

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
**AT CAMP COURT, SWAT**

Service Appeal No. 1704/2019

Date of Institution ... 06.12.2019  
Date of Decision ... 01.03.2021

Muhammad Raziq Primary School Teacher Government Primary  
School Khakhty, Tehsil Matta, District Swat.

... (Appellant)

**VERSUS**

The Secretary Elementary & Secondary Education Khyber  
Pakhtunkhwa Peshawar and three others.

... (Respondents)

Imdad Ullah,  
Advocate

... For appellant.

Riaz Khan Paindakheil,  
Assistant Advocate General

... For respondents.

ROZINA REHMAN  
MIAN MUHAMMAD

... MEMBER (J)  
... MEMBER (E)

**JUDGMENT**

ROZINA REHMAN, MEMBER : Brief facts of the case are that appellant is a P.S.T at G.P.S Khakhty, Tehsil Matta, District Swat. He got ill, therefore, consulted a Specialist. He was advised rest for three days where-after surgery was also advised. He submitted an application for medical leave which was duly forwarded by the



Headmaster and properly endorsed by the Sub Divisional Education Officer Primary Swat. That despite a genuine reason, when he resumed his duties, he was informed to have been penalized for being willful absence. Penalty of withholding of increment for year 2019 coupled with deduction of salary of 23 days was imposed upon appellant. He filed departmental appeal which was also rejected, hence the present service appeal.

2. Learned counsel for appellant argued that appellant was not treated in accordance with law and rules and that he was condemned unheard. He argued that appellant was entitled for medical leave but the same was refused which act of the respondents is against law. He submitted that appellant never absented himself willfully rather was incapacitated and unable to attend the duties due to serious illness.

3. Conversely, learned A.A.G submitted that appellant remained absent from his duty and he never submitted any medical certificate to the respondents' Department. He argued that an inquiry officer was nominated to probe into the matter and that proper inquiry was conducted and penalty was imposed upon appellant in accordance with the recommendations of the inquiry officer. Lastly, he submitted that he was penalized after fulfillment and observance of all codal formalities.

4. From the record, it is evident that the appellant availed earned leave without proper sanction from competent authority. Proper inquiry was conducted where-after penalty was imposed upon



appellant in the light of recommendation of inquiry officer. Even today, he failed to produce any sanction from high-ups in respect of his leave. The impugned order was passed on 30.05.2018. He filed departmental appeal which is undated, however letter dated 06.11.2019 of Assistant Director Establishment (Male) Elementary & Secondary Education Khyber Pakhtunkhwa addressed to the District Education Officer (Male) Swat is available on file wherein the letter No.2182 sent by the District Education Officer, has been properly mentioned. It is evident that appeal of the present appellant was rejected with reference to letter No.2182 dated 19.10.2019 vide which departmental appeal of the present appellant had been sent to the competent authority for decision. The impugned order was passed on 30.05.2018 whereas, departmental appeal was filed on or before 19.10.2019 which is badly time barred, hence, the appeal has become incompetent.

5. As per Rule-3 of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, a civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms & conditions of his service may, within 30 days from the date of communication of the order to him, prefer an appeal to the appellate authority. It is well-entrenched legal proposition that where appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwarul Haq v. Federation of Pakistan 1995 SCMR 1505, Chairman,

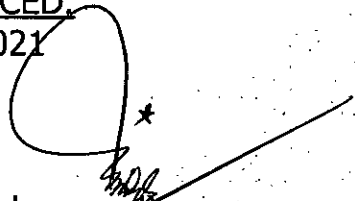


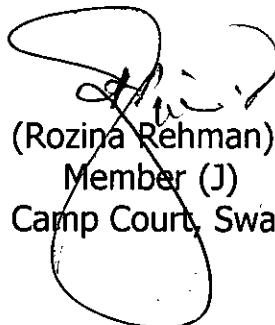
PIAC v. Nasim Malik PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others 2004 SCMR 1426.

6. In view of the foregoing reasons, the instant appeal stands dismissed; with no order as to costs. File be consigned to the record room.

ANNOUNCED.

01.03.2021

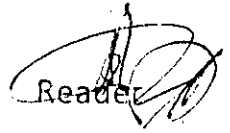
  
(Mian Muhammad)  
Member (E)  
Camp Court, Swat

  
(Rozina Rehman)  
Member (J)  
Camp Court, Swat

4-1 .2020

Due to COVID19, the case is adjourned to

1/3 /2020 for the same as before.

Reader 

01.03.2021

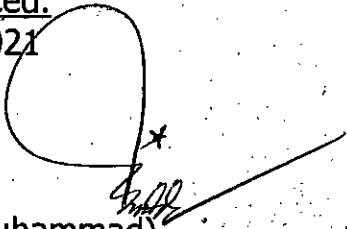
Appellant present through counsel.

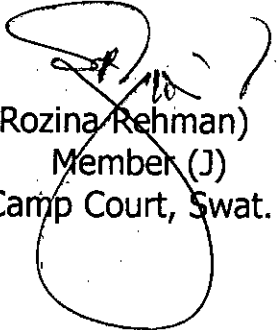
Riaz Khan Paindakheil learned Assistant Advocate General alongwith Hussain Ali Litigation Officer for respondent present.

Vide detailed judgment of today of this Tribunal placed on file, the instant appeal stands dismissed; with no order as to costs. File be consigned to the record room.

Announced.

01.03.2021

  
(Mian Muhammad)  
Member (E)  
Camp Court, Swat.

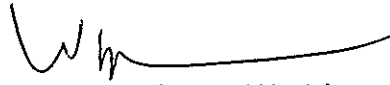
  
(Rozina Rehman)  
Member (J)  
Camp Court, Swat.

02.11.2020

Appellant in person present.

