## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1608/2019

Date of Institution

29.11.2019

Date of Decision

30.03.2022

Shamraiz Khan Ex-Senior Primary School Teacher Shamal Gali No.1 District Kolai Palas Kohistan.

(Appellant)

## **VERSUS**

Government of Khyber Pakhtunkhwa through Secretary E&SE Khyber Pakhtunkhwa Civil Secretariat, Peshawar and three others.

(Respondents)

Rashid Rauf Swati,

Advocate

. For appellant.

Naseer-Ud-Din Shah,

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 the appeal, the impugned orders passed by the respondents No.2 & 3 may graciously be set aside and appellant may be reinstated in service with all benefits."

2. The relevant facts leading to filing of instant appeal are that appellant was appointed as PTC Teacher in 1992. It was on



16.05.2019 when he was served with show cause notice. He submitted reply but to utter surprise of appellant, he was removed from service on 31.07.2019. He filed departmental appeal which was dismissed. He also filed an application for review of the order dated 04.10.2019 which was not responded to, hence, the present service appeal.

- 3. We have heard Rashid Rauf Swati Advocate for appellant and Naseer-Ud-Din Shah, learned Assistant Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.
- Rashid Rauf Swati Advocate, learned counsel appearing on behalf of appellant, inter-alia, contended that the so called disciplinary proceedings are in violation of the settled law on the subject as such the impugned notification of removal from service and dismissal of departmental appeal is liable to be set aside. He contended that the appellant throughout his carrier performed his duty properly and with full devotion to the entire satisfaction of his seniors. It was argued that due to enmity, family of the appellant is settled in Mansehra and he was the only teacher posted in the School in a far flung hilly area and despite repeated requests, no other teacher was posted in the said School but he never remained absent from duty rather availed leave as and when needed. Learned counsel submitted that only four days alleged absence was made a ground for his removal from service though he was on leave and the penalty imposed is harsh and against the settled principles. Lastly, he submitted that no charge sheet and statement of allegations were served upon the appellant and that the



major penalty was imposed without regular inquiry which is violation of fundamental rights of fair trial guaranteed by the Constitution. He, therefore, requested for acceptance of the instant service appeal.

- 5. Conversely learned AAG submitted that appellant remained willful absent from duty and found negligent several times by IMU/DCMA. He contended that services of the appellant were not satisfactory according to the rules and his removal from service was recommended by the SDEO after conducting proper inquiry and after fulfillment of codal formalities, he was punished according to law.
- 6. From the record, it is evident that the appellant was proceeded against departmentally on the allegations of habitual absence and major penalty of removal from service was imposed upon him under Rul-4(b) (iii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. A Government servant shall be liable to be proceeded against under the Rules ibid if he is guilty of habitually absenting himself from duty without prior approval of leave. If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under the rules it shall either:

proceed itself against the accused by issuing a show cause notice under Rule-7 and for reasons to be recorded in writing, dispense with inquiry and if the competent authority decides to get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may



be under Rule-11 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

In the instant case, the competent authority appointed Inquiry Officer (Sub Division Education Officer) but no inquiry report is available on file. No charge sheet and statement of allegations were ever served upon appellant which means that proper procedure prescribed by the law was not followed in the instant case. The only show cause notice available on file shows that as per report of DCMA/IMU, the appellant was charged for willful absence from duty on 04.05.2019, whereas, the impugned notification dated 31.07.2019 shows four different dates for which the appellant was charged for willful absence. These dates are 24.04.2018, 04.12.2018, 22.03.2019 and 04.05.2019. In fact, major penalty of removal from service was imposed upon him on the allegation of absence for a single day which order is harsh and does not commensurate with the gravity of guilt. Even otherwise, absence was not proved as no proper inquiry was conducted in the matter.

7. For what has been discussed above, instant service appeal is accepted. Impugned order is set aside and appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

<u>ANNOUNCED.</u> 30.03.2022

(Salah-Ud-Din) Member (J) (Rozina Rehman) /Member (J)

DB is on Toux case to come up)
For the Same on Darted 30-3-22

30.03.2022

Appellant present through counsel.

Naseer Ud Din Shah learned Assistant Advocate General for respondents present.

Vide our judgment of today of this Tribunal placed on file, instant service appeal is accepted. Impugned order is set aside and appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED. 30.03.2022

> (Salah-Ud-Din) Member(J)

(Rozina Rehman)

Member (J)

15.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 09.08.2021 for the same as before.

Reader

09.08.2021

Nemo for parties.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Preceding date was adjourned on a Reader's note, therefore, both the parties be put on notice for 17.12.2021 for arguments before D.B.

(Rozina Rehman) Member (J) Chairman

22.10.2021

Nemo for the appellant. Mr. Muhammad Idrees, ADEO alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

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 17.12.2021.

(MIAN MUHAMMAD) MEMBER (E) (SALAH-UD-DIN) MEMBER (J) 15.09.2020

Junior to counsel for the appellant and Addl. AG alongwith Muhammad Idrees, ADEO for the respondents present.

Joint parawise comments have been furnished on behalf of the respondents, which are made part of the record. The appeal is assigned to D.B for arguments on 01.12.2020. The appellant may furnish rejoinder, within a fortnight, if so advised.

Chairman

01.12.2020

Counsel for the appellant and Addl. AG alongwith M. Idrees, ADEO for the respondents present.

Learned counsel for the appellant requests for adjournment in order to further prepare the brief.

Adjourned to 11.01.2021 for hearing before the

D.B.

(Mian Muhammad) Member(E)

Chairman

11.01.2021

Due to COVID-19, the case is adjourned for the same on 15.04.2021 before D.B.

PEADER

17.02.2020

Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned Additional AG seeks time to furnish written reply/comments. Adjourned to 11.03.2020 for written reply/comments before S.B.

