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

Service Appeal No.1281/2020

Date of Institution

02.03.2020

Date of Decision

16.09.2021

Asfandyar, D.M, G.M.S Tangi Payeen, Khadagzai, Dir Lower.

(Appellant)

## **VERSUS**

Secretary to Government of Khyber Pakhtunkhwa, (E&SE), Peshawar and two others.

(Respondents)

Muhammad Ayub Khan Shinwari,

Advocate

For Appellant.

Muhammad Adeel Butt,

Additional Advocate General

For Respondents.

AHMAD SULTAN TAREEN ROZINA REHMAN

CHAIRMAN

MEMBER (J)

## <u>JUDGMENT</u>

ROZINA REHMAN, MEMBER (J): Brief facts of the case are that appellant was appointed as Drawing Master. During service, he was charged in a murder case and was arrested by the local Police, however, he was acquitted by the competent court of Law. After release, he reported back to the Department for adjustment/posting but he was informed regarding his termination from service and a copy of the order was handed over to him. Feeling aggrieved, he filed departmental appeal which was dismissed, where-after, he filed service appeal and his case was remitted to the Department for denovo proceedings strictly in accordance with law. Appellant was



reinstated in service and inquiry was conducted. His absence period was converted into leave without pay while some period was treated as on duty. Feeling aggrieved, he filed another service appeal before this forum and the respondents were directed to properly implement the judgment passed in earlier service appeal in letter and spirit, where-after, the respondents initiated inquiry proceeding but without issuing any charge sheet and statement of allegations and the appellant was held not entitled to any kind of pay, arrears, increments and other service back benefits. Feeling aggrieved, he filed departmental appeal which was rejected, hence, the present service appeal.

- 2. We have heard Muhammad Ayub Khan Shinwari Advocate and Muhammad Adeel Butt learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.
- 3. Learned counsel for appellant contended that the impugned orders are against law and facts as the order was passed without holding any inquiry and without issuing charge sheet, statement of allegations and final show cause notice. He contended that the appellant was condemned unheard as he was not given any chance of personal hearing.
- 4. Conversely learned A.A.G submitted that the Court order was implemented in letter and spirit and that proper order was passed after observing all the codal formalities in de-novo inquiry.



5. From the record it is evident that appellant was appointed as Drawing Master in the year 1989. He was charged in murder case vide F.I.R No.1454 dated 12.10.2005 registered at Police Station Ouch U/S 302 324/34 P.P.C. He was arrested on 14.10.2010 by the local Police and was acquitted by the competent court of Law on 18.11.2011, whereas, he was removed from service vide office order dated 14.04.2008. He filed Service Appeal No.520/2012 and vide order of this Tribunal dated 10.12.2015, impugned orders were set aside and case was remitted back to the Department for proceeding de-novo against the appellant. He was also reinstated in service. The intervening period was ordered to be decided in the light of outcome of fresh proceedings. De-novo inquiry was conducted and vide office order dated 29.07.2016 of the District Education Officer, absence period w.e.f 12.10.2005 to 17.10.2010 and 19.11.2011 to 15.01.2016 was converted into leave without pay as extraordinary leave while the period w.e.f 18.10.2010 to 18.11.2011was treated as on duty. Again, he filed Service Appeal No.168/2017 and vide judgment of this Tribunal dated 10.07.2019, impugned order dated 29.07.2016 was set aside and Department was directed to implement the judgment in Service Appeal No.520/2012 in letter and spirit by conducting proper de-novo inquiry and vide order dated 16.10.2019 of the District Education Officer, consequent upon the recommendation of Inquiry Committee, appellant was held not entitled to any kind of pay, arrears, increments and other service back benefits and the office order dated 29.07.2016 was considered as correct and justified. Office order dated 29.07.2016 is hereby reproduced for ready reference:-

Ivi:

"Reference letter from the Director (E&SE) Khyber Pakhtunkhwa Peshawar vide No.2019/F.No, P/F.Asfandiyar Khan Ex DM dated 27/06/2015, the absence period in respect of Mr. Asfandiyar Khan DM GMS Tangi Payeen Khadagzai w.e.f 12.10.2005 to 17/10/2010 and w.e.f 19/11/2011 to 15/01/2016 is hereby converted into leave without pay as extraordinary leave, and the period w.e.f 18/10/2010 to 18/11/2011 is treated as on duty."

As per this order, absence period w.e.f 12.10.2005 to 17.10.2010 and 19.11.2011 to 15.01.2016 was converted into leave without pay. As per record, F.I.R was registered against the appellant on 12.10.2005 and he was arrested on 17.10.2010. This is the period during which the appellant remained absconding, therefore, he was rightly held not entitled to any back benefits because he never contacted his Department during this period and he went into hiding. He was arrested on 14.10.2010 and was acquitted on 18.11.2011 and this period was treated as on duty while the period from 19.11.2011 to 15.01.2016 when he was reinstated, was again converted into leave without pay. He was not properly held entitled to the back benefits for the period w.e.f 18.10.2010 to 18.11.2011 when he was behind the bars. This period is converted into leave of the kind due, whereas, the period from 19.11.2011 to 15.01.2016 when he fought for his rights and finally succeeded in getting his reinstatement order is treated as on duty.

( )

7. In view of the above discussion, appeal in hand stands disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED. 16.09.2021

> (Ahmad Sultan Tareen) Chairman

(Rozina Rehman) Nember (J)

S

proceedings 2	parties where necessary.
2	3
16.09.2021	Present:
	Muhammad Ayub Khan Shinwari, Advocate For Appellant.
	Muhammad Adeel Butt, Additional Advocate General For Respondents
	Vide our detailed judgment of today of this Tribunal placed on file,
	absence period w.e.f 12.10.2005 to 17.10.2010 and 19.11.2011 to 15.01.2016
	was converted into leave without pay. As per record, F.I.R was registered
	against the appellant on 12.10.2005 and he was arrested on 17.10.2010. This
	is the period during which the appellant remained absconding, therefore, he
	was rightly held not entitled to any back benefits because he never contacted
	his Department during this period and he went into hiding. He was arrested on
	14.10.2010 and was acquitted on 18.11.2011 and this period was treated as on
	duty while the period from 19.11.2011 to 15.01.2016 when he was reinstated,
	was again converted into leave without pay. He was not properly held entitled
	to the back benefits for the period w.e.f 18.10.2010 to 18.11.2011 when he
٠-	was behind the bars. This period is converted into leave of the kind due,
	whereas, the period from 19.11.2011 to 15.01.2016 when he fought for his
	rights and finally succeeded in getting his reinstatement order is treated as on
	duty. Appeal stands disposed of accordingly. Parties are left to bear their own
	costs. File be consigned to the record room.
	ANNOUNCED. 16.09.2021
	(Ahmad Seitan Tareen) (Rozina Rehman) Chairman (Member (J)

Appellant present through counsel.

Muhammad Adeel Butt learned Additional Advocate General for respondents present.

Bench is incomplete as learned Member Executive (Mian Muhammad) is on leave, therefore, case is adjourned to 16.09.2021 for hearing before D.B.

(Rozina Rehman)
Member(J)

17.09.2020

Appellant in person and Addl. AG alongwith Shahid Anwar.

ADEO for the respondents present.

Parawise comments on behalf of respondents No. 1, 2 and 3 submitted, which are made part of the record. The matter is assigned to D.B for arguments on 03.12.2020. The appellant may furnish rejoinder, if any, within one month.

Chairman

03.12.2020 Due to pandemic of Covid-19, the case is adjourned to 24.02.2021 for the same as before.

Reader

24.2.2021

Due to COVID-19, the matter is adjourned to 01.6.2021 for the same.

Reader

15.07.2020

Counsel for the appellant present. Arguments heard and record perused.

Contends that appellant was appointed as Drawing Master in 1989 who was falsely charged in case FIR No.1454 dated 12.10.2005 under Section 302 324/34 PPC at Police Station Ouch. The appellant was acquitted vide order dated 18.11.2011 where after, he reported back to the department but he was informed to have been terminated from service vide order dated 14.04.2008. then filed departmental appeal which was dismissed, therefore, filed service appeal and the department was directed for de-novo inquiry. He was reinstated in service, inquiry was conducted and an order was passed in respect of his absence period which was assailed in another service appeal vide order dated 10.07.2019 and the respondents were directed to implement the judgment dated 19.12.2015 by conducting proper de-novo inquiry. In pursuance of the aforesaid order of the Tribunal, the respondents without holding any inquiry, issued office order dated 16.10.2019 whereby the appellant was not held entitled to back benefits. His departmental appeal was rejected and now the instant service appeal.

Appellant Deposited
Security & Process Fee

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal exceptions. The appellant is directed to deposit security and process fee within 10 days. Notice be issued to the respondents. To come up for written reply/comments on 17.09.2020 before S.B.