Muhammad Jan learned Deputy District Attorney for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 04.01.2021 for arguments, before D.B at Camp Court, Swat.




(Atiq ur Rehman Wazir)  
Member(E)  
Camp Court, Swat



(Rozina Rehman)  
Member (J)  
Camp Court, Swat

02.06.2020 Due to Covid-19, the case is adjourned. To come up for the same on 07.07.2020, at camp court Swat.



Reader

07.07.2020 Bench is incomplete. Therefore, the case is adjourned. To come up for the same on 07.09.2020, at camp court Swat.




Reader

07.10.2020 Counsel for the appellant present.

Mr. Riaz Painsdakhel learned Assistant Advocate General alongwith Mr. Hussain Ali, Assistant for the respondents present.

Written reply/comments on behalf of respondents submitted, which is placed on file. To come up for rejoinder, if any and arguments on 02.11.2020 before D.B.



Member (J)  
Camp Court, Swat

04.03.2020

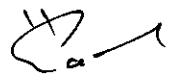
Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (PST) has filed the present service appeal against the order dated 30.05.2018 whereby minor penalty of withholding of one annual increment for the year 2019 was imposed upon him and deduction of 23 days salary was also ordered. Vide office letter dated 06.11.2019 it was conveyed that the departmental appeal filed by the appellant has been rejected.

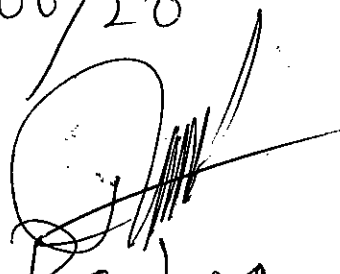
Submissions made by the learned counsel for the appellant, need consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 07.04.2020 before S.B at Camp Court, Swat.

Appellant Deposited  
Security & Process Fee

09/3/20

  
Member  
Camp Court, Swat.

Due to corona virus tour to Camp Court Swat has been cancelled. To come up for same on - 02/06/20

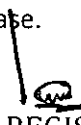

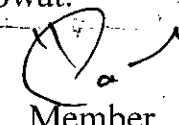
  
Readers



## FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- \_\_\_\_\_ 1704/2019 \_\_\_\_\_

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/12/2019	<p>The appeal of Mr. Muhammad Raziq presented today by Mr. Aziz-ur-Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR - 6/12/19</p>
2-		<p>This case is entrusted to touring S. Bench at Swat for preliminary hearing to be put up there on <u>04-02-20</u></p> <p style="text-align: right;"> CHAIRMAN</p>
04.02.2020		<p>Clerk to counsel for the appellant present and seeks adjournment as learned counsel for the appellant is not available. Adjourn. To come up for preliminary hearing on 04.03.2020 before S.B at Camp Court, Swat.</p> <p style="text-align: right;"> Member Camp Court, Swat.</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Service Appeal No. 1704 of 2019

Muhammad Raziq Primary School Teacher Government Primary School Khakhty,  
Tehsil Matta, District Swat.

...Appellant

VERSUS

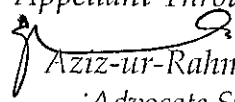
The Secretary Elementary and Secondary Education Khyber Pakhtunkhwa and  
Others.

...Respondents

INDEX

S. #	Description of document	Annexure	Pages
1.	Memo of Petition	....	1-6
2.	Affidavit	....	7
3.	Addresses of the parties	....	8
4.	Copies of the Medical Documents	A	9-12
5.	Copy of the Application	B	13
6.	Copy of the Letter	C	14
7.	Copy of the Order dated 30-05-2019	D	15
8.	Copy of the Departmental Appeal	E	16
9.	Copy of the order dated 06-11-2019	F	17
10.	Vakalat Nama	....	18

Appellant Through

  
Aziz-ur-Rahman

Advocate Swat

Office: Khan Plaza, Gulshone Chorok,  
Mingora Swat, Cell 0333 929 7746

2

THE APPELLANT FILED A DEPARTMENTAL APPEAL FOR THE REDRESSAL OF HIS GRIEVANCES, BUT THE SAME WAS ALSO REJECTED IN A VERY MECHANICAL MANNER IN BLATANT VIOLATION OF THE LAW, RULES AND SHARIAH VIDE ORDER ENDST: NO. 5578-79/ DATED 06-11-2019 COMMUNICATED ON 15-11-2019, THUS BOTH ORDERS IMPUGNED ARE NOT SUSTAINABLE UNDER THE LAW AND ARE LIABLE TO BE SET ASIDE.

---

Prayer:

*That on acceptance of this service appeal both the orders impugned may very kindly be set being void ab initio and nullity in the eyes of law and restore the increment for the year 2019 along with return of the illegal deducted salary of 23 days.*

---

Respectfully Sheweth:

Facts:

- i. That the appellant is a PST at GPS khakhty, tehsil Matta District Swat and has regularly been performing his duties efficiently and to the best of his abilities.
- ii. That the appellant got ill and for medical examination consult a specialist. Upon diagnosis the appellant examined himself by the Nawaz Sharif Kidney Hospital, the one

specialized in the relevant field. Copies of the medical prescription as well the diagnosis are enclosed as Annexure "A".

- iii. That the appellant was initially advised a rest for three days and after which surgery was advised to the appellant.
- iv. That the appellant submitted an application for medical leave and categorically mentioned in the application the reason for the leave. Copy of the application is enclosed as Annexure "B".
- v. That the said leave application on medical grounds was duly forwarded by the Head Master of the school and thereafter endorsed by the Sub-Divisional Education Officer Primary Swat as well. Copy of the letter is enclosed as Annexure "C".
- vi. That despite a genuine reason yet to the utmost surprise of the appellant when he resumed his duties he was informed that he was being penalized for being willful absent.
- vii. That the appellant was imposed upon the penalty of withholding of increment for the year 2019 coupled with the deduction of the 23 days of salary vide order Endst: No. 4246-49/193/M.Raziq/PST/DEO/M dated 30-05-2019 against the law, rules and Shariah, hence is not sustainable in the eyes of law and liable to

(4)

be set aside. Copy of the order dated 30-05-2019 is enclosed as Annexure "D".