(MUHAMMAD AMIN KHAN KUNDI) MEMBER

11.03.2020

Appellant in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned Additional AG seeks adjournment to furnish written reply from respondents. To come up for written reply/comments on 20.04.2020 before S.B.

(MUHAMMAD AMIN KHAN KUNDI)

MEMBER

20.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 14.07.2020 for the same. To come up for the same as before S.B.

Reader

14.07.2020

Counsel for the appellant and Addl: AG alongwith Mr. M. Idress, ADEO for respondents present.

Written reply not submitted. Representative of the respondents seeks time to submit the same. Last opportunity granted.

Adjourned to 15.09.2020 before S.B.

(Mian Muhammad)
Member(E)

03.01.2020

Contends that in the show cause notice dated 16.05.2019 the grounds for proceedings against the appellant were noted to be willful absence from duty on 04.05.2019 and being guilty of misconduct. Not only any incidence of misconduct was noted in the show cause notice but through the impugned order dated 31.07:2019 the appellant was alleged to have remained absent on 24.04.2018, 04.12.2018 and 22.03.2019 in addition to 04.05.2019. Departmental proceedings by way of regular enquiry were not conducted against appellant thereby he was deprived of putting forth his defence in a reasonable manner. Even otherwise, the imposition of major penalty of removal from service against the appellant was incommensurate with the allegation of absence on four different dates. Explaining the apparent delay in submission of instant service appeal, learned counsel contended that the appellate order dated 04.10.2019 was disclosed to the appellant on 18.10.2019 upon his visit to the concerned office.

In view of the available record and arguments of learned counsel, instant appeal is admitted to regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 17.02.2020 before S.B.

Chairman

1.19/1/200

## Form- A

## FORM OF ORDER SHEET

Court of	,	
Case No	1608/ <b>2019</b>	

	Case No	1608/ <b>2019</b>
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
.1	. 2	3
1-	29/11/2019	The appeal of Mr.Shamraiz Khan presented today by Mr. Rashi Rauf Swati Advocate may be entered in the Institution Register and put u
1		to the Worthy Chairman for proper order please.
	. •	REGISTRAR > 9   11   19
2-	52/11/20	This case is entrusted to S. Bench for preliminary hearing to be
•	०२/०1/२०	put up there on 03 01/20
•	·	
•		CHAIRMAN
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## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Affeal no. 1608 /2019

Shamraiz Khan Ex Senior Primary School Teacher Shamal Gali No 1 District Kolai Palas Kohistan.

#### Versus

Government of Khyber Pakhtunkhwa through Secretary E & SE KPK Civil Secretariat Peshawar & Others.

## INDEX

S No	Description of Documents	Annexure	Pages
, A	Appeal		1-5
2	Affidavit		6
3	Appointment Order of Appellant	A	7
4	Copy of Show Cause Notice	B	8
5	Reply to Show Cause Notice	C	9
6	Order/Notification Dated 31/07/2019	D	10
emp.	Copy of Departmental Appeal	E	11
8	Copy of Application by Appellant	<b>16.</b>	12
9	Copy of Order Dated 04/10/2019	G	13
10	Copy of Review Application	XX.	14
13	Other Documents	I	15-19,19
14	Wakalatnama		20

Shamraiz Khan (Appellant)

Through

Rashid Rauf Swati & Zele Huma Advocates

Peshawar

# (1)

#### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Affeal No. 1608/2019

Shamraiz Khan Ex Senior Primary School Teacher Shamal Gali No 1 District Kolai Palas Kohistan.

Khyber Pakktukhwa(Appellant)
Service Tribunui

Versus

Day No. 1694

Dates 29-11-2019

- 1. Government of Khyber Pakhtunkhwa through Secretary E& SE KPK Civil Secretariat Peshawar.
- Director Education Elementary & Secondary Education KP, near Hussain Shaheed High School Firdos Peshawar.
- 3. District Education Officer Male, Kolai Palas Kohistan.
- 4. Sub Divisional Education Officer Kolai Palas Kohistan.

(Respondents)

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT 1974, AGAINST THE ORDER DATED 31/07/2019, WHEREBY APPELLANT WAS REMOVED FROM SERVICE BY THE RESPONDENT NO 3 AND ORDER DATED 04/10/2019, RECEIVED ON 17/11/2019 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS DISMISSED BY THE RESPONDENT NO 2.

Fredto-day

Resistrary

-9/11/19

PRAYER

ON ACCEPTANCE OF THE APPEL THE IMPUGNED ORDERS
PASSED BY RESPONDENTS NO 2 & 3 MAY GRACIOUSLY BE SET
ASIDE AND APPELLANT MAY BE REINSTATED IN SERVICE WITH
ALL BENEFITS

ANY OTHER RELIEF, WHICH THIS HONORABLE TRIBUNAL MAY DEEM FIT MAY ALSO BE GRANTED.

## Respectfully Submitted

- That Appellant was appointed as PTC Teacher in the year 1992.
   Copy of appointment order is Annexure "A".
- 2. That petitioner performed his duty with full devotion and dedication to the entire satisfaction of the immediate bosses.
- 3. That that Appellant was promoted to the post of SPST due to his hard work, dedication and satisfactory service throughout.
- 4. That all of sudden, on 16/05/2019, Appellant was served with Show

  Cause notice on flimsy grounds by Respondent No 3. Copy of Show

  Cause, notice is Annexure "B".
- 5. That Appellant submitted reply to the Show Cause notice and plausible reasons forward with the prayer to with draw the Show cause notice. Copy of Reply is Annexure "C".
- 6. That to utter surprise of Appellant he was removed from service illegally by the Respondent No 3 vide Order dated 31/07/2109. Copy of order is Annexure "D".
- 7. That on Appellate filed departmental Appeal against the order Dated passed by respondent No 3 to the Respondent No 2 on sound and plausible reasons. Copy of Departmental Appeal is **Annexure "E"**.
- 8. That Appellant was waiting for the decision of Departmental Appeal and in this respect, he was in contact with office of Respondent No 3

regularly through one Abdul Hadi Head Clerk on his cell No however there was no proper response from him.