Member (J)

#### Form- A

## FORM OF ORDER SHEET

Court of_				
Case No	;	1281	/2020	

	Date of order proceedings	Order or other proceedings with signa	ture of judge
-1	2	3	
		·	
1-	02/03/2020		presented today by Mr. Muhamm
		Ayub Khan Shinwari Advocate may b	· ·
		and put up to the Learned Member for	r propel order please.
•		,	REGISTRAR 213 1202
	06-03-020	This case is entrusted to S. B	ench for preliminary hearing to
		put up there on 17-04-020	
			Mall >
			MAT
			MEMBER
		19 (eg	
. <del></del> -		Due to multiplication on ac	count of COVID-19 the c
17.	04.2020	Due to public holiday on ac	•
		is adjourned to 15.07.2020 fo	or the same. To come up
•		the same as before S.B.	
	1		
			Reader
		į	Reader
		į	Reader
			Reader

## In The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No \_\_\_\_\_/ 281\_\_\_/ 2020

Asfandyar versus · Secty to Govt of KP, (E &S) Edu & others

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3.	Copy of F.I.R	12-10-05	B.	6
4.	Copy of Judgment and Order of A.S.J	18-11-11	С	7-19
5.	Copy of Endst	14-04-08	D	20
6.	Copy of Judgment of Service Tribunal	10-12-15	E	21-24
7.	Copy of office order	29-07-16	F	25
8.	Copy of Judgment in S.A No 168/2017	10-07-19	G	26-29
9.	Copy of Office Order	16-10-19.	Н	30
10.	Copy of Departmental Appeal	<del>-</del>	I	31
11.*	Copy of impugned order	22-01-20	J	32
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<b>*</b>				

Through

tel 1- 02/03/2020

Appellant,

Muhammad Ayub Man Shinwari Advocate Peshawar

Chamber:

7-A Haroon Mansion, Khyber Bazar, Peshawar Cell No (Clerk) 03219068514

## In The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No 1281 / 2020

Service Takhtükires Service Takhtükires

Asfandyar, DM, GMS Tangi Payeen, Khadagzai, Dir Lower 02/03/2020

......Appellant

#### Versus

- 1. Secretary to Government of Khyber Pakhtunkhwa, (E & S) Edu, Peshawar
- 2. Director (E & S) Education, Khyber Pakhtunkhwa, Peshawar
- 3. District Education Officer (Male), Dir Lower

....Respondents

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against Order dated 22-01-2020

## Prayer:

edto-day

On acceptance of the instant Service Appeal, the impugned order dated 16-10-2019 and Order dated 22-01-2020 whereby the departmental appeal of the appellant is rejected may kindly be set aside and the appellant may kindly be granted pay, increments, arrears and other service back benefits

Respectfully Sheweth.

Brief but relevant facts of the case are as follows:

- 1. That the Appellant was appointed as Drawing Master in the respondent Department in the year 1989 and was performing his duties efficiently, honestly and to the entire satisfaction of his superiors, the Appellant was charged in a false and frivolous FIR No 1454 dated 12-10-2005 under section 302/234/34 P.P.C at Police Station Ouch.(Copy of appointment order and F.I.R is filed herewith and annexed as **Annex-A & B** respectively)
- 2. That the Appellant was arrested on 14-10-2010 by the local police in the above said case and after trial the Appellant was acquitted of the charged leveled against him vide Judgment and Order dated 18-11-2011 passed by learned Additional Session Judge, Chakdara, Dir Payeen. (Copy of Judgment and Order is filed herewith and annexed as Annex-C)

- 2
- 3. That after release the Appellant reported back to the respondent Department with a request to adjust/post him for performing his duties but he was informed that he is being terminated from service vide Endst No 6866-69 dated 14-04-2008 and the copy of the said order was handed over to him. (Copy of Endorsement is filed herewith and annexed as **Annex-D**)
- 4. That the Appellant feeling aggrieved of the aforesaid Order i.e., Endst No 6866-69 dated 14-04-2008, filed Department Appeal, which was dismissed vide Order dated 13-04-2012. Against the said order, the Appellant filed Service Appeal No 520/2012 before this Honorable Tribunal, wherein this Honorable Tribunal Judgment and Order dated 10-12-2015 was pleased to set aside the aforesaid order being void and remit the case to respondent Department for proceeding de novo against the Appellant strictly in accordance with law and the appellant was reinstated in service accordingly for de novo enquiry, the intervening period will be decided in light of outcome of the fresh proceedings. (Copy of Judgment is filed herewith and annexed as **Annex-E**)
- 5. That in pursuance of the aforesaid Judgment and Order dated 10-12-2015 in Service Appeal No 520/2012, the Appellant was reinstated in service, inquiry was conducted and his absence period with effect from 12-10-2005 to 17-10-2010 and with effect from 19-11-2011 to 15-01-2016 is converted into leave without pay as extraordinary leave and the period w.e.f 18-10-2010 to 18-11-2011 is treated on duty vide Order dated 29-07-2016.(Copy order is filed herewith and annexed as **Annex-F**)
- 6. That feeling aggrieved of the aforesaid order, the appellant filed Service Appeal No 168/2017 before this learned Tribunal, wherein this learned Tribunal vide judgment dated 10-07-2019 was pleased to set aside the said order and the respondents were directed to properly implement the judgment dated 19-12-2015 passed in Service Appeal No 520/2012 in letter and spirit by conducting proper de-novo inquiry against the appellant and to conclude the same through speaking order. (Copy of judgment is filed herewith and annexed as **Annex-G**)
- 7. That in pursuance of the aforesaid order of this learned Tribunal, the respondents without holding any inquiry, without issuing any charge sheet, statement of allegation, final show cause notice, have issued Office Order dated 16-10-2019, received by the appellant on 14-11-2019, whereby the appellant is held not entitled for any kind of pay, arrears, increments, and other service back benefits. (Copy of office order is filed herewith and annexed as **Annex-H**)
- 8. That feeling aggrieved of the aforesaid order, the appellant filed departmental appeal, which is rejected vide impugned order dated 22-01-2020, received by the appellant on 06-02-2020. (Copy of departmental appeal and order is filed herewith and annexed as **Annex-1 & J**)

Hence the instant Service Appeal on the following amongst other grounds:

### Grounds:

- a. That the impugned order is against the law, illegal, unlawful, without lawful authority and void ab-initio, thus liable to be set aside.
- b. That the impugned order is passed without holding any inquiry whatsoever, without issuing charge sheet, statement of allegation, final show cause notice and without giving any chance of hearing to the appellant.
- c. That the treatment met to the Appellant is against the principles of natural justice and the mandatory provisions of Khyber Pakhtunkhwa Civil Servant Act, 1973 and rules framed under it.
- d. That the impugned order is against F.R 54 and is not a speaking order, as no reasons are given.
- e. That the impugned Order is passed in utter disregard of the mandatory provisions of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.
- f. That the impugned order is against the principles of administrative law and dictums of this learned tribunal and August Supreme Court of Pakistan.
- g. That the Appellant craves permission of this Honorable Tribunal to rely on other grounds at the time of arguments and produce any additional document if required in support of his Appeal.

It is, therefore, prayed that on acceptance of the instant Service Appeal, the office order dated 16-10-2019 and the impugned order dated 22-01-2020 may kindly be set aside and for the period w.e.f 12-10-2005 to 17-10-2010 and w.e.f 19-11-2011 to 15-01-2016, the appellant may kindly be granted pay, increments, arrears and other service back benefits.

Any other relief, deemed fit and appropriate by this Honorable Tribunal in the circumstances of the case, which has not been specifically prayed for, may graciously be granted.

Appellant,

Through

Muhammad Ayub Khan Shinwari

Advocate Peshawar

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## In The Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No \_\_\_\_\_ / 2020

Asfandyar versus

Secty to Govt of KP, (E &S) Edu & others

## **AFFIDAVIT**

I, Asfandyar, DM, GMS Tangi Payeen, Khadagzai, Dir Lower do hereby solemnly affirm and declare on oath that the contents of the instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hamanakla Tail.

from this Honorable Tribunal.

Deponent

OFFICE OF THE DIRECTOR OF EDUCATION(S) MALAKAND DIVISION AT GUIKADA, SWAT APPOINTMENT.

The following candidates as horoby temporarily appointed against PET/DM/CT/SV in the schools noted against each in BPS-9 @ Rs:830/-P.M fixed plus usual allowances as due and admissible to them under the, rules with effect from the date of their taking over charge in the interest of public service subject to the following terms and conditions:-

S. No. Name, qualification & address.

School whord Romarks. appointed.

Mohammad Shah BA S/O Foroz Shah R/O Kambat Dist Dir. 1.

GHS: Mayar Dir. A. V. PET . Post

2. Akhtar Ali FA S/O Fazal Azim R/O Soidu Shorif, Swat.

GMS: Todachina Dir.

Assond Yar FA Mat with Drawing \$/O H. Abdul Malik R/O Khadgazi Dir.

GHS: Patrak Dir. .. A. V. / DM pos

Inyatul Haq PTO/MSc GPS: Martung, Swat

GHS: Hartung Swat Against vo. cant CT ag M Scionce;

5. Hond Chafoor Shoh PTC/Trained D. M GIIS: Warljun Chitral.

teacher. . Gov't:Elo:nollogo Against newfor Education. for Education. ly created (mon)Drosh Chitral B. M. Post.

Mohammad Gulab Shah FA/PTC GPS: Sherigel B R/O Doog Payeen Dir.

GMS: Doog payoon Dir A.V./SV DAST.

## TERMS & CONDITIONS:-

No TA/DA is allowed.

Charge report should be submitted to all concerned.

The appointment is made on purely temporarily basis and liable to termination ay any time wihout notice and assigning any reason. Incase of resignation he whey to submit one month, s prior notice to the department or forefict one month, s pay in licu thereof of the

- The candidates shall produce their health and age certificates from the civil surgwon concerned in case they are not already in service.
- 5. The Head of the Institution are required to check the original academic/professional cortificates of the condidates before handing over charge to thom.

б. In case the candidates failed to take over charge within 15 days of the issue of this order, their appointmen shall stand automatically cancelled.

The candidates shall not be whanded over charge if their age exceed 33 years or below 18 years.

