

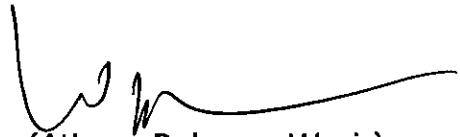
18.03.2021

Counsel for the petitioner present.

Muhammad Riaz Khan Paindakhel learned Assistant Advocate General alongwith Kazi Ayaz Litigation Officer for respondents present.

Learned A.A.G stated that respondents have filed CPLA against the judgment of this Tribunal before Apex Court copy of the same is placed on file and requested that the instant petition may be adjourned sine die till the decision of Apex Court.

In view of above, instant execution petition is adjourned sine die till the decision of CPLA. However, petitioner is at liberty to seek restoration of the instant execution petition after the decision of Apex Court.



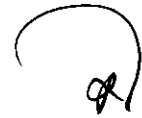
(Atiq ur Rehman Wazir)  
Member (E)  
Camp Court, A/Abad

22.10.2020

Nemo for petitioner .

Usman Ghani learned District Attorney alongwith Kazi Ayaz S.O (Litigation) and Zahir Ashraf Lecturer for respondents present.

It was on 20.11.2019 when copy of CPLA was provided to the petitioner on his request. Today, lawyers are on general strike, therefore, notice be issued to the petitioner for attendance and arguments as to why the instant execution petition be not consigned to the record room in view of CPLA. To come up on 17.12.2020 before S.B at Camp Court, Abbottabad.



(Rozina Rehman)  
Member (J)  
Camp Court, A/Abad

*Due to COVID-19 case is  
adjourned to 18-03-2021*




Due to covid ,19 case to come up for the same on  
at camp court abbottabad.

16 / 4 / 20

  
Reader

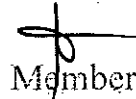
Due to summer vacation case to come up for the same on  
10 / 20 at camp court abbottabad.

122

  
Reader

20.11.2019

Petitioner in person present. Mr. Usman Ghani, District Attorney alongwith Prof. Malik Muhammad Saddique and Prof: Muhammad Shaukat for respondents present. Representative of the respondents submitted copy of CPLA which is placed on file. Petitioner seeks adjournment. Adjourn. To come up for further proceedings on 18.12.2019 before S.B at Camp Court, Abbottabad.



Member  
Camp Court Abbottabad

18.12.2019

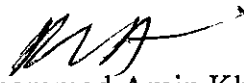
Petitioner in person and Mr. Usman Ghani, District Attorney alongwith M/S Professor Malik Muhammad Siddique and Shoukat, Lecturer for the respondents present. Petitioner requested for adjournment. Adjourned to 18.02.2020 for further proceedings before S.B at Camp Court Abbottabad.



(Muhammad Amin Khan Kundi)  
Member  
Camp Court Abbottabad

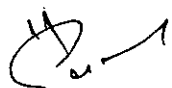
17.09.2019

Petitioner in process and Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Muhammad Shoukat, Lecturer for the respondents present. Representative of the department requested for adjournment on the ground that the implementation report is in process. Adjourned to 24.10.2019 for implementation report before S.B at Camp Court Abbottabad.

  
(Muhammad Amin Khan Kundi)  
Member  
Camp Court Abbottabad

24.10.2019

Petitioner present in person. Mr. Usman Ghani District Attorney present. Mr. Muhammad Shaukat Lecturer for the respondents present. Representative of respondents furnished order dated 03.06.2019 in relation to the conditional reinstatement of the petitioner subject to the decision of the Apex Court in CPLA, filed by the respondents against the judgment under implementation, placed on file. On request of petitioner representative of respondents is directed to furnish copy of CPLA on the next date fixed, so that the petitioner could pursue his case before Apex Court. Adjourned to 20.11.2019 before S.B at camp court, Abbottabad.

  
Member  
Camp court, A/Abad

18.03.2019

Petitioner in person and Mr. Muhammad Bilal learned Deputy District Attorney alongwith Muhammad Sadiq Litigation Officer present. Representative of the respondent department seeks adjournment on the ground that the respondent department has filed CPLA against the judgment under implementation. Adjourn. Representative is directed to furnish order regarding suspension of operation of the judgment in question else conditional implementation subject to the outcome of CPLA. Adjourn. To come up for further proceedings on 21.05.2019 before S.B



Member  
Camp Court A/Abad.

21.05.2019

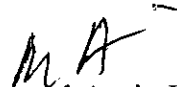
Counsel for the petitioner and Mr. Muhammad Shoukat, Lecturer alongwith Mr. Muhammad Bilal, Deputy District Attorney for the respondents present. Implementation report not submitted. Representative of the department requested for adjournment for filing of implementation report. Adjourned to 09.07.2019 for implementation report before S.B at Camp Court Abbottabad.



(Muhammad Amin Khan Kundi)  
Member  
Camp Court Abbottabad

09.07.2019

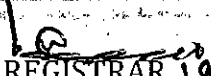


Counsel for the petitioner and Mr. Muhammad Asif, AD and Professor Malik Muhammad Saddique for the respondents present. Implementation report not submitted. Representative of the department requested for further adjournment. To come up for implementation report on 17.09.2019 before S.B at Camp Court Abbottabad.



(Muhammad Amin Khan Kundi)  
Member  
Camp Court Abbottabad

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_  
Execution Petition No. \_ 289/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	19.09.2018	The execution petition of Mr. Dilawar Khan submitted by Mr. Muhammad Arshad Khan Tanoli Advocate may be entered in the relevant register and put up to the Court for proper order please.   REGISTRAR 19/9/18.
2-	25-9-2018	This execution petition be put before Touring S. Bench at A.Abad on 13-11-2018
13.11.2018		Petitioner in person present. Due to retirement of the CHAIRMAN Hob'ble Chairman the Service Tribunal is incomplete. Tour to Camp Court Abbottabad has been cancelled. To come up for the same on 16.01.2019 at camp court Abbottabad.   Member A/Abad
16.01.2019		Petitioner in person present. Notice of the present execution petition be issued to the respondents for 18.03.2019. Adjourn. To come up for further proceedings on the date fixed before S.B at Camp Court Abbottabad.   Member Camp Court Abbottabad

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

*Execution Petition No. 289/2018*

CM No. \_\_\_\_\_/2018

IN

Service Appeal No. 1211/2016

Dilawar Khan son of Muhammad Farid, Cook Govt. Degree College Oghi,  
Tehsil Oghi, District Mansehra.

...APPELLANT

**VERSUS**

Director Higher Education Khyber Pakhtunkhwa Peshawar and another.

...RESPONDENTS

**EXECUTION PETITION**

**INDEX**

S. #	Description	Page Nos.	Annexure
1.	Execution Petition alongwith affidavit	1 to 3	
2.	Copies of impugned orders	4	"A"
3.	Copies of service appeal No. 1211/2016 and judgment of this Honourable Tribunal	5-24	"B" & "C"
4.	Wakalatnama	25	

*Dilawar Khan*

...APPELLANT

Dated; 15/9 /2018

Through

*(Muhammad Arshad Khan Tanoli)*  
Advocate High Court, Abbottabad

Muhammad Arshad Khan Tanoli  
Advocate High Court  
Office No. 33 Adjacent to  
... Abbottabad



①

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

*Execution Petition No. 289/2018*

CM No. \_\_\_\_\_/2018

IN

Service Appeal No. 1211/2016

Dilawar Khan son of Muhammad Farid, Cook Govt. Degree College Oghi,  
Tehsil Oghi, District Mansehra.

...**APPELLANT**  
Khyber Pakhtunkhwa  
Service Tribunal

**VERSUS**

Diary No. 1026

Dated 19.9.18

1. Director Higher Education Khyber Pakhtunkhwa Peshawar.
2. Principal Govt. Degree College Oghi, District Mansehra.

...**RESPONDENTS**

**APPLICATION**

EXECUTION PETITION IN SERVICE APPEAL NO.  
1211/16 DATED 29/06/2018

---

Respectfully Sheweth;-

1. That the appellant removed from service on 18/08/2009, due to absence for 2 days. Copies of impugned orders are attached as Annexure "A".
2. That the appellant finally filed service appeal No. 1211/2016 which was decided by this Honourable Tribunal on 29/06/2018. Copies of service appeal

2

No. 1211/2016 and judgment of this Honourable Tribunal are attached as Annexure "B" & "C".

3. That this Honourable Tribunal allowed service appeal by setting aside impugned removal from service order dated 17/11/2016 and further directed that; "The appellant is re-instated in service and the intervening period may be treated leave of the kind due".
4. That the appellant handed over the said judgment to the respondents for his reinstatement but respondents did not implement judgment dated 29/06/2018 of this Honourable Tribunal.

