

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,**  
**PESHAWAR.**

Service Appeal No. 1532/2019

Date of Institution ... 29.10.2019

Date of Decision ... 15.12.2021

Adil Ehsan S/O Muhammad Asif, R/O Garhi Mawaz Khan Kohat.

... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Secretary  
Elementary and Secondary Education Khyber Pakhtunkhwa  
Peshawar and two others.

... (Respondents)

MR. MUBARAK ZEB,  
Advocate

--- For appellant.

MR. MUHAMMAD RASHEED,  
Deputy District Attorney

--- For respondents.

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

--- MEMBER (JUDICIAL)  
--- MEMBER (EXECUTIVE)

**JUDGMENT:**

**SALAH-UD-DIN, MEMBER:-**

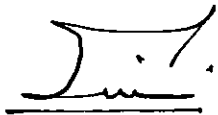
Precise facts forming the background of the instant service appeal are that the appellant was appointed as Chowkidar vide notification dated 06.10.2011 and was posted in Government Girls Degree College KDA Kohat. During the course of his service, disciplinary action was taken against the appellant on the ground of his absence from duty and he was terminated from service vide order dated 11.03.2014. The appellant challenged the same through filing of departmental appeal, which was regretted vide order dated 23.11.2018 on the ground that the same was time



barred. The appellant has now approached this Tribunal through filing of instant service appeal for redressal of his grievance.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the absence of the appellant was not willful, rather he was unable to attend his duty as he was falsely charged in a murder case; that the appellant has been acquitted in the murder case and in view of FR-54, the appellant is entitled to be reinstated in service with all back benefits; that the inquiry proceedings were conducted at the back of the appellant and he was not provided any opportunity of personal hearing or self defense; that the relevant provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 were not complied with; that the word "termination" has been mentioned in the impugned order, which has rendered the impugned order as void; that as the impugned order is void ab-initio, therefore, no limitation would run against the same. In the last he requested that the appeal in hand may be accepted and the appellant may be reinstated in service with all back benefits. Reliance was placed on 1998 SCMR 1993, 2001 SCMR 259 and judgment dated 08.07.2020 passed by this Tribunal passed in Service Appeal No. 1208/2017.



4. Conversely, learned Deputy District Attorney for the respondents has contended that the appellant was appointed as Chowkidar on 06.10.2011, however he was not at all interested in performing of his duty and was time and again issued show-cause notices on the ground of his absence from duty but he submitted affidavits that he will remain careful in future, therefore, the show-cause notices issued to him were filed; that the departmental action was taken against the appellant on the ground of his willful absence from duty and he has been removed from service after complying of procedure provided in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011; that the appellant was not at all proceeded against on the ground of his involvement in the

criminal case, therefore, his acquittal in the criminal case is of no avail to him; that the appellant went into hiding after his charging in the murder case on 10.09.2013, who was arrested on 18.06.2014, however he was already proceeded against on the ground of willful absence from duty and was removed from service vide order dated 11.03.2014; that the impugned order was passed on 11.03.2014 and copy of the same was also sent to the appellant, while the appellant filed departmental appeal on 16.10.2018, which was badly time barred; that the departmental appeal of the appellant was turned down vide order dated 23.11.2018, which was required to be challenged within 30 days, however the appellant had filed Service Appeal on 29.10.2019, which is also badly time barred; that all legal and codal formalities were complied with before passing of the impugned order, therefore, the same may be kept intact and the appeal in hand may be dismissed with costs. Reliance was placed on judgment dated 26.09.2017 passed by this Tribunal in Service Appeal No. 703/2016.



5. We have heard the arguments of learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and have perused the record.

6. A perusal of the record would show that disciplinary action was taken against the appellant on the ground of willful absence from duty. The appellant remained absent with effect from 12.09.2013 without seeking any leave or permission of the competent Authority, therefore, show-cause notices through registered acknowledgment were issued to him on 19.09.2013, 07.10.2013 and 24.10.2013 on his home address, however the appellant did not turn up for his duty. Notice was then issued to the appellant by way of publication in two newspapers but even then the appellant did not turn up for his duty. The procedure as prescribed in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was thus complied with prior to passing of the impugned order.

7. The appellant was charged in the criminal case on 10.09.2013, who went into hiding and was arrested on

18.06.2014, while the impugned order, whereby the appellant was terminated was issued on 11.03.2014. The appellant thus cannot take the plea that the proceedings against him were conducted while he was in custody in the criminal case. The contention of learned counsel for the appellant that in view of FR-54, the appellant is entitled to be reinstated in service with all back benefits is misconceived for the reason that the appellant was not proceeded against on the ground of his involvement in the criminal case, rather he was proceeded against on the ground of willful absence from duty. The objection of learned counsel for the appellant that the using of word "termination" in the impugned order has made the same as void is also misconceived because the same is mere an irregularity and this Tribunal has got ample powers under Section-7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, to rectify the same.

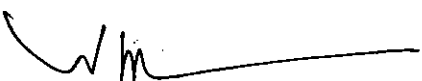
8. Furthermore, the departmental appeal of the appellant was badly time barred, therefore, on this score alone, the appeal in hand is not maintainable. The appellant has though filed an application for condonation of delay, however the same is general in nature and delay of each and every day has not been explained therein.

9. In view of the above discussion, the impugned order dated 11.03.2014 is modified only to the extent that the penalty of termination from service shall be considered as removal from service. With the afore-mentioned modification in the impugned order dated 11.03.2014, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
15.12.2021



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)




(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

ORDER  
15.12.2021

Appellant alongwith his counsel namely Mr. Mubarak Zeb Advocate, present. Fresh Wakalat Nama on behalf of the appellant produced, which is placed on file. Mr. Jehanzeb, Superintendent alongwith Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present. Arguments heard and record perused.

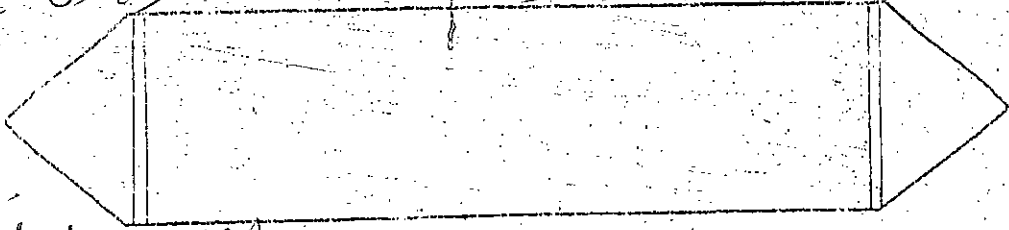
Vide our detailed judgment of today, separately placed on file, the impugned order dated 11.03.2014 is modified only to the extent that the penalty of termination from service shall be considered as removal from service. With the afore-mentioned modification in the impugned order dated 11.03.2014, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
15.12.2021

  
(Atiq-ur-Rehman Wazir)  
Member (E)

  
(Salah-Ud-Din)  
Member (J)

بعد التعمیر کے لیے درخواستیں ارسال کی گئی ہیں۔



2021ء میں بجائے اس کے لیے  
بے دخل رہا بنام حکومت

مورخہ  
مقدمہ 9/1532/SA  
دعویٰ  
جرم

### باعث شکر برآئیکہ

مقدمہ میں درجہ عنوان بالا میں اپنی طرف سے واسطے پیردی و جواب دہی دکن کاروائی مختلف  
آن مقام سے درجہ کے لیے  
مقرر کر کے قرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز  
دکن صاحب کو رائی نامہ کرنے و تقرر نامتہ فیصلہ پر خلاف دینے جواب دہی اور اقبال دعویٰ اور  
ضرورت ڈگری کرنے اجراء اور صولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
و زامیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور مستثنیٰ  
نیز دائر کرنے اپیل ٹرانسپیرنٹ و نظر ثانی و پیردی کرنے کا اختیار ہوگا۔ از ضرورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساخت  
پر واضح منظور قذیل ہوگا۔ دوران مقدمہ میں جو خرچہ ہو جائے گا اس کے لیے مقدمہ کے سبب سے ہوگا۔  
کوئی تاریخ پیش مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے کہ پیردی  
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Accepted  
Mukhtar

ماہ کسمبر 2021ء

المرقومہ

BE-10-3455

واہ العباد

کے لیے منظور ہے۔

بمقام

ADIL AHSAN

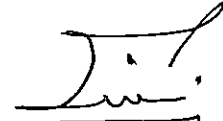
17.09.2021

Appellant in person present. Mr. Kabirullah Khattak,  
Additional Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his  
counsel is busy in the august High Court. Adjourned. To come up  
for arguments before the D.B on 15.12.2021.



(ATIQ UR REHMAN WAZIR)  
MEMBER (EXECUTIVE)



(SALAH UD DIN)  
MEMBER (JUDICIAL)

07.01.2021

Junior to the senior counsel is present for appellant. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Qazi Ayaz, Litigation Officer, for the respondents are also present.

Written reply on behalf of respondents not submitted. Representative of the department is seeking further time for submission of written reply/comments. Time is allowed but as a last chance. File to come up for written reply/comments on 25.02.2021 before S.B.

(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

25.02.2021

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Written reply on behalf of respondents not submitted despite last chance given in the preceding order sheet dated 07.01.2021, therefore, the appeal is posted to D.B for 01.06.2021 for arguments.

(Muhammad Jamal Khan)  
Member

01.06.2021

Appellant alongwith clerk of counsel present. Mr. Jehanzeb, Superintendent alongwith Mr. Javed Ullah, Assistant Advocate General for the respondents present.

Comments on behalf of respondents No. 2 & 3 submitted, which are placed on file and copy of the same handed over to the appellant. Adjourned. To come up for rejoinder as well as arguments before the D.B on 17.09.2021.

(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

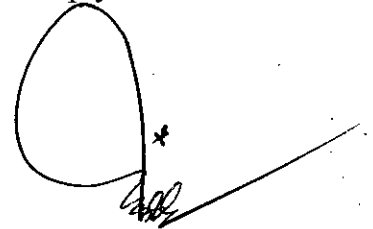


25.09.2020

None for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Jehanzeb, Supdt for respondents present.

Written reply not submitted. Learned Addl: AG seeks time to submit written reply/comments on the next date of hearing.

Adjourned to 18.11.2020 for written reply/comments before S.B.



(Mian Muhammad)  
Member (E)

18.11.2020

Junior counsel for appellant and Addl; AG alongwith Jehanzeb, Superintendent for respondents present. Representative of respondents seeks time to furnish reply/comments: Adjourned 07.01.2021 on which date the requisite reply/comments shall positively be submitted.