- to inquire about the Departmental Appeal, where he came to know of dismissal of Departmental Appeal by Respondent No 2 vide order dated 04/10/2019. Appellant then filed an application for the copies of the record and obtained the copies. Copy of order dated 04/10/2019 of Respondent No 2 and Application filed by the appellant are **Annexure** "F" & "G".
- 10. That Appellant on 19/11/2019 filed an application to the Respondent

  No 2 for *REVIEW* of the Order Dated 04/10/2019. Copy of Application
  is **Annexure "H"**.
- 11. That being aggrieved and dissatisfied of the impugned orders passed by the Respondents No 2 & 3 Appellant is before this Hon'ble Tribunal inter alia on the following grounds:

### GROUNDS

A. That the so-called disciplinary proceedings are in violation of settled law on the subject as such the impugned Notification of Removal from Service of Appellant by the Respondent No 3 and that Dismissal of Departmental Appeal by The Respondent No 2 is liable to be setasside.

- B. That impugned orders passed by the Respondents No 3 & 2 are against the law facts and Service Record of Appellant and not tenable.
- C. That Appellant throughout his career performed his duties properly and with full dedication to entire satisfaction of his immediate bosses and left no room for any complaint.
- D. That due to enmity, family of Appellant is settled in District Mansehra and he is only teacher posted in the school which situates in far-flung hilly area and repeated requests of Appellant, though Respondent No 3 & 4 promised to post the other teacher but have not fulfilled the promise.
- E. That in compelling circumstances Appellant was late from duty at Couple of occasions but he never remained absent from duty rather availed leave as and when needed.
- F. That only four days alleged absence of Appellant, were counted for his removal from service though he was on leave.
- G. That penalty imposed is harsh and disproportionate and against the settled principles therefore is not tenable.
- H. That no statement of allegations was given to the appellant is violation of law that is why the entire proceedings are illegal.
- That major penalty was imposed on Appellant without regular inquiry which is again violation of fundamental rights of *Fair Trail* guaranteed by the Constitution.

- That no opportunity of Personal Hearing was provided to the Appellant during so called disciplinary proceedings and Appellant was condemned unheard.
- That no proper procedure was adopted by the Respondents No 2 & 3 Κ. while passing the impugned Orders dated 31/07/2019 and 04/11/2019 respectively and as such damaged the career of Appellant without any justification.
- That actual negligence is on the part of the Respondents No 2, 3 & 4 as they have not conveyed the order of Removal of Appellant from service properly and in time as well, they have not conveyed the order of deciding Departmental appeal of the Appellant as per law and with in time.
- M. That any other ground will be agitated during arguments with the permission of the Court/Tribunal.

IT IS THEREFORE HUMBLY PRAYED THAT ON ACCEPTANCE OF THIS APPEAL THE IMPUGNED ORDERS MAY BE SET-ASIDE AND APPELLANT MAY BE INSTATED TO SERVICE WITH ALL BACK BENEFITS.

ANY OTHER RELIEF WHICH THIS HON'BLE TRIBUNAL DEEM FIT, MAY ALSO BE GRANTED.

Shamraiz Khan Appellant

Rashid Rauf Swati & Zele Huma Advocates



## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Shamraiz Khan Ex Senior Primary School Teacher Shamal Gali No 1 District Kolai Palas Kohistan.

(Appellant)

#### Versus

Government of Khyber Pakhtunkhwa through Secretary E& SE KPK Civil Secretariat Peshawar & Others.

(Respondents)

## AFFIDAVIT

I, Shamraiz Khan (Appellant) bearing CNIC No 13503-8310930-9 do hereby affirm and declare on oath that, the contents of the Appeal are true and correct and nothing has been concealed.

2 9 NOV 2019

ATTESTED

ate High Court Pest

Manke

DEPONENT

## EVILLEF THE DISTRICT EDUCATION OPPOSE IN PRINCY HOUSE THE SE

ASSISTMENT .

The following untrained candidates are hereby appointed on merit bests in SV:-7 (As. 1095-) F.B Fixed plusuaual allowances as adminsible under the rules in the interest of subile assvice with immediate offect on the following terms and conditions:-

P. F. 51.

Sea hare of Candidates.	rather's page	Resident.	Lame of School Rem.
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#### 3010171 04.

- 1. Condidates who are dovt: Sorvents and their applications have a t been received through their papartment and those who are studying in any institute are not sligible for appointment.
- 2. Charge Report should be submitted to all concerned.
- 3. NO TWO is slimped.
- criginal Cartificates of the Camilidates may please be checked by the cartificates found begins about the cartificates because the cartificates because being a cancelled.
- assigning any reasons.
- 6. ago and health certificated from D.M.G Kohistan should be produced.
- 7. They should not be allowed to take over charge if their age is less

DISTRICT SMICATION OFFICER (F)
PRIMARY COUCSTION KOSTATANA

copy of the above is forwarded to:-

1. Director Frimary Education North Hayet Abad Beahawar.

3.5.2.0 (M) Konistan, with the remarks that the Griginal Certificans may plance be verified before handing over charge to them.

Candidates Conderned. Office Order File:

DISTRICT ROUGHTON APPROAM (F)

رگشریری

Hallas

28.11



## **SHOW CAUSE NOTICE**

I, Nawab Ali District Education Officer, (Male) Kolai Pallas Kohistan, being as a competent authority under the Khyber Pakhtunkhwa Govt

Servants (E&D) Rules, 2011, do hereby serve you, Mr, Shamraiz SPST GPS

Shamal Gali No 1 Pallas as follows:

That as per report of DCMA/IMU you have committed the following acts/omissions specified in rule 3 of the said rules.