It is prayed that the judgment of this Honourable Tribunal dated 29/06/2018 may graciously be ordered to the executed by the respondents and the respondents may be directed to reinstate the appellant with all service back benefits, failing which, Contempt of Court proceeding may be initiated against them.

*D.A. Tanoli*

...APPELLANT

Through

Dated; 15/9 /2018

*(Muhammad Arshad Khan Tanoli)*  
Advocate High Court, Abbottabad

Muhammad Arshad Khan Tanoli  
Advocate High Court  
Office No. 33 Adjacent to  
Dist. Court Abbottabad

3

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

CM No. \_\_\_\_\_/2018  
IN  
Service Appeal No. 1211/2016

Dilawar Khan son of Muhammad Farid, Cook Govt. Degree College Oghi,  
Tehsil Oghi, District Mansehra.

**...APPELLANT**

**VERSUS**

Director Higher Education Khyber Pakhtunkhwa Peshawar and another.

**...RESPONDENTS**

**EXECUTION PETITION**

**AFFIDAVIT**

I, Dilawar Khan son of Muhammad Farid, Cook Govt. Degree College Oghi,  
Tehsil Oghi, District Mansehra, do hereby solemnly affirm and declare that  
the contents of foregoing application are true and correct to the best of my  
knowledge and belief and nothing has been concealed therein from this  
Honourable Court.

*Dilawar Khan*

**DEPONENT**

P-18

P-18


Office Of The Principal Govt. Degree College Oghi,  
District Mansehra.

Annex A

Office Order:

In the light of recommendation of the inquiry committee and in compliance of the orders passed by the honourable Khyber Pukhtoon Khawa, Services Tribunal, vide judgment dated 24/05/2011 in appeal No. 1967/2009 and after completion of all codal formalities and ascertaining the facts that official concerned remained willfully absent from his official duty unlawfully and without prior sanction of competent authority and is guilty of gross misconduct and negligence.

I, Biradar Khan, Principal, Govt. Degree College Oghi being in the capacity of competent authority, in exercise of powers U/S (3) of the Removal From Service (Special powers) ordinance 2000-2001, is pleased to impose the major penalty of Removal from Services upon Mr. Dilawar Khan (Cook) w.e.f. 18/08/2009.

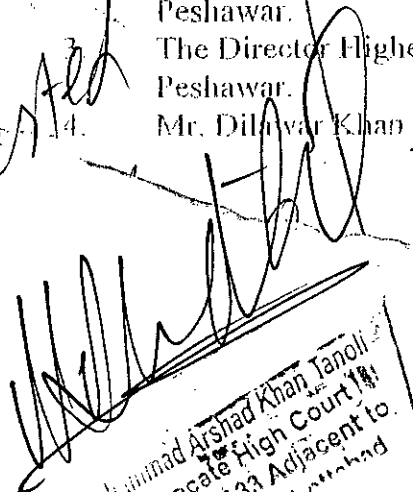
  
Principal  
Govt. Degree College Oghi.

Endst No. 1789-92 /Dated 21/06/2011

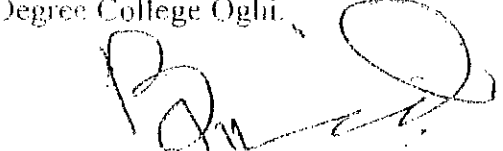
Copy of the above is forwarded to:

1. The Chairman Services Tribunal Khyber Pukhtoon Khawa, Peshawar.
2. The Secretary Higher Education Khyber Pukhtoon Khawa, Peshawar.
3. The Director Higher Education, Khyber Pukhtoon Khawa, Peshawar.
4. Mr. Dilawar Khan (Cook), Govt. Degree College Oghi.

Attested



Muhammad Arshad Khan Janoli  
Advocate High Court  
Office No 33 Adjacent to  
for Attestation

  
Principal  
Govt. Degree College Oghi.

Retrospective

1

(5)

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

Annex "B"

Service Appeal No. \_\_\_\_\_/2016

Dilawar Khan son of Muhammad Farid Cook Govt. Degree College Oghi,  
Tehsil Oghi, District Mansehra.

*Dilawar Khan*  
....APPELLANT

**VERSUS**

1. Govt. of Khyber Pakhtunkhwa, through Secretary Higher Education KPK Peshawar.
2. Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
3. Principal Govt. Degree College Oghi.

....RESPONDENTS

**SERVICE APPEAL** UNDER SECTION 4 OF  
KPK SERVICE TRIBUNAL ACT, 1974, FOR  
DECLARATION TO THE EFFECT THAT THE  
APPELLANT WAS REMOVED FROM  
SERVICE VIDE IMPUGNED ORDER NO. 1789-  
99 DATED 21/06/2011 BY RESPONDENT NO.

*Submitted*

*Muhammad Arshad Khan Janoli*

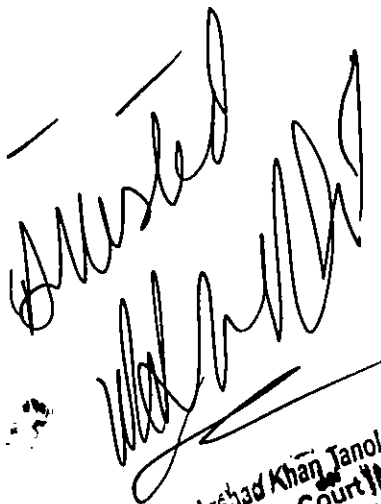
Muhammad Arshad Khan Janoli  
Advocate High Court  
Office No 33 Adjacent to  
Dist. Bar Abbottabad

3. WHICH IS AGAINST THE LAW, RULES AND PRECEDENT CASE LAW REPORTED 2008 SCMR 2014 AND 1995 SCMR 776, AND IMPUGNED REMOVAL FROM SERVICE ORDER 21/06/2011 IS LIABLE TO BE SET ASIDE.

---

**PRAYER:** ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, OF THE APPELLANT, IMPUGNED REMOVAL FROM SERVICE ORDER NO. 1789-92 DATED 21/06/2011 MAY GRACIOUSLY BE DECLARED VOID AND THE SAME MAY BE SET ASIDE AND RESPONDENTS DEPARTMENT MAY BE DIRECTED TO RE-INSTATE THE APPELLANT IN SERVICE WITH ALL BENEFIT IN TERMS OF PAY ETC. BESIDES SALARY W.E.F 11/08/2009 TO TILL DATE MAY ALSO BE PAID TO THE APPELLANT. ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEM APPROPRIATE IN THE CIRCUMSTANCES MAY ALSO BE GRANTED.

---

  
Muhammad Arshad Khan Janoli  
Advocate High Court  
Office No 33 Adjacent to  
Ditch For Abbottabad

(7)

Respectfully Sheweth: -

1. That the appellant was serving as Cook in Govt. Degree College Oghi. Copy of appointment letter is attached as annexure "A".
2. That the appellant was relieved of from duties on 11/08/2009 without any order and was directed to report to the office of respondent No. 2 the respondent No. 2 directed respondent No. 3 to settle the matter of appellant at his own. Copy of order is attached as Annexure "B".
3. That the appellant challenged the relieving chit 11/08/2009 in the Honourable Service Tribunal Peshawar vide civil appeal No. 1967/2009. Copy of service appeal is attached as Annexure "C".
4. That the Honourable Service Tribunal directed the respondents to conduct fresh inquiry against the appellant and pay salary

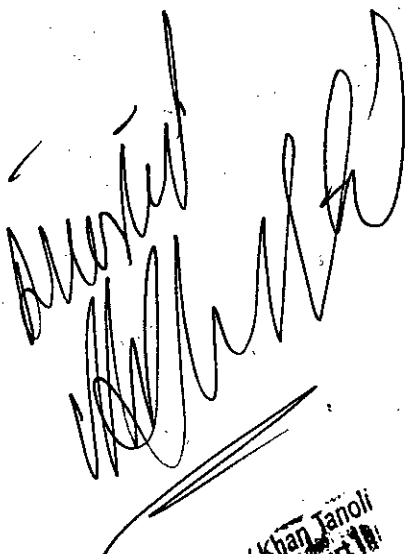
*Arshad*  
*Muhammad Arshad Khan Tanoli*  
Muhammad Arshad Khan Tanoli  
Advocate High Court  
Office No 33 Adjacent to  
Dist Bar Abbottabad.

vide order dated 24/05/2011 is attached as Annexure "D".

5. That instead of fresh inquiry respondent No. 3 removed appellant from service without show cause notice, personal hearing, charge sheet and statement of allegation vide impugned removal from service order No. 1789-92 dated 21/06/2011. Copy of impugned removal from service order No. 1789-92 dated 21/06/2016 is attached as Annexure "E".