> (GHULAM MOHAMMAD) DIRECTOR OF EDUCATION(S), MICD:DIVN:AT GULKADA, SWAT.

Endst: No. 308915-36

dated the,

Copy to tho:-

Advisor to the Hon: Chief Minister for Edu: NWFP, Peshawar. Director of Education(S) NWFP, Peshawar. 2.

Distt Edu:Officer(M) Concerned. 3.

Sub:Divl:Edu:Officer(M). Concerned. 4.

5. H/M GHS: Concerned.

6. Supdt: (E) L.Diroctorate. ""

7. PA to the DE(S) L.Directorate.

Candidates concerned.

PIRECTOR OF EDUCATION,
MANAGEMENT DIVISION,
CARROLL KADA, SWAT.

Z. HUSSIN.

ANNEX B ابتدا في الملاكي راوله ابتدا کی وقیدان شخص تابل درست ا زازی لیسیس دیورث متده زیر داخسی مرحم مرحم ۱ مجرغس 20/01/21 20/05 3/ ( 10/0 20 m 20 12/10/02/ ناربخ و وقت ر پررٹ N 302/324/34 تة وقرع فاصل تقان مد او رسيفه والراس في الراب ليون عدائل من في جرزرب والمعدالنواب سائدن ما وراني المرش فار آن تغنیتش کے تعلق لگئی اگراطلاع دیج کرنے میں توقف مرام تو وج بیان کرم الموقت رما وي حدال مهات صدى اله ما دور ما دور ما در مارد علی از مارد علی از مارد عدر عدر مارد عدر عدر مارد عدر عدر مارد عدر عدر مارد عدر مارد عدر مارد عدر مارد عدر مارد عدر عاد معى أكرمست عالا رورد أو من الم ورد المعان من من من من وسافان بردرم ورولدها فالمناه بروردار ، يُسَالُهُ ن مر عَمَا كُمَّا وَوَلَ لَمُؤْرِ لَا مِنْ مَا نَا لَا مِنْ مُلِكُ مِنْ مِلْكُم مُرَالُ ما لاج مارت ملكي ما مُلكي من منذ بدلام مركم مراجد مندار نے بہ رسی فان بر المب ول سے و مدالنورب نے رور ملا فان بر بنان رخول ک عاب سرار مان فی بی ارد عث رس غان رد ا درد می در این می می در در در در در در در این استان کار در ال و در در این این در ت سيدي سي ميد مان در المان و المراك ا 

15/2/20 12-10-05 الملاعك يني اطلاع وبنده كار تخطيركا. ياس ك جريانتان نظ ياعات كا. اوراف برور كننده ابتدال احماع و مشرخ روشنائي سے بالمقابل الم ميرايك مرم يا مشهر على الترتيب واسط باشند كان ملاقة غير طاوسط اليشا يا افغانسان جهال موزول بول المحدنا جاسط باشند كان ملاقة غير طاوسط اليشا يا افغانسان جهال موزول بول المحدنا جاسية .

## FORM "A" FORM OF ORDER SHEET

AWER C

## Court of Addl: Sessions Judge/ Izafi Zila Qazi, at Chakdara Dir (L

SC #41 of 2010 State Vs Muhammad Nawab etc

Serial No of Order or Proceedings Date of Order or Proceedings Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary

Order#26

18-11-2011

A.P.P for State, complainant Abdul Jabbar, accused Muhammad Nawab and Asfandyar in custody along with counsel present.

(2) Arguments heard and record perused.

my separate judgment announced today, it is held that the prosecution failed to prove guilt accused in custody beyond shadow of doubt. The accused in custody by extending them benefit of doubt are hereby acquitted in case FIR#1454 dated 12-10-2005 U/S-302/234/34 P.P.C P/S Ouch. If not required in any other case, they be released immediately from district jail Timergara. Case property be kept intact till the expiry of period appeal/revision.

(4) File to General Record Room after completion. Judicial File be returned to Peshawar High Court Mingora Bench.

ANNOUNCED.

18/11/2011

(AURANGZEB KHALIL)

Addl: Sessions Judge/IZQ, Chakdara Dir lower

after co Peshawa

Chacked

Copyista

Attested

EACriminal CasesMudgment Acquirar Stale Vs Muhaemiad Navyab Acquittedable

# بعدالت اورنگ زیب خلیل ایر نیشن شین جی ااضافی صلع قاضی چکدره

ور ما تاریخ سیش مقدمه نبر 41سال <u>2010</u> تاریخ رجومه \_\_\_\_15/11/2010 تاریخ فیصل\_\_\_\_18/11/2011

سركار بذريعة عبدالبيار خان ولدسعيد ملوك خان مها كن خاد گزانی مختصيل ادينز انی ضلع دريها نين ( - سنغيث ) اركار بذريعة عبدالبيار خان ولدسعيد ملوك خان مها كن خاد گزانی مختصيل ادينز انی ضلع دريها نين ( - سنغيث ) منام

ا يَنْهُ أَوَا بِ وَلَدِ عُومِهِ الْحَوَابِ "٢ ـ استفند بإر ولد حبد المهالك ساكنان خاوَّلز انَّى بإ كبين تخصيل اوينز انَّى منتلخ ومريا تنتيَّن ( ملز مان زمير است )

مقدمه علت تمبر 1454 مورخه 12/10/2005

ج برروند 302/324 قررات با کتان قاندادج و 302/324 قررات با کتان قاندادج

قیصله 18نوبر2011

مُختَفر كُنَّهُ أَنَّ مُقدمه بِنَ يَوْلِ الْمُعَالِمُ وَلَهُ 12/10/2005 كُومَ عَيْث اعبد البار

م تغنیش کلمل ہوئے کے احد ملزم عبدالنواب کے خلاف متند مہ بندا بخرش ہاعت غدالت عمد ملاد میں میں میں میں ماث گل مال ملاوموں این کر مالید و اور میں تکلم

ر الله المرابع الماريكي مين واخل مواجئة موجوده ملز مان كومقد مدين رويوش كردانا كيا-ملزم عبدالنواب كوعدالت بذا نے برو نيقتم ( بناري ہے )

18/11/11

بىلىدىدىلىدىدىدىدىدىدىدىدىدى كىلىدىدىدىدى كىلىدىدىدىدى كىلىدىدىدىدى كىلىدىدىدىدى كىلىدىدىدىدى كىلىدىدىدىدى كىلى

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(14)

: فیلمد خرره 11/07/2007 بری کیا۔

سائه موجوده ملزمان كومور عد 14/10/2010 كوكر فنار كيا كياجن ك فناف مقدمه مذا ا تین خیالان مکمل برائے ساعت عدالت بنرا میں دائر ہوئی ۔ C-265 ضابطہ فو خداری کی کاروائی کے بعد مَلْخُ آبان بالا کے خلاف فرد جرم عائد ہوئی ملز مان بالا نے اپنے اپ کو بے گناہ قرار ۔ یا فر و جرم کے بعد استغاث ا کی شہادت طلب کی گئی۔استغاشہ نے ملزم بالا کے خلاف آشارہ گواہان پیش کئے۔جو کم مختصرا ویل ہے۔ ٣٠ كواه نمبر 1عبدالبار خان ستغيث نے برطف مراتب مراسله مظیرہ EX:PA/1 ڈھراتے ہوئے اپنابیان قلمبند کروایا۔ یہ کہ اُن کی نشاند ہی پرنقشہ موقع بھی مرتب کیا گیا آ

۵ \_ گواه نمبر 2 علی شاه برحلف بیانی ہے کہ وقوعہ کے روز اسفندیار ،محمد نواب اور عبدالنواب ا بنی ملکیتی ٹا نگ آرامنی ماکانه میں بذر اید ٹر کیٹر بلیڈ /ہل جلار ہے تھے ۔ وہ ، والد اش بخت زمین خان ، بَرُّ إِذَارَاشُ مَقْتُولَ زِورَطْلَبِ خَانَ ، برادراش برخورداراور بِجَيَّاشُ عبدالجبار جائعَ وتوعه برسط سأن فاوالد بخت زِیمین کچھ فاصلے پرآ گے تھا جنہوں نے موقع پر اُن کے ساتھ کچھ باتین کی جو کہ اُنہوں نے نہیں سُنی ملزم المنفنديارنے والداش پر پيتول سے فائرنگ كى ۔اسفنديار كى فائرنگ سے بخت زمين خان جبكہ عبدالنواب اور . محد نواب کی فائزنگ سے زورطلب خان لگ کر ذخی ہوا۔اورملز مان جائے وقوعہ سے فرار ہوئے۔ مجر دھیں کو پینتال لے جایا جار ہاتھا جن میں زورطلب خان راہتے میں جبکہ بخت زمین خان بعدہ ذخموں کی تاب نہ لاکر . خُوان جَن ہُوئے۔ یہ که نششہ موقع جھی اُن کی نشا ند بی پر مرتب ہوا ہے۔