- viii. That to utmost astonishment of the appellant it is stated in the impugned order that an inquiry has been conducted and that the appellant is found guilty of the charges leveled against him.
- ix. That the appellant was never associated with any inquiry of any sort neither was the appellant communicated any charge sheet or statement of allegation nor was any show cause issued to the appellant before imposition of the penalty.
- x. That the appellant feeling aggrieved of the same preferred a departmental appeal against the order impugned for the redressal of his grievances, but the same was also rejected in a very mechanical manner and in utter violation of the law and rules on the subject vide order Endst: No. 5578-79/ dated 06-11-2019, communicated on 15-11-2019. Copy of the departmental appeal is enclosed as Annexure "E" and that of the order dated 06-11-2019 is enclosed as Annexure "F", respectively.
- xi. That still feeling aggrieved and having no other option the appellant resorted to this Honourable Tribunal for the redressal of his grievances on the following grounds.

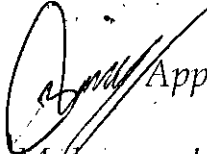
Grounds:

- a. That the appellant has not been treated in accordance with the law and rules on the subject and has been condemned as unheard as neither was the appellant ever associated with the so called inquiry, if conducted at all, while the same time no chance of self defence was ever afforded to the appellant neither was his application coupled with the relevant documents was ever considered.
- b. That under the law and rules the appellant was entitled for the leave prayed for, yet the same was not granted bald of any reasons whatsoever.
- c. That if the leave was not accorded then at least the appellant should have been referred to standing medical board, but the same was also not done despite the fact that the appellant was seriously ill and needed proper and timely medical care.
- d. That the appellant has never absented himself willfully rather was incapacitated and unable to attend his duties due to serious illness, yet he was penalized.

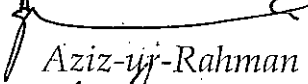
It is, therefore, very respectfully prayed that on acceptance of this service appeal both the orders impugned may very kindly be set aside, being nullity in the eyes of law and the increment stopped be granted along with the illegal deduction made restored back.


6

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly granted.

 Appellant

Mithammad Raziq  
Through Counsels,

  
Aziz-ur-Rahman

  
Imdad Ullah  
Advocates Swat

7

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2019

Muhammad Raziq Primary School Teacher Government  
Primary School Khakhty, Tehsil Matta, District Swat.

...Appellant

**VERSUS**

The Secretary Elementary and Secondary Education  
Khyber Pakhtunkhwa and Others.

...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of  
this service appeal are true and correct to the best of my  
knowledge and belief and nothing has either been  
misstated or kept concealed before this Honourable  
Tribunal.

Deponent  
  
Muhammad Raziq





BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2019

Muhammad Raziq Primary School Teacher Government  
Primary School Khakhty, Tehsil Matta, District Swat.

...Appellant

VERSUS

The Secretary Elementary and Secondary Education  
Khyber Pakhtunkhwa and Others.

...Respondents


ADDRESSES OF THE PARTIES

Appellant:

Muhammad Raziq Primary School Teacher Government  
Primary School Khakhty, Tehsil Matta, District Swat.

Respondents:

1. The Secretary Elementary and Secondary  
Education Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary and Secondary Education  
Government of Khyber Pakhtunkhwa, Peshawar.
3. The Assistant Director Elementary and Secondary  
Education Khyber Pakhtunkhwa, Peshawar.
4. The District Education Officer (Male) District  
Swat at Gulkada.

Appellant  
Through Counsel,  
  
Imdad Ullah  
Advocate Swat

# Dr. Ahmad Zeb Khan

Consultation (By Appointment only)

MBBS, FCPS Medicine  
FCPS Nephrology  
SCE Nephrology (RCP UK)

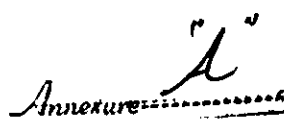
Member International Society of Nephrology  
Member Pakistan Society of Nephrology  
Nephrologist & Medical Specialist  
Department of Nephrology  
Khyber Teaching Hospital Peshawar  
E-mail: ahmad.zeb@hotmail.com

# ڈاکٹر احمد ذیب خان

ایف بی ایس ایم ایف سی پی ایس (مزید پڑھیں)  
سی پی ایس (طب عمومی)

سی پی ایس (آرڈی پی 2)

ممبر انٹرنیشنل سوسائٹی آف نفرالوجی  
ممبر پاکستان سوسائٹی آف نفرالوجی  
الوجی وارڈ خیر پشنگ ہسپتال پشاور  
ایمرٹس: گوردہ، شانہ، ڈائیسس، بلڈ پریشر، سیز، معدہ، شوگر، فالج

Signature: 

9

Date 25/11/018

Name: Muhammed Raziq

Age & Gender: 48y M

Temp: 37.2

B.P: 20/100

Pulse: 72/min

CVS: )

GI: )

U/G: )

CRS: )

ND

Hx of Hypogastric Pain  
Dysuria, urgency  
Bilateral Pain

Renal US ->

- Bil Renal Calce
- Both kidneys are Normal in Calce
- Bladder size 5.8 x 6.0 x 5.2 cm BPH
- Ureteric 8-12
- Cystic 1.2
- Cholesterol 241
- Urea 4-5
- RBS 131
- SPT 22