6. That the appellant filed another service appeal No. 1790/2011 before this Honourable Tribunal. Copy of service appeal No. 1790/2011 is attached as Annexure "F".

7. That this Honourable Tribunal again directed respondent No. 1 to decide the departmental appeal which was previously addressed to DCO within a period of one month vide order dated 19/01/20016. Copy of order is attached as Annexure "G".



Muhammad Arshad Khan Janoli  
Advocate High Court  
Office No 33 Adjacent to  
Dist. Court Abbottabad



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8. That in the mean while, the appellant submitted order of this Honourable Tribunal to respondents on 28/01/2016. Copies of application alongwith registered receipts are attached as Annexure "H".

9. That the appellant was directed by the respondents to file fresh departmental appeal vide letter No. 994 dated 13/08/2016. Copies of letter No. 994 dated 13/08/2016 and departmental appeal are attached as Annexure "I" & "J".

10. That without considering the appeal of the appellant respondent No. 2 regretted the departmental appeal vide dated 17/11/2016. Copy of rejection of departmental appeal letter dated 17/11/2016 is attached as Annexure "K".

Muhammad Arshad Khan Tanoli  
Advocate High Court  
Office No 33 Adjacent to  
Abbottabad

11. That during pending of decision on departmental appeal as per direction of this Honourable Court, the petitioner filed COC No. 55/18 in service appeal No.

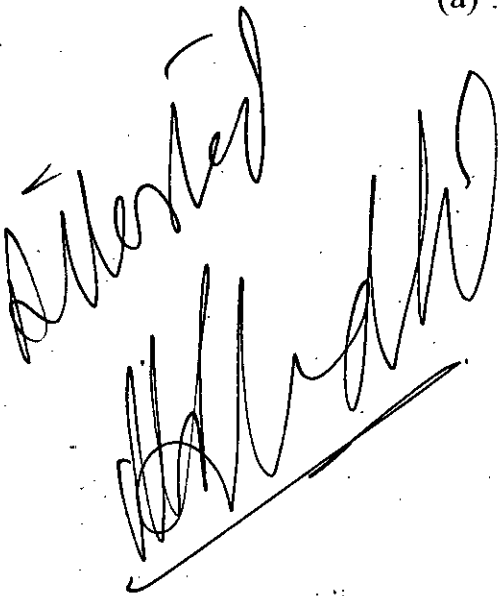
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1790/2011. Copy of COC is attached as Annexure "L".

12. That on receipt and production of rejection of appeal letter dated 17/11/2016, before this Honourable Tribunal, COC against respondent No. 1 was dismissed with the direction to file fresh appeal vide order dated 22/09/2016. Copy of order of this Honourable Court is attached as Annexure "M". Hence the instant service appeal is fixed inter-alia on the following grounds.

**GROUND:-**

- (a) That the impugned removal from service order dated 21/06/2011 is arbitrary, discriminatory, malafide, perverse against the precedent of case law settled by the apex courts reported 2008 SCMR 2014 and 1995 SCMR 776. Copies of judgments of august Supreme Court of Pakistan are attached as Annexure "N".



Muhammad Arshad Khan Jarril  
Advocate High Court  
Office No 33 Adjacent to  
Dist. Office Abbottabad

(b) That another similar employee Dildar Ahmed Sweeper has been re-instated alongwith others except the appellant which is discriminatory and against the law.

(c) That the appellant was removed from service merely on the allegation of so-called absence from service for 2 days. The appellant is crying at the top of his voice for redressal of his grievances almost on the all fora as well as in this Honourable Tribunal since 11/08/2009 to till date but respondents turned to deaf ear to the humble requests of the appellant.

(d) That show cause notice and inquiry reports arbitrarily conducted against the appellant is attached as Annexure "O".

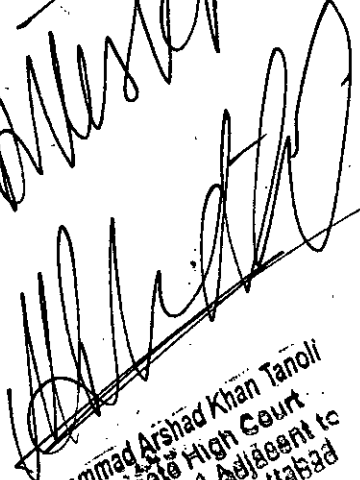
(e) As per direction of this Honourable Tribunal dated 24/11/2011, no denovo departmental inquiry was conducted

Muhammad Iqbal Anwar Jandali  
Advocate High Court  
Office No. 33 Adjacent to  
Bottabad

by the respondent and the appellant has not been treated according to the norms of justice as well as Article 25 of the Constitution. The appellant is also entitled to be treated alike and hence, the appellant is entitled to be re-instant in service.

(f) That the respondents department has led the petitioner to the place which is utterly unknown to the principle of natural justice and fair play.

(g) That as per direction of this Honourable Tribunal salary for the period of suspension of the appellant has not so far been paid to the appellant which amounts to misconduct as well as disobedience of order of this Honourable Tribunal.

*Arshad*  
  
Muhammad Arshad Khan Tanoli  
Advocate High Court  
Office No. 33 Adjacent to  
31st Bar Abbottabad

It is, therefore, humbly prayed that on acceptance of the instant service appeal, of the appellant, impugned removal from service order No. 1789-92 dated 21/06/2011 may graciously be

declared void and the same may be set aside and respondents department may be directed to reinstate the appellant in service with all benefit in terms of pay etc. Besides salary w.e.f 11/08/2009 ✓  
to till date may also be paid to the appellant. Any other relief which this Honourable Tribunal deem appropriate in the circumstances may also be granted.

*Dil*  
...APPELLANT

Through

Dated: \_\_\_\_\_/2016

*Muhammad Arshad Khan Tanoli*  
(Muhammad Arshad Khan Tanoli)  
Advocate High Court, Abbottabad

**VERIFICATION:-**

Verified on oath that the contents of forgoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

*Dil*  
*Tanoli*  
...APPELLANT

*Muhammad Arshad Khan Tanoli*

Muhammad Arshad Khan Tanoli  
Advocate High Court  
Office No: 33 Adjacent to  
New Court Building

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

Service Appeal No. \_\_\_\_\_/2016

Dilawar Khan son of Muhammad Farid Cook Govt. Degree College Oghi,  
Tehsil Oghi, District Mansehra.

*D.K.*  
....APPELLANT

**VERSUS**

Govt. of Khyber Pakhtunkhwa, through Secretary Higher Education KPK  
Peshawar and others.

....RESPONDENTS

**SERVICE APPEAL**

**AFFIDAVIT**

I, Dilawar Khan son of Muhammad Farid Cook Govt. Degree College Oghi,  
Tehsil Oghi, District Mansehra, do hereby solemnly affirm and declare that  
the contents of forgoing appeal are true and correct to the best of my  
knowledge and belief and nothing has been concealed therein from this  
Honourable Court.

**DEPONENT**

Identified by;

*Muhammad Arshad Khan Tanoli*  
(Muhammad Arshad Khan Tanoli)  
Advocate High Court, Abbottabad

*Muhammad Arshad Khan Tanoli*  
Muhammad Arshad Khan Tanoli  
Advocate High Court  
Office No 33 Adjacent to  
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(15) 1

Annex 2 25

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT, ABBOTTABAD.



Service appeal No. 1211/2016

Date of institution ... 27.07.2016  
Date of decision .... 29.06.2018

Dilawar Khan son of Muhammad Farid, Cook Govt. Degree College Oghi, Peshawar District, District Mansehra. ... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary Higher Education Department, Khyber Pakhtunkhwa, Peshawar and 2 others. ... (Respondents)

Mr. Muhammad Arshad Khan Tanoli, Advocate ... For appellant.

Mr. Ziaullah, Deputy District Attorney ... For respondents.

MR. SUBHAN SHER, ... CHAIRMAN  
MR. AHMAD HASSAN, ... MEMBER.

**ATTESTED**

JUDGMENT

SUBHAN SHER, CHAIRMAN:-

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Stated here the short facts of the appeal in hand are that the appellant was serving as Cook in the respondent-department. On 27.04.2009, he remained absent from duty, so the respondents, keeping in view the importance and sensitivity of work of the appellant being a Cook in the hostel, he was suspended from service and his services were also placed at the disposal of Director Higher Education, Peshawar. So the appellant aggrieved from the said order impugned before this Tribunal vided service appeal no. 1967/2009 dated 24.05.2011 which was disposed off but with the directions to the respondents to pass the final order after adopting the legal procedure as prescribed under the law. When the matter reached to the respondents, they did not take any legal step.