٢ ـ گواه نمبر 3 برخوردار برحلف بیانی ہے کہ بروز وقوع عبدالنوائب، أن كا بینا محمد نوائب اور أن كَا بِهَا لَى اسفندياراُن كَى ملكيتى آراضى ملكانه ٹا تَك ميں بذريعه بليْرُ ثريمبرُ لِغرِض بل چلارے تھے۔وہ اپنے والد ا کے تھا۔ جب وہ نز دیک <u>بہن</u>ے تو اُنہوں نے ملز مان کوٹریکٹر کے ذریعے ہم کرنے سے منع ہونے <u>کے لئے کہا</u> نوّاس ا ثنامیں اسعندیار نے پستول کے ذریعے اُن کے والدیرِ فائزنگ کی عبدالنواب نے زورطلب خان پر ربییز کے ذریعے فائزنگ کی جبکہ عبدالنواب کے کہنے پر حمد نواب نے بیاراد فتل فائزنگ شروع کی۔ اسفندیارا كى فائر تل سے بنت زمين خان ،عبدالنواب اور تمدنواب كے فائزنك سے زور طلب خان لك كر شديد ذخي ، ہوئے ۔ اُنہوں نے ادگوں کی امداد پر دولوں اٹنیوں کو طُیلہ جہنال نے گئے۔ زورطاب خان را سنا میں جَبَلہ بخت زمین خان البعدة أخرا الب نال کر جان بخن اوئے ۔ یہ که انشه موقع بھی اُن کے رو برومرتب کیا گیا

Checked cypylst: Vitogrand הלומח

(جارئ ہے) WSTED

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۸\_گواه نمبر 05 فعنل کرم برحلف بیانی ہے کہ وہ اقرار نامه مظہرہ EX:PW3/1 کا گواه حالتی ہے جس کی رویت برخور دراز نے والد خود کا پیشار نم نہ کرنے کا اقرار اُن کے روبر و کیا نتا۔اقرار نامہ پر اُن کے علاوہ ابودھر برا کا دینخط نہمی و رست لور پر ثبت ہے۔

9 گواہ نمبر 06 نعد ملک برحاف بیانی ہے کہ اُن کے روبر دایک قیص وشلوارخون آلودازاں مقبول بخت زبین خان مقامی پولیس کو پیش کیا گیا تھا جو کہ اُنہوں نے قبضہ پولیس کرکے فرد مقبر دارات طور پرشت ہے۔ مظبر دارات طور پرشت ہے۔

اا ۔ گواہ نمبر 08 محد طاہر برحلف بیانی ہے کہ اُن کی موجود گی میں عبدالنواب کی ملکیتی گاڑی میں جس کا بڑی ہے۔ کہ اُن کی موجود تھے مقامی پولیس نے اُن کے اور رجیم بخش میں موجود تھے مقامی پولیس نے اُن کے اور رجیم بخش میں موجود کے مقامی پولیس نے اُن کے اور رجیم بخش میں موجود گئی موجود گی میں تبنید بولیس کیا ۔ فردمظہرہ EX:PW12/1 بران کے دستنظ ورسنت طور نیز شبت کیں ۔

السَّواه نمبر 09 بهادر زیب برحاف بانی ہے کہ اُنہوں نے مال مقدمہ برائے تجزیہ

FSL پشاور پهنچايا ـے۔

۱۳-گواه نمبر 10 صدیق اکبر DSP برحلف بیانی ہے کہ اُنہوں نے مستغیث کی رپورٹ بیشکل مراسلہ مظہرہ EX:PA/1 ضبط تحریر میں لا کر بغرض قائمی مقدمہ بزر بعیہ سیابی دوا خان ارسال تھا نہ کیا۔ اور مقدمہ بذا میں جالان کمل بھی اُنہوں نے تر تیب دیا ہے۔

المورد 19/10/2010 و المراد المورد 19/10/2010 و المراد 19/10/2010 و المراد 19/10/2010 و المراد المرا

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1.an entry wound 1x1 MM circular in shape left chest close to and just lateral to the xiphisternum.

2.Exit wound: about 1.05MM in size irregular in shape on the upper outer quidrant of the left buttock, patient had tender and tense abdomen, patient was referred to the tertiary care hospital at peshawar for further management where he expired in male surgical ward LRH Peshawar on 14/10/2005. Nature of wound grievous

Nature of weapons FAI

cause of death. Hypovoloemic should due to excessive bleeding.

الله المراد الم

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ا التیش کی ہے اور حسب نشاند ہی مدی مقدمہ و کوامان چشم و ید نقشہ موقع EX:PB مرتب کیا ہے۔ جائے مَوْجُودًكَى ملزم اسفنديار سنة ايك عدد حول كارتوس 30 بوربرآ مدكر كے بروئے فرد قبضہ بوليس كيا گيا ۽ ايك عدد ٹر نیکٹر کو بھی انہوں نے قبضہ پولیس کیا۔ جانے موجود گی ملزم نئی نواب کے نزدیک ہے آٹھ عدد خول کارنویں ا

62). 7 بور برآ مد کرے برہ نے فرد فبصہ بولیس کی ٹی ہے۔ مقتولین نے پوشمارٹم نہ کرنے کی بابت اقرار نامیہ ہائے حاصل کی ہیں۔منتولین کے یار جات کو نبضہ پولیس کیا ہے۔ میرکہ بدوران خانہ ہلاثی ملزم عبدالنواب شے نیص وشاوار برنگ مفیارسزی مائل جس برخون کی ہوئی تھی فبعنہ پولیس کیا ہے۔ گوامان ودیگر متعلقین کے 🕓

بیانات قامیند کئے ہیں ۔مغنولین کے نقشہ ضرر ،فر دصور شال بھی اُن کے مرتب کرد و ہیں ۔ملز مان کے خلاف ، كَالْرُواكَى رويونَى بَى أنهول ني لل مين لانى يه - بوامان لوانهول في المسندى بيانات زيروفعه 164 نس ف

میر ایک بروے درخواست عدالت میں پیش کیا ہے جن کے بیانات مسل پر موجود میں رائے FSI حاصل کرنے کے بعد شامل کی ہے۔

۲۰۔ گواہ نمبر 17 ناصر علی HC ابر جاف بیانی سے کہ اُنہوں نے اس

·Certificate آزاںمقول بخت زمین خانRH نا پیثا در سے لاکر تفتیشی آفیسر کوجوالہ کی ہے

ا۲\_گواہ نمبر 18 نوشیروان خان SHO برحلف بیانی ہے کہ اُنہوں کے نگر م محمد نوائب کو

نِتَّارِكِرِكِ اُن كَى كاردُّ گرِفتارى مظهرِ 6X:PW18/1 جاري كى ئے

٣٢ \_ گواه دُّ اکثرِ مبدالعنفور جونک پاکستان میں مئوجود شہ ہے اور و مسعود کی عرب جا چا کا ہے ا

لئے اکرم نان کے بیان کی روش میں ان کا بیان اسابقہ قالمہ بید

98/03/2007 نزرہ PW-13 کومقدمہ بذا میں متل کیا کہا ہے۔

٢٣- ورحه 1 1 0 2 / 7 / 2 و شهادت استغاثه مكمل بيوكي اس نسبت وكيل

بغَيْث/سركارنے اینابیان قلموند کیا۔ بیانات ملز مان زیرد فعہ 342 من فسقلموند ہوئی جن تیں بلز مان نے

النفيخ آب كوايك بار پھربے گناه قرار ديا۔

۲۴۰۰ کیث مامنت ور دکار ڈیلا حظہ شد \_

٢٥ ـ فاصل وكيل برائ مستغيث و APP برائ سركار بياني ي كر الريان زيرجران

مقدمًا. بذا میں براہ راست نامز دملنہ مان ہیں۔ جنہوں نے منتق لین زورِ طلب خان اور بجنت زمین خان کرا

: فا بُرْنُک کر کے قبل کیا ہے۔ یہ کہ وقع بد بذا کے پیشم دید گواہان موجُود ہیں جوعدالت بندا میں برخلف بنیانی ہے کہ آج مُزِ ہانا نے دقو مہ کے دن/دہت اینے اسند آشین سے منتولین پر فا بڑنگ کر سے قبل عمر سے مرتکب ہوئے ،

ر جود ہے۔ جن سے ملز مان فریق الکاری نہیں ہے۔ یہ کہ ملز مان وقو عظیمے بعد ا

( جاري ہے)

Ppylšťa

Attostock!

﴿ وَهِ بِيْنَ ہُوئِ اور تقریباً پانچ سال بعد مقامی ولیس نے کرفنار کیا ہے۔ یہ کہ استفاقہ نے ملز مان کے خلاف مقد مہ ہذا چشم دید شہادت ہے تا بت کیا ہے۔ استدعا ہے کہ ملز مان زیر حراست قانون کے مولا اِل محت ترین مزاکے ستحق ہیں۔

كما جوكدا كلي ريزوت والمستعملين

Attested 7

Checisso

ANTESTEE.