Chairman

21.07.2020

Learned counsel for the appellant is present. Contends inter-alia on the point of law of having been terminated from service without compliance of the coal formalities by the authority according to the law and rules on the subject he contends that upon implication in a criminal case, he was proceeded but did not receive any intimation from the department, he was ultimately acquitted from the charges by the Hon'ble High Court vide its judgment dated 27.06.2018. That initiation of proceedings without making compliance of legal requirements is an act which cannot be justified by any canonical norms and practices as well as in a recognized legal system, in the circumstances he submitted that the impugned order is void ab-initio and the period of limitation do not run against an order which do not stand on robust and sound footings of law. He placed reliance on the judgment of this Service Tribunal dated 08.07.2020 copy of which has been placed on record wherein it was held that no period of limitation could run against a void order. That since the order passed by the authority stand no where it could be challenged/assailed through the instant appeal.

The points raised need thorough probe and resolution therefore, the appeal is admitted to regular hearing. 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 25.09.2020 before S.B.

(MUHAMMAD JAMAL KHAN)  
MEMBER

Appellant Deposited  
Security & Process Fee

20/08/2020

22.01.2020

Junior to counsel for the appellant present.

Requests for adjournment due to general strike of the Bar. Adjourned to 05.03.2020 in order to avail the outcome of case(s) pending before the Larger Bench regarding retrospective punishment.

Chairman



05.03.2020

Clerk of counsel for the appellant present and requested for adjournment on the ground that learned counsel for the appellant is busy before the Hon'ble Peshawar High Court Peshawar and cannot attend the Tribunal today. Adjourned to 21.04.2020 in order to avail the outcome of case(s) pending before the Larger Bench regarding retrospective punishment.

(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER



21.04.2020

Due to COVID19, the case is adjourned to 21.07.2020 for the same as before.

Reader






Form- A.

# FORM OF ORDER SHEET

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

Case No.- 1532/2019


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/11/2019	<p>The appeal of Mr. Adil Ihsan resubmitted today by Mr. Zar Taj Anwar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	18/11/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>20/12/19</u></p> <p> CHAIRMAN</p>
	20.12.2019	<p>Counsel for appellant present.</p> <p>Learned counsel requests for adjournment of instant matter to a date after the hearing of matter involving retrospective punishment by a larger bench of this Tribunal.</p> <p>Adjourned to 22.01.2020 before S.B.</p> <p> Chairman</p>

The appeal of Mr. Adil Ehsan son of Muhammad Asif r/o Garhi Mawaz Khan Kohat received today i.e. on 29.10.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Copy of FIR mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 5- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 6- Copy of termination and rejection order of departmental appeal mentioned in the memo of appeal in respect of appellant are not attached with the appeal which may be placed on it.
- 7- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 8- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

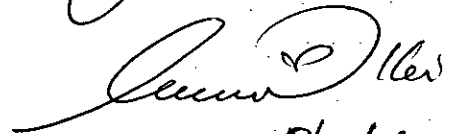
No. 1906 /S.T,

Dt. 30/10 /2019.

  
REGISTRAR 30/10/19  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr.Zataj Anwar Adv. Pesh.

There <sup>is</sup> no show cause notice, charge sheet and inquiry, which is one of our grounds of appeal.

  
8/11/19

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 1532/2019

Adil Ehsan S/o Muhammad Asif R/o Garhi Mawaz Khan  
Kohat.

(Appellant)

**VERSUS**

Govt. of Khyber Pakhtunkhwa through Secretary Elementary  
and Secondary Education KPK & Others.


(Respondent)

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1	Memo of Appeal along with affidavit		1-5
2	Application for condonation of delay		6-7
3	Copy FIR dated 09.06.2013	A	8
4	Copy of Judgment of acquittal of PHC dated 27.06.2018.	B	9-20
5	Copy of Departmental appeal & rejection order <i>9 order dtd 11-3-2014</i>	C & D	21-23
6	Vakalatnama		24

  
Appellant

Through

  
**ZARTAJ ANWAR**  
Advocate Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

Appeal No. 1539/2019

Diary No. 1518

Dated 29-10-2019

Adil Ehsan S/o Muhammad Asif R/o Garhi Mawaz Khan  
Kohat.

(Appellant)

**VERSUS**

1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Director, Higher Education, Khyber Pakhtunkhwa, Peshawar.
3. Principal, Govt. Girls Degree College, KDA, Kohat.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned Order dated 11.03.2014, whereby the appellant was terminated from service, and against which the departmental appeal was filed before the competent authority which was also rejected/turn down vide order dated 23.11.2018, which was communicated on 17.10.2019.

Filed to-day

Registrar

29/10/19

Prayer in Appeal: -

Re-submitted to -day  
and filed.

Registrar

14/11/19

On acceptance of this appeal the impugned order dated 11.03.2014, may please be set aside, similarly the impugned order dated 23.11.2018, may also be set-aside and the appellant may graciously be re-instated in service w.e.f 12.09.2013 with all back benefits.

Respectfully Submitted:

1. That the appellant was appointed as Chowkidar on 06-10-2011, in Govt. Girls Degree-II College, Kohat.

2. That ever since his appointment, the appellant had performed his duties as assigned with zeal and devotion and there was no complaint whatsoever regarding his performance.
3. That while serving in the said capacity, the appellant was falsely implicated in a criminal case under section 302-B/34-PPC, vide FIR No.1046, dated 10.09.2013. The appellant duly informed his department about his false implication in criminal case. Since there were serious threats to the life of the appellant from his enemies, therefore he could not join his duty. ***(Copy of the FIR is attached as Annexure A)***
4. That after facing trial, the appellant was convicted by the learned Additional Session Judge-IV, Kohat vide their impugned judgment dated 26.08.2015, whereof the Appellant appealed before the Hon'ble Peshawar High Court, Peshawar against the aforesaid judgment and the appellant was honourable acquitted from criminal charges by the Peshawar High Court, Peshawar vide judgment dated 27.06.2018. ***(Copy of the judgment of the PHC dated 27.06.2018 is attached as Annexure B)***
5. That after obtaining copies of the acquittal order, the appellant duly reported the matter to the respondent by submitting his arrival report for duty through which the Petitioner was informed that he has been terminated from service.
6. That aggrieved from the order dated 23.11.2018, which was never communicated to the appellant and came to know about it when he submitted his departmental appeal in response to which he was handed over the rejection order on his departmental appeal. ***(Copy of the departmental appeal and rejection order are enclosed as Annexure C & D).***
7. That the appellant prays for the acceptance of the instant appeal inter alia on the following grounds:-

**GROUND OF APPEAL:**

- A. That the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B. That the case of the appellant is covered under FR-54 which provides that:  
***“F.R.54----Where a Government Servant has been dismissed or removed is reinstated, the revising or***



*appellate authority may grant to him for the period of his absence from duty—*

- a) If he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed, and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or*
- b) If otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribed.*

*In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty unless the revising appellate authority so directs.*

Since the appellant has been Honourable acquitted in criminal case, therefore on his reinstatement he cannot be denied the back benefits of service to which he would have been entitled had he been in service.

- C. That it has also been held by the Superior courts in a number of reported cases that all acquittals are honorable and there can be no acquittal that can be termed as dis-honourable, reliance is places on 1998 SCMR 1993 and 2001 SCMR 269.
- D. That since the absence of the appellant was not willful but was due to his false implication in criminal case, moreover the respondents were fully aware of the registration of criminal case against the appellant, therefore under the law/rules when the appellant on his acquittal from criminal case, then he under the law the Appellant is entitle to be re-instated with all back benefits.
- E. That the appellant was falsely implicated in FIR, and on 18.06.2014 he was arrested by the Police and since then he was behind the bar until he was honourably acquitted by the Court of law, and therefore he remained out of service during that period. The absence period of the Appellant was thus beyond his control and he cannot be made suffered for the events which were beyond his control.
- F. That the appellant has never committed any act or omission which could be termed as misconduct, his absence from duty was not willful but it was due to his false implication in criminal case. Since the appellant have honorably acquitted in the criminal case, therefore the Appellant is also entitle to be reinstated in service with all back benefits.

- G. That during the intervening period the appellant never remained in gainful employment, therefore on his reinstatement he is entitled for the grant of all benefits also.
- H. That the appellant also seeks permission of this honorable Tribunal to rely on additional grounds at the time of hearing of the appeal.

*It is, therefore, humbly prayed that on acceptance of this appeal the impugned order dated 11.03.2014, may please be set aside, similarly the impugned order dated 23.11.2018, may also be set-aside and the appellant may graciously be re-instated in service w.e.f 12.09.2013 with all back benefits.*

  
Appellant

Through



ZARTAJ ANWAR  
Advocate Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Appeal No. \_\_\_\_\_/2019

Adil Ehsan S/o Muhammad Asif R/o Garhi Mawaz Khan  
Kohat.

**(Appellant)**

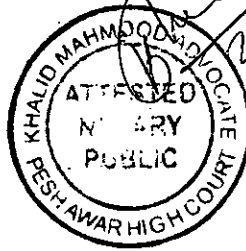
**VERSUS**

Govt. of Khyber Pakhtunkhwa through Secretary Elementary  
and Secondary Education KPK & Others.

**(Respondent)**

**AFFIDAVIT**

I, *Adil Ehsan S/o Muhammad Asif, Ex-Chowkidar in Govt. Girls Degree-II College, Kohat*, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.



  
**Deponent**

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Appeal No. \_\_\_\_\_/2019

Adil Ehsan S/o Muhammad Asif R/o Garhi Mawaz Khan  
Kohat.

**(Appellant)**

**VERSUS**

Govt. of Khyber Pakhtunkhwa through Secretary Elementary  
and Secondary Education KPK & Others.

**(Respondent)**

**APPLICATION FOR CONDONATION OF DELAY,  
IF ANY IN FILING THE TITLED APPEAL**

*Respectfully submitted:*

1. That the applicant has today filed the accompanied appeal before this Honorable Tribunal in which no date of hearing is fixed so far.
2. That the applicant prays for condonation of delay if any in filing the instant appeal inter alia on the following grounds:-

**GROUND OF APPLICATION**

- A. That the applicant has falsely been charged by the complainant. The applicant duly informed the department about his false implication, however since there were severe threats to the appellant and his family therefore it was not possible for the applicant to join his duties.
- B. That soon after his acquittal, the applicant requested for re-instatement for which his departmental appeal was rejected vide 23.11.2018. However the order was never communicated to the appellant. The appellant time and again inquired about the outcome of his departmental appeal, however he was not given any response, lastly he came to know on 17.10.2019 that his request for re-instatement has been turned down on the basis of barred by time. Since, the appellant pursued his case diligently and never remained negligent in pursuing his remedy, therefore delay if any in filling the

titled appeal is not willful but due to the reason stated above, and deserve to be condoned.