MS  
27.06.2018  
[Signature]

however, passed the impugned order dated 21.06.2011 whereby he was removed from service w.e.f 18.08.2009. Again this order was impugned before this Tribunal and this time too, the appeal was allowed on 19.01.2016 and the impugned order was set aside with the direction to the appellant to approach to the department within one month with further direction to the competent authority to dispose off the appeal of the appellant within one month. Again the respondents without taking proper, action passed the impugned order dated 17.11.2016 and the request in appeal was also regretted. So for the 3<sup>rd</sup> time, the appellant approached this Tribunal through instant appeal.

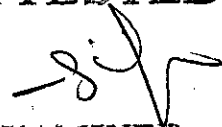
2. Arguments heard and record perused.

3. Mr. Muhammad Arshad Khan Tanoli, Advocate, counsel for the appellant contended that the appellant has been removed from service but without complying with the procedure as laid down in the Khyber Pakhtunkhwa Government Servant (E&D) Rules 2011. Further contended that the respondents were legally bound to conduct full fledged enquiry and give him opportunity of hearing and thereafter pass the order but they violated all the prevalent rules and regulation on the subject. He placed reliance on 1995 SCMR 776 and requested to set aside the impugned order and reinstate the appellants with all back benefits.

4. Mr. Ziaullah, Deputy District Attorney with the assistance of Mr. Malik Muhammad Saddique, Litigation Officer strongly opposed the contentions of the learned counsel for the appellant and argued that show cause notice given in 2009 and the enquiry was also conducted and in this way, the proceedings were conducted in accordance with the law. He requested the Tribunal to dismiss the appeal.

5. After hearing the parties and consulting the available record, on one hand, the contention of the learned counsel for the appellant seems to be roust as on the record,

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

(1) H u 28 6 2016



there is nothing to show that before imposing major penalty of removal from service, respondents had conducted an enquiry served charge sheet or statement of allegations and thereafter, given show cause notice but straightaway passed the impugned order and that too, w.e.f 18.08.2009. This order itself is invalid in the eyes of law for the omissions committed by the respondents particularly when it has been passed on 17.11.2016 but it was given retrospective effect from 18.08.2009. This view is supported by the numerous judgments of the august Superior Courts. Apart from this, the appellant has been punished for the absence of two days and as per judgment of the august Supreme Court of Pakistan 1995 SCMR 776, it was held that absence from duty for period less than a week, major penalty cannot be imposed

6. The pith of the foregoing discussion is that taking into consideration the arguments of the parties and going through the available record and taking guidance from the worthy rulings on the subject, the appeal is allowed and impugned order dated 17.11.2016 is set aside. The appellant is reinstated in service and the intervening period may be treated as "leave of the kind due". In the circumstances of the case, parties shall bear their own costs. No order as to costs. File be consigned to the record room.

Sd-

Subhan Sher  
Chairman  
campus A - Abad

Sd  
Ahmad Hassan  
member

Certified to be true copy  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 10-9-2018  
 Number of Words 1200  
 Copying Fee 8-0  
 Urgent 2-0  
 Total 10-0  
 Name of Copyist Saidullah  
 Date of Completion of Copy 10-9-2018  
 Date of Delivery of Copy 10-9-2018

~~P-10~~ (18)



S.No. of order or proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
08	24.05.2011	<p style="text-align: center;">Appeal No.1967/2009 ✓ (Dilawar Khan-vs-Secretary Higher Education Peshawar etc.)</p> <p>Counsel for the appellant and Mr.Misbah-ud-Din, Librarian on behalf of the respondents with Mr.Tahir Iqbal, AGP present. Arguments heard at some length, and record perused.</p> <p>The grievance of the appellant, Dilawar Khan, a Cook in the Government Degree College Oghi, District Mansehra, is twofold, namely: his suspension and stoppage of pay.</p> <p>The respondents, in their written reply/comments, have alleged that departmental proceedings have been initiated against the appellant for his continuous and wilful absence from duty, and, further, that though the pay was initially stopped but has later on been released. The learned AGP referred to Annexure-K, in this respect, and stated that the Principal, Government Degree College, Oghi has already asked the Manager National Bank of Pakistan Oghi, vide his memo. dated 18.8.2009, to release pay of the appellant alongwith another.</p> <p>Notwithstanding the fact that suspension is not a final order within the meaning of section 4 of the NWFP (Khyber Pakhtunkhwa) Service Tribunals Act, 1974 and hence not appealable, the respondents have also adopted a novel way of relieving the appellant to report to the Director Higher Education Department, at the conclusion of departmental proceedings, instead of passing an appropriate order under the provisions of law. Therefore, on the one hand, the respondents are directed to conclude departmental proceedings against the appellant in accordance with law within shortest possible time, including, passing a final order under the law, but not later than a month from the receipt of the order; and, on the other, they should also ensure release of pay of the appellant by the</p>

*[Handwritten signatures and scribbles]*

Office No. 33 Adjacent to District Court, Peshawar

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

*[Handwritten signature]*

for the purpose. This exercise should also be undertaken within the period specified above. The appellant may have recourse to legal remedy available to him under the law if he is aggrieved of the final order of the authority. The appeal is disposed of in the above terms, with no order as to costs.

**ANNOUNCED**

24.05.2011

(Syed Manzoor Ali Shah)  
Member

(Qalandar Ali Khan)  
Chairman

Camp Court Abbottabad

Certified to be true copy

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 26-5-2011  
 Number of Words 800  
 Copying Fee 6-00  
 Total 6-00  
 Name of Copyist 7  
 Date of Completion of Copy 30-5-2011  
 Date of Delivery of Copy 30-5-2011

District Bar Abbottabad

Muhammad Arshad Khan Janoli  
Advocate High Court  
Office No. 33 Adjacent to  
Dist Bar Abbottabad

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AMW

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P-28 (20)

The Secretary  
Higher Education  
KPK Peshawar

Director Higher  
Education KPK  
Peshawar.

✓ Principal Govt.  
Degree College Oghi.

*[Faint handwritten notes and scribbles]*

DEPARTMENTAL APPEAL AS PER DIRECTION OF  
HONOURABLE SERVICE TRIBUNAL KPK DATED  
22/09/2016

pected Sir,

1. That the applicant/ appellant was removed from service on 27/04/2009 from Govt. Degree College Oghi. The appellant filed service appeal before the Honourable service tribunal for redressal of his grievance. As per law, on the basis of so called absence, for two days, the appellant can not be removed from service as the appellant was on leave on 27/04/2009.
2. That the Honourable Service tribunal again converted service appeal of the appellant as departmental appeal and directed the Deptt to decide appeal of the appellant within one month vide order dated 19/01/2016 and 22/09/2016. Copies of order of service tribunal KPK one attached.

It is prayed that service record of the appellant may graciously be looked into and after accepting the appeal, the appellant may be re-instated in service with all service back benefits in terms of pay etc.

Your Obediently  
*Dilawar Khan*  
ex COOK Q.D.C. Oghi  
(DILAWAR KHAN)

*[Handwritten signature: Arshad]*  
*[Handwritten signature: Muhammad Arshad Khan]*

Muhammad Arshad Khan Tanoli  
Advocate High Court  
Office No 33 adjacent to  
District Office Peshawar

8/10/16 /2016

received  
eg

provide the Reg Receipts to  
this office that sent to the  
Secretary & Director Higher Edu.  
KPK Peshawar. *[Signature]* 12/10/16



**DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA,  
KHYBER ROAD PESHAWAR**

Phone # 091-9210242, 9211025/Fax # 9210215

21

No. 30887 /CA-VII/Estt; Branch/A-167/ Dated Peshawar the 17/11 /2016

The Principal,  
GDC, Oghi(Mansehra).

*P. 20*  
*[Handwritten signatures and scribbles]*

**SUBJECT: DEPARTMENTAL APPEAL AS PER DIRECTIONS OF HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, DATED 22.04.2016.**

Memo:

I am directed to refer to your letter No.1076 dated 04.10.2016, on the subject noted above and to inform Mr. Dilawar Khan, Ex-Cook, GDC, Oghi, Mansehra that his request for re-instatement is hereby regretted.

*[Signature]* 16/11/16  
BY: DIRECTOR (ESTABLISHMENT)

Encl.No

30888

Copy of the above is forwarded to the Section Officer (Litigation) Govt: of Khyber Pakhtunkhwa, Higher Education Department, Peshawar w/r to his letter No.SO(Lit)HED/2-101/SA# 55/2016 Dilawar Khan/2741-42 dated 18.10.2016,

*[Signature]* 16/11/16  
BY: DIRECTOR (ESTABLISHMENT)

*[Handwritten signature]*

*[Handwritten signature]*  
Muhammad Ashraf Khan Talwar  
Advocate High Court  
Office No: 33 Adjacent to  
Distt Bar Abbottabad



**GOVT. DEGREE COLLEGE OGI DISTRICT MANSEHRA.**

Phone # 0997 320014 email: [govt.degreecollegeoghi@yahoo.com](mailto:govt.degreecollegeoghi@yahoo.com) / [gdcoghi@gmail.com](mailto:gdcoghi@gmail.com)



No. 1154/1

Dated: 23/11/2016

To

Mr. Dilawar Khan,  
Ex. Cook,  
Govt. Degree College Oghi.