(40) Auto (20)

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۲۸ - ابتدائی اطلائی ر پارٹ کے مطابق جائے وقوعہ پر ستنغیث اعبدا اجبار 1 - PW، مطابق جائے وقوعہ پر ستنغیث اعبدا اجبار 1 - PW، مقدمه علی شاه / PW-2، برخور دار / 3- PW اور مقنولین بنت زمین خان وزور طلب خان موجود سختی، مقدمه بندا میں بنیادی فیصلہ طلب نفظہ رہے کہ آیا بروز وقوعہ مستنغیث اور دیگر چشم دید گواہان بالا جائے وقوعہ پر موجود سختے یا نہیں ؟

۲۹ - مقتول بخت زین خان چشم دیدگواه مستغیث گا بھائی جبکہ علی شاہ اور برخور دار چشم دید گواہان کا والد ہے ۔ مذکورہ چشم دیدگواہان کی مہینہ موجود کی کانعین کرنے کیلئے اُن کا جائے وقوعہ پرفوری رد عمل انتہائی اہم ہے ۔

الموان الو ہریرہ فضل کرم ،محد ایعقوب اور سلطان روم کے نام درج ہیں۔ باالتر تنیب سلطان روم بصل کرم ، ابو ہر بر د بطور 4-40 -5، PW اور 7- PW بیش ہوئے۔ جبکہ بقایا ایک گواہ کوترک کیا گیا۔ ہر۔ عوامان کیٹ کشانی کرنے بیس نا کام رہے۔ کہ فردسورت حال مرجب وقت ان کے ساتھ مبینہ چینئم وید کواہان ہمی موجود

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ضروری مورجه 2011-05-09 کوترک کیا۔ دوسرا گواه شهر یاربطور 13-9W عدالت بذا مین پیش ہوکر این نبست ایک لفظ تک نبیل کہا کہ وقوعہ کے فوراً بعدوہ جائے وقوعہ پرآیا اور مبینہ چیٹم دید گواہان کے ساتھ ملکر مقبولین/ مجروحین کو جائے وقوعہ سے سڑک یا ہسپتال تک پہنچایا۔ ندکور ہنی الرحمان گا بیش نہ ہونا اور شہر یارکی ایک کشائی نہ کرنا۔ استغاثہ کے اس وقت کو کمز در کرتا ہے۔ کہ ندکورہ دوافراد اور گواہان نے وقوعہ سے متنو لین الم مجروحین کوسڑک یا ہمیتال تک پہنچایا۔

۳۳ مندیار نے متاق کی جو اور ملز میں سندیث میں مطابان ملزم اسفندیار نے متنق کی است نہ بین پر پہتول ہے۔

المجمل ملزم محرنواب نے کا اشکوف اور ملزم عبدانواب نے رپیٹر سے مقنول رُورطلب پرفائر تگ کی ہے۔ متنق کین کے اس اور میں اور چشم وید گواہان کا محرن کے فاصلہ اور ہموار زمین پرائیک وورٹ کے ساتھ قریب قریب کے است کے متنق کی بین ہوئے ہیں جا مقتولین زمی ہوئے ہیں حالا مگر چشم وید گواہان یا ستخیث اپنے آپ کو بچ نے کے لئے کوئی کوشش بھی نہیں کرتے یا ستنجیث مراسلہ میں مقامی کے لئے گوئی کوشش بھی نہیں کرتے یا ستنجیث مراسلہ میں مقامی کے لئے گوئی کوشش بھی نہیں کرتے یا ستنجیث مراسلہ میں مقامی کے اور الحمینان سے وقوعہ و کھرے ہیں ۔ محفوظ مقام پر ستنجیث یا دیگر چشم وید گواہان کی موجود وی کا فرکر نہ مراسلہ کے اور الحمینان سے وقوعہ و کھرے ہیں ۔ محفوظ مقام پر ستنجیث یا دیگر چشم وید گواہان کی موجود وی کا فرکر نہ مراسلہ کے دیکھ کے ایک ہموار جگر مقام ہے جہال پر تین قسم کے دیکھ کا دیکھ کے ایک ہموار جگر مقام ہے جہال پر تین قسم کے دیکھ کے دیکھ کے دیکھ کا دیکھ کی کو کھر کا مقام ہے جہال پر تین قسم کے دیکھ کے دیکھ کا دیکھ کے دیکھ کو دیکھ کے دیکھ کو دیکھ کے دیکھ کے دیکھ کے دیکھ کے دیکھ کو دیکھ کے دیکھ کے

(جارن بـ) عا 00 عا 1

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ہے اندھادھند فائزنگ کے بتیہ میں محفوظ ر بنا خارج / از مکان ہے۔

۳۸۰ دریکارد کے مطابق شریک ملزم عبدانواب مقدمہ بذا میں بروئ فیسلہ محررہ ۔ 200-07-11 بری بو چکا ہے۔ بری شدہ شریک ملزم عبدانواب کی حد تک پہلے ہی مجاز عدالت چشم دید ، ر الرا آن كي شهادت كونا قابل اغتبار قرار دي چي ہے۔ تا حال سي مجاز عدالت ہے منسوخ يا كا بعدم قرار نبيس موا ہے۔ چشم دید گواہان ماقبل ساعت مقدمہ میں بیش ہوئے تھے وہی گواہان مقدمہ ہذامیں ہیں۔

٣٥ \_ دوران تفتيش مقامي بوليس في خانه ملزم اسفندياري تلاشي ممل كي ممر برويخ فردمظهره Ex-Pw-14/7 الدُّنْ ياديكر منوعه في برآيد نهين هوني - مقاى يوليس في خانه عبدالنواب كي الله في ك دورًا أن ایک خون الود قبیص شلوار برآید کی \_مقامی پولیس کویفین تھا کہ مذکورہ شلوار قبیص ملزم اسفندیار کی ہے ۔ بُرِّالِبُ تَجْرِيهِ خون الودشلوار قبيص F.S.L بهيجا گياجس كي ربورث Ex-PW-14/11 مسلِ يرموجو به ۔ یکٹیے ندکورہ ریورٹ کے مطابل ملزم کے گھریت برائید شلوار بیس کے خون الود و غیرہ ہے مطابقت مہیں رکھتی۔ نَوْ لَيْكُو كُراً لَ حُونِ الودكِرُ مِن شده ملز عبدالنوابُ كَرِيت برآ مد ببوتي بهذا مُسل براليسال كوتي مواد 'گرشهادت/ جوازمو جودنییں کہ بری شدہ شریب ملزم *ے گھر سے بر*آ مدخون الود کپڑے بشریب ملزم اسفندیا برز مر ا این چرانینت کی ملکیت یاز ریاستغال ره نیخل ہے۔

٣٦ ـ مقای پولین نے درران تفتیش مورجہ 2005-10-12 کو ایک یجا رونمبر \$ B-10 جارسدہ قصد خود کی ہے۔ جس کے مطابق مذکورہ گاڑی کوملز مان نے واردات میں استعال کی مَذُورَهُ كَارُي بِرائِ ملاحظه عدالت بذا مِن مِينَ نبين كَهِ كُن بَهُ كُورٍ هِ فردمقوصَكَى كارگواه محذ ظاهر برائ بيان برحلف ع البت ہذا میں بیش ہوا۔ستغیث کے مطابق ملزمان جائے وقوعہ برملکیتی اراضی سبتغیث برفریکٹر جا ارہے - 12 كو مذكوره فريكم فينسه خود كرك فرد -× عرت کیا۔ متا ی پولیس کے مطابات ندکورہ ٹریکٹراور پجارو گاڑی بری شدہ شریکہ Pw-13/15/6/20 ﴾ ﷺ فیلزانواب کی ملکیت تھی۔ نذکور د ٹریکٹر گاڑی کا موجود ہ ملز مان سے کو کی تعلق تھا نہیں؟ یا موجو د ملز مان وتو أُرُّاك Ex-PW-13/ كَا الْكِ كُوادِشِهِ بِإِزَار 13-PW بِيشِ مُوالْ دورانَّ جِنَّ اقْرَازِي لَيْتَةٍ منع تو د ماں پر ملز مان موجو دنہیں تھے۔استغاشہ نے ایک بھی غیر جانب دار گواہ پین نہیں گیا، جرن نے يُردَقَ بِهِ بِهِ سِلْبِيلِ زِيرِجراست كو مُدكوره فريكُثر جلائيَّة بَوْئِيَّة ويكِيما بَوْنَا لِغَدُارُ وَتَوْغُ ظُرْنَاكُ أَ يَجْارُو كَاثِرَى مِينِ فِهِارِ ہُوئِے ۔ اَلبَدُ النَّ حالات مِين استعابُهُ/ستعنيث مَدَّثُورِه فَرَ يَكُثِر اور سِحَارُه كَارُ كَيْ يَصْمُوجُوا

(جاری ہے)

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مكز مان زير حراست كاتعلق ثابت لرئة بين نا كام ربي ..

۳۷ متا می پولیس نے دوران آفتیش و جودہ ملز مان سے کوئی برآ مدنی یا نشاندی کرنے میں یا نشاندی کرنے میں یا کا مربی ملز مان زیر حراست نے دوران آفتیش اور دوران ساعت مقد مدمقا می پولیس اور مجاز عدالت کے مسال استفاش مناشل سنف کے اللہ امات سے انادی زیا۔

۳۸۔ جہاں تک وجہ عناد کا تعالی ہے۔ مستخیث بیانی ہے۔ کہ ملز مان بذر لیے تر یکٹر مستخیث بیانی ہے۔ کہ ملز مان بذر لیے تر یکٹر مستخیث بیانی ہے۔ کہ ملز مان بذر لیے تر یکٹر مستخیث بیانی اراضی میں بداخات / قبند کرر ہے تھے۔ جائے وقو عہ اراضی زیر نزاع در یاسوات کے کنارے واقت میں مذکورہ اور گذشتہ سال تاریخ ساز سیلا ہے نے مبینہ اراضی اپنے ساتھ بہا نے گیا اور موجود ہودہ وقت میں مذکورہ اراضی کا وجود ختم ہو چکا ہے۔ اس نسبت متا می افراد کا مشتر کہ بیان مقا می پولیس نے قلم بند کر کے عدالت بذا میں بیش کر بیش ہے۔ ہو کہ اس پر مقلم 14/20 میں اور کا مشتر کہ بیان مقا می پولیس نے قلم بند کر سے بین کہ میں بیش کر بیش ہے۔ موجود ہے۔ فریقتین خود بھی تسلیم کرتے ہیں کہ میں بیش کر بیش ہور یا بدورہ و بیش ہے۔ میں بیان کو بیش ہوریا بدورہ اراضی میں بیان میں زیر نزائر دیں ہوں