- C. That the delay, if any, in filing the instant appeal was not willful nor can the same be attributed to the applicant as it was due to the non communication of the rejection order to the applicant, therefore the applicant cannot be made suffered for the omission of respondent for not communicating the rejection order . Hence delay if any deserves to be condoned.
- D. That it has been consistently held by the superior courts that appeal filed with in 30 days from the date of communication of the order on departmental representation / appeal would be in time. *Reliance is placed on 2013 SCMR 1053 & 1997 SCMR 287 (b).*
- E. That valuable rights of the appellant are involved in the instant case in the instant case, hence the delay if any in filing the instant case deserves to be condoned.
- F. That it has been the consistent view of the Superior Courts that cases should be decided on merit rather than technicalities including limitation. The same is reported in 2014 PLC (CS) 1014 2003 PLC (CS) 769.

*It is therefore humbly prayed that on acceptance of this application the delay if any in filing the instant appeal may please be condoned.*

  
Applicant

Through

  
ZARTAJ ANWAR  
Advocate Peshawar

**AFFIDAVIT**

*I, Adil Ehsan S/o Muhammad Asif, Ex-Chowkidar in Govt. Girls Degree-II College, Kohat, do hereby solemnly affirm and declare on oath that the contents of the above noted application for condonation of delay are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.*

  
Deponent



9

ANNEX B

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR**

Criminal Appeal No. 514-P/2015

1. Adil Ehsan alias Sani
2. Muhammad Ashir both sons of Muhammad Asif
3. Muhammad Asif S/O Nisar Ali all residents of  
Garhi Mawaz Khan, Kohat .

.....APPELLANTS

**VERSUS**

1. Mst. Jamsheda through her legal heirs widow of  
Abdul Razaq R/O Fateh Khankhel, Kohat.
2. The State.

.....RESPONDENT

**APPEAL U/S 410 CR.PC AGAINST THE ORDER OF  
LEARNED ADDITIONAL SESSION JUDGE-IV, KOHAT,  
WHEREBY THE APPELLANTS WERE CONVICTED U/S  
302-B/34 PPC AND SENTENCE TO SUFFER LIFE  
IMPRISONMENT AND ALSO LIABLE TO PAY FINE  
1,00,000/- EACH TO THE LEGAL HEIRS OF  
DECEASED U/S 544-A CR.PC AND DEFAULT OF  
PAYMENT THE APPELLANTS SHALL SUFFER 6  
MONTHS IMPRISONMENT.**

**ATTESTED**

FILED TODAY

Deputy Registrar

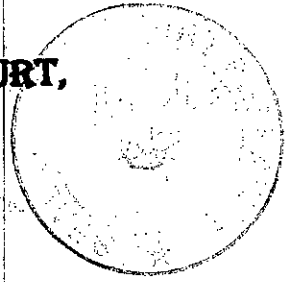
01 SEP. 2015

**ATTESTED**  
EXAMINER  
Peshawar High Court.

06 AUG 2015

10

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
JUDICIAL DEPARTMENT**



**JUDGMENT**

**Cr. Appeal No. 514-P of 2015**

Date of hearing: 27.06.2018  
Appellant: (Adil Ehsan alias Sani,  
Muhammad Ashir &  
Muhammad Asif) By Mr. Jalal-  
ud-Din Akbar-e-Azam Khan  
(Gara) Advocate.  
Respondent: (State) By Mr. Kashaan  
Abdullah, Advocate.

**ISHTIAQ IBRAHIM, J.-** Through the

present criminal appeal, (1) Adil Ehsan alias Sani, (2) Muhammad Ashir sons of Muhammad Asif and (3) Muhammad Asif son of Nisar Ali, appellants herein, have challenged the legality of the judgment dated 26.08.2015 of the learned Additional Sessions Judge-IV, Kohat whereby they have been convicted and sentenced as mentioned hereunder:-

- (i) Under Section 302 (b)/34 PPC: each appellant to life imprisonment;
- (ii) Each appellant was also burdened to pay Rs.100,000/- as compensation to the legal heirs of the deceased under Section 544-A Cr.P.C., in default thereof, the appellants were ordered to undergo further imprisonment for six months.

**ATTESTED**



2. In essence, facts of the prosecution case, as averred in the F.I.R., are that on 10.09.2013 at 08.30 hours, complainant Mst. Jamsheda widow of Abdur Razzaq present with the dead body of deceased Muhammad Suleman reported to Sabir Ali ASI at Emergency Room of LMH Kohat that at the eventful day and time, she along with her son deceased Muhammad Suleman was going to Bazaar to purchase groceries; her son was going ahead while she was following him, when they reached near Kalu Hotel at Jail Road, accused Muhammad Asif son of Nasir Ali, Muhammad Ashir and Adil Ehsan alias Sunny sons of Muhammad Asif emerged and opened fire at her son, as a result whereof, her son was hit and succumbed to his injuries en route to the hospital. The accused decamped from the spot after commission of the offence. Motive behind the offence was stated to be a dispute over a house. So, the present case, vide F.I.R. No.1046 dated 10.09.2013, was registered against them.
3. The accused appellants, after the occurrence, went into hiding, therefore, after completion of investigation and submission of Challan against them, evidence under Section 512 Cr.P.C. was recorded in their absence.
4. Subsequently, on 18.06.2014 accused appellant Adil Ehsan alias Sunny was arrested while the remaining two accused appellants were arrested on 04.08.2014 and supplementary challan was submitted against them. Formal charge was

ATTESTED

ATTESTED  
EXAMINER  
Peshawar High Court  
06 AUG 2015

framed against them on 10.10.2014 to which they pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined as many as eleven witnesses during the trial. Gul Razim SI (PW-6) appeared in Court and recorded his statement wherein he deposed that upon receipt of copy of FIR and *murasila* for investigation, he rushed to the spot along with other police officials. He inspected the spot and prepared site plan Ex:PW-6/1 on the pointation of complainant. During spot inspection, he recovered and took into his possession blood stained earth Ex:P-1 from the place of deceased, three empty shells of .30 bore Ex:P-2 from the places of accused and prepared recovery memo Ex:PW-5/1, in presence of marginal witnesses. Thereafter, he proceeded to the house of accused for their search vide search memo Ex:PW-6/2 but nothing incriminating was recovered.. He searched the accused in the locality but in vain. Thereafter, he came back to police station where constable Sakhi Badshah No.961 produced blood stained Qamees Shalwar and one white banyan along with relevant documents which he took into his possession vide recovery memo Ex:PW-5/2, in presence of marginal witnesses. He recorded statements of identifiers of dead body of the deceased along with other PWs under Section 161 Cr.P.C. He sent blood stained garments and earth to FSL. Thereafter, he initiated proceedings under Sections 204 and 87 Cr.P.C. against the

**ATTESTED**

accused vide his applications Ex:PW-6/3 and PW-6/4, respectively. He received FSL report which is Ex:PZ. After completion of investigation, he handed over the case file to the SHO for submission of challan. He verified the above documents and his signatures thereon.

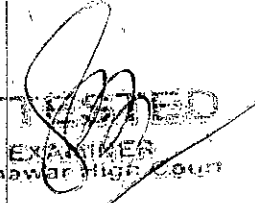
6. Dr. Sajjad Rauf was examined as PW-7. His statement is reproduced below in verbatim:-

*"that on 10.09.2013 at about 09.30 AM, I have conducted autopsy of dead body of deceased Muhammad Salman aged about 24/25 years s/o Abdul Razaq r/o Mohallah Fatih Khan Khel, Kohat and found the following:*

*A young adult in white clothes having the following wounds:*

- 1- *Firearm entry wound below umbilicus about 1 cm in diameter.*
- 2- *Firearm entry wound over the right deltoid area about 1 cm in diameter.*
- 3- *Firearm exit wound over the front of chest near right shoulder about 2.5 cm in size.*
- 4- *Firearm wound over the left shoulder about 1 cm in size.*
- 5- *Firearm wound over the right shoulder 1 cm in size.*
- 6- *Firearm entry wound over left deltoid area about 1 cm in size.*

  
**ATTESTED**

  
**ATTESTED**  
EXAMINER  
Peshawar High Court

06 AUG 2018

**Internal Examination:**

**Scalp, skull and vertebra: intact.**

**Thorax: Walls, ribs, cartilages, pleurae, larynx, trachea, right lung, left lung, pericardium, heart, blood vessels, walls, peritoneum, diaphragm, stomach and its contents, pancreas, small intestines and their contents, large intestines and their contents, liver, spleen were injured.**

**Muscles, bones, joints: Chest and abdomen was injured.**

**Remarks: In my opinion, the persons received bullet injuries to the chest and abdomen causing severe bleeding, resulting in sudden death.**

**Probable time between injury and death: About 1-2 hours and between death and PM: 30-90 minutes.**

**Today I have seen the PM report Ex:PM (six pages), which correctly bear my signatures. Inquest report also bears my endorsement.**

7. After closure of prosecution evidence on 02.05.2015, accused appellants were examined under Section 342 Cr.P.C on 12.05.2015 wherein they professed innocence, however, neither they wished to be examined on oath as required by Section 340 (2) Cr.P.C, nor opted to produce evidence in their defence.

**ATTESTED**



12 /

8. On conclusion of trial, after hearing the learned counsel for the parties and appraising evidence available on the file, the learned Additional Sessions Judge-IV, Kohat, vide impugned judgment dated 26.08.2012, convicted and sentenced the appellants as mentioned in the earlier part of the judgment.


9. We have heard arguments of the learned counsel for the appellants and learned State counsel carefully and perused the evidence on the file with their valuable assistance. Daughter of complainant Mrs. Nafisa Naveed appeared before this Court on 14.02.2018 and submitted that she is unable to engage counsel and will rely on the arguments of learned State counsel. A.O.