Cap Paracet-D 65/0.4 (ایب، اے) ۶/۶


Tab Ract 10mg (ایب، اے) ۶/۶

Tab L-ucid 250mg 1+1 ۱۵ دن

Tab Gemlik Plus 1+1 20 دن

Tab Brofen Plus 1+1 3 دن

Cap Risc day 2 (ایب، اے) ۶/۶

Attested  
  
Advocate

پشاور ہیڈ کوارٹر: بروز پیر تاج محل  
ابراہیمی ہسپتال فرسٹ فلور کمرہ نمبر 125 ڈگری گارڈن پشاور  
فون: 0300-5829309

سوات ہیڈ کوارٹر: بروز ہفتہ، اتوار  
جیبہ میڈیکل سنٹر نزد شی سکول سید و شریف سوات  
فون: 0344-9670796



NAWAZ SHARIF KIDNEY HOSPITAL MANGLOR  
RADIOLOGY DEPARTMENT

Dr Fayyaz Ahmed Khan  
Incharge Radiology department

Dr Fazle Ghaffar  
Radiologist

Dr Falak naz  
Radiologist

Dr Tahira faiz  
Sonologist

Name	Mohammad raziq	Date	27 November 2018
------	----------------	------	------------------

**ULTRASOUND KUB**

**Right kidney** Normal cortico medullary index and echogenicity. Cortical thickness is normal.

**Shows an about 8mm calculus in its mid portion .**

**Left kidney:** Normal cortico medullary index and echogenicity. Cortical thickness is normal.

**Shows small microliths measuring upto 4mm .**

**Urinary Bladder:** is partially filled with normal wall thickness. No calculi , mass seen

**Prostate is enlarged measuring 90 g in weight . No focal lesion seen**

**Impression:**

See comments

Dr. fayyaz

Hard copy is attached for review.

**Attested**  
*[Signature]*  
**Advocate**

# Nawaz Sharif Kidney Hospital, Swat at Manglor

Rs. 10

(12)

Name M. Raziq Age \_\_\_\_\_ Sex \_\_\_\_\_

Lab. No: 877 OPD. NO: \_\_\_\_\_ Date 27/11

## URINE ANALYSIS

### URINE PHYSICAL

Quantity 100

Colour p-yellow

### URINE CHEMICAL

PH 6.0

Specific Gravity \_\_\_\_\_

Albumin nil

O / Blood \_\_\_\_\_

Glucose nil

Bilirubin \_\_\_\_\_

Ketone \_\_\_\_\_

Urobilinogen \_\_\_\_\_

Hemoglobin \_\_\_\_\_

Nitrite \_\_\_\_\_

Leucocytes Esterase \_\_\_\_\_

## MICROSCOPIC EXAMINATION

R.B.C. 1-2

Cast \_\_\_\_\_

Leucocytes 2-3

Granular \_\_\_\_\_

Epithelial Cell \_\_\_\_\_

Hyaline \_\_\_\_\_

Bacteria \_\_\_\_\_

Crystals \_\_\_\_\_

Others \_\_\_\_\_

Others \_\_\_\_\_

Remarks: \_\_\_\_\_

Pathologist

Attested

*[Signature]*

Advocate

(13)

حکومت سندھ کی ایس او ایف اسکول (23 دن)

عنوان: درخواست برآمدگی سے استحقاق <sup>Earn-leave</sup> 29 نومبر سے 14 دسمبر تک  
صاحب عالی

گزارش ہے کہ میں بی اے میں اور ایف اے میں بھی امتیازی کارکردگی کے ساتھ  
میں نے بی اے اور L.R.H. میں کام کیا ہے۔ ڈاکٹر نے اپنی مشورہ دیا ہے  
میں نے اگر آپ میری رٹ ~~میں~~ 29 نومبر سے 14 دسمبر تک  
23 دن رخصت استحقاق سے فائدہ لینا چاہتا ہوں۔ لہذا میں اپنی درخواست  
اب تک میرا اکاؤنٹ پر جمع ہے۔

الحاصل

محمد عزیز قاسم صاحب، سربراہ اسکول

Date 16-11-2018

Attested

Advocate

صاحب عالی! درخواست ضرور کاربند

HEAD MASTER  
GPS Khakhtey (Bachhola)  
EMIS Code N 22362  
19-11-018

کے ذریعے پیش فرمادے  
Forwarded to SDEO (M)  
is original to  
for for ma pas

11/19  
Chief Ex. Officer (M)  
Swal

Office of SDEO (M) Matta Swat

No: 281

Annexure C

(14)

Dated: 20.11.2018

To

The DEO (M)  
Swat

Subject: = Earned Leave w.e.f 22-11-2018 to 14-12-2018

Memo: Enclosed find herewith the original application along with relevant documents in respect of <sup>Mr.</sup> Muhammad Raziq PST. QPS Khakhtay Matta Swat for forward for further necessary action please.

  
SDEO (M)

Matta Swat  
Sub Divnl. Edu Officer  
Primary Swat



**Attested**



Advocate



OFFICE OF THE  
DISTRICT EDUCATION OFFICER  
(MALE) SWAT.

Amir D

(15)

NOTIFICATION

1. Whereas Mr. Mohammad Raziq PST GPS Khakhtay Matta Swat, was proceeded against the Khyber Pakhtunkhwa Government servant (Efficiency & Discipline) Rules 2011 for the charges mentioned in the show cause notice.

2. Whereas per report of the staff of GPS Khakhtay as well as SDEO Matta vide his letter No. Nil dated Nil.

3. Whereas an enquiry in this regard was conducted by Mr. Muhammad Ismail Principal GHSS Balogram Swat where in he has proved you as "negligent and irregular"

4. Whereas the charges leveled against you were proved and reported by the enquiry officer.

5. Now, Therefore I, Mohammad Amin District Education Officer (M) Swat being competent authority do hereby impose upon you the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011 "withhold one annual increment for the year 2019 & Deduction of 23 days salary" under Rules 4 (a) (ii) & (iii) with immediate effect in the interest of public service.