۳۹ مستنیث برحاف بیان / اقراری ہے۔ کہ وقوع بذا کے بعد گو برطان کا بھا اور مقتول زور طلب کا بھا کی رعویہ بذا کے بعد گو برطان کا بھا کہ بھا کا ب

ا تُلَابت كرنے ميں كامياب نہيں ہوئى ہے۔

۳۰ ستغیث کا ۱۳ میں موتف ہے۔ کہ بروز وقوعہ وہ ہمراہ دیگر چشم دید گواہان و بھتو لین اپنی ملکیتی ارامنی مند ہویہ کام کررہے مقتولین اپنی ملکیتی ارامنی مند ہویہ کام کررہے مقتولین اپنی مند ہویہ کام کررہے متنے۔ دوروں پڑتی کی الم مند کورہ کا مرکز کی مرکز کا مرک

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مستغیث نے مقامی پولیس کو دوران تفتیش حوالہ نہیں سے ہیں۔تفتیشی آفیسر/ 14-PW بھی اقراری ہے۔ کہ مذکورہ اشیاء مستغیث فریق نے ان کو دوران تفتیش پیش نہیں کئے۔ نذکورہ آوزار/اشیاء زمینداری کا پیش نہ کرنا۔استغاشہ/ ستغیث کے منف کو مذیر کم فرار/ شکوک بنانا ہے۔کدکیا درحقیقت مستغیث/چشم دید کواہان توجہ کے دفت جائے وقوعہ پرکام کے سلسلے میں موجود ہتھے۔

الار استغاشہ کی بنیادی و مداری ہوتی ہے۔ کہ جرم کو ثابت کرنے کے لئے شکوک و شہبات اللہ تر شہادت بیش کرے۔ شہبات استغاشہ کی بنیادی و مداری ہوتی ہے۔ کہ جرم کو ثابت کرے ہے ہم مر اوط ہونی چاہئے۔ اللہ تر شہادت بیش کرے۔ شہباریا مشاوک ایک ہی گائی میں کا فائندہ ملزم کو جائے گا۔ موجودہ مقدمہ آگر درمیان میں نا قابل اعتباریا مشاوک ایک ہی کرئی ہے۔ شیقت سے دور ہے اور ملز مان سے تعلق ثابت نہیں میں مندرجہ ذیل وجو ہات کی بنیاد پر ملز مان بالامقدمہ بندا میں بریت کے حقدار ان ہیں۔

(۱)۔ پشم وید گواہان/ سندنیث کا میریہ جائے وقو مدیرہ و دورگی نا قابل استبار ہے۔ کیونکہ جائے وقو مہ ایک ہموارز مین ہے جہاں چینئے کی جگئی ستنغیث کرپشم وید گواہان ملز مان کے خلاف فائز مگ کی نسبت ایسی وعویذاری کرتے ہیں کہ جیسا مستنفیث فریق ایک محفوظ جگہ پر بیٹھ کہ اطمینان سے وقوعہ و کیورہے ہو۔ جو کہ

(ب) - ہموار جائے وقو مہ پروقو مہ ہے وقت تنگف تنم کے اسلحہ جات ہے اندھا وصند فائر نگ للزمان مسلوب ہے۔ ایکن سننیث / پشم دید گواہان کوخراش تک ندآ نا نا قابل تعلق ہے۔ معموم ملم سلی سنسسوب ہے۔ لیکن سننیث / پشم دید گواہان کوخراش تک ندآ نا نا قابل تعلق ہے۔ ایکن مقدم میں زمینداری کا کام کے لئے جانا بیانی ہے۔ لیکن مذکورہ کام کے لئے جانا بیانی ہے۔ لیکن مذکورہ کام کے لئے اپنے ساتحہ لے جانے والے آوزار کدالہ یا بیلچے وغیرہ مقامی پولیس کو حوالہ نہ کرنا الیکن مذکورہ کام کے لئے اپنے ساتحہ لے جانے والے آوزار کدالہ یا بیلچے وغیرہ مقامی پولیس کو حوالہ نہ کرنا الیکن مذکورہ کام کے لئے اپنے ساتحہ لے جانے والے آوزار کدالہ یا بیلچے وغیرہ مقامی پولیس کو حوالہ نہ کرنا

و شار است المراب المراب المراب المراب المراب المراب المرابع مبينة طور براه م الررب سنا مرابع المرابع المرابع

(ج) ۔ وقوعہ کے فور آبعد مقتولین کو جائے وقوعہ سے سرک یا سپتال کے جائے وفت اُن کے ساتھ شم دید گواہان کا نہ ہونا اس امر کوتنویت دیتی ہے کہ وقوعہ کے وفت سنتغیث یا دیگررشتہ دار انچشم دیڈ موجود مدست

رج ) نا استه این سرد مناه تابت کرنے میں نا کا م رہا۔ اگر چه وجه عناه ضروری نہیں کیکن جہال تعنیک وجه مناه کا موقف اپناکر تا ہ و کال دو جه عناه ایک اسم غور طلب نقطه ہوتا ہے۔ پانسان کا موقف اپناکر تا ہو کہاں ہو جہ عناه ایک اسم غور طلب نقطه ہوتا ہے۔ پانسان کا موقف اپناکر تا ہو کہاں ہو جہ عناه ایک اسم غور طلب نقطه ہوتا ہے۔ پانسان کا موقف اپناکر تا ہو کہاں ہو جہ عناه ایک اسم غور طلب نقطه ہوتا ہے۔ Chocker

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(خ) \_مستغیث فریق ملز مان زیرحراست مصابقه فریق ملز مان زیرحراست مصابقه وشنی ثابت مرض میں ناکام رہا بلکہ اقراری بیان کے مطابق مستغیث کادیگر افراد سے قبل کی دشمنیاں موجود ہیں۔ (د)۔ دوران نتیش ملز مان زبرحراست سے کوئی برآ مدگی نہیں ہوئی اور نہ بی اُنہوں نے اپنے جرم کا

( ذ ) \_ مباز عدالب شریب ملزم بری شده عبدانواب کی حد تک موجوده مستغیث د د گیرچشم دیدگوابان . کی شہادت او نا قابل اشہار اقرار دی پلی ہے۔ جو کہ تا حال بحال ہے اور مجاز عدالت عالیہ سے منتوخ / كالعدم نبيل بوئي يا

مندرجه بالا وجود کی ویشی میں ملز مان زیرحراست کومقدمه بذاہے بری کئے جانے ہیں۔ملز مان جیل ً میں بیل اُن کوفی الفورر ما کیا جائے بشرطیکہ کسی دیگر مقد مدین ملوث بند ہوں۔

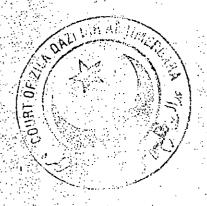
مال مقدمه بعداز معیادا بیل حسب منیابطه تلف جواورگاژی وغیره جائز حقدار کا لک کودالیس ہو Lhyl

(اورنگ زیب خلیل) ایدیشنا سیشن بچ راضانی ضلع قاضی چکدراه

تفعد اِن کی جاتی ہے کہ فیسلہ ہذا کل (12) صفحات برمشمل ہے اور سفی کی بعد از ضروری تقیع میرا دسخط شبت ہے۔ /////18 (اورنگ زیب خلیل)

الديشناسيش جح راضاني صلع قاضي حيكدره

اسان سلع قاسى جدر ورياعين



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OFFICE OF THE EXECUTIVE DISTT: OFFICER (SCHOOLS & LIT:)DIR LOWER.

OFFICE ORDER.

WHEREAS One Mr, Asfandiar Drawing Master Gevt; Middle School Teerona Tehsil Adenzai Distt; Dir Lower, is continously absent from duty with effect from 12/10/2005.

AND WHEREAS Show Cuase Natice was issued served upon him to report for duty, but he failed to do so, and no repense has been received so for.

New therefore I being the competent authority I hereby erdered the termination of Services of Mr. Asfandiar Drawing Master Gevt; Middle School Teerena Tehsil Adenzai Distt; Dir Lewer with effect from his absence from duty, under the Removal from Services (Special Powers) Ordinance 2000-2001.

(MOHD IBRAHIM)
EXECUTIVE DISTT: OFFICER
SCHOOLS & LIT: DIR LOWER.

Endst; No, 6866-69 /Dated Timergara the 14 /4/2008

Copy of the above is forwarded to;-

- 1. The Distt; Coordination Officer Dir Lower.
- The Distt; Accounts Officer Dir Lower.
- The Dintt;Officer(M) Lecal Office.
- The Headmaster GMS Teerona.

The Accused concerned.

EXECUTE & DISTT: OFFICER SCHOOLS & LIT: DIR LOWER

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S.No. Date of Order or other proceedings with signature of judge or Magistrate order proceedings

## KHYBER PAKHTUNKHWA SERVICE TRIBUNAD. PESHAWAR.

#### APPEAL NO.520/2012

(Asfandyar-vs-Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education, Peshawar and others).

#### <u>JUDGMENT</u>

## ABDUL LATIF, MEMBER:

10.12.2015

Appellant with counsel (Mr. Mohammad Ayub Khan Shinwari, Advocates) and Mr. Hameedullah, AD (Lit) alongwith Mr. Kabirullah Khattak, Assistant Advocate General for respondents present.

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The instant appeal has been filed by the appellant under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act-1974. He prayed that on acceptance of this appeal, the impugned order dated 14.04.2008 whereby the service of the appellant was terminated and order dated 13.04.2012 passed by respondent No.2 whereby the Departmental Appeal against order dated 14.04.2008, was dismissed, may kindly be set aside and the respondents may be directed to reinstate the appellant in service with all back benefits.