- a.) Willful absent from your duty on 04/5/2019 (School found closed)
- b.) Guilty of misconduct.

As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of <u>RECOVERY OF SALARY FOR THE</u>

<u>ABSENCE PERIOD AND REOMVAL FROM SERVICE.</u> Under rule 4 of the said rule. You are, thereof required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desired to be heard in person.

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

District Education Officer (Male)

Kolai Pallas Kohistan.

Endstt; No 126-32 / Copy forwarded to the:-

dated 16 / 5 /2019.

1- Director Elementary & Secondary Education KPK Peshawar

2- Deputy Commissioner Kolai Pallas Kohistan.

3- Assistant Commissioner Pallas Kohistan.

4- DMO (IMU) Kohistan.

5- SDEO (Male) Pallas Kohistan.

6- Teacher concerned.

7- Office Copy.

District Education Officer (Male)

Kolai Pallas Konistan

H.Hasles 28.11.19 126-324/6/90 30 8/6/90 180/00/90 2 ( M) Singel Teacher 1, ile fing of 4/4 2 mais ( 1 mm) 2 . Wo classed on Con عَرُول الله الله ورقع به مردو في أول المراق في المراح فل مركب ع بېچ دو د ما د مرك رئ ترس ه لوي ه مرسول تما ي دي را مرس ما درم رضي عرفان دين المولت من منواي وجم من متعلم عدم كا ديكر من ما وُل كا فورز رمانی رقی یی شیران ی مرس و مرس کا معدم کا و عدم کا و دورا ف بارسرورون ما ما ما ما فرواس من مردارمان منارها ع · W/2 world ; is predictable in sois ويسال عيد الرفيل على بن رس و زواست عندا بر فيوت لذج. مناس لوم وتمزوران فود الله يشوكار و أو دفتر م أ المف الله وم ر فرا ما را و م م و و در در می می در روی فیجردو کر می وی تا م می ایس کا تعلی ما تر می می وی تا م می ایس می تعلی می ترین می وی می در است و از July de local in a fine Adary, and il wind DEO 20.5.2019



## OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KOLA

## PALLAS KOHISTAN.



#### NOTIFICATION.

1.Whereas Mr.Shamraiz Khan SPST GPS Shamal Goli No 1 Kolai Palas was proceeded against the Khyber Pakhtunkhwa Governmet servant Kohistan (Efficiency & Discipline)Rules 2011 for the charges mentioned in the show cause notice.

- (1) Whereas per DCMA/IMU you have willful absent from duty on 24/04/2018, 04/12/18,22/3/19, and 04-05-2019 with out proper permission of the competent authority.
- (2) Whereas, you have been reported by ASDEO Circle concerned to be absent from duty ,irregular and negligent dated 01-01-2019.
- (3) You remained absent from PDDay no 4,5 and 7.
- (4) Whereas Inquiry report received from the Sub Divisional Education Officer (M) Palas Kohistan vide No.3425/ dated 04.01.2019 wherein he has proved the accused as "negligent and irregular" and recommended you to be removed from service.
- (5) Whereas you have issued a show cause notice vide No 925 dated 07/02/2019.
- (6) Your reply was found un-satisfactory.
- (7) Whereas the District Education Officer (M) Palas Kohistan being competent authority after having considered the charges and evidences on record against you as proved.
- (8) Now, Therefore I Nawab Ali District Education Officer (M) Palas Kohistan being odinpeterit authority น้ำกัder 🕾 & D rules 2011 do hereby impose upon you " the p major penalty of "REMOVAL FROM SERVICE" under 4 (b) (iii) of the ibid rules with immediate effect in the interest of public service.

(NÁWAB ALI)

COMPETENT AUTHORITY DISTRICT EDUCATION OFFICER (M)

KOLAI PAULAS KOHISTAN

Endst: No

Copy for information and necessary action to: 1. The Director Elementary & Secondary Edu; KPK Peshawar.

2. Deputy Commissioner Kolai Pallas Kohistan.

3. The DDEO (M) Palas Kohistan

4. The SDEO(M) Palas Kohistan.

5 DMO Kohistan .

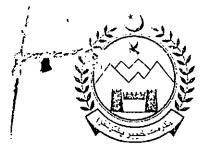
6. The Official concerned.

7. The PA to local Office.

DISTRICT EDUCATION OFFICER (M)

. كروت ما در در مرك رشرال و الوى تعلى عبر بحتولوال استامر و ستن مطرفعه عرض و الم و بنس بن وري رهن فران مران و و الم من و و و الم من و و و الم من من الم المريكا ون في تعلق ما وروز و من ول كريس ورون من المرور و ووق المرور و من ورود و من و ورم و الما الما و الما من المراج من المراج مع الما مع الما منامات كا سعد من و درا ما ما عفري رو نري رفتي و شيخ ي د شي وود يه و دن مرا ي . عدد الم علی مادی مردی می می رس فت عدد اسم مول می می سول در رس دن ور گرارت کا فاعد فی موفیر (ع) 18.5 و يو بروز في مانم ع بريان على الم والى مرا مان في مرم مان مي من مرد دريا أن لوم في له لين مان کاری با بنیاد فائل نائی حکو میر کاری نے نفول س نظری بر مورد در با سام میروی کو مرح او و کورنوان م کردن کا فقو نم کی عروب من و ورم ایا مردین کی فقیان عی سکول مند تھے ہے 50 کن رندز کر 3425 کو معلوج کے معنوج و نتر تو کانوک بر وق قور ورد دے طبی کی درواست طبالات سی و من المان عمل و في المراد و المراد و المراد المرا 