(MOHAMMAD AMIN)  
DISTRICT EDUCATION OFFICER (M)  
SWAT


4246-48

Endst: No: \_\_\_\_\_/193/M. Raziq/PST/DEO/M.


30  
Dated. \_\_\_/\_\_\_/2016

Copy forwarded to:

- 1- The Director Elementary & Secondary Education KPK Peshawar.
- 2- The District Comptrollers of Account Swat at Saidu Sharif.
- 3- The Sub Divisional Education Officer (M) Mata Swat with the direction to make necessary entry in original service book under intimation to this office within 07 days.
- 4- ASDEO (M) concerned with the direction to serve the order on the accused teacher.
- 5- P.A to District Education Officer (M) Swat the local office.
- 6- The teacher concerned.

  
DISTRICT EDUCATION OFFICER (M)  
SWAT

ASDEO Matta

**Attested**  
  
**Advocate**



To

Annexure E

(16)

The Director  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

Subject: - **Appeal against the illegal order passed by the DEO (M) Swat.**

Respected sir

I have the honor to bring the following few lines for your kind and sympathetic consideration with the hope that these will receive your benevolent and immediate response.

That vide order of the District Education Officer (M) Swat bearing 4246-49/193-M.Raziq/PST/DEO (M) dated 30/5/2019 my annual increment occurring on 1<sup>st</sup> December 2019 (copy attached as annexure A) has been stopped along with deduction of 23 days of salary which is illegal keeping in view the following ground.

1: - That I was ill and therefore applied for earned leave from 23<sup>th</sup> November 2018 to 14<sup>th</sup> December (23 days) and submitted my application through the Head teacher of my School to the Sub Divisional Education Officer (M) Tehsil Matta Swat (Copy attached as annexure B). The said application was forwarded by the SDEO (M) Matta to the District Education Officer (M) Swat vide No.281 dated 20/11/2018 (copy attached as annexure C).

2: - That I was of the view that my application being sent through proper channel would have been considered as I have sufficient leave at my credit.

3: - That instead of receiving leave sanction I received the order referred to above where in a penalty of stoppage of annual increment and deduction of salary for 23 days have been mentioned.

4: - That it has been mentioned in the impugned order that show cause notice was served on me and inquiry conducted but all such are baseless as neither show cause was served on me neither the inquiry Officer called me for hearing and as such I have been condemned unheard and the entire process is cooked And based on malafide intention. Article 14(4) (b) (c) of the E & D Rules 2011 provides that when inquiry report is received, the competent authority shall prepare show cause and reasonable opportunity shall be provided to the accused official along with copy of the inquiry report. In the instant case neither the inquiry officer called me nor the competent authority provided me copy of the inquiry report as well as show cause notice.

5: - That Article 15 of the Efficiency and Disciplinary Rules 2011 are crystal clear which states that the competent authority may, by order in writing will call the accused and Departmental representative along with relevant record and materials of the case to appear before him on a fixed date. In my case these mandatory provision has been deliberately ignored and I have been axed in absentia illegally.

That in view of above it is prayed that by accepting this appeal the illegal order passed by the DEO (M) may be done away with and I may be exonerated of the charges for which I shall be thankful to you.

Obediently yours

Muhammad Raziq PST B-12

Government Primary School Khakhty Tehsil

Matta swat

Attested  


Advocate



DIRECTORATE OF ELEMENTARY & SECONDARY  
EDUCATION KHYBER PAKHTUNKHWA,  
PESHAWAR

17

No. 5578-79 / F.No.04/DEO(M) Mardan.  
Dated: 6/11/2019 / 2019.

To

The District Education Officer  
(Male) Swat.

Subject: - DEPARTMENTAL APPEAL.

I am directed to refer to your letter No. 2182 Date 19-10-2019, on the subject cited above and to ask you that appeal in respect of Muhammad Raziq PST GPS Khakhty Tehsil Swat, has been rejected.

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

Assistant Director Estab (Male)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

Endst No. 5578-79,  
Copy of the above is forwarded to: -

1. Mr. Muhammad Raziq PST GPS Khakhty Tehsil Swat.
2. PA to Director E&SE local Office.
3. Master File.

Assistant Director Estab (Male)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

6-11-2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

18

In the matter of:-

[Signature] Appellant

VERSUS  
[Signature] Respondent

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

**AZIZ-UR-RAHMAN and IMDAD ULLAH**

Advocates High Court

To be the advocate for the [Signature] in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To acts, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

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

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this 05 day of 12 2019.

\_\_\_\_\_  
(Signature or thumb impression)

\_\_\_\_\_  
(Signature or thumb impression)

\_\_\_\_\_  
(Signature or thumb impression)

[Signature]  
Muhammad Laziq

[Signature]

(IMDAD ULLAH)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk,  
G.T. Road, Mingora, District Swat  
Cell No. 0333 929 7746

Accepted subject to terms regarding fees

[Signature]

(AZIZ-UR-RAHMAN)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk  
G.T. Road Mingora, District Swat.  
Cell No. 0300 907 0671

**BEFORE THE KHYBER PAKTUN KHWA SERVICE TRIBUNAL AT CAMP  
COURT SWAT.**

Service Appeal No. 17/04/2019

Muhammad Raziq PST Government Primary School Khakhty, Tehsil  
Matta District Swat. ....Appellant

**Versus**

1. Government of Khyber Pakhtunkhwa through Secretary  
Elementary and Secondary Education Peshawar.
2. Director Elementary and Secondary Education Khyber  
Pakhtunkhwa at Peshawar.
3. The Assistant Director Elementary and Secondary Education  
Khyber Pakhtunkhwa at Peshawar.
4. District Education officer (Male) Swat. .... Respondents.