3. Brief facts giving rise to the instant appeal are that the appellant was appointed as Drawing Master in the respondent Department in the year 1989. Meanwhile a false and frivolous FIR bearing No. 1454 dated

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12.10.2005 was lodged wherein the appellant was charged under section 302/234/34 P.P.C at Police Station Ouch. That the appellant was arrested by the local police in the above said case and after trial the appellant was acquitted of the charges leveled against him vide judgment and order dated 18.11.2011 passed by learned Additional Session Judge, Chakdara. Dir Payeen. That after his release the appellant reported back to the respondent department with a request to adjust/post him for performing his duties but he was informed that he was being terminated form service vide order dated 14.04.2008 and the copy of the said order was handed over to him. That it is pertinent to mention here that immediately after lodging of FIR against the Appellant, the respondents suspended the Appellant from service vide order dated 08.10.2005, so the subsequent impugned order whereby the appellant has been terminated from service is against the law, illegal, un-lawful, void ab-initio and liable to be set aside. That appellant preferred departmental appeal before respondent No.2 against the order dated 14.04.2008 which was dismissed vide order dated 13.04.2012, hence the instant appeal.

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Khyber ob a nkhwa
Service Tribunal,
Peshawar

4. The learned counsel for the appellant argued that impugned order was against the law, rules, without lawful authority and without justification, hence not tenable and liable to be set aside. He further argued that mandatory provisions of the law/rules were not followed as no full fledge enquiry was conducted nor any final show cause notice was issued to the appellant before impostion of the major penalty on him. He further contended that appellant was suspended subsequent to lodging of FIR against him and hence subsequent order of termination form service was void ab-initio because absence was beyond his control. He further argued that appellant had been acquitted of the charges by the competent

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court of law hence respondents were not vested with powers to terminate him from service. He also contended that EDO was not competent authority to impose the penalty on the appellant and the order was void ab-initio. He further argued that word termination was nowhere mentioned in the RSO-2000 and the impugned order was also defective on this count. He prayed that on acceptance of this appeal impugned order of termination dated 14.04.2008 and appellate order dated 13.04.2012 may be set aside and the appellant may be reinstated in service with all back benefits. He relied on 2001 SCMR 1062, 2011 PLC (C.S) 990, 2007 SCMR 562, 2011 SCMR 676.

- The learned Government Pleader resisted the appeal and argued that appellant was suspended from service but there-after he remained fugitive from law and remained absent from his duties which was willful and he remained absent from 12.10.2005 till his arrest on 14.10.2010. The appellant was removed on the basis of his long absence after fulfilling all codal formalities. He further argued that show cause notice was issued to the appellant but he failed to respond to the same being absconder. He further contended that order of termination was issued on account of willful absence and the requirements of the Removal from Service (Special Powers) Ordinance-2000 were duly completed in the process of his termination from service and prayed that appeal being time barred may be dismissed.
- 6. Arguments of learned counsels for the parties heard and record perused with their assistance.
- 7. From perusal of the record, it transpired that the appellant was

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proceeded against for the charges of willful absence from duties on account of his involvement in a criminal case of which he was acquitted by the competent court of law. Perusal of the impugned order dated 14.04.2008 revealed that the appellant was terminated from service with effect from 12.10.2005 i.e the date of his absence. The said order was passed by the Executive District Officer (E&SE) Dir Lower. It transpired from the order that the same was not passed by the DCO who under the law was the relevant competent authority for the appellant. Moreover, it was not in conformity with RSO as the said law does not contain "Termination" as one of the major penalty and it also suffered from legal infirmity as it was given effect from retrospective effect. The Tribunal is therefore constrained to interfere in the case by setting aside the impugned orders being void and remit the case to respondent-department for proceeding de-novo against the appellant strictly in accordance with law in a period of sixty days after receipt of this judgment. The appellant is reinstated in service accordingly for the de-novo enquiry, the intervening period will be decided in light of outcome of the fresh proceedings. Parties are left to bear their own costs. File be consigned to the record.

Service Tripulation

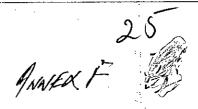
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To 12.2015

Date of Presentation

No. 21.12.15



## OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DIR LOWER. OFFICE ORDER

Reference letter from the Director (E&SE) Khyber Pachtunkhwa Peshawar vide No,2019/F.No, P/F.Asfandiyar Khan Ex DM dated 27/6/2015, the absence period in respect of Mr,Asfandiyar Khan DM GMS Tangi Payeen Khadagzai w.e.f 12/10/2005 to 17/10/2010 and w.e.f 19/11/2011 to 15/01/2016 is hereby converted into leave without pay as ecxtr=ordinary leave, and the period w.e.f 18/10/2010 to 18/11/2011 is treated as on duty.

Note: Necessary entry to this effect should be made in his Service accordingly.

(Prof;Mohammad Uzair Ali)
District Education Officer
(Male) Dir lower.

Endst; No, 12234-38 Dated Timergara the 29/7 /2016

#### Copy forwarded to;

- 1. The Director (E&SE) Khy ber Pakhtunkhwa Peshawar.
- 2. The District Accounts Officer Dir Lower.
- 3. The Deputy District Officer(L) office.
- 4. The Teacher concerned.
- 5. Master file

District Education Officer
(Maie) Dir lower.

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	Sr.	Date of	Order or other proceedings with signature of Judge or Magistrate
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ļ		proceeding	The state of the s
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			Tonithers I room
			BEFORE THE YBER PAKHTUNKHWA SERVICE TRIBENAL
			Service Appeal No. 168/2017
			07.02.2017
			Date of Institution 07.02.2017  Date of Decision 10.07.2019
			Date of Decision 10.07.2019
	-		
			Asfandyar DM, GMS Tangi Payeen, Khadagzai, Dir Lower.
			Asiandyai Divi, Givis Tangi Tuyeen, Tanadagan, 211 Appellant
		<i>,</i> , , , , , , , , , , , , , , , , , ,	
		·	Versus
	_	THE THE PARTY OF T	1. Secretary Government of Khyber Pakhtunkhwa Elementary &
7	TE		Secondary Education Khyber Pakhtunkhwa Peshawar.
<b>-</b>			2. Director Elementary & Secondary Education Khyber
			Pakhtunkhwa Peshawar.
	RXA	13	3. District Education Officer (Male), Dir Lower.
K	hyber	Pakistan.	3. District Education Officer (Maie), Bit Bower.
	Servin	cshawar	Respondents
			Mr. Muhammad Hamid MughalMember(J) Mr. Ahmad HassanMember(E)
		10.07.2019	
			JUDGMENT  AND HAMD MIGHAL MEMBER: Appellant
	-		MUHAMMAD HAMID MUGHAL, MEMBER: Appellant
			with counsel and Mr. Usman Ghani learned District Attorney
	1		present.
		2019	2. The appellant (D.M) has filed the present service appeal u/s 4
<u>t</u> .	٠		of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the
	O		der dated 29.07.2016 whereby the abscondance period of the
			appellant w.e.f 12.10.2005 to 17.10.2010 as well as the period after
			acquittal of the accused in criminal case w.e.f 19.11.2011 to
٠.			15.01.2016 was treated as leave without pay/extraordinary leave



while the period w.e.f 18.10.2010 to 18.11.2011 during which the appellant was in jail was treated as on duty.

Learned counsel for the appellant argued that the appellant was appointed as Drawing Master in the year 1989; that the appellant was charged in case vide FIR No.1454 dated 12.10.2005 u/s 302/324/34 PPC Police Station Ouch; that the appellant was arrested on 14.10.2010 and after trial the appellant was acquitted by the trial court vide judgment/order dated 18.11.2011; that after his acquittal, the appellant reported back to the respondent department but he came to know that he was terminated from service vide order dated 14.04.2008; that the departmental appeal of the appellant against the order dated 14.04.2008 failed and consequently the appellant filed Service Appeal bearing No.520/2012 before this Tribunal; that this Tribunal vide judgment dated 10.12.2015 passed in the above mentioned service appeal, set aside the impugned order and remitted the case to the respondent department for de-novo proceedings and the appellant was also reinstated in service for denovo inquiry and it was also directed that the intervening period will be decided in the light of outcome of fresh proceeding; that the appellant was reinstated in service, inquiry was conducted; that vide impugned order dated 29.07.2016 the abscondance period as well as the period after acquittal of the accused in the above mentioned criminal case, was treated as leave without pay as extraordinary leave and the period during which the appellant was in judicial custody was treated as on duty. Learned counsel for the

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EKAMINER Khyber Pakhtunkhwa Service Tribunal, Peshawar

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appellant next contended that the appellant filed departmental appeal against the aforesaid impugned order dated 29.07.2016 but the departmental appeal of the appellant was not responded; that the impugned order is against law, hence liable to be set aside. Prayer of the learned counsel for the appellant is that the abscondance period of the appellant may be treated as leave of the kind due and the absence period of the appellant after his arrest w.e f 14.10.2010 till reinstatement may be treated as on duty with full pay.