10. Substantive evidence in the present case is the statement of complainant Mrs. Jamshed, mother of the deceased. She died before the commencement of trial and her statement recorded under Section 212 Cr.P.C. on 24.01.2014 was transposed to the file of the present case by the trial Court vide order sheet dated 12.2.2012. Admittedly, she is solitary eye witness and her statement recorded under Section 212 Cr.P.C. was substantive piece of evidence and the same can be legally considered for proof of guilt of the appellants or otherwise, provided the same appears to be duly recorded in accordance with law and secondly if it appears natural, truthful and duly corroborated by unimpeachable corroborative evidence. Statements under

*[Handwritten signature and stamp]*

*[Handwritten signature]*

8. On conclusion of trial, after hearing the learned counsel for the parties and appraising evidence available on the file, the learned Additional Sessions Judge-IV, Kohat, vide impugned judgment dated 26.08.2015, convicted and sentenced the appellants, as mentioned in the earlier part of the judgment.
9. We have heard arguments of the learned counsel for the appellants and learned State counsel carefully and perused the evidence on the file with their valuable assistance. Daughter of complainant Mst. Nadia Naveed appeared before this Court on 14.06.2018 and submitted that she is unable to engage counsel and will rely on the arguments of learned State counsel/A.A.G.
10. Substantive evidence in the present case is the statement of complainant Mst. Jamsheda, mother of the deceased. She died before the commencement of trial and her statement recorded under Section 512 Cr.P.C. on 24.01.2014 was transposed to the file of the present case by the trial Court vide order sheet dated 12.5.2015. Admittedly, she is solitary eye witness and her statement recorded under Section 512 Cr.P.C. was substantive piece of evidence and the same can be legally considered for proof of guilt of the appellants or otherwise, provided the same appears to be duly recorded in accordance with law and secondly if it appears natural, truthful and duly corroborated by unimpeachable corroborative evidence. Statements under



**ATTESTED**

**ATTESTED**  
EXAMINED  
Peshawar High Court

06 AUG 2018

Section 512 Cr.P.C. are relevant according to Article 47 of the Qanun-e-Shahadat but still these are subject to judicial scrutiny and are to be looked into in the peculiar circumstances of each and every case. In this case, father (Muhammad Asif, appellant No.3) and two sons Adil Ehsan and Muhammad Ashir, appellants No.1 and 2) are charged by the complainant for effective firing at the deceased. First, it is to be seen whether presence of the complainant has been proved by the prosecution. Not a single independent piece of evidence is available on record which would show that at the relevant time of occurrence, the complainant was accompanying the deceased. The statement of the complainant qualifies the first test that her statement under Section 512 Cr.P.C. was recorded in accordance with the law and the same was also transposed to the file of the present trial but still that statement will face the test of its truthfulness and corroboration from other pieces of evidence which are available on the file. The medical evidence shows that all the entry wounds on the deceased are of the one and the same dimension i.e. carrying the size of one cm each while we have before us three appellants for making simultaneous firing at the deceased, more so, the three empties which were recovered from the place of occurrence were not sent to Firearms Expert in order to ascertain as to whether the same were fired from one or different weapons. It appears that this

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vital evidence has been purposely withheld by the prosecution in order to overcome the exaggerated charge made by the complainant and the same is also indicative of the fact that the complainant was not present at the spot at the time of occurrence. We are fortified in our view by the judgment of the Apex Court in case Farman Ali vs. The State (PLD 1980 Supreme Court 201) wherein the following observations were made:-

**"In his dying declaration, Rashid Khan has involved the three brothers as well as their friend, Farman Ali. But the medical evidence and the evidence of the Ballistic Expert do seem to cast doubt on his veracity. The evidence of Doctor Muhammad Kamal, who had conducted autopsy on the dead body of Rashid Khan' is that the size of inlet of all the wounds suffered by him was the same meaning thereby that he had been shot from one or more than one weapon of the same calibre. It is in the evidence of the Ballistic Expert, however, that the four empties sent to him for examination' were found to have been fired through .32 bore pistol which was also sent to him by the Investigation Officer. It would therefore follow that Rashid Khan had been shot through a pistol and certainly not through a rifle with which Farman Ali is said to have been armed. It is true that according to the prosecution each one of the three appellant brothers was armed with a .32 bore pistol. But the type of injuries suffered by Rashid Khan rather suggest that it was the work of one man. It is common knowledge that .32 bore pistol is an automatic weapon carrying in its charger seven bullets. The fact that the deceased was found to have suffered seven inlet wounds, three of them in his left Knee joint, one on his left elbow, two in his abdomen and one in backward direction to his right superior iliac spine, the inlet size of all of which is said to be the same, would go a long way to show that this could as well be the work of a single**

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person and not of the three appellants. There is no evidence on the record to show, however, as to which one of the three had caused him the said injuries, therefore, no option is left but to hold that the prosecution has failed to bring home its case against any one of the appellants."

11. Statements recorded under Section 512 Cr.P.C. and statements recorded under Article 46 (1) of Qanun-e-Shahadat i.e. dying declaration are exception to the general rule that evidence must be recorded in the presence of the accused. Such statements are subject to close scrutiny and the same cannot be considered as gospel truth and needs strong and independent corroboration due to the reason that the maker of such statement has not been subjected to cross examination, most particularly in case where the number of accused appears to be exaggerated. In this regard, reliance is placed on judgment in case titled Ali Raza vs Fazal Wahid (P L D 2004 Peshawar 20)

wherein the following dictum/guideline was laid down:-

"24. True that statements recorded under section 512, Cr.P.C. and validly transferred in the laid down manner to the trial Court file fall within the category of substantive evidence still judicial wisdom requires that much care and caution be exercised by the Courts before placing reliance on it moreso when a conviction on a capital charge is to be recorded because these statements are not subjected to the test of cross-examination which is universally considered to be a great engine for discovering the truth. In other words that much of sanctity cannot be attached to it which is normally attached to those statements having been tested by way of cross-examination. Of


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EXAMINER  
Peshawar High Court

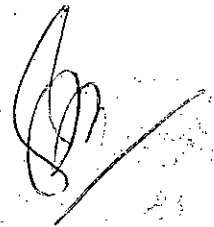
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course no hard and fast rules can be laid down to that effect but for the safe dispensation of justice the duty of the Court in such eventuality becomes more onerous while determining the guilt or innocence of an accused on the basis of such evidence. In such case the proper course to be adopted is that the Court must look for strong independent corroboratory evidence, sufficient enough to enhance the evidentiary value of such statements/evidence to an extent where the guilt of the accused is established beyond reasonable doubts. The degree and quality of corroboratory evidence comparatively must be on higher' side."

12. Nothing was brought on record to prove the motive which was alleged by the complainant to be a dispute over a house. More so, it is by now settled that mere abscondence is of no use to the prosecution if otherwise the case of the prosecution has not been proved.
13. The quintessence of the above discussion is that the prosecution case is full of doubts. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. For giving the benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.
14. Accordingly, this appeal is allowed, the conviction and



~~ATTESTED~~



sentence of the appellants recorded by the learned trial Court vide impugned judgment dated 26.08.2015 are set aside, they are acquitted of the charge under Section 302 PPC and be set at liberty forthwith if not detained in any other case.

15. Above are the detailed reasons of our short order of even date.

*Sy Rool Amin*  
*Mr. Justice Roshid*

**Announced:**  
**27-06-2018**

*nd*

(D.B.)  
Hon'ble Mr. Justice Rool-ul-Amin Khan  
Hon'ble Mr. Justice Ishaq Ibrahim

Muradullah, PS

No. 340

Date of Presentation of Application 4/7/18

No of Pages 12-9

Copying Fee 1

Urgent Fee RS 481

Total 482

Date of Preparation of Copy 6/8/18

Date of Delivery of Copy 6/8/18

Received By M. Ibrahim

CERTIFIED TO BE TRUE COPY

EXAMINER  
Peshawar High Court, Peshawar  
Authorised Under Article 87 of  
The Pakistan Shariat Order 1964

06 AUG 2018

*[Signature]*  
**CERTIFIED**  
HEAD COPYIST  
Peshawar High Court, Peshawar  
*18/10/18*

**ATTESTED**



بکھنور جناب انچارج صاحب سیکرٹریٹ خیبر پختونخوا پشاور

درخواست برآمد بحالی سروس

جناب عالی!

مؤدبانہ گزارش ہے کہ سائل عادل احسان ولد محمد آصف سکند گڑھی مواز خان کوھاٹ کا ہوں۔ اور ذیل عرض رساں ہوں۔

۱۔ یہ کہ سائل گورنمنٹ گرلز ڈگری-11 کالج کوھاٹ میں بطور چوکیدار تعینات تھا۔ سائل نے تقریباً ساڑھے تین سال سروس بھی کی۔

۲۔ یہ کہ سائل پر مورخہ 10-09-2013 کو بے گناہ 302 کیس میں ملوث کیا گیا۔ سائل نے 6 سال جیل میں بھی گزارے۔ سائل ہائی کورٹ پشاور سے باعزت طور پر مورخہ 27-06-2018 کو بری ہو چکا ہے۔ (نقل لف ہے)

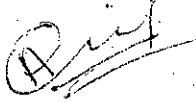
۳۔ یہ کہ سائل نے کئی بار درخواستیں بابت بحالی سروس گزاری۔ لیکن سائل کو تاحال سروس پر بحال نہیں کیا گیا۔ حالانکہ سائل کا کیس مذکورہ کے ساتھ کوئی تعلق نہیں تھا۔ سائل کو بے گناہ کیس میں ملوث کیا گیا تھا۔

۴۔ یہ کہ سائل کو اپنی سروس پر بحال کرنا سائل کا قانونی حق ہے۔ اس بابت سائل نے درخواستیں ہائے بھی افسران بالا کو گزاریں۔ لیکن سائل کی درخواستوں پر عمل نہیں ہو رہا۔ اس لیے مجبوراً درخواست ہذا گزاری جاتی ہے۔

استدعا ہے کہ سائل کو اپنی نوکری پر بحال کرنے کے احکامات صادر فرمائے جاویں۔

سائل تازیت دعا گو ہے گا

مورخہ 23-07-2019



عادل احسان ولد محمد آصف

شناختی کارڈ نمبر 7-14301-4979360

موبائل نمبر 0335-0664333

**ATTESTED**

92 : Attested. D

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

Tel # 091-9210242 / 9211025 Fax # 091-9211803

E-mail:- [dhekpkpesh@gmail.com](mailto:dhekpkpesh@gmail.com) Facebook.com/dhekppeshawar Twitter.com/dhekppeshawar1

No. 31191 /CA-VII/Estt: Branch/A-167/ GGC, KDA Kohat. Dated Peshawar the 23/11 /2018

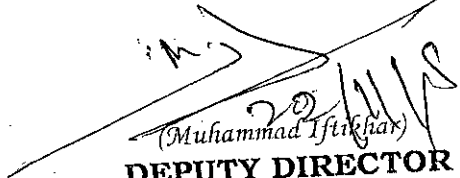
To

✓  
The Principal,  
Govt. Girls Degree College,  
KDA, Kohat.