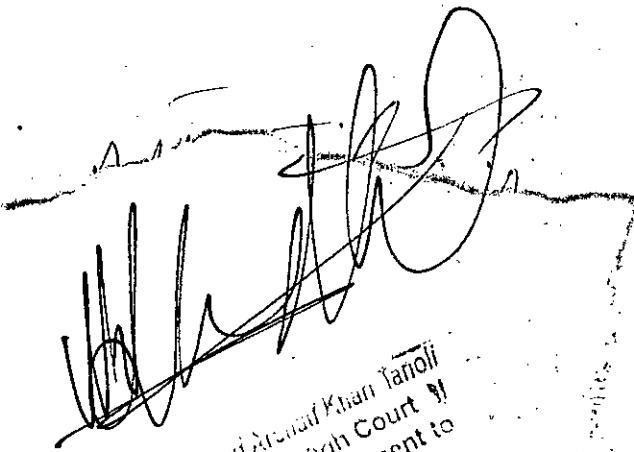
Subject: Departmental Appeal As PER DIRECTIONS OF HONORABLE SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA, DATED 22-04-2016.

Memo

Copy of the overleaf i.e. letter No. 30887/CA-VII/Estt Branch/A-167 dated Peshawar the 17/11/2016 regarding Departmental Appeal as per directions of the honourable Service Tribunal Khyber Pakhtunkhwa, Peshawar dated 22-04-2016 issued by the Dy. Director Establishments Directorate of Higher Education Peshawar is forwarded to you for your information

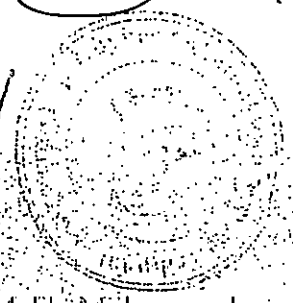
Principal

Govt. Degree College Oghi

  
Muhammad Arshad Khan Tanoli  
Advocate High Court  
Office No: 33 Adjacent to  
Distt Bar Abbottabad

22 M

Appeal No. 1790/2011  
E.P. No. 55/2016



22.09.2016

Petitioner in person; M/S Prof. Malik Muhammad Siddique and Muhammad Shaukat Awan, Focal person along with Mr. Muhammad Siddique, Sr.GP for the respondents present. Learned Sr.GP informed the Tribunal that respondent No. 1 has not received any departmental appeal till date from the office of respondent No. 2. Representatives of the respondents, as well as learned Sr.GP suggested that the petitioner can provide a copy of the said appeal which shall be transmitted to respondent No. 1 within a week.

In view of the afore-stated position it is directed that the petitioner shall submit a copy of the said departmental appeal to respondent No. 2 for further transmission to respondent No. 1 and in case the petitioner is not in a position to supply a copy of departmental appeal then he shall submit a fresh departmental appeal which shall be transmitted to respondent No. 1 by respondent No. 2. To come up for further proceedings on 24.11.2016 before S.B. at camp court, Abbottabad.

Sd/-  
Chairman  
Camp Court  
Abbottabad

Arshad Khan Tanoli  
Advocate High Court

Certified to be true copy  
Sd/-  
Khushnawaz Khan  
Secretary Tribunal  
Peshawar

Date of presentation 28-9-16  
Number of copies 6800  
Urgency 8  
28-9-16  
28-9-16

Muhammad Arshad Khan Tanoli  
Advocate High Court  
Office No. 33 Adjacent to  
1st St. 9th Abbottabad

P-12

Arshad Khan

Arshad Khan

Office of the Principal Govt. Degree College Oghi District Manshera.

No. 276

Dated: 11/8 /2009.

To

Mr. Dilawar Khan

Hostel Bearer.

Govt Degree College Oghi.

Subject: Relieving Chit.

Memo:

Consequent upon the report of the enquiry committee of college council your services are no more required in this institution. You are hereby relieved from your duties and directed to report to the Worthy Director Higher Education P.W.F.P Peshawar with immediate effect.

*Signature*  
Principal.

Govt. Degree College Oghi.

Encl: No. 277-78 / Dated: 11/8 /2009

Copy to:

1. Worthy Director Higher Education P.W.F.P Peshawar for favour of further necessary action please.
2. The Hostel Warden to

*Arshad Khan*  
*Signature*

*Signature*  
Principal

Govt. Degree College Oghi.

Muhammad Arshad Khan, Tanoli  
Advocate High Court  
Office No. 33 Adjacent to  
Dist Manshera



(24)

محرمیت صواب ڈائریکٹر صواب کابینہ ایجوکیشن سوات

عنوان درخواست خیر احوال کے بیان کے سروس سائل بمطالعہ منسلک سروس ٹریبونل

تاریخ 29/6/18

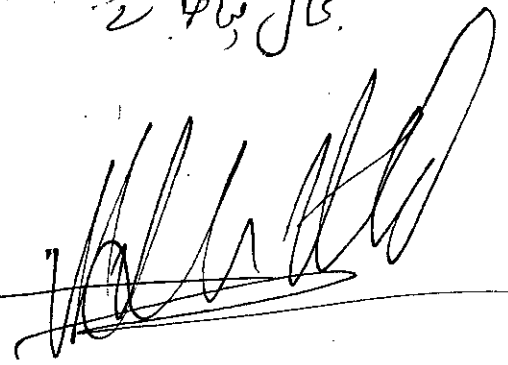
صواب عالی درخواست ذیل ہے۔

1۔ یہ کہ سائل صواب کے ڈائریکٹر کے طور پر ملرز میں کمرتا تھا۔ سائل کو ملرز میں سے بہداشت کیا گیا، سائل نے سروس ٹریبونل سے درخواست کی کہ

2۔ یہ کہ سائل کو سروس ٹریبونل نے مقدمہ منسوخ کرنے کے بعد ملرز میں بحال کر دیا ہے نقل منسلک ہے درخواست ہے۔

لینڈ اسٹریٹجی سائل کو جملہ قواعد و ضوابط کے تحت ملرز میں بحال کیا جائے۔

المقررہ 8/7/18



سائل دالہ خان ولد محمد فرید ساکنہ ادنیٰ مسالقم ننگ و رعیت ڈگری کالج ادنیٰ

کامی اطلاع و تعمیری کارروائی

ڈائریکٹر ڈگری کالج ادنیٰ

کورٹ فیس

# وکالت نامہ (۹۵)

بعدالت ضمایم سروس پریہنل لیسٹ اور  
عنوان: دلاور خان بنام ڈائریکٹر پائپر ایجوکیشن و ملچ

منجانب: اجرائی لیسٹ

نوعیت مقدمہ:

## باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آل مقام  
صدر ایڈووکیٹ جنرل دلاور خان شہنوی ریسٹریکٹڈ لیسٹ اور  
کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل  
صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری  
کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت  
ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی  
بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا  
ساختہ پرداختہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے  
مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہوا  
حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں  
کوئی جز و بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست برادر  
استجارت نالش بصیغہ مفلسی کے دائر کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

Accepted

المرقوم: ۱۵/۱۱/۱۸

بمقام

M. Amal Khan  
Civil Ad.

27

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT, ABBOTTABAD.**

EP # 289/2018  
in  
S.A # 1211/2016

Dilawar Khan.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa  
Through Director, Higher Education  
and others.....Respondents.

**SUBJECT: REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENTS  
NO. 1, AND 2.**

**Respectfully Sheweth: -**

- 1) Correct.
- 2) Correct.
- 3) Correct.
- 4) It is worth to mention that respondent department filed civil petition for leave to appeal (CPLA) in the apex court of Pakistan against the Judgment dated: 29/6/2018 passed by this Honourable Tribunal and date of hearing is not yet fixed.

**Prayers: -**

It is, therefore, humbly prayed that the CPLA is pending for adjudication before Supreme Court of Pakistan, hence execution proceedings may be stopped till final disposal of the instant case.

  
**Director,**

Higher Education Department  
Respondent No. 01

  
**Principal,**

Government Degree College Oghi Mansehra  
Respondent No. 02

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT, ABBOTTABAD.**

EP # 289/2018  
in  
S.A # 1211/2016

Dilawar Khan..... Appellant

Versus

Govt. of Khyber Pakhtunkhwa  
Through Director, Higher Education  
and others..... Respondents.

