Secretary to Govt. of Khyber Pakhtunkhwa, E&S Education
3. The P.A to Director, E&S Education Khyber Pakhtunkhwa.
4. The District Accounts Officer, Kohistan.
5. The Deputy District Officer, (M) E&S Education Kohistan.

Judis
Executive District Officer,
E & S Education Kohistan.

D/A

for on file

CTC
[Signature]

Date of ~~trans~~ aptt.
26-12-1997-


فائنل نوٹس برائے حاضری

(2)

ہر گاہ تم مسمیان ذیل (تفصیل ہر ایک کے سامنے درج ہے)

نمبر شمار	نام بمحہ عہدہ	جائے تعیناتی	تاریخ غیر حاضری
۱	محمد نبی پی، ایس، ٹی	گورنمنٹ پرائمری سکول چروجا کلوٹ	16-12-2003 سے تاحال
۲	عزت نوز بی، ایس، ٹی	گورنمنٹ پرائمری سکول کوٹ گلی جالکوٹ	12-11-2007 سے تاحال
۳	فلاش خان چوکیہ رار	گورنمنٹ پرائمری سکول مڑو گاہ	12-11-2007 سے تاحال

آپ مندرجہ بالا تاریخوں سے بلا اجازت اور بلا جواز اپنے اپنے سکول کی ڈیوٹیوں سے غیر حاضر ہیں۔ اس سلسلے میں ڈپٹی ڈسٹرکٹ آفیسر (مردانہ) محکمہ ابتدائی و ثانوی تعلیم کوہستان کو انکو ازری کمیٹی مقرر کیا گیا تھا۔ مطابق انکو ازری کمیٹی رپورٹ آپ طلبی کے باوجود جواب دہی کیلئے انکو ازری کمیٹی کے سامنے پیش نہ ہوئے اور تاحال بغیر کسی اطلاع، چھٹی کے غیر حاضر ہوئے۔ لہذا آپ کو آخری بار بذریعہ اخباری نوٹس طے کیا جاتا ہے کہ اس نوٹس کی اشاعت کے 15 دنوں کے اندر غیر حاضر ہو کر اپنی طویل غیر حاضری کی وجوہات پیش کریں۔ بصورت دیگر مندرجہ بالا میعاد کے اندر حاضر نہ ہونے کی صورت میں آپ کے خلاف قانون کے تحت کارروائی یکطرفہ عمل میں لائی جائیگی جو کہ آپ کی ملازمت سے برخاستگی پر منتج ہوگی۔


 ایگزیکٹو ڈسٹرکٹ آفیسر
 محکمہ ابتدائی و ثانوی تعلیم
 ضلع کوہستان

~~1370-72~~ Dated 3/5/2012

~~1370-72~~ Dated 3/5/2012

1371-72 - Dated 3/5/2012

- 3/5/2012

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 64/2018

Kalash Khan.....Appellant

V E R S U S

DEO & Others.....Respondents

REPLICATION ON BEHALF OF THE APPELLANT

REPLY TO PRELIMINARY OBJECTIONS.

All the preliminary objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action, he is not estopped by his conduct to file instant appeal, instant appeal is not bad in law and the same is well within time. The appellant has come to this honorable Tribunal with clean hands, have concealed nothing from this honorable tribunal and in instant appeal necessary parties have been impleaded.

REPLY TO FACTS/GROUNDS.

Comments of the respondents are full of contradictions and are based on malafide. Respondents have failed to show that the claim of the appellant is incorrect. The comments amount to admissions on part of the respondents, as they have failed to deny the plea of the appellant through cogent and convincing reasoning. Respondents have tried to mislead this honorable tribunal by twisting the facts and misinterpreting the law on the subject. Ex parte action has been taken against the appellant and he has been condemned unheard, the impugned order is as such void and not tenable in the eyes of law. Even time factor becomes irrelevant in such cases. Even otherwise the appellant has been acquitted by the Court of competent jurisdiction and even on this score alone he is entitled to be reinstated in service with consequential benefits. Even the colleagues of the appellant dismissed vide the same order have

been reinstated by this honorable Tribunal, the appellant also as such deserves the same treatment and should not be discriminated.

Even the respondents have admitted that the appellant has been awarded punishment under KP Govt. Servants (Efficiency & Disciplinary) Rules 2011 which rules are not applicable in case of the appellant as the proceedings against him were pending since 2006 and as per Sub Rule (3) of Rule 23 of the rules ibid, he was to be proceeded under Removal From Service Ordinance 2000, the order is also void on the score.

In the circumstances the appellant is denied treatment according to law and rules which is his fundamental right guaranteed in Constitution of the land. The impugned order is also not speaking order which is not based on any reasoning. Respondents have failed to substantiate their version and bring anything on record in support of their version; the impugned order is as such liable to be struck down.

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

Dated:- ____ - ____ -2018

Appellant

Through

Fazal Shah Mohmand

Advocate Peshawar

A F F I D A V I T

I, Qalash Khan Ex Chowkidar, Govt. Primary School Morogah Tehsil Dasu District Kohistan, (The Appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT

4/12/18
BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 64/2018

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V E R S U S

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

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Dated: -12-12-2018

Appellant

Through

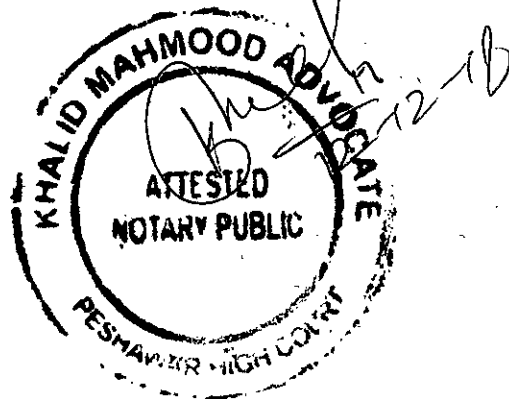
Fazal Shah Mohmand

Advocate Peshawar

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DEPONENT



BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

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V E R S U S

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

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Dated:- _____ - _____ -2018

Appellant

Through

Fazal Shah Mohmand

Advocate Peshawar

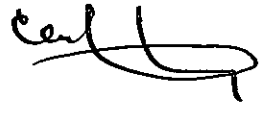
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D E P O N E N T

CERTIFICATE

certified that I received
Rs 1000/- fine in S.A No 64/2018
Case title Qalaa Kham from
the Representatives of
Education department

 Counsel for appeal
Adv

18-9-18