**Parawise Comments on Behalf of the Respondents**

**Respectfully shewith**

**Preliminary objections**

1. That the appellant is not an aggrieved person within the  
meaning of Section 4 of the service tribunal Act, 1974.
2. That the appellant has no cause of action / locus standi.
3. That the appellant has not come to this honorable court with  
clean hands.
4. That the appellant has filed this instant service appeal just to  
pressurize the respondents.
5. The present service appeal is liable to be dismissed for non-  
joinder/miss joinder of necessary parties.
6. That the instant service appeal is against the prevailing law and  
rules.
7. That the appellant has filled this instant Service Appeal on  
malafide motives.
8. That the instant service appeal is time barred.
9. That the instant service appeal is not maintainable in the  
present form, and above in the present circumstances of the  
issue.
10. That the appellant has estopped by his own conduct.

11. That the appellant has concealed the material facts from this honorable tribunal.

### **FACTS**

- i. That the Para No.i is correct to the extent of the post and school of the Appellant the rest of the para is denied. The Appellant has remained absent from his duty time and again. **(Detail of his absentees as annexure A)**
- ii. That the Para No.ii is irrelevant to the present issue as the Appellant has not submitted any medical certificate to the respondent department.
- iii. That the Para No.iii is irrelevant to the present issue as the Appellant has not submitted any surgery certificate to the respondent department. It is also worth to mention here that whether the Appellant's surgery was done in the period in which he remained absent or otherwise?
- iv. That the para No.iv is incorrect and not admitted. In fact, the Appellant wants to misguide this Honorable Tribunal. The application forwarded by the Head Teacher and Sub-Divisional Educational Officer male concerned has not been provided by the appellant to the respondent No.4/Sanctioning authority. The Appellant should submit the said application to respondent No.4 and should wait till the sanction of the said leave. The Appellant willfully concealed the application and did not attend the School w.e.f 22-11-2018 till 14-12-2018 (23 days).
- v. That the Para No.v is repetition of Para No.iv, hence no comments.
- vi. That the Para No.vi is incorrect and not admitted. Proper procedures have been adopted by the respondent department. The Head Teacher concerned reported the Appellant to the respondents. The respondent department nominated an inquiry officer to probe into the matter. The inquiry officer conducted a detailed inquiry and the penalty was imposed upon the Appellant in accordance with the recommendations of the inquiry report. **(Head Teacher and Staff complaint and Inquiry report as annexure B,C)**


- vii. That the Para No.vii is correct to the extent of penalty imposed upon the Appellant, the rest of the Para is incorrect and not admitted. The Appellant has been penalized after fulfillment of all codal formalities. Hence, the impugned order dated 30-05-2019 is not against the law and rules.
- viii. That the Para No.viii is repetition of Para No. vii above. Hence, no comments.
- ix. That the Para No. ix is incorrect and denied. The Appellant being an irresponsible, irregular and habitual absent teacher as mentioned in Para No.i above, has been penalized in the light of the recommendations of the inquiry report.
- x. That the Para No. x is correct to the extent of departmental appeal of the Appellant, the rest of the para is denied. Admittedly, the Appellant remained absent willfully time and again. The departmental appeal of the Appellant has rightly been rejected as there are enough evidences and materials available against the Appellant.
- xi. That the instant service appeal of the appellant is bereft of any merit, hence, liable to be dismissed inter alia following grounds.

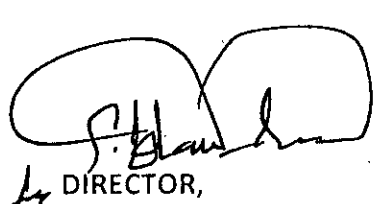
### **GROUND**

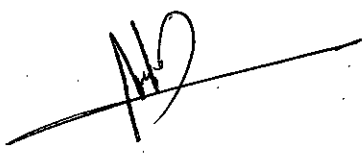
- a. That the Para No. a is incorrect and not admitted. Proper inquiry has been conducted by the respondent department. All codal formalities have been observed and the Appellant has been penalized after fulfillment of all codal formalities. Hence, the Appellant has been treated in accordance with law, rules and policy.
- b. That the Para No. b is incorrect and denied. The Appellant willfully concealed the application forwarded by SDEO concerned and did not submit before Respondent No. 4 / Sanctioning Authority. He did not even inform the Head Teacher / any staff member of his school. Therefore, all the staff members reported his absentee.
- c. That the Para No. c is the repetition of the above paras, hence, no comments.
- d. That the Para no. d is absolutely incorrect and not admitted. The report as annexure A in Para No. i of the


facts above is clear about his absentees. Moreover, he has been reported by the Head Teacher and SDEO concerned many times.

It is, therefore, very humbly prayed that the instant service appeal of the appellant may be dismissed with cost in favor of the respondents.

  
DISTRICT EDUCATION OFFICER (M)  
SWAT AT GULKADA

  
DIRECTOR,  
ELEMENTARY AND SECONDARY  
EDUCATION KHYBER PAKHTUNKHWA

  
ASSISTANT DIRECTOR,  
ELEMENTARY AND SECONDARY  
EDUCATION KHYBER PAKHTUNKHWA

  
SECRETARY,  
ELEMENTARY AND SECONDARY  
EDUCATION PESHAWAR



OFFICE OF THE  
DISTRICT EDUCATION OFFICER  
(MALE) SWAT

NO 310/P.F/M.Raziq/PST/DEO /Swat

Dated 19/10/2019

Annexure "A"

159

To

The Director  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar.

Subject:- DEPARTMENTAL APPEAL.

Memo:-

Please refer to your letter No.781/F.NO.04 DEO (Male) Maidan Dated Peshawar the 03.7.2019 on the subject noted above.

In this connection the following comments are hereby submitted for your kind consideration, please.