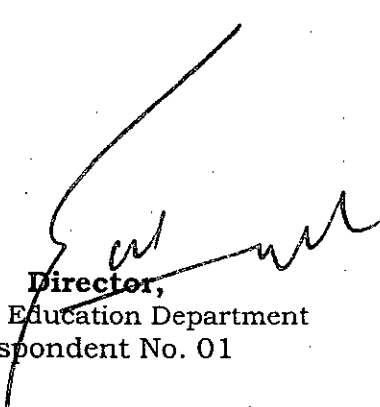
**SUBJECT: REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENTS  
NO. 1, AND 2.**

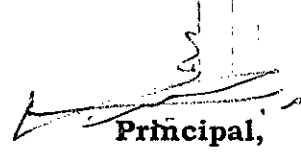
**Respectfully Sheweth: -**

- 1) Correct.
- 2) Correct.
- 3) Correct.
- 4) It is worth to mention that respondent department filed civil petition for leave to appeal (CPLA) in the apex court of Pakistan against the Judgment dated: 29/6/2018 passed by this Honourable Tribunal and date of hearing is not yet fixed.

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**Director,**  
Higher Education Department  
Respondent No. 01

  
**Principal,**  
Government Degree College Oghi Manshra  
Respondent No. 02

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT, ABBOTTABAD.**

EP # 289/2018  
in  
S.A # 1211/2016

Dilawar Khan.....Appellant  
Versus

Govt. of Khyber Pakhtunkhwa  
Through Director, Higher Education  
and others.....Respondents.

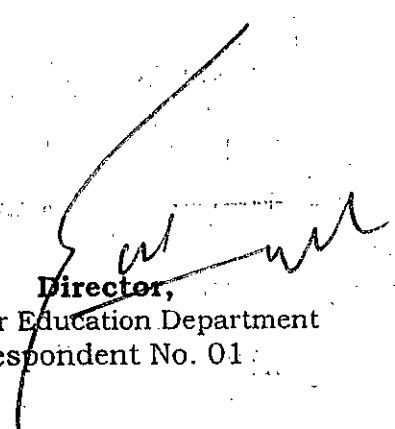
**SUBJECT: REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENTS  
NO. 1, AND 2.**

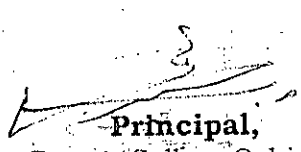
**Respectfully Sheweth: -**

- 1) Correct.
- 2) Correct.
- 3) Correct.
- 4) It is worth to mention that respondent department filed civil petition for leave to appeal (CPLA) in the apex court of Pakistan against the Judgment dated: 29/6/2018 passed by this Honourable Tribunal and date of hearing is not yet fixed..

**Prayers: -**

It is, therefore, humbly prayed that the CPLA is pending for adjudication before Supreme Court of Pakistan, hence execution proceedings may be stopped till final disposal of the instant case.

  
**Director,**  
Higher Education Department  
Respondent No. 01

  
**Principal,**  
Government Degree College Oghi Manshara  
Respondent No. 02



No. 331-40

Dated. 03/06/2019

**NOTIFICATION**

**Conditional Re-instatement Order**


In Compliance with directorate Higher Education Peshawar, letter No.11009/AD (Lit) S.A No.1790/11 dated 20-05-2019 and the judgment of service tribunal court order vide diary No. 102b dated 18-03-2019.

The undersigned being competent authority is pleased to re-instate Mr. Dilawar Khan s/o Muhammad Fareed on the post of Bearer against vacant post at GDC Oghi w.e.f 22-05-2019, with the condition that he shall abide by the forthcoming decision of Supreme Court under CPLA (ref. DHE/AD(Lit)No. 27037 dated 19-10-2018) . It is further stated that he shall not claim this order as permanent/regular.

Moreover Mr. Dilawar Khan shall abide by the surety bond Ref. No.1626 dated 03-06-2019 that he has submitted at this office and copy of surety bond is annexed with this order.

**TERMS AND CONDITIONS:**

- i. This re-instatement order is subject to the forthcoming decision of Supreme Court under CPLA (ref. DHE/AD (Lit) No. 27037 dated 19-10-2018).
- ii. The appointee, Mr. Dilawar Khan shall be entitled to draw his salary against BPS-1 along with fixation as per salary last drawn.
- iii. He can join the duty within 30 days of the issuance of this letter failing which, the reinstatement order shall stand null and void.

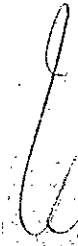
  
Principal  
Govt. Degree College  
Oghi (Mansehra)

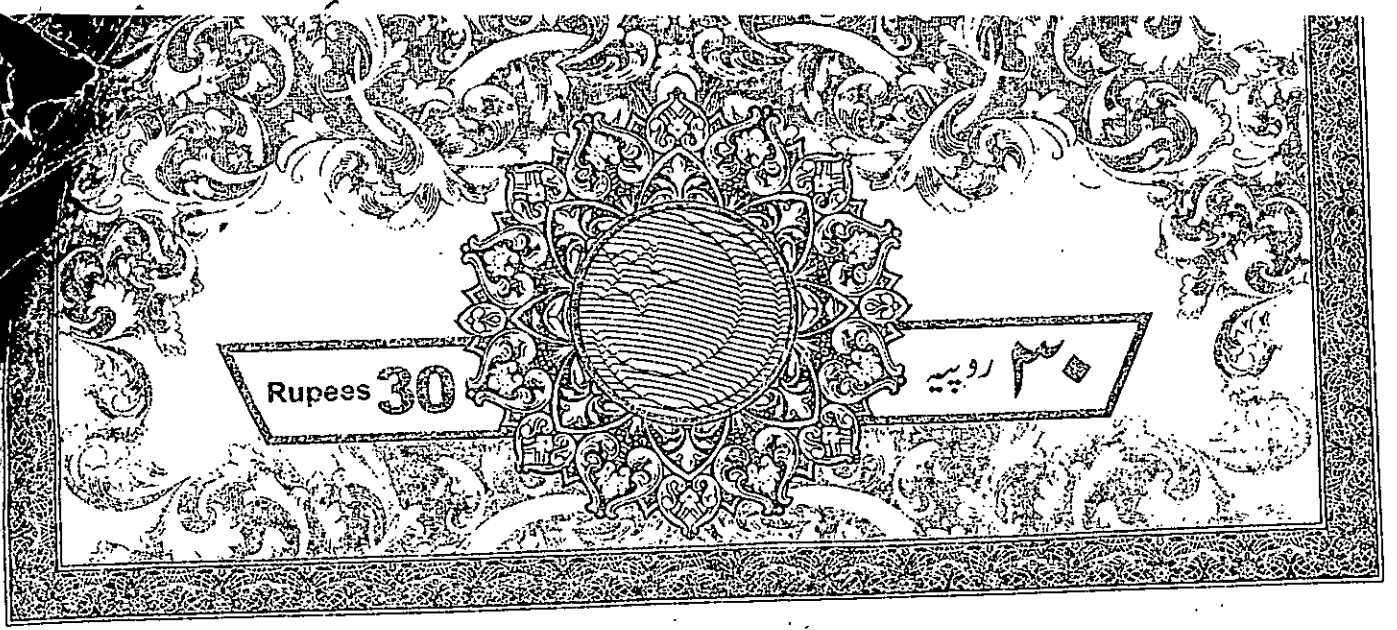
Endst. No. 331-40

**Copy to:**

1. Director Higher Education Peshawar.
2. Registrar KPK Service Tribunal Peshawar.
3. Additional Advocate General, KPK, Tribunal Peshawar.
4. Deputy Director (IT), Local Directorate with the remarks to electronically circulate the letter to concerned.
5. Section Officer (Lit), Higher Education Department, KPK.
6. Assistant Director (Lit), Local Directorate.
7. CA-VII Establishment Branch Local Directorate.
8. District Account Office Mansehra.
9. The appointee Dilawar Khan.
10. The Master File for Office Record







بازار صلیبی

مذکورہ سی دلدور خان ولد محمد قمر بدست سند و آباد اولی تحصیل اولی  
 ضلع مانٹروہ ماہیوں - محلہ بنانی پور نہ من مقرر در Cook "گراؤنڈ" Bearer  
 ڈگری کاہم تحصیل اولی ضلع مانٹروہ ماہیوں - خود دیتا ہوں نہ من مقرر کو  
 حکم شہر نے جسے Rein state اور قبریں 2015 سروس  
 فریونٹ ٹیمپ کوورٹ آسید آباد دبا ہے۔ من مقرر بنانی پور  
 انٹر منیجر سپریم کوورٹ آف پالٹنن نے سروس ایمل / منظم ہوتی  
 من مقرر خانہ فرما ہا تو من مقرر نوری سے بر خاصہ سہرا جاتا ہے  
 اس کی رنگا ہر تحقیق ہے اور نہ ہی من مقرر بنانی پور ہے۔ بازار صلیبی  
 نیا روہڑی سٹیشن اور ہے۔ 03/6/2019