**Subject: - APPLICATION OF ADIL AHSAN.**

Respected Madam, السلام عليكم

I am directed to refer to your letter No. 275 dated 22.10.2018, on the subject cited above and to request you that your departmental appeal is hereby regretted due to time barred.

  
(Muhammad Iftikhar)  
**DEPUTY DIRECTOR**  
Jan.

**ATTESTED**

23

No. 755 dated Kohat the 11-3- /2014.

From The Prinxcipal,  
Govt, Girls Degree College KDA, Kohat.

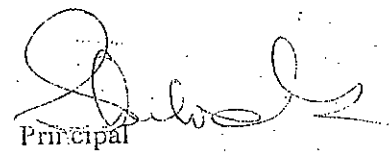
To Mr: Adil Ihsan Chowkidar S/O Muhammad Asif  
Mohalla Kaifa Sadi  
Garhi Mawaz Khan Kohat.

Subject: TERMINATION FROM THE SRVICES IN R/O MR; ADIL IHSNA CHOWKIDAR.

Memo:  
The above mentioned class IV, Mr: Adil Ihsan chowkidar has been absent from his duty since 12-9-2013. You have been issued notices time and again but you did not turn up. A notice in the daily Mashriq and other Provincial News Paper was also published but proved to be of no vial. Thereafter a committee of three senior staff members was constituted to look into the matter. The committee after studying the case recommended that the service of the said chowkidar Mr; Adil Ihsan may be terminated w.e.f 12-09-2013 under the E & D rules. Then the case was referred to the Director Higher Education Khyber Pakhtunkhwa Peshawar for onward action and guidance through letter No. 723 dated 10-2-2014.

The competent authority directed the undersigned vide letter No. 3363/CA-VII/Estab/A-167 GGDC KDA Kohat dated Peshawar the 17-2-2014 to proceed against the accused Class IV under E & D rules, 2011

Hence after fulfilling all the codal formalities, the services of Mr: Adil Ihsan Class IV are hereby terminated w.e.f 12-09-2013.

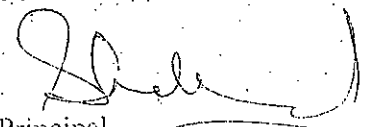


Principal  
Govt: Girls Degree College KDA  
Kohat

Endst: No. 756 /P. File Dated Kohat the, 11-3- /2014.

Copy to the

- 1. Director Higher Education Khyber Pakhtunkhwa Peshawar for information.



Principal  
Govt: Girls Degree College KDA  
Kohat



**POWER OF ATTORNEY**

In the Court of Phys Paktun Khil Jaseer Fozil Raza  
Adil Hasan

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

**VERSUS**

Govt of Pkt in Othrs.

} Defendant  
} Respondent  
} Accused  
}

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/W, the undersigned, do hereby nominate and appoint

**ZARTAJ ANWAR ADVOCATE**, my true and lawful attorney, for me in my same and on my behalf to appear at \_\_\_\_\_ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromise or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc. and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

**AND** to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

**AND** I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

**PROVIDED** always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

**IN WITNESS** whereof I/we have hereto signed at \_\_\_\_\_  
the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_  
Executant/Executants \_\_\_\_\_  
Accepted subject to the terms regarding fee \_\_\_\_\_

Adil Hasan

Zartaj Anwar

**Zartaj Anwar**

Advocate High Courts

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT  
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BC-10-9851

CNIC:17301-1610454-5

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

**S.A 1532/2019**

Adil Ehsan ..... Appellant

**Versus**

Govt. of Khyber Pakhtunkhwa  
Through Secretary, Higher Education Department,  
& Others ..... Respondents

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**Superintendent**

Directorate of Higher Education  
Khyber Pakhtunkhwa Peshawar

Respondents

P.O.F.  
J.W.  
01/08/21



①

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHWAR**

S.A # 1532/2019

Mr. Adil Ehsan.....Appellant  
Versus

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

**SUBJECT: PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 2 & 3**

**Respectfully Sheweth: -**

**Preliminary Objections:-**

1. That the appellant has got neither cause of action nor locus standi to file the instant Service Appeal.
2. That the appellant has not come to this Tribunal with clean hands.
3. That the instant appeal is hit by doctrine/principle of laches.
4. That the appellant is estopped by his own conduct to file the instant appeal.
5. That the instant appeal is badly time barred.

**Facts: -**

- 1) Correct.
- 2) Incorrect. That the appellant has performed his service with utter dissatisfaction of the high-ups. The appellant was not punctual in his duties and used to remain absent from duty without prior permission. The appellant was warned by the college administration to mend his ways but he did not pay any heed to the warnings, even though he submitted affidavit on 12-02-2012 in this regard that he will not repeat the same (**Annex-A,B**) but even then he did not mend his ways and the respondent no. 3 constituted internal inquiry committee vide letter dated: 21-03-2012 (**Annex-C**) and notice was issued to the appellant to appear before the committee and the committee recommended to terminate his services and deduct his salary for the period of absence from duties (**Annex-D**) but the appellant again submitted on affidavit an apology and the committee recommended to give him last chance (**Annex-E**). That the appellant was again absent from duty w.e.f 12-09-2013 and the Principal issued three notices through registered post on the home address of the appellant (**Annex-F**)

but the same was returned undelivered and finally the absence notice was published in the newspaper on two different days (**Annex- G**).

The Principal constituted a committee vide letter dated: 09-01-2014 (**Annex-H**) and the committee recommended to terminate the appellant from service w.e.f 12-09-2013 under E&D Rules, 2011 (**Annex-I**) and his services were terminated vide order dated: 11-03-2014 (**Annex-J**).

- 3) Correct to the extent that the appellant was nominated in FIR dated: 10-09-2013 and arrested on 18-06-2014 but during this period he did not inform the college, absence notices were issued on his home address and even published in newspaper but he did not report to the college neither informed the college regarding FIR.
- 4) Correct, to the extent that the appellant was convicted by the trail court vide judgement dated: 26-08-2015 and later on acquitted vide judgment dated: 27-06-2018 passed by Peshawar High Court, Peshawar.
- 5) Subject to Proof.
- 6) Incorrect. That the termination order was sent on his home address and the appellant was aware of this which is evident from the application/Departmental Appeal dated: 15-10-2018, in Para 2 he stated that he has been removed from service. It is pertinent to mention here that the service of the appellant were terminated vide order dated: 11-03-2014 w.e.f 12-09-2013 due to wilful absence even before his arrest dated: 18-06-2014. Moreover, the appellant was acquitted on 27-06-2018 and the appellant filed application/departmental appeal for reinstatement on 16-10-2018 even after 4 months of acquittal. The departmental appeal was regretted vide letter dated: 23-11-2018 being time barred. As per Rules, an aggrieved person has to file departmental appeal within 30 days of the order from which he is aggrieved (**Annex-K**) and the appellant filed appeal after 5 years.
- 7) Needs no comments.

**Grounds: -**

- a) Incorrect. That the appellant has been treated in accordance with law.
- b) Incorrect. That the appellant case does not fall under FR 54 as the appellant was removed from service due to wilful absence from duty after fulfilment of all codal formalities. It is pertinent to mention here that he never informed the department that he is charged in criminal case till his removal.
- c) That each and every case has its own facts.

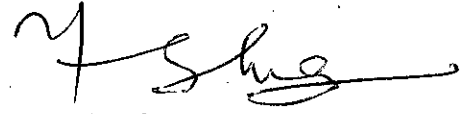
- d) Incorrect. That the appellant did not inform the respondents.
- e) Incorrect. That the FIR was lodged on 10-09-2013 and he was arrested on 18-06-2014 after 9 months but he did not inform the department and was absent from duty.
- f) Incorrect. As already explained in Para 2 of facts.
- g) Incorrect. As already explained in preceding paras.
- h) That the respondents may be allowed to raise additional grounds at the time of arguments.

**Prayer:-**

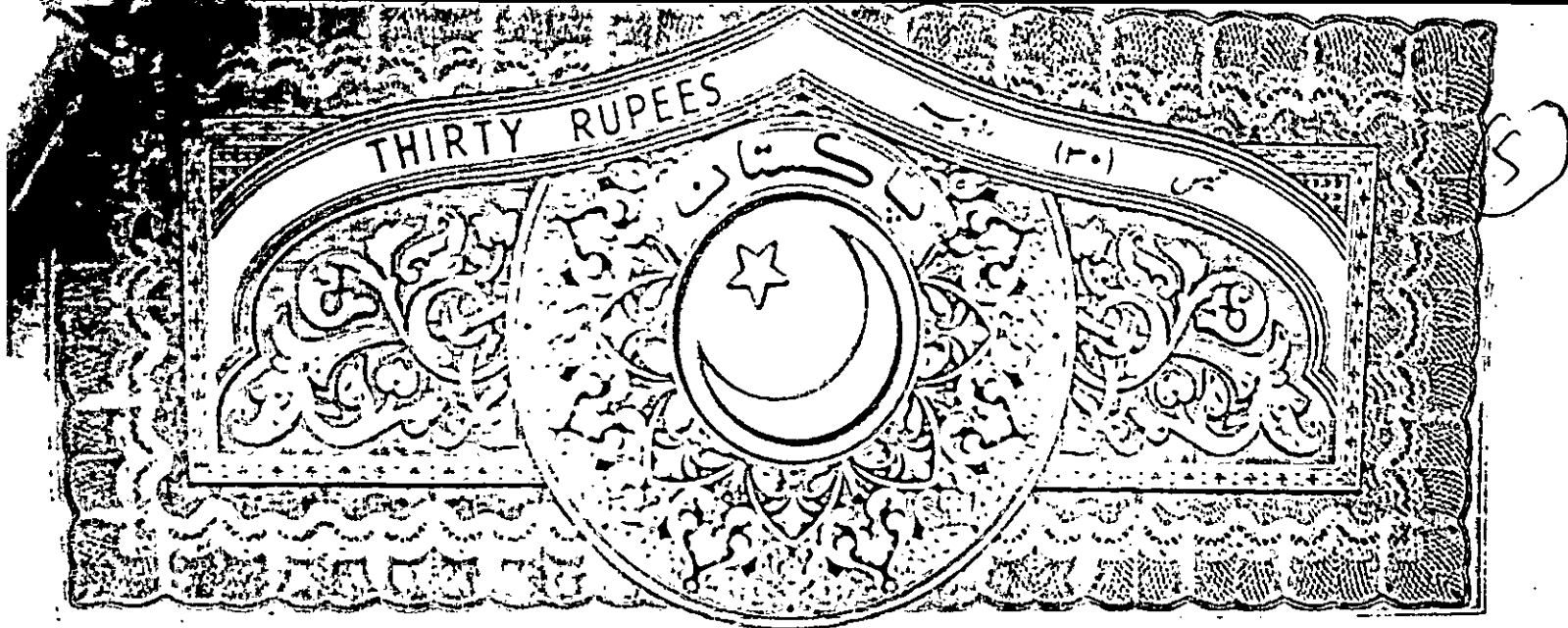
It is, therefore, humbly prayed that the instant Service Appeal is based on misconception/misstatements hence may graciously be dismissed.