Ju Removal 1, d (1) is a city of 1) DE0 5 317 P. 0 6 win 0 Ja 10 207 ju 1 29 8 p 19 00 de 10 1000 000 ويد دار ابعي للرسائل كو نه ملياً أما - نا منيا أما المرام ي الحمام ول ك ومن من من معتق اروم كنسول بيل كرك دني بي ما يه وما ش المعتما المعتما فرمالعطادی کافری ند کافری می میرالعطادی کافری ندی ایسی میرادی ما من وی المساع والم معنی ما میا می مراس مارید (اشترا در انتیا رون کے م معدد من ما تو منوان اور در در امنوام ما به درما ر مین عن ما مان درما ر مین عن ما مان Les of one of the contraction of the ور سان عدالت م فالون دار راش ما مل رات . من فرازی مول المقح الم 19 عَالُ فَيْنِم وَ وَيُنْ مُولُ مِالِيَّ وَهِ مِنْ مُولُ مِالِيِّ وَهِ مِنْ مُولُ مِالِيٌّ وَهِمْ مِنْ 2.11.2



## DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR

/F.No. 100/Vol:06/Appeal. Dated: \(\lambda\) \(\cappa\)

Τo

The District Education Officer (Male)Kolai Pallas Kohistan..

Subject: -**APPEAL** 

I am directed to refer to your letter No. 7272 Date 20-09-2019, on the subject cited above and to ask you that appeal in respect of Mr. Shamraiz Khan SPST GPS Shamai Gali District Kolai Pallas Kohistan has been rejected.

I am further directed to ask you to inform the appellant concerned accordingly under intimation to this office.

Endst No. [ Copy of the above is forwarded to: -

Deputy Director Estab (Male) 15/ Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar 10 2019

1. Mr. Shamraiz Khan SPST GPS Shamai Gali District Kolai Pallas Kohistan. PA to Director E&SE local Office.

3. Master File.

Deputy Director Estab (Male) ell Elementary & Secondary Education 力3/10/21g Khyber Pakhtunkhwa Peshawar

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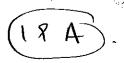
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#### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Shamraiz Khan Ex Senior Primary School Teacher Shamal Gali No 1
District Kolai Palas Kohistan. (Appellant)

#### Versus

Government of Khyber Pakhtunkhwa through Secretary E& SE KPK Civil Secretariat Peshawar & Others. (Respondents)

## APPLICATION FOR CONDONATION OF DELAY

### Respectfully Submitted

- 1. That Appellant has filed accompanying Service Appeal in which no date of hearing has yet been fixed.
- 2. That vide order dated 31/07/2019, Appellant was *Removed from Service*, by Respondent No 3, whereas on 29/08/2019, Appellant filed Departmental appeal to Respondent No 2.
- 3. That until 18/11/2019 Appellant was not intimated of any Order/Decision of the Departmental Appeal when on 18/11/2019, Appellant visited the office of Respondent No 2 and inquired about the result of Departmental Appeal where he was informed that it has been dismissed on 04/10/2019.
- 4. That Appellant filed two Applications to Respondent No 2 and narrated the entire facts. (Copies Annexed with Appeal) and on 29/11/2019, Appellant filed Service Appeal, which is well within time.
- 5. That result/decision of Departmental Appeal was never communicated to the Appellant nor he was in know of same prior to 18/11/2019, and that is why Service Appeal of the Appellant is within time however if this Hon'ble Tribunal consider otherwise, in that case, Appellant craves for *Condonation of Delay* for the reasons given above.

Therefore it is humbly prayed that delay if any, in filing of Service Appeal may graciously be condoned.

Shamraix Khan (Appellant)

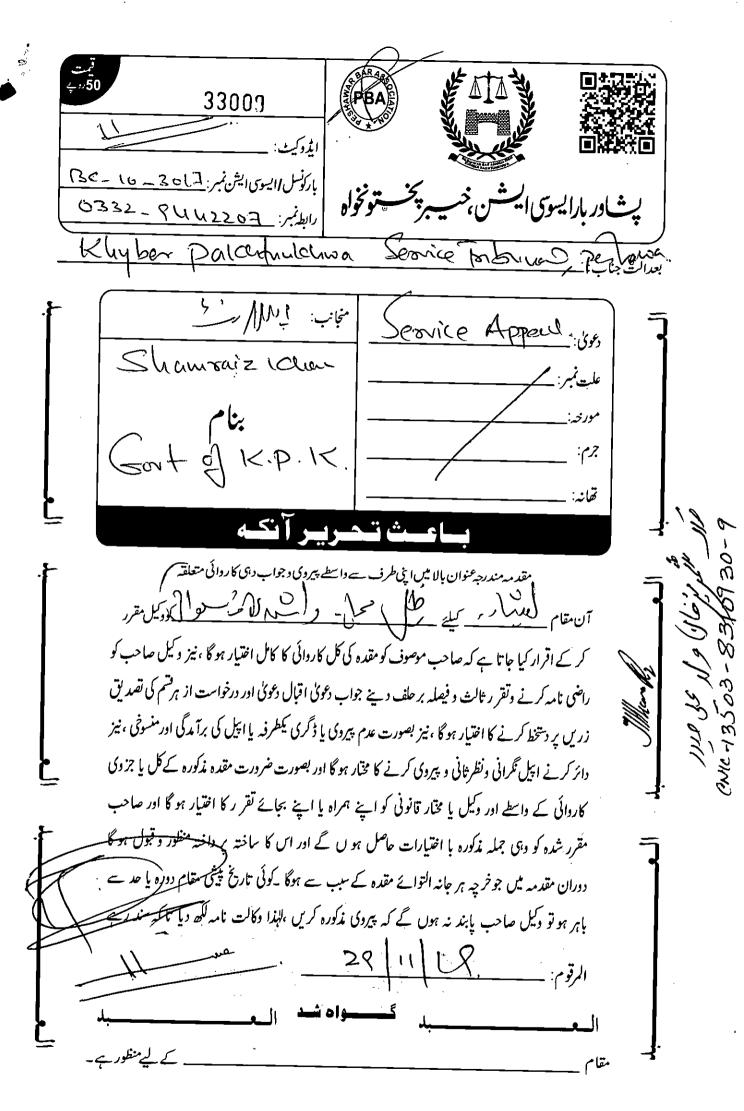
Through

Zele Huma Ádvocate High Court

AFFIDAVIT

Stated on oath that the contents of the petition are true and correct and nothing has been concealed.