گواہ  
 (1) ناکر علی خان ولد محمد قمر  
 سرگنڈہ مانٹروہ ضلع مانٹروہ  
 شہر صلیبی بازار 7-3374589-13504  
 (2) نام ایچا دلدور خان  
 سیکرٹری خانہ کوٹلہ اور  
 وزارت نہ لکھی ضلع مانٹروہ  
 شہر صلیبی بازار 5-7771693-13504  
 19  
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ATTESTED  
 Waheed Ahmad Khan  
 Cell Commissioner  
 No. 3/19

دلدور خان / فرمایا  
 13504-7850662-5  
 Dir  
 Tense

03/19/2019  
D. J. Williams

4526

03.8.2019



DJW





**DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA  
KHYBER ROAD, PESHAWAR**

Tel # 091-9210242 / 9211025 Fax # 091-9210215  
E-mail:- [dhekpkpesh@gmail.com](mailto:dhekpkpesh@gmail.com) Facebook.com/dhekppeshawar Twitter.com/dhekppeshawar1

No. 11008 / AD(Lit)/S.A.No.1790/11 (Dilawar Khan) Dated Peshawar the 20/5 /2019

To

✓ The Principal,  
Govt. Degree College,  
Oghi (Mansehra).

Subject: - EP NO. 289/2018 IN SA # 1211/2016 TITLED DILAWAR KHAN,  
COOK VS GOVT. OF KHYBER PAKHTUNKHWA

Memo,

I am directed to refer to the subject noted above and to enclose herewith a copy of order sheet dated 18-03-2019 with the remarks to conditionally reinstate Mr. Dilawar Khan, Cook subject to the decision of Supreme Court of Pakistan wherein CPLA has been filed by this department.


The conditional reinstatement will be subject to the production of surety bond on the judicial stamp paper, wherein the appellant will submit written statement that he will abide by the final decision of the Supreme Court and will not claim this order as permanent/regular appointment.

  
(Muhammad Yftukhan)  
DEPUTY DIRECTOR

Endst.No \_\_\_\_\_ / AD(Lit)/S.A.No.1790/11 (Dilawar Khan)

Copy of the above is forwarded to the:

1. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. Additional Advocate General, Khyber Pakhtunkhwa, Service Tribunal Peshawar.
3. Deputy Director (IT), Local Directorate with the remarks to electronically circulate the letter to concerned.
4. Section Officer (Lit), Higher Education Department, Khyber Pakhtunkhwa.
5. Assistant Director (Lit), Local Directorate.
6. CA-VII Establishment Branch Local Directorate.

  
DEPUTY DIRECTOR

U

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

*Execution Petition No. 289/2018*

CM No. \_\_\_\_\_/2018

IN

Service Appeal No. 1211/2016

Dilawar Khan son of Muhammad Farid, Cook Govt. Degree College Oghi,  
Tehsil Oghi, District Mansehra.

...APPELLANT

Khyber Pakhtunkhwa  
Service Tribunal

VERSUS

Diary No. 1026

Dated 19.9.18

1. Director Higher Education Khyber Pakhtunkhwa Peshawar.
2. Principal Govt. Degree College Oghi, District Mansehra.

...RESPONDENTS

**APPLICATION**

EXECUTION PETITION IN SERVICE APPEAL NO.  
1211/16 DATED 29/06/2018

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18.03.2019

Petitioner in person and Mr. Muhammad Bilal learned Deputy District Attorney alongwith Muhammad Sadiq Litigation Officer present. Representative of the respondent department seeks adjournment on the ground that the respondent department has filed CPLA against the judgment under implementation. Adjournal. Representative is directed to furnish order regarding suspension of operation of the judgment in question else conditional implementation subject to the outcome of CPLA. Adjournal. To come up for further proceedings on 21.05.2019 before S.B

*Accepted  
12/03/19*

*[Signature]*

22/05/2019

جارج رپورٹ

من دالعرفان ولد محمد اسلم - نے آج 22 مئی 2019

حصہ اول از دوپہر بیٹرز گورنمنٹ ڈسٹری کالج اولی مانسہرہ کا چارج  
صاحب اکیڈمی

جارج دیندہ

جارج گزیندہ



دلدار خان ولد محمد فرید

PRINCIPAL  
GOVT. DEGREE COLLEGE  
OGHI (MANSEHRA)

بیٹرز گورنمنٹ ڈسٹری کالج

اولی مانسہرہ



**DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA  
KHYBER ROAD, PESHAWAR**

Tel # 091-9210242 / 9211025 Fax # 091-9210215

E-mail:- [dhekpesh@gmail.com](mailto:dhekpesh@gmail.com) Facebook.com/dhekpeshawar Twitter.com/dhekpeshawar1

DHE/AD (Lit) No. 4379 /

Dated Peshawar the 15 / 2 /2019

To

The Principal,  
Government Degree College,  
Oghi Mansehra.

**SUBJECT: - S.A NO. 1211/2016 DILAWAR KHAN VERSUS GOVT OF KHYBER PAKHTUNKHWA.**

Memo;

I am directed to refer to the Subject noted above and to enclose herewith reply to execution petition (in original) with the remarks to sign the same and return to this office within 7 days, please.

**Note: Next date of hearing is 18/03/2019 at camp court, Abbottabad.**

With best regards

(Jafar Allah Khan)

Assistant Director (Litigation)

for

15.2.19

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
APPEALS AND DISCIPLINARY PROCEEDINGS COURT, ABBOTTABAD.**

EP # 289/2018

S.A # 1211/2016

Dilawar Khan.....Appellant

Versus

Govt. of Khyber Pakhtunkhwa  
Through Director, Higher Education  
and others.....

Respondents.

**SUBJECT: REPLY TO EXECUTION PETITION ON BEHALF OF RESPONDENTS  
NO. 1, AND 2.**


**Respectfully Sheweth: -**

- 1) Correct.
- 2) Correct.
- 3) Correct.
- 4) It is worth to mention that respondent department filed civil petition for leave to appeal (CPLA) in the apex court of Pakistan against the Judgment dated: 29/6/2018 passed by this Honourable Tribunal and date of hearing is not yet fixed.

**Prayers: -**

It is, therefore, humbly prayed that the CPLA is pending for adjudication before Supreme Court of Pakistan, hence execution proceedings may be stopped till final disposal of the instant case.

**Director,**  
Higher Education Department  
Respondent No. 01

  
**Principal,**  
Government Degree College Oghi Mansehra  
Respondent No. 02

NOTIFICATION

In Compliance  
(LID) S.A. No. 170  
vide diary No.

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Khan (O. M.  
w.c. 22-05  
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More  
05-06  
with

TERMS AND CONDITIONS

- i. This re-instatement is in accordance with the order of the Supreme Court under C.P.E.S. No. 17057 dated 05-06-2005.
- ii. The appointee, Mr. Dilawar Khan, shall be entitled to draw his salary against BPS-1 along with fixation as per salary list.
- iii. He can join the duty within 30 days of the issuance of this letter failing which the reinstatement order shall stand null and void.

Principal  
Govt. Degree College  
Oghr (Mansehra)

Encls. No. 331-40

Copy to:

- 1. Director Higher Education Peshawar
- 2. Registrar KPK Service Tribunal Peshawar
- 3. Additional Advocate General, KPK, Tribunal Peshawar
- 4. Deputy Director (IT), Local Directorate with the remarks to electronically circulate the letter to concerned.
- 5. Section Officer (Lit), Higher Education Department, KPK
- 6. Assistant Director (Lit), Local Directorate
- 7. CA-VII Establishment Branch Local Directorate
- 8. District Account Office Mansehra
- 9. The appointee Dilawar Khan
- 10. The Master File for Office Record

BEFORE THE SERVICE TRIBUNAL KHYBER  
PAKHTUNKHWA, PESHAWAR

Execution Petition No. 239/2018

CM No. \_\_\_\_\_/2018

IN

Service Appeal No. 1211/2016

Dilawar Khan son of Muhammad Farid, Govt. Degree College Oghi,  
Tehsil Oghi District Manshara,

...APPELLANT

VERSUS

1. Director Higher Education Khyber Pakhtunkhwa Peshawar.
2. Principal Govt. Degree College Oghi, District Manshara.

...RESPONDENTS

APPLICATION

EXECUTION PETITION IN SERVICE APPEAL NO.  
1211/16 DATED 29/06/2018

18.03.2019

Petitioner in person and Mr Muhammad Bilal learned Deputy District Attorney along with Muhammad Sadiq Litigation Officer present. Representative of the respondent department seeks adjournment on the ground that the respondent department has filed CPLA against the judgment under implementation. Adjourn. Representative is directed to furnish order regarding suspension of operation of the judgment in question else conditional implementation subject to the outcome of CPLA. Adjourn. To come up for further proceedings on 21.05.2019 before S.B

DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA  
KHYBER ROAD, PESHAWAR

Phone: 091-92102121, 9211025 Fax: 091-9210216  
Email: dhkppeshawar@gmail.com Facebook.com/dhkppeshawar Twitter.com/dhkppeshawar

AD/LD/S.No. 1790/11 (Dilawar Khan) Dated Peshawar, 18/03/2019

To  
The Principal,  
Govt. Degree College,  
Ghani (Manserna)

Subject: EP NO. 239/2018 IN SA # 1311/2016 TITLED DILAWAR KHAN  
COOK VS GOVT. OF KHYBER PAKHTUNKHWA

Memo  
Bare directed in refer to the subject noted above and to enclose herewith  
a copy of order sheet dated 18/03/2019 with the remarks of conditionally reinstatement  
Mr. Dilawar Khate Cook subject to the decision of Supreme Court of Pakistan  
wherein CPLA has been filed by this department.