1. Since his appointment on 09.10.1989, Mr. Muhammad Raziq PST has been irregular, non punctual and killing the precious time of innocent students.
2. He has been continuously reported absent w.e.f. 1.03.2000 to 31.03.2000 by the Sub Divisional Education Officer (M) Swat vide his letter No.1840-44 dated 4.5.2000 and also received illegal salaries from Government treasury.
3. He has been reported absent w.e.f. 01.06.1999 to 31.10.1999 (153 days). His absent period was then converted in to leave without pay vide Endst: No.5627-28 dated 29.11.1999.
4. Again he was found absent on 01.08.2002. This absent period was converted into leave without pay vide Endst: No.6133, dated 11.12.2002.
5. In this regard enquiry was conducted by Mr. Fasehul Lisan Ex-ADO (M) Primary vide No.22244-46 dated 20.12.2003 and declared Mr. Muhammad Raziq PST as habitual absentee, non co-operative.
6. The teacher concerned was arrested by Kohistan Police due to involvement in a case FIR No.79 dated 4.10.2004 U/S 419/420/468/471/406 PPC Dubai.
7. He remained absent for 3<sup>rd</sup> time on 09.12.2003 to 16.12.2003, 24.8.2004 to 25.8.2004 and 13.09.2004 to 21.09.2004 by ADO(M) Primary Swat vide letter No.10683 dated 22.9.2004.
8. The Section Officer (Schools/Male) Government of Khyber Pakhtunkhwa directed this office vide No.SO(S/M)E&SED/4-17/2013/M Raziq Dated Peshawar the October 22, 2013 to recover the amount of Rs:-503083/= for unauthorized absence w.e.f 01.03.2010 to 01.02.2012.
9. He was reported absent by the concerned Head Teacher on 20.11.2011.
10. He was served upon a Show Cause for his habitual absenteeism vide Endst: No.3956 dated 17.12.2012. But he could not reply to the show cause notice.
11. He was arrested by the Anti Corruption Department and was in judicial lookup w.e.f 30.11.2012 at Timargara Jail in case FIR No.409,420,468,471 and suspended from service vide Endst: No.5220-25 dated 10.01.2013.
12. The teacher concerned was involved in case FIR No.358 dated 05.04.2017 U/S 489 F/420 PPC Police station Matta & Case FIR No.373 dated 11.04.2017 U/S 489 (F)/420 PPC Matta and suspended from service vide this office Endst: No.4233-36 dated 7.11.2017.
13. He was once again reported as absent for 4<sup>th</sup> time by the Head Master as well as staff of GPS Khakhtay Bazkhela and this office nominated one Mr. Muhammad Ismail Principal GHSS Balogram vide this office Endst: No.1543-44 dated 4.4.2019. As per enquiry officer he availed one month leave and 23 casual leave without proper sanction/permission from the competent authority.

Keeping in view the facts mentioned above, Mr. Muhammad Raziq is irregular, non punctual, inefficient and subversive person. His retention in education Department is just like a fatal poison for innocent children. Therefore your kind honor is hereby humbly requested to set aside his departmental appeal and keep this office decision as intact please.

  
DISTRICT EDUCATION OFFICER  
MALE SWAT



10

19-3-19

129  
131

مکتبہ صیانت الیوم ڈی ایچ او سوات لو ایس ڈی اے

صیانت عالی

حود ان کے پاس سے کہ گورنمنٹ ہائر کانسول فنڈ میں اساتذہ  
 میں کچھ رازق کا تبادلہ ہوا ہے 18 مارچ میں عمل میں آیا ہے۔  
 یہ سوال متعلقہ ذکورہ اسکولوں کے لئے لکھنے کی ضرورت ہے کہ  
 دل سے اس کے پاس سے کئی نوٹوں کے ساتھ 14 مارچ کو اساتذہ کو  
 پیش کیے گئے تھے جو اساتذہ کے پاس موجود تھے۔  
 متعلقہ ذکورہ اسکولوں کے لئے بھی متعلقہ اسکولوں کے لئے  
 کیا ہے اور آج 19 مارچ کو اساتذہ کو پیش کیا گیا ہے۔  
 اور اساتذہ کو اساتذہ کے لئے جو نوٹ پیش کیا گیا ہے  
 اساتذہ کو اساتذہ کے لئے پیش کیا گیا ہے۔

صیانت عالی! اساتذہ کے لئے اساتذہ  
 اساتذہ کے لئے اساتذہ کے لئے اساتذہ کے لئے  
 اساتذہ کے لئے اساتذہ کے لئے اساتذہ کے لئے  
 اساتذہ کے لئے اساتذہ کے لئے اساتذہ کے لئے

19-3-19

مکتبہ صیانت الیوم ڈی ایچ او سوات

Forwarded in  
 original to the DSO (M)  
 for n/a please  
 and for inquiry  
 may please be  
 put up to  
 the DSO (M)  
 Matia Swat

HEAD-MASTER  
 GPS Khaikhtey (Ejazmatia)  
 EMIS Code No. 22362  
 19-3-19

- 1. Headmaster SPST Matia Swat
- 2. Headmaster SPST Matia Swat
- 3. Headmaster SPST Matia Swat
- 4. Headmaster SPST Matia Swat
- 5. Headmaster SPST Matia Swat
- 6. Headmaster SPST Matia Swat

Forwarded to SDEO (M) Matia Swat  
 for n/a please.

M. Ismail

Mohammad Ismail  
 Asstt. Sub Divisional Edu Officer (M)  
 Matia Swat

Enquiry report against Mr Mohammad Razig PST  
GPS Khakhtay Swat

Annexure 'C' (136)  
put up on file (15)  
15-5-19

To The District Education Officer (M) Swat.

memo Reference your office order no 1543-44  
dt 11/4/19. The undersign Mohammad Jamil  
Principal G.S.S. Bologram appointed as  
enquiry officer regarding Mr M. Razig PST  
GPS Khakhtay Swat. The detail report is as  
under.