29/11/19



# BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTHOONKHAWA PESHAWAR

APPEAL NO. 1608/2019

Shamraiz khan Ex Senior primary school	teacher shamalGali No 1 KP Kohistan
	Appellant
•	VERSUS
Government of KPK & Others	
	Respondent

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3	Show Cause Notices	7	"A1 to – A3"	5-7
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5	ASDEO Report	· · · · · · · · · · · · · · · · · · ·	"C"	9
6	SDEO Report		"D"	10
7	Personal Hearing Letter	**************************************	"E"	11

# BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBERPUTHOONKHAWA PESHAWAR

**APPEAL NO. 1608/2019** 

Shamraiz khan Ex Senior primary school teacher shamal Gali No 1 KP Kohistan

.....Appellant

#### **VERSUS**

- 1) Government of KPK through secretary E&SE KPK
- 2) Director Education E&SE KPK
- 3) District Education Officer Kolai Palas Kohistan
- 4) Sub Divisional Education Officer Palas

.....Respondents

Joint Para-wise comments on behalf of respondents No 1 to 4

## Respectfully Sheweth:

## Preliminary objections

- That the appellant has no cause of action/locus standi to file the instant appeal.
- 2) That the appellant has concealed the material facts from the honorable tribunal
- 3) That the appellant has not come to this honorable tribunal with clean hands.
- 4) That the appellant has filed the instant appeal on mala fide grounds.
- 5) That the appellant appeal is against the prevailing law and rule.
- 6) That the appellant is estopped by his own conduct to file instant appeal.
- 7) That the claim of the appellant is unlawful, hence the appeal is liable to dismissed.
- 8) That the act of the respondent within law and rules. Order dated 31.07.2019 issued after fulfillment of the codal formalities hence appeal is liable to be dismissed.

## **FACTUAL OBJECTIONS**

- 1) Para No.1 of the appeal relates to appellant's service record, hence no comment.
- 2) Para No.2 is incorrect as appellant was found willful absent from his duty several times.

- 3) Para No.3 of the appeal relates to service structures hence no comments.
  Promotion has always made on seniority cum fitness.
- 4) Para No.4 is incorrect. The show cause notice was issued by a competent authority after fulfillment rules and law. Copies of show cause notices are attached as annex "A-1, A-2,A-3, respectively.
- 5) Para No.5 is incorrect. The appellant was failed to satisfy the competent authority. The reply to show cause notice was not satisfactory and against the facts.
- 6) Para No.6 is incorrect, strongly denied. That the appellant has been removed from service legally and after fulfillment the codal formalities of law such as under:
  - I. Appellant remained willful absent from duty and found negligent several times by IMU/DCMA. Report of IMU is annexed as Annexure B.
  - II. Appellant was also reported irregular and negligent by ASDEO concerned w. e. f 01/01/2019.Repoert f ASDEO is Annexed is as Annexure C.
  - III. Appellants services were not satisfactory according to rules after having considered charges and evidence on record.
  - IV. After the result of inquiry report SDEO's recommendations for removal from service on 04/01/2019 is annexed as Annexure D.
  - v. In the light of above mentioned facts competent authority called appellant for personal hearing but appellant failed to satisfy the competent authority. Letter of personal hearing call is annexed as annexure E.
  - vi. So appellant has removed from service after fulfillment of all codal formalities of law.
- 7) Para No.7 is incorrect the appeal was not considerable so rejected by appellate authority.
- 8) ParaNo.8 is incorrect, strongly denied.
- 9) ParaNo.9 is incorrect. All the process was done within the knowledge of the appellant.
- 10) Para No.10 is correct it relates to appellant review appeal, but appeal was rejected by the appellate authority.
- 11) Para No.11 is incorrect. Appellant was treated as per rule and law.

#### **GROUNDS**

- a) Para of the ground 'A' is incorrect, hence denied. The impugned orders are in accordance with law and rules.
- b) Para of ground 'B' is incorrect. Appellant was removed after fulfillment of all codal formalities of law

- c) Para of ground 'C' is incorrect. Appellant was found absent and negligent several times
- d) Para of the ground' D 'is incorrect. There was not found any record about enmity of the appellant and not he shared this issue through proper channel.
- e) Para of the ground E is incorrect. Reply has been given in above factual objections in detail.
- f) 'Para of the ground 'F' is incorrect. Reply has already been giving in factual objections.
- g) Para of the ground 'G' is incorrect penalty imposed on appellant was according settle principles.
- h) Para of the ground 'H' is incorrect, hence denied. Reply has already been given in above Para. Appellant is leveling baseless allegations to save his skin.
- i) Para of the ground 'I' is incorrect, hence denied. Appellant removed after conduct inquiry which detail is given in above Para.
- j) Para of the ground 'J' is incorrect, hence denied. Appellant has been called for personal hear.
- k) Para of the ground 'K' is incorrect, hence denied. Appellant has been treated as per rule and law.
- I) Para of the ground 'L' is incorrect, hence denied because the entire proceedings were done according to per rule and law.
- m) Para of the ground 'M' is incorrect. Respondent will explain more factual position at the time of arguments.