The conditional reinstatement will be subject to the production of surety  
bond on the judicial stamp paper wherein the appellant will submit written  
statement that he will abide by the final decision of the Supreme Court and will not  
claim this order as permanent/regular appointment.

(Signature)  
DEPUTY DIRECTOR

Endst. No. / AD(LD)/S.No. 1790/11 (Dilawar Khan)

1. Copy of the above is forwarded to the
2. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
3. Additional Advocate General, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
4. Deputy Director (LT) Local Directorate with the remarks to electronically circulate  
the order concerned.
5. Section Officer (Lit), Higher Education Department, Khyber Pakhtunkhwa.
6. Assistant Director (Lit), Local Directorate.
7. CA VII Establishment Branch, Local Directorate.

(Signature)  
DEPUTY DIRECTOR



**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

CPLA NO. 663 - P/2018

Government of Khyber Pakhtunkhwa through Secretary  
Higher Education Khyber Pakhtunkhwa Peshawar & Others  
-----**PETITIONERS**

**VERSUS**

Dilawar Khan  
-----**RESPONDENT**

*Appeal from* : Hon'ble Khyber Pakhtunkhwa Service  
Tribunal, Camp Court Abbottabad  
*Counsel for Petitioner* : Advocate General, KPK, Peshawar  
*Instituted by* : Mian Saadullah Jandoli, AOR

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**CERTIFIED** that the paper book has been prepared in accordance with the rules of the Court and all the documents necessary for due appreciation of the court have been included in it. Index is complete in all respect.

(Mian Saadullah Jandoli)  
Advocate on Record  
Supreme Court of Pakistan  
For Govt. of KPK./petitioners

(A)

**IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)**

CPLA NO. 663-P/2018

Government of Khyber Pakhtunkhwa through Secretary Higher  
Education Khyber Pakhtunkhwa Peshawar & Others

PETITIONERS

VERSUS

Dilawar Khan

RESPONDENT

**CONCISE STATEMENT**

- 1- Subject matter and the law Service Matter/ Re-Instatement into Service
- 2- Which side has filed this petition Government / petitioners

Court / Forum	Date of a) Institution b) Decision	Who filed it and with what result
KPK Service Tribunal, Camp Court Abbottabad	a) 27/07/2016 b) 29/06/2018	Respondent filed service appeal which has been accepted
Points noted in the impugned Judgment	Treatment of points in the impugned judgment	
Learned counsel for the respondent contended that the respondent has been removed from service but without complying with the procedure as laid down in the Khyber Pakhtunkhwa Government Servant (E&D) Rules, 2011. Further contended that the petitioners were legally bound to conduct full fledged enquiry and give him opportunity of hearing and thereafter pass the order but they violated all the prevalent rules and regulation on the subject.	The contention of the learned counsel for the respondent seems to be robust as there is nothing to show that before imposing major penalty of removal from service, petitioners had conducted an enquiry served charge sheet or statement of allegations and thereafter, given show cause notice but straightway passed the impugned order and that too w.e.f. 18/08/2009. This order itself is invalid in the eyes of law for the omissions committed by the petitioners particularly when it has been passed on 17/11/2016 but it was given retrospective effect from	
Learned counsel for the petitioners		

(B)

<p>strongly opposed the contention of the counsel of respondent and argued that show cause notice was given in 2009 and the enquiry was also conducted and in this way, the proceedings were conducted in accordance with the law. He requested the tribunal to dismiss the appeal.</p>	<p>18/08/2009. Apart from this, the respondent has been punished for the absence of two days while it has been held in various judgments of the Supreme Court of Pakistan that absence from duty for period less than a week, major penalty cannot be imposed. The appeal is allowed and impugned order dated 17/11/2016 is set aside. The respondent is reinstated in service and the intervening period may be treated as "leave of the kind due".</p>
---	--

**LAW/RULING ON THE SUBJECT**

**FOR**

- 1- CONSTITUTION OF PAKISTAN, 1973
- 2- E&D Rules, 2011

**CERTIFICATE:**

Certify that I myself prepared the above concise statement which is correct.

(Mian Saadullah Jandoli)  
Advocate-on-Record  
Supreme Court of Pakistan  
For Government

①

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

CPLA NO. 663-P /2018

1. Government of Khyber Pakhtunkhwa through Secretary Higher Education Khyber Pakhtunkhwa, Peshawar
2. Director Higher Education Khyber Pakhtunkhwa, Peshawar
3. Principal Government Degree College Oghi.

PETITIONERS

VERSUS

Dilawar Khan S/o Muhammad Farid Cook Govt. Degree College  
Oghi, Tehsil Oghi, District Mansehra

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER  
ARTICLES 212(3) OF THE CONSTITUTION OF  
ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST  
THE IMPUGNED JUDGMENT/ ORDER OF  
LEARNED KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, CAMP COURT ABBOTTABAD DATED  
29/06/2018 IN SERVICE APPEAL NO.1211/2016

RESPECTFULLY SHEWETH

The substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad suffers from material illegality, factually incorrect and require interference by this august Court?

2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad has properly and legally exercised its jurisdiction in the matter in hand?
3. Whether the respondent was inefficient and always remained willfully absent from duty and neglected his official duty?
4. Whether a proper show cause notice was issued to the respondent regarding his willful absence from duty being inefficient and negligent in his official duty which was not satisfactorily replied?
5. Whether an enquiry committee was constituted for probing the allegations of willful absence from duty who associated the respondent in the enquiry proceedings but respondent could not justify his willful absence from duty before the enquiry committee?
6. Whether willful absence from duty does constitute gross misconduct which entails major punishment?
7. Whether the punishment awarded to the respondent is commensurate with the charge leveled and proved against the respondent?
8. Whether the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad is in utter disregard of E&D Rules, 2011 as well as the Hon'ble Tribunal has not adverted to the question of limitation as the departmental appeal was barred by time?
9. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad has properly and legally construed the record and material in its true perspective?

10. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad has properly and legally applied and interpreted the law in the subject case?

FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

1. That the respondent was serving and performing his duty in Education Department as Cook in the Hostel of Government College Oghi Tehsil Oghi District Mansehra.
2. That respondent was in habit of willful absence and without obtaining a proper leave from the competent authority was proceeded him under the E&D Rules, 2011 by the authority.
3. That a proper show cause notice was issued to the respondent which was not replied by the respondent satisfactorily therefore enquiry committee was constituted to probe the charges of misconduct.
4. That the enquiry committee after hearing the respondent and conducting enquiry recommended the respondent for punishment.
5. That on the report of enquiry committee the respondent was removed from service vide order dated 21/6/2011.
6. That the respondent filed time barred departmental appeal which was rejected vide order dated 22/9/2016.
7. That the respondent filed service appeal before the Hon'ble Khyber Pakhtunkhwa Service Tribunal wherein comments were called from the petitioners which was filed accordingly.

- (4)
8. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad accepted and allowed the service appeal of respondent vide order dated 29/6/2018.
  9. That the petitioners being aggrieved from the impugned judgment/order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad dated 29/06/2018 in Service Appeal No.1211/2016 prefer this CPLA before this august Court.
  10. That the petitioners seek leave to appeal against the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad dated 29/06/2018 in Service Appeal No.1211/2016.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad dated 29/06/2018 in Service Appeal No.1211/2016 may graciously be granted.

(Mian Saadullah Jandoli)  
Advocate-on-Record  
Supreme Court of Pakistan  
For Government

**NOTE:**

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

**ADDRESS**

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

**CERTIFICATE** Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record