**Director,**  
Higher Education, Department  
Peshawar  
Respondent No. 2



**Principal,**  
Govt. Girls Degree College  
KDA, Kohat  
Respondent No. 3



بیانِ حلفی

مفتی عادل احسان دہلوی صاحب سترہ مہینہ پہلے صحت مند تھے اور ان کا وزن 114 کلو گرام تھا۔  
 کھانسی، سانس لینے میں دشواری، اور کھانسی دیکھی گئی۔  
 صحتِ بیان ہے کہ

میں مقررہ وقت پر ڈاکٹر صاحب کا علاج میں لکھنؤ میں کئی بار اپنی ڈیڑھ سیرا انجام دے رہا ہوں۔

یہ کہ میں مقررہ علاج میں شامیوں کے ساتھ تینوں نرسوں میں سیرا لیا گیا۔

یہ کہ میں مقررہ سیرا کسی کے ساتھ منہ مارا نہیں کرے گا کہ سیرا میں جراثیم نہ ہو۔


یہ کہ میں مقررہ علاج میں مانگتا ہوں۔ اور آئندہ اپنی ڈیڑھ سیرا باقاعدگی کے ساتھ

کرنے کا بندوبست رہے گا۔ اور دوبارہ کھانسی کا موقع نہیں دے گا۔

صحتِ بیان ہے کہ صحت مند رہنے کے لیے علم و عمل کے مطابق احتیاط اور صحت

میں لکھنؤ اور پشاور میں

12/02/2012 مورخہ

  
 M. Adil Hassan  
 Superintendent  
 Directorate of Higher Education  
 Khyber Pakhtunkhwa Peshawar  
 301-4979360-7

ATTESTED  
 Advocate  
 Civil Court  
 District Court, Kohat  
 12/07/2012  
 P. Khat

اساتذہ اہلک کو ریٹائرمنٹ ڈیپارٹمنٹ کے ذریعہ اطلاع دی جائے گی۔

بنام: عادی افسانہ جو کیمبریا کی ڈیپارٹمنٹ

عنوان: کالج سہارن پور کی ڈیپارٹمنٹ سے مندرجہ ذیل

تاریخ: 16/7/2013 کو سکالر جو کیمبریا  
کو لکھا گیا تھا کہ اس کی ڈیپارٹمنٹ سے  
اس کی ڈیپارٹمنٹ سے اس کی ڈیپارٹمنٹ سے  
جو کالج نواریس ہے اس کی ڈیپارٹمنٹ سے

اس لیے اس لیے اس لیے اس لیے اس لیے  
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17/7/2013

22/7/2013

Handwritten signature and notes on the right side.

Annex - C

(18)

(7)

OFFICE OF THE PRINCIPAL, GOVT: GIRLS DEGREE COLLEGE  
KDA, KOHAT.

Office Order No. 5


Dated 21-3-12.

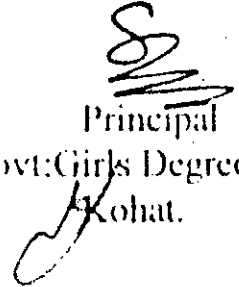
OFFICE ORDER.

An inquiry committee comprising of the following staff members are hereby constituted in regard the allegations against Mr. Adil Ihsan Chowkidar of this College.

<u>S:No.</u>	<u>Name</u>	<u>Designation</u>
1.	Miss Sadia Rana	Chairperson
2.	Miss Fatima	Member
	Miss Robina	-do-

ATTESTED

  
Superintendent  
Directorate of Higher Education  
Khyber Pakhtunkhwa Peshawar

  
Principal  
Govt: Girls Degree College KDA,  
Kohat.

## Internal Inquiry Report (13)


پس منظر۔ عادل احسان ولد محمد آصف مورخ 10/2012  
 اس کالج میں جو کیدار کی پوسٹ پر کام کر رہا ہے۔ وہ اکثر اپنی  
 سے غیر حاضر رہتا ہے اور جب آتا ہے تو دیر سے آتا ہے اور  
 ہمیشہ کوئی نہ کوئی بیان تراشتا ہے۔ عادل احسان کو اپنی بار  
 زبانی تنبیہ کی گئی ہے اور تقریری طور پر بھی سمجھایا گیا ہے کہ ہر  
 وقت کان پر صوبائی کالج کا ہیڈ فون لگا کر گانے مت سنارو اور  
 اپنی ڈیوٹی احسن طریقے سے ادا کیا کرو۔ جو اب Affidavit اور  
 سادہ کاغذ پر معافی نامہ لکھ کر اپنی غلطی اور کوتاہی کی  
 معافی مانگتا رہتا ہے۔ اکثر اپنے کالج کے دیگر کلاس فور کے  
 ساتھ صف ماری کرتا رہتا ہے، اس پر بھی اسے کئی بار نصیحت  
 کی گئی۔

مورخ 5<sup>3</sup>/<sub>2012</sub> سے 10<sup>3</sup>/<sub>2012</sub> کو وہ مسلسل 5  
 دن ڈیوٹی سے غیر حاضر رہا اور کالج انتظامیہ کیلئے مسائل  
 پیدا کرتا رہا جس کیلئے Internal Inquiry Committee  
 بنائی گئی۔ J.O.C نے اسے بلا کر پھر سمجھایا اور تنبیہ کی  
 کہ اگر تم دوبارہ نوکری سے بلاوجہ غیر حاضر رہے تو تمہیں  
 Disciplinary Act کے تحت نوکری سے نکالا جاسکتا ہے  
 اگرچہ اسے بار بار مواقع فراہم کیے گئے مگر بے اثر۔ جب بھی  
 اسے ٹیلی فون یا بذریعہ نائب قاصد رابطہ کیا گیا وہ جواب  
 تک دینا گوارا نہیں کرتا۔

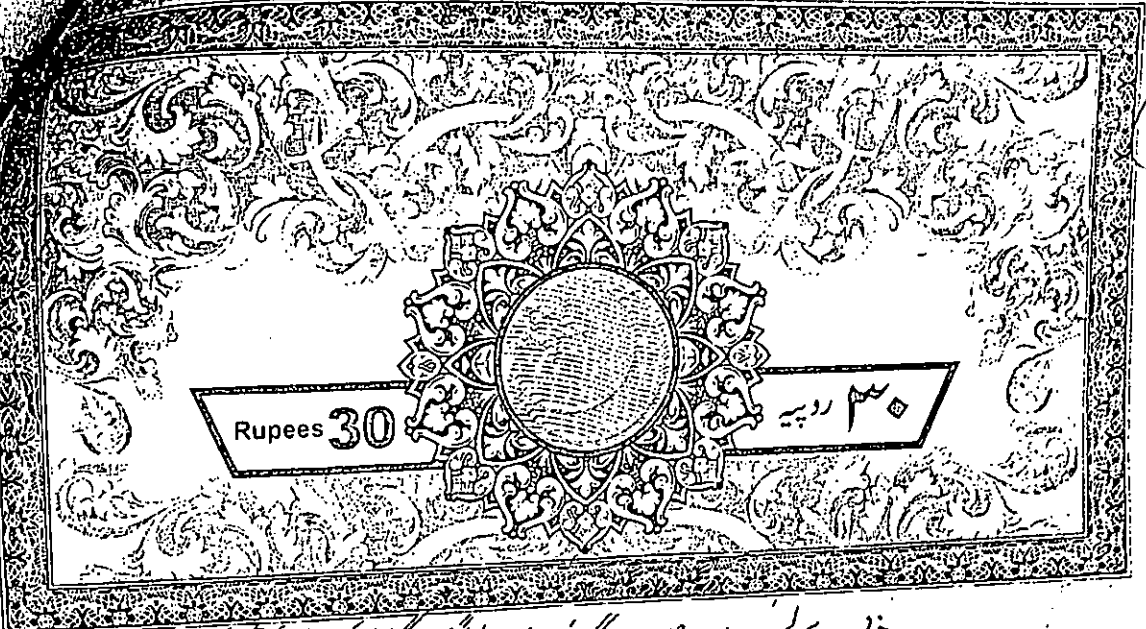
تجاویز:- عادل احسان، جو کیدار، ولد محمد آصف، گورنمنٹ  
 گریڈ ڈگری کالج، ڈی۔ ای۔ کوہاٹ میں عرصہ چھ ماہ  
 سے جو کیدار کی پوسٹ پر کام کر رہا ہے۔ چونکہ وہ عادی  
 دیر سے آئیوا اور ڈیوٹی سے جی حیرانے والا جو کیدار  
 ہے اس کی ان حرکتوں کی بنا پر ایک Internal Inquiry  
 Committee بنائی گئی تاکہ اسے سمجھایا جاسکے اور نوکری کے

قوانین سے لے کر جاسکیں مگر یہ قسمیں سے وہ لیں عام  
 احسان جو کیدار کسی طور ڈیوٹی کو سنبھالنے سے اور  
 کی خواہش نہیں رکھتا۔ C.I.D نے اسے بلا کر پھر سمجھایا  
 اور تنبیہ کی کہ اگر تم دوبارہ نوکری سے بلا وجہ غیر حاضر  
 رہے تو Disciplinary Act کے تحت تمہیں نوکری سے  
 نکالا جاسکتا ہے۔ جو کیدار کی پوسٹ انتہائی sensitive  
 پوسٹ ہے، یہ جس بھی سرکاری محکمے میں کام کرے گا اس  
 کا رویہ ایسا ہی رہے گا اور ہمیشہ درد سہی کا باعث  
 بنے گا۔ اس لئے یہ سفارش کی جاتی ہے کہ  
 1. عادل احسان کو نوکری سے برخواست کیا جائے  
 2. عادل احسان جتنے دن بھی اپنی ڈیوٹی سے غیر حاضر رہا  
 اس سے ان دنوں کی تنخواہ کاٹی جائے۔

- 1, Sachin  
AP Home Economics
- 2, Amin  
Lect in Geography
- 3, Dmargk  
Lect in Botany

ATTESTED  
  
 Superintendent  
 Directorate of Higher Education  
 Khuzdar, Baluchistan, Pakistan