It is therefore humbly prayed that in the light of forgoing comments the appeal may graciously be dismissed with cost throughout.

Secretary Elementary & Secondary Education

Khyber Pakhtunkhwa Peshawar

Respondent No.2

**Director Elementary & Secondary Education** 

Khyber Pakhtunkhwa PK

Respondent No incer
District Education Schoer
(Male) History
(M) Kolail Palas Rohistan.

Sub Divisional Education Officer (M)
Pallas District Kolai Pallas Kohistan

#### OFFICE OF THE DISTRICT EDUCATION OFFICER MALE KOLAI PALAS KOHISTAN

#### **AUTHORITY CERTIFACATE**

It is certified that **Mr. Muhammad Idrees ADEO (litigation)** is hereby authorized to deal court matters in different courts and subordinate courts on the behalf of District Education Officer (M) kolai palas Kohistan.

District Education Officer (Male) District Kolai Pallas Kohistan

DISTRICT EDUCATION OFFICER (M) KOLAI PALAS KOHISTAN

4

# BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTHOONKHAWA PESHAWAR

APPEAL NO. 1608/2019

Shamraiz khan Ex Senior primary school teacher s	hamalGali No 1 KP Kohistan	
	A	\ppellant

**VERSUS** 

Government of KPK & Others .

.....Respondent

#### **AFFIDAVIT**

I Mr. Muhammad Idrees Assistant District Education Officer (M) do hereby affirm do and declare of oath that contents of Para wise comments are true and correct to the best of my knowledge and believe that nothing has been concealed from this honorable court.

Assistant District Education Officer (litigation)
(M) Kolai Pallas

# OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) KOLAI PALLAS KOHISTAN



### SHOW CAUSE NOTICE

I, Nawab Ali District Education Officer, (Male) Kolai Pallas Kohistan, being as a competent authority under the Khyber Pakhtunkhwa Govt: Servants (E&D) Rules, 2011, do hereby serve you, Mr, Shamraiz SPST GPS Shamal Gali No 1 Pallas as follows:

That as per report of DCMA/IMU you have committed the following acts/omissions specified in rule 3 of the said rules.

- a.) Willful absent from your duty on 04/5/2019 (School found closed)
- b.) Guilty of misconduct.

As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of RECOVERY OF SALARY FOR THE ABSENCE PERIOD AND REOMVAL FROM SERVICE. Under rule 4 of the said rule. You are, thereof required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desired to be heard in person.

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

> Officer (Male) cation olai Pallas/Kohistan

Endstt; No 12 dated 16 / 5 /2019. Copy forwarded to the:-

1- Director Elementary & Secondary Education KRK Peshawar

2- Deputy Commissioner Kolai Pallas Kohistan.

3- Assistant Commissioner Pallas Kohistan.

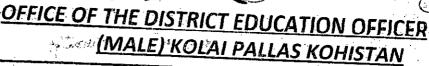
4- DMO (IMU) Kohistan.

5- SDEO (Male) Pallas Kohistan.

Teacher concerned.

7- Office Copy.

istrict Education Officer (Male) Kolai Pallas Kohistan



#### SHOW CAUSE NOTICE

I, Nawab Ali District Education Officer, (Male) Kolai Pallas Kohistan, being as a competent authority under the Khyber Pakhtunkhwa Govt: Servants (E&D) Rules, 2011, do hereby serve you, Mr. Shamriaz SPST B-14 GPS Shamal Goli No 1Kolai Pallas as follows:

That as per report of DMO/DCMA IMU Kohistan you have committed the following acts/omissions specified in rule 3 of the said rules.

- a.) Willful absent from your duty w.e.f 22/3/2019(School found closed)
- b.) Guilty of misconduct.

As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of RECOVERY OF SALARY FOR THE ABSENCE PERIOD AND REOMVAL FROM SERVICE. Under rule 4 of the said rule.

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

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

Nawab Ali

District Education Officer (Male) Kolai Pallas Kohistan.

Endstt; No 194-98 dated 08 104/2019 Copy forwarded to the;-

1- Director Elementary & Secondary Education KPK Peshaway

2- Deputy Commissioner Kolai Pallas Kohistan.

3- DMO (IMU) Kohistan.

4- SDEO (Male) Pallas Kohistan.

5- Teacher concerned.

6- Office Copy.

District Education Officer (Male) Kolai Pallas Kohistan

vernment of Khyber Pakhtunkhwa Office of the District Education Officer Male

KOHISTAN



File No: /

Dated: 27-Jan-2019



waiz khan, (Sr. PST) R SHAMAL GALI NO.1, MADAKHEL, PALAS, KOHISTAN

## Subject: - SHOW CAUSE NO

I am directed to refer to the subject noted above and to enclose herewith a copy of Show Cause Notice wherein the Competent Authority District Education Officer, Male, KOHISTAN, Khyber Pakhtunkhwa has tentatively decided to impose upon you the major penalty of "Removal from service" under Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 in connection with the charges leveled against you.