The Head teacher along with staff  
members wrote an application to DEO (M)  
Swat that Mr Mohammad Razig PST is  
habitual absent person from his duties.

Procedure: The enquiry officer visited GPS  
Khakhtay on 18.4.2019 all the staff members  
were present because they already  
know about the enquiry. By checking  
the attendance register it is clear  
that Mr Mohammad Razig PST avoided

23 casual leaves since 25.5.18 and  
along with this availed the so called

earned leave w.e.f 21.11.18 to 14.12.18

without any proper sanction from

Competent authority. Another PST Kyjayatullah

also availed 8 days from new start of

the session i.e 9.4.19 to 16.4.19 sanctioned

from SDEO. The head teacher Anni Hattam

record shows that every month he perform

periodicity 6-10 days regularly and have

no interest in schooling of the students.

He is serving in this school since long

but never took any class. I asked the

students that ~~what~~ when your teacher

on c. leave who teach you they answered

then we play seen and hide out side the

school in the street.

This very school having 2... students  
But astonishing thing is that there is  
no 5th class, they send them to another  
school through hard and hilly way  
and the head teacher told me that  
the course is out of our reach.

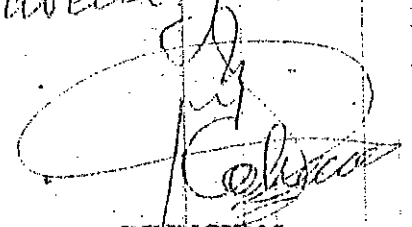
Conclusion: The head teacher donot take  
any interest in the school he only interested  
in his duty being the head it is not  
good for the students and Mr M. Raziq,  
is trained of office therefore well expert  
to ditch the staff.

Recommendation: Mr M. Raziq <sup>availed</sup> one month  
earned leave and 23 casual leaves without  
any sanction from his ups and availed the  
leave without permission therefore deduction  
of in same period must be done - and one  
one increment should be <sup>stop</sup> for two years.

Mr Amir Hattam HAST is not fit for this post at this school should transferred to another school and warning of demotion should issue to him.

3, Frequent visit of DBO, SPBO and ASDBO should planned to keep and run them on the path.

4, Forced the school to starts 5th class in the school because students of 5th class are in big trouble in travelling to another school.



PRINCIPAL  
Govt. Higher Secondary School  
Balogram, Distt: Swat.

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

*Service Appeal No. 1704 of 2019*

*Muhammad Raziq Primary School Teacher Government  
Primary School Khakhty, Tehsil Matta, District Swat.*

*...Appellant*

**VERSUS**

*The Secretary Elementary and Secondary Education  
Khyber Pakhtunkhwa and Others.*

*...Respondents*

**REJOINDER BY THE APPELLANT**

*Respectfully Sheweth:*

*Preliminary Objections:*

*That all the preliminary objections are incorrect, baseless, against the law, rules, facts and Shariah and are specifically denied. Moreover the appellant has got a prima facie case in his favour and has approached this Honourable Tribunal well within time with clean hands and this Honourable Tribunal has got the jurisdiction to adjudicate upon the same.*

*On facts:*


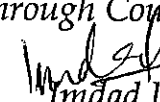
- i. Para 1 of the comments as drafted is misconstrued and based on misstatements, thus the same is denied.*

- ii. *Para 2 of the comments as drafted also is based on misstatement and concealment of facts, thus the same is denied as well.*
- iii. *Para 3 of the comments as drafted also is incorrect and devoid of merits as well as based on concealment, thus the same is denied as well.*
- iv. *Para 4 of the comments as drafted also is incorrect and based on whims in utter negation of the law and rules on the subject, thus the same is denied as well.*
- v. *Para 5 of the comments as drafted also in vague, evasive and based on concealment, thus the same is denied as well.*
- vi. *Para 6 of the comments as drafted is baseless, incorrect and based on concealment of facts, hence the para is specifically denied.*
- vii. *Para 7 of the comments as drafted also is incorrect, devoid of merits and misconstrued, thus the same is denied as well.*
- viii. *Para 8 of the comments as drafted also is vague and evasive as well as devoid of merits, thus the same is denied as well.*
- ix. *Para 9 of the comments as drafted also is devoid of merits, hence denied as well.*

Grounds:

- a. Ground A of the comments as drafted is incorrect, baseless, devoid of merits and in need of solid evidence, thus the same is denied specifically.
- b. Ground B of the comments as drafted is devoid of merits, incorrect and based on whims, thus the same is also denied specifically.
- c. Ground C of the comments as drafted is vague, evasive bereft of merits, thus the same is denied as well.
- d. Ground d of the comments as drafted also is incorrect, devoid of merits and misconstrued, thus the same is denied as well.

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be decided as prayed for originally.

  
Appellant  
Muhammad Raziq  
Through Counsel,  
  
Imdad Ullah  
Advocate Swat



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

*Service Appeal No. 1704 of 2019*

*Muhammad Raziq Primary School Teacher Government  
Primary School Khakhty, Tehsil Matta, District Swat.*

*...Appellant*


**VERSUS**


*The Secretary Elementary and Secondary Education  
Khyber Pakhtunkhwa and Others.*

*...Respondents*

**AFFIDAVIT**

*It is solemnly stated on Oath that all the contents of  
this rejoinder are true and correct to the best of my  
knowledge and belief and nothing has either been  
misstated or kept concealed before this Honourable  
Tribunal.*

 Deponent  
Muhammad Raziq

ATTESTED  
  
UMAR SADIQUE Advocate,  
OATH COMMISSIONER  
Distt: Courts Swat.  
No. 101. Date: 1-03-2021