غائب پرنسپل صاحبہ گورنمنٹ ڈگری گزٹنگ کالج کراچی  
بیان طبعی

مندرجہ ذیل عاقل اہسان ولد محمد آصف سٹوڈنٹ گورنمنٹ کالج کراچی کا بہن

طفا بیان ہے کہ میں تلف سعادت خزان ہے۔

طفا بیان ہے کہ میں تلف بکرا آف جمع CHANCE دیا جانے  
میں تلف آئندہ طریقے سے قضا طرہ ہوگا اور میں تلف  
کے خلاف کوئی شکایت نہ ہوگی۔

طفا بیان ہے کہ میں تلف آف بارہم سعادت گزٹنگ بہن

طفا بیان ہے کہ جہد مراتب بالدر دست ہیں اور  
کوئی اس پر شکوہ نہ ہے۔

اعاقل اہسان  
پرنسپل گورنمنٹ ڈگری گزٹنگ کالج کراچی  
۲۰۱۲ء ۱۲/۰۳/۲۰۱۲

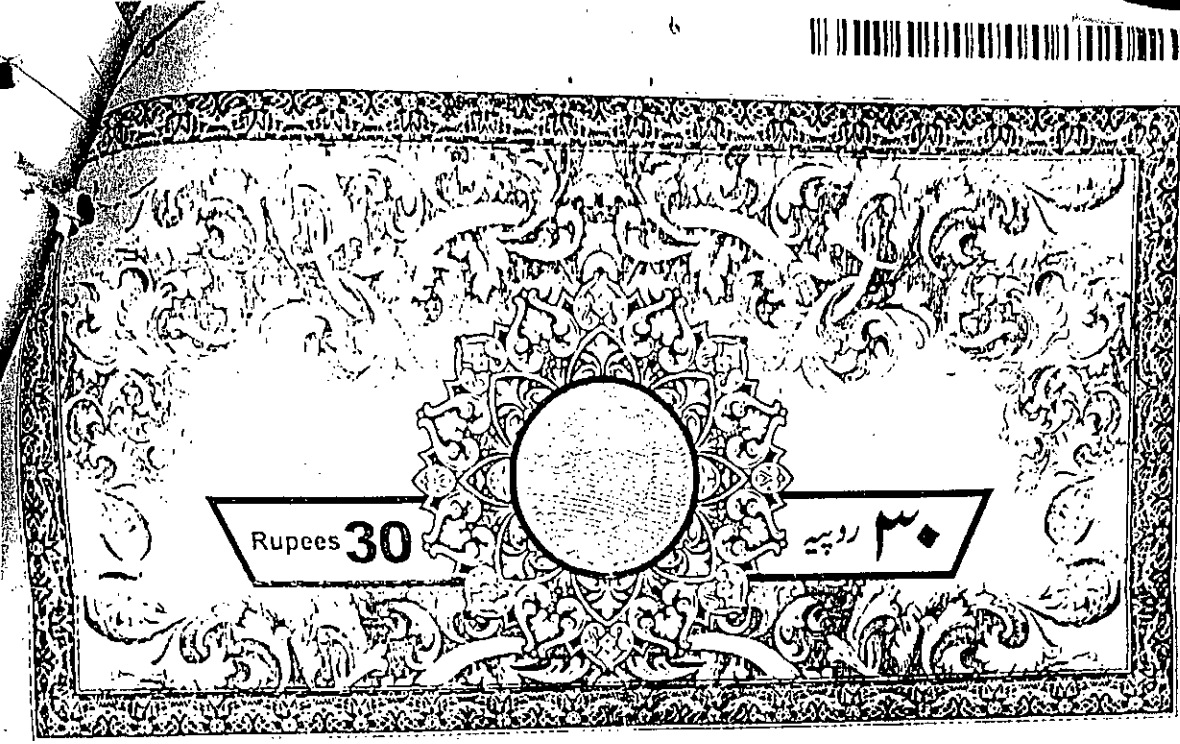
ATTESTED  
Advocate  
Committee

22/3/12



ATTESTED

Superintendent  
Directorate of Higher Education  
Khyber Pakhtunkhwa



23

## بیان حلفی

منکہ سہی عادل احسان ولد محمد آصف ساکن محلہ کلہ صدی، گڑھی سوازاخان، کوہاٹ کا ہوں۔

حلفا بیان ہے کہ

- ۱- یہ کہ من مقرر گورنمنٹ ڈگری کالج فار وومن نمبر 2، KDA کوہاٹ میں چوکیدار تعینات ہے۔
- ۲- یہ کہ من مقرر آئندہ کالج ہذا کے رولز ریگولیشن کی پابندی کرے گا۔ اور کالج میں اپنی ڈیوٹی جانفشانی سے کرے گا۔
- ۳- کسی انتہائی وجہ سے چھٹی کرنا مقصود ہو تو پہلے درخواست دے گا۔ بغیر درخواست کے چھٹی نہیں کروں گا۔
- ۴- کسی بھی قانون کی خلاف ورزی کرنے کی صورت میں اگر کالج انتظامیہ نے مجھے کالج سے بے دخل کرے تو من مقرر خود ذمہ دار ہوگا۔ اور عدالت میں اپیل نہیں کرے گا۔

حلفا بیان ہے کہ جملہ مراتب بالا درست و صحیح ہے اور کوئی امر پوشیدہ نہیں رکھا گیا۔

*(Signature)*

العبد

نادل احسان ولد محمد آصف 7-14301-4979360

والد محمد آصف  
Mawal. A

ATTESTED

Superintendent  
Directorate of Higher Education  
Khyber Pakhtunkhwa Peshawar

AMANULLAH KHAN  
BANGASH M.A.L.L.S  
OATH COMMISIONER  
KOHAT

Annex - B3

19  
22

No. 314 Dated Kohat the 6-6- /2012.

Fro The Principal,  
Govt: Girls Degree College KDA,  
Kohat.

To The Director Higher Education,  
Khyber Pakhtoonkhwa, Peshawar.

Subject CASE OF ADIL IHSAN (CHOWKIDAR)

Sir,

The Inquiry committee constituted by ex Principal Miss Saeeda Bano on 21-3-2012 comprised of Miss Fatima, Miss Robina and Miss Sadia Rana, these worthy members conducted inquiry and found the employee irresponsible.

After extensive meetings with the young employee and his parents he sought apology and submitted an affidavit (attached) on 2-5-2012 for not repeating irresponsible behavior. The committee recommended forgiveness for the employee as declaring it the last chance. The employee has resumed his duty with effect from 1-5-2012, so the case is considered closed.

ATTESTED

*[Signature]*  
Superintendent  
Directorate of Higher Education  
Khyber Pakhtunkhwa Peshawar

*[Signature]*  
Principal  
Govt: Girls Degree College KDA  
Kohat

F1

(13)

No. 637 Dated Kohat the 19-9- /2013. 29

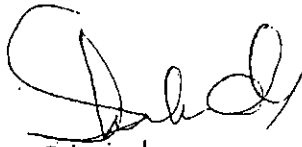
From The Principal,  
Govt:Girls Degree College,KDA, Kohat.

To Mr: Adil Ihsan S/O Muhammad Asif  
Mohalla Kala Sadi  
Garhi Mawaz Khan Kohat .

Sfubject: Absent from duty.

Memo:  
You are absent from your duty on 12-9-2013 without any application/ intimation till today. The institution works are badly affected due to your absence. Your action is tantamount to inefficiency and indiscipline.


You are directed to attend the college immediately and explain your position within three days otherwise disciplinary action will be taken against you under E & D rules, 1973.

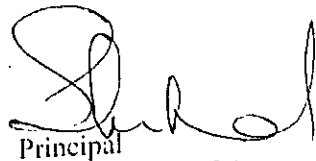
  
Principal  
Govt:Girls Degree College KDA  
Kohat

Endst:No. 638 /P. File Dated Kohat the 19-9- /2013.

Copy forwarded to the Director Higher Education Khyber Pakhtunkhwa,  
Peshawar for information please.

ATTESTED

  
Superintendent  
Directorate of Higher Education  
Khyber Pakhtunkhwa Peshawar

  
Principal  
Govt:Girls Degree College KDA  
Kohat

R-2

14

35

2nd Notice.

No. 645 Dated Kohat the 3-10- /2013.

From The Principal,  
Govt; Girls Degree College, KDA, Kohat.

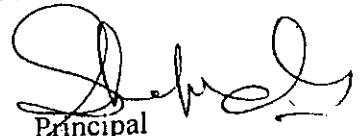
To Mr: Adil Ihsan Chowkidar S/O Muhammad Asif  
Mohalla Kala Sadi  
Garhi Mawaz Khan Kohat .

Sfubject: Absent from duty.

Memo: You are absent from your duty on 12-9-2013 without any  
application/ intimation to the undersigned

You were served with a notice No.637 dated 19-9-2013 under  
postal register No.303 dated 20-9-2013 to explain your absentia but you have not done  
so, till to date.

You are directed to attend the college immediately and explain  
your position within three days otherwise disciplinary action will be taken against you  
under E & D rules, 1973.




Principal  
Govt: Girls Degree College KDA  
Kohat

Endst: No. 646 /P. File Dated Kohat the 3-10- /2013.

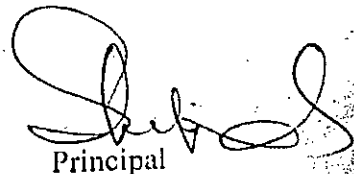
Copy forwarded to the Director Higher Education Khyber Pakhtunkhwa,  
Peshawar for information please.

ATTESTED



Superintendent

Directorate of Higher Education  
Khyber Pakhtunkhwa Peshawar



Principal  
Govt: Girls Degree College KDA

F3

(15)  
39

3rd Notice.

No. 651 Dated Kohat the 22-10- /2013.

From The Principal,  
Govt; Girls Degree College, KDA, Kohat.

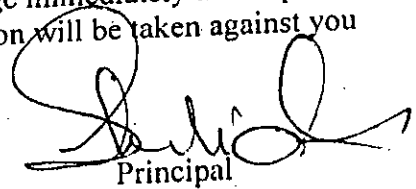
To Mr: Adil Ihsan Chowkidar S/O Muhammad Asif  
Mohalla Kala Sadi  
Garhi Mawaz Khan Kohat .

Sfsubject: Absent from duty.

Memo: You are absent from your duty on 12-9-2013 without any  
application/ intimation to the undersigned

You were served with a notice No.637 dated 19-9-2013 under  
postal register No.303 dated 20-9-2013 and No. 645 dated 3-10-2013 and postal register  
No. 532 dated 7-10-2013 to explain your absentia but you have not done so, till to date.