2. You are therefore directed to furnish your reply to the Show Cause Notice as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

3. Your reply should reach to this Department within Seven (07) days of the delivery of this letter otherwise action under the Rules shall be taken against you.

dučakion Office, M

Encl: As Above

Endst: Even No. & Date

Copy of the above is forwarded to the: -

i. Copy to all concerned

District Education Office





	e Name of School		<u></u>	<u>_</u> '						.
JS Coa	elvame or School	Level	Gender	Tehsil	UC Name	Monitoring Date	Full Name	Designation	Presence Status	Status Details
30815	GPS SHAMAL GALI NO.1	Primary	Boys	PALAS	MADDAKHEL ABAD	2018-04-24 00:00:00	SHAMRAIZ KHAN	Senior PST	Absent	Un-Authorized
30815	GPS SHAMAL GALI NO.1	Primary	Boys	PALAS	MADDAKHEL ABAD	2018-12-04 11:22:35	SHAMRAIZ KHAN	Senior PST		Un-Authorized
30815	GPS SHAMAL GALI NO:1	Primary	Boys	PALAS	MADDAKHEL ABAD	2019-03-22 10:48:16	SHAMRAIZ KHAN	Senior PST		Un-Authorized
30815	GPS SHAMAL GALI NO.1	Primary	Boys	PALAS	MADDAKHEL ABAD	2019-05-04 09:36:27				Un-Authorized



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### OFFICE OF THE SUB-DIVISIONAL EDUCATION OFFICER (MALE) PALLAS DISTRICT KOLAI PALLAS KOHISTAN.

No 3 4 25 / Dated 4/0/ /2019

To,

The District Education Officer (Male) Kohistan.

Subject;

Report against Shamraiz SPST.

R/Sir,

As an SDEO (M) Sub-Division Pallas, I have the honor to submit a detail report regarding Mr, Shamraiz Khan SPST B-14 GPS Shamal Goli No 1 Kolai.

- He remained absent from school w.e.f 20/11/2018 to 04/12/2018, (see page No 1 for ready
- /2- As per report of ASDEO (M) Circle he willfully remains absent from PD day and QMM ,besides, this he dose not send information's /record to the office (see page No 2 for ready reference)
- 3- He remained absent in IMU report dated 12/4/2018 (see page No 3 for ready reference)
- 4- He remained absent from PD day No 4,5 and 7 (see page No 5 for ready reference)
- 5- He remained absent from school on 10/10/2018 (see page No 6 for ready reference)
- 6- He remained absent from school duty ,times and again (see ASDEO report page No 7 for ready reference)
- He willfully remained absent on 24/4/2018 (see IMU report page No 9 for ready reference)
- He willfully remained absent on 29/8/2018 in IMU report (see page No 10 for ready reference)

9- Again, he was absent on 10/10/2018 (see page No 11 for ready reference)

Keeping in view the above facts, I do hereby propose that Mr, Shamraiz SPST of the GPS. Shamal Goli No 1 may please be REMOVED from service after completing all the codal formalities, please, so that others may learn a lesson.

> Hameedullah Marwát Sub- Divisional Education Officer (M) Pallas Kohistan

Endstt; No 342 6 7 3 Copy for /SDEO (M) Pattan KH Dated cl/ 12019. Copy forwarded to the:

1- Deputy District Education Officer (M) Kohistan,

2- ASDEO (M) Circle Concerned.

3- DMO (IMU) Kohistan.

4- Teachers Concerned.

5- Office copy.

Sub- Divisional Education Officer (M) Pallas Kohistan

#### Government of Khyber Pakhtunkhwa Office of the District Education Officer Male KOHISTAN





File No: 154 Dated: 27

amaiz khan, (Sr. PST) PS SHAMAL GALI NO.1, MADAKHEL, PALAS, KOHISTAN



# Subject: - SHOW CAUSE NOTI

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# مگومت یا نتان نیشنل ڈیٹا ہیں اینڈ رجسٹریش اتحار ٹی (وزارت داخلہ ) انھارہ سال سے کم عمر تواں کاسپر میکنیٹ \*

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عتمان يوسف مبين

د ستخفار جسٹرار جنرِل تاریخ اجراء 2017-09-2

بیان دی سیری، ذائف حانه پاک سکول، سیر پور، تحصیل و هلع کیف آباد



1350383109309

CRC No: 11081380

# مگومت پاکتتان نیشنل فی نامیس اینله رخستر مشن آخار کی (وزارت داخار) انتخاره سال سے کم الر نیمان کاسبر فیکیری \*

	3503-8310930-9	فتنق كارد فممبر	: اشالاه رف	ود خواست و	ملک شمر پر خان:	ورخواست وېنده کا نام:	
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- - 2- درج شده کیچ کی عمر انگھارہ سال ہولئے ہی شاختی کار ڈیجے حصول کیلیا درخواست تمع کروائیں۔
- 3- اس سر میفکیٹ کوسٹ بھال کرر کھیں کیونکہ بجوں کے اٹھارہ سال کی عمر کو پہنچنے پر اسی نمبروں کے حرالے سے شافتق کارڈ جاری لئے جانمیں گے۔
  - 4- الوزائده منتي كالورى طوري الدراج كروائين ادر نيار صفريش سر فيفيكيث ماصل كريا.
    - 5- كواكف كى نىرىلى كى صورت يىل ئىيار جسىر يىشن سىر فيفيكي ي حاسل كرين-

عتران يوسف مبين

و متخطار جسرًار جنر ل نان گاجرار 20-17-20

ميان دى سيرى، ذاك خانه بلكك بمكول، عبر إدر، تحميل وهلع أيدا كا إد



\* ياسر تينيك ورج بالاكتبام مجول كي شاخت اور مذكوره بلا توانك و معلومات تابت كريد كيليج قانو فأبرواك فد 801 والدوق نينس مجريد من 2000 اوار شوت قابل قول عبد Page 2 of 2

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# KHYBER PAKHTUNKWA

#### SERVICE TRIBUNAL, PESHAWAR

No: 1242 /ST Dated: <u>63</u> / <u>66</u> /2022

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

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

To

District Education Officer (M), Kolai palas Kohistan.

Subject:

JUDGMENT IN APPEAL NO. 1608/2019 Titled Mr.Shamraiz khan

I am directed to forward herewith a certified copy of judgment dated 30.03.2022 passed by this Tribunal on the above subject for information please.

Encl: As Above.

(WASEEM AKHTAR)

REGISTRAR KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.