You are directed to attend the college immediately and explain  
your position within three days otherwise disciplinary action will be taken against you  
under E & D rules, 1973.



Principal  
Govt:Girls Degree College KDA  
Kohat

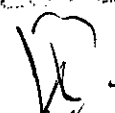
Endst:No. 652 /P. File Dated Kohat the 22-10- /2013.

Copy forwarded to the Director Higher Education Khyber Pakhtunkhwa,  
Peshawar for information please.



Principal  
Govt:Girls Degree College KDA  
Kohat

ATTESTED

  
Superintendent  
Directorate of Higher Education  
Khyber Pakhtunkhwa Peshawar

## نوٹس غیر حاضری

ہرگاہ عادل احسان (چوکیدار) ولد محمد آصف محلہ کالا سدی گڑھی موہڑ  
 خان کوہاٹ مورخہ 12 ستمبر 2013 سے اپنی ڈیوٹی سے غیر حاضر  
 ہو۔ یہ کہ زبردستی نے آپ کے گھر کے پتے پر تین بار نوٹس برائے  
 غیر حاضری اظہار وجوہ بھیجا تھا لیکن آپ تا حال اپنی ڈیوٹی پر واپس  
 نہیں آئے۔ لہذا بذریعہ اشتہار ہذا آپ کو اطلاع دی جاتی ہے کہ  
 اشتہار ہذا کی اشاعت کے 15 دن کے اندر اندر اپنی ڈیوٹی پر واپس  
 حاضر ہو جائیں۔ بصورت دیگر آپ کے خلاف یکطرفہ کارروائی کرتے  
 ہوئے ملازمت سے برخواست کیا جائیگا۔

پرنسپل گورنمنٹ گولڈنگری

کالج کے ڈی ایے کوہاٹ

INF(P) 3059 Also available on [www.khyberpakhtunkhwa.gov.pk](http://www.khyberpakhtunkhwa.gov.pk)

ATTESTED

Superintendent  
 Directorate of Higher Education  
 Khyber Pakhtunkhwa Peshawar

Scanned with CamScanner

# نوٹس غیر حاضری

ہر گاہ عادل احسان (چوکیدار) ولد محمد آصف محلہ کالا سدی گڑھی مواز خان کوہاٹ مورخہ 12 ستمبر 2013 سے اپنی ڈیوٹی سے غیر حاضر ہو۔ یہ کہ زیر دستخطی نے آپ کے گھر کے پتے پر تین بار نوٹس برائے غیر حاضری اظہار وجوہ بھیجا تھا لیکن آپ تا حال اپنی ڈیوٹی پر واپس نہیں آئے۔ لہذا بذریعہ اشتہار ہذا آپ کو اطلاع دی جاتی ہے کہ اشتہار ہذا کی اشاعت کے 15 دن کے اندر اندر اپنی ڈیوٹی پر واپس حاضر ہو جائیں۔ بصورت دیگر آپ کے خلاف یکطرفہ کارروائی کرتے ہوئے ملازمت سے برخاست کیا جائیگا۔

Superintendent  
Directorate of Higher Education  
Khyber Pakhtunkhwa

پرنسپل گورنمنٹ گریجویٹ کالج کے ڈی اے کوہاٹ

INF(P) 3277

Also available on [www.khyberpakhtunkhwa.gov.pk](http://www.khyberpakhtunkhwa.gov.pk)



OFFICE OF THE PRINCIPAL GOVT; GIRLS DEGREE COLLEGE  
KDA, KOHAT.

OFFICE ORDER

Off: order  
Dated: 9-1-2014.

A committee of the following staff members is hereby constituted to consider the case of Adil Ihsan Chowkidar and finalize the case as per Govt; Servant rules.

1. Prof: Sadia Rana Chairperson
2. Prof: Bushra Zahoor Member
3. Miss Fatima Bibi Lec: Member

*Sadia*  
*BZ*

*Fatima*

**ATTESTED**

**Superintendent**  
Directorate of Higher Education  
Khyber Pakhtunkhwa, Peshawar

*Sadia*

Principal  
Govt: Girls Degree College KDA  
Kohat

Annex-1

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To

The Principal,  
Govt; Girls Degree College KDA,  
Kohat.

Subject:

Willful Absence from duty of Mr;Adil Ihsan Chowkidar

Memo:

Reference your office Order No. Nil dated 9/11/2014  
regarding the inquiry against the above mentioned official.

It is submitted that we probed into the case in detail and reached to the conclusion that Mr: Adil Ihsan Chowkidar G.G.D. C. KDA, Kohat willfully absent from duty since 12-9-2013 till now. The college administration has submitted the following official letters to him under register cover but returned undelivered stating by the postal official that the house of Mr;Adil Ihsan is locked.

1. Letter No. 637 dated 19-9-2013 Registered receipt No. 303 dated 19-9-2013
2. Letter No. 645 dated 3-10-2013 Registered receipt No. 532 dated 7-10-2013.
3. Letter No.651 dated 22-10-2013 Registered receipt No. 773 dated 24-10-2013

After that his willful absence from duty was given in news papers but he could not join the duty within the stipulated period.

Keeping in view the above factual position, Mr;Adil Ihsan chowkidar is neither in the position to reply the official letters nor to join the Govt: duty.

Hence it is proposed that he may be terminated from service w.e.f 12-9-2013 under E & D rules, 1973.

INQUIRY COMMITTEE.

1. Prof: Sadia Rana Chairperson Sadia
2. Prof: Bushra Zahoor Member B/Zahoor
3. Miss Fatima Bibi Member Fatima

ATTESTED

[Signature]  
Superintendent

Directorate of Higher Education  
Khyber Pakhtunkhwa

Annex-1

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No. 755 dated Kohat the 11-3- /2014.

From The Prinxcipal,  
Govt;Girls Degre College KDA, Kohat.

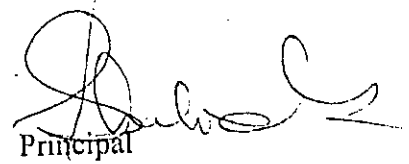
To Mr: Adil Ihsan Chowkidar S/O Muhammad Asif  
Mohalla Kala Sadi  
Garhi Mawaz Khan Kohat .

Subject: TERMINATION FROM THE SRVICES IN R/O MR:ADIL IHSNA CHOWKIDAR.

Memo: The above mentioned class IV , Mr: Adil Ihsan chowkidar has been absent from his duty since 12-9-2013. You have been issued notices time and again but you did not turn up. A notice in the daily Mashriq and other Provincial News Paper was also published but proved to be of no vial. Thereafter a committee of three senior staff members was constituted to look into the matter. The committee after studying the case recommended that the service of the said chowkidar Mr; Adil Ihsan may be terminated w.e.f 12-09-2013 under the E & D rules. Then the case was referred to the Director Higher Education Khyber Pakhtunkhwa Peshawar for onward action and guidance through letter No. 723 dated 10-2-2014.

The competent authority directed the undersigned vide letter No. 3363/CA-VII/Estab/A-167 GGDC KDA Kohat dated Peshawar the 17-2-2014 to proceed against the accused Class IV under E & D rules, 2011

Hence after fulfilling all the codal formalities, the services of Mr: Adil Ihsan Class IV are hereby terminated w.e.f 12-09-2013.

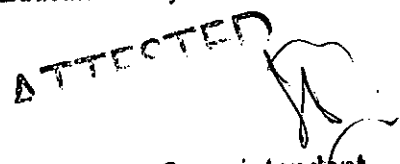


Principal  
Govt:Girls Degree College KDA  
Kohat

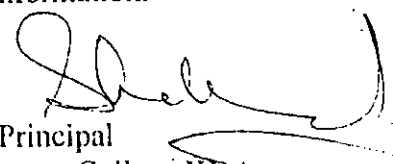
Endst:No. 756 /P.File Dated Kohat the , 11-3- /2014.

Copy to the :-

- 1. Director Higher Education Khyber Pakhtunkhwa Peshawar for information.



Superintendent  
Directorate of Higher Education  
Khyber Pakhtunkhwa Peshawar



Principal  
Govt:Girls Degree College KDA  
Kohat

Annet - 15

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(21)

(2) Where any subscription made by a civil servant to his provident fund has not been shown or credited in the account by the Accounts Officer or other officer required maintaining such account, such subscription shall be credited to the account of the civil servant on the basis of such evidence as may be prescribed.

21. **Benevolent Fund and Group Insurance:-** All civil servants and their families shall be entitled to the benefits admissible under the West Pakistan Government Employees Welfare Fund Ordinance, 1969 (W.P Ordinance of 1969), or the Khyber Pakhtunkhwa Government Servants Benevolent Fund Ordinance, 1972 (The Khyber Pakhtunkhwa Ordinance VII of 1972), and the rules made there under.

22. **Right of Appeal or Representation:-** (1) Where a right to prefer an appeal or apply for review in respect of any order relating to the terms and conditions of his service is provided to a civil servant under any rules applicable to him, such appeal or application shall, except as may be otherwise prescribed, be made within thirty days of the date of such order.

(2) Where no provision for appeal or review exists under the rules in respect of any order or class of orders, a civil servant aggrieved by any such order may, within thirty days of the communication to him of such order, make a representation against it to the authority next above the authority which made the order:

Provided that no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade.

#### MISCELLANEOUS

23. **Saving:** - Nothing in this Act or in any rule shall be construed to limit or abridge the power of the Governor to deal with the case of any civil servant in such manner as may appear to him to be just and equitable:

Provided that, where this Act or any rule is applicable to the case of a civil servant, the case shall not be dealt with in any manner less favourable to him than that provided by this Act or such rules.

23-A. **Indemnity:-** No suit or, prosecution or other legal proceedings shall lie against a civil servant, for anything done or intended to be done in good faith in his official capacity under this Act or the rules, instructions or direction made or issued there under.

23-B. **Jurisdiction barred.-** Save as provided under this Act and the Service Tribunal Act, 1974 (The Khyber Pakhtunkhwa Act No. 1 of 1974), or the rules made there under, no order made or proceedings taken under this Act, or the rules made there under by the governor or any other officer authorized by him shall be called in question in any court and no injunction shall be granted by any court in respect of any decision made, or proceedings taken in pursuance of any power conferred by or under this Act or the rules made there under.

24. **Removal of difficulties:** - If any difficulty arises in giving effect to any of the provisions of this Act, the Governor may make such order, not inconsistent with the

ATTESTED

Superintendent  
Directorate of Higher Education  
Khyber Pakhtunkhwa Peshawar