- 4. As against that learned District Attorney argued that the period during which the appellant confined in jail has been treated as on duty while abscondance and absence period of the appellant was rightly converted into leave without pay. Further argued that there is no provision to pay someone for the period he did not perform any government duty.
  - 5. Arguments heard. File perused.
- 6. Perusal of judgment dated 10.12.2015 passed in Service Appeal No.520/2012 mentioned above would show that the order of termination of the appellant was set aside and the case of the appellant was remitted to the respondent department for de-novo proceeding and the appellant was reinstated in service for the purpose of de-novo inquiry and it was also directed that intervening period will be decided in the light of outcome of fresh proceeding.
- 7. Perusal of file would show that proper de-novo proceeding/inquiry has not been conducted against the appellant in as much as no charge sheet/statement of allegation found available

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EXAMINATION

Kinyber Pakhrunkya

Service Tribunal,

Pesnawar

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on file, similarly no proper order of the competent authority regarding the conclusion of de-novo inquiry has been passed more so no order of competent authority or appellate authority is available on record to show that the appellant was reinstated upon the conclusion of the de-novo inquiry. Simply the period w.e.f 12.10.2005 to 17.10.2010 and w.e.f 19.11.2011 to 15.01.2016 was treated as leave without pay/extraordinary leave and period w.e.f 18.10.2010 to 18.11.2011 was treated as on duty vide impugned order dated 29.07.2016.

8. In the light of above, this Tribunal is constrained to set aside the impugned order dated 29.07.2016 as the respondent department has yet to properly implement the judgment dated 10.12.2015 passed in Service Appeal No.520/2012 in letter and spirit by conducting proper de-novo inquiry against the appellant and to conclude the same through speaking order. The present service appeal is disposed of in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.

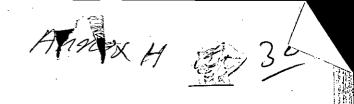
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(Ahmad Hassan) Member (Muhammad Hamid Mughal) Member

<u>ANNOUNCED</u>

10.07.2019

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#### OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DIR LOWER AT TIMERGARA.

E- Mail: deomaledirlawer@gmail.com, Tell: 0945-9250081-82

## Office Order.

Consequent upon the recommendation of inquiry committee, constituted vide Service Appeal No.168/2017, dated 10/07/2019, the appellant Mr. Asfandayar DM GMS Tangi (P) is not entitled / eligible for any kind of pay ,arrears, increments and other service back benefits; as he did not performed the official duty for the period he claimed and the office order No.122334-38 dated 29/07/2016, issued in the light of detailed inquiry is considered as correct and justified.

11010-12 dl 16/10/18

District Education Officer

(M) Lower Dir

Copy of the above is forwarded to:-

- 1. The Registrar Khyber Pakhtoonkhwa Services Tribunal Peshawar. 2. The District Accounts Officer Lower Dir.

The Appellant."

District Education Officer (M) Lower Dir

المراق في المراق والمراق ما المهندي وين سالماري المول فيروي والمساور عنوان: دروانت عراد على بنكي واجل حورهم الع سيسلر الح 15 ما معامل على بنكي واجل حورهم العدد مِنَابِ عَالَى! مود ما نه ارش سائع صد دیل سے و من كه سائل غسروس مرسوم المبرخور فوا لمنا ور من مروس رسل 0,13 leis our she die 13 Squ dais of 2019 2019 168/2017 i who & 520/2012 i ful (regraf la le 191- b) Set aside of 29 7 2016 10 le (16016 in Implement Cue Latter and 3 port of 10 12 leil chin ري اور اين سفارسات فكي تو ارسال كي سفارسات كا متعلق بير الفوارش كا المعارف في المعارف ف Re-instatement of the official as order by the honorable court may be confirmed and the absconder period w.e.f. 12.10-2005 to 13-10-2010 may be allowed as leave without pay however the remaining absent period we f. 14-10-2010 up to ge-instatement may be considered for benefits because he was in police custody during this period he himself of the himself stated in his statement that the he will never demand for back benefits of absconder. و من و الله و ال lister bis 6 fully plu po UN- ed confirm i fix is dispos « existing à in la 15 1/2 15 2/6 de 19 2011 (2019 Célles 2 10-12-19 سائل اسفند ما ما وی - ای گروندخ مرک سکول منای باش خاردی ) دم لونز ما ما ما ما می ما می دوندخ مرک سکول منای باش خاردی ) دم لونز

Anna J



# DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR

No.  $\frac{46}{\text{F.N o.}100/\text{Vol:}1/\text{Departmental appeals.}}$ Dated:  $\frac{23-\frac{1}{2}-\frac{1}{2}020$ .

Ŧο

The District Education Officer (Male)Dir Lower.

Subject: - DEPARTMENTAL APPEAL.

I am directed to refer to the appeal on the subject cited above and to ask you that appeal in respect of Mr. Asfandyar DM GMS Tangi Payan District Dir Lower, 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

Tr 16/1/2020

Endst No. \_\_\_\_/ Copy of the above is forwarded to: -

1. Mr. Asfandyar DM GMS Tangi Payan District Dir Lower.

2. PA to Director E&SE local Office.

3. Master File.

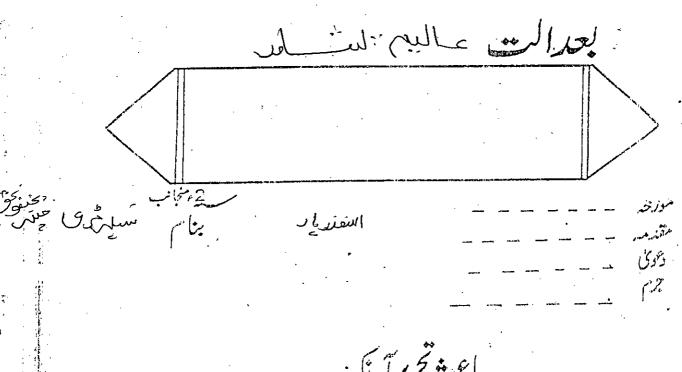
Assistant Director Estab (Male)

C Elementary & Secondary Education

Khyber Pakhtunkhwa Peshawar

P16/1/2020





باعت فحرياً كذ

مقدمه مندرج عنوان بالامين ابني طرف سے داسطے پير دي دجواب دہي وکل کاروا کي متعلقه مقرركر كے اقراركيا جاتا ہے۔ كەصاحب موصوف كومقدمه كى كل كارواكى كاكامل اختيار ، وگا نيز " كيل صاحب كوراضي ثامه كرئے وتقرر ثالت ہ فيصله برحلف ديہے جواب دہي اورا قبال وعوي اور السورت وحرى كرف اجراءاورصولى جيك وروبيارعرضى دعوى اور درخواست برقتم كى تفديق دراین پردشخط کرانے کا اختیار ہوگا۔ نیزصورت عدم پیردی یا ڈگری پیطرفہ یا ہیل کی برایدگی ادرمنسوخی ٹیز دائز کرنے اپیل نگرانی ونظر ثانی و بیروی کرنے کا اختیار ہوگا۔از بصورت ضرورت مقدمہ ندکور کے کل یا جزوی کا روائی کے واسطے اور وکیل یا مخارقانونی کوایت بمراه گاایت بجائے تقرر کا اختیار ، وگارا ورمها حب مقررشده کومهی و بی جمله ند کور « بااختیارات حاصل موں مے اوراس کا ساخت برواختة منظور تبول موكار دوران مقدمه يس جوخ جدد برجاندالتواع مقدم كسبب عدوموكار کوئی تاریخ بیتی مفام دوره پر مویا حدے باہر ہوتو دیل صاحب یابند موں مے کہ بیروی نه کورگرین -لبداو کالت نامه که صدیا کرسندر ہے، ۔

ا، طرج مرود،

سنك سسية مثنا وارسها د

## DEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL SHAWAR

SERVICE APPEAL NO. 1281/2020.

MR. Asfandyar.

......Appellant

### VERSUS

1. The Government Khyber Pakhtunkhwa through Secretary Elementary and secondary Education at Peshawar.

2. Director (Elementary & Secondary Education), Khyber Pakhtunkhwa Peshawar.

3. District Education Officer (Male) Dir lower at Timergara.

(RESPONDENTS)

# PARA WISE COMMENTS ON BEHALF OF RESPONDENTS, 1,2.and 3. RESPECTFULLY SHEWETH:

## PRELIMINARY OBJECTIONS:

- 1. The appellant is not an aggrieved person with the meaning of Article 212 of the constitution of the Islamic republic of Pakistan.
- 2. The appellant has concealed the material fact from this Hon! Able Tribunal, hence liable to be dismissed.
- 3. The appellant has not approached this Honorable Tribunal with clean hands.
- 4. The appellant has filed the instant appeal on malafide motives.
- 5. The instant appeal is against the prevailing laws & rules.
- 6. That the instant service appeal suffers from laches, hence not maintainable in the form.

## ON FACTS.

- 1. This para relates to the appellant, hence needs no comments.
- 2. Needs no comments.
- 3. Correct and needs no comments.
- 4. Correct.
- 5. Correct, his absentee / break period was considered as leave without pay to make his service regularized / continued.
- 6. The court order was implemented in letter and spirit. Proper order was passed after observing all the codal formalities in denove inquiry.
- 7. In addition to para No. 6 above, the respondent department issued proper order. The appellant, had not render any service in the mentioned period, hence not entitled for any benefit, for the period, had not perform the duty.
- 8. Correct.

## **GROUNDS:**-

- a. In correct. The appellant did not deliver any services, nor performed duty, hence not entitled for the benefits he claimed for.
  - b. The appellant is misconceived, he is not entitled for financial benefits, as he did not performed the duty.
  - c. Incorrect. It is the common principle that "No duty no pay".
  - d. The appellant was treated as per law..
  - e. As above.
  - f. As above.
  - g. The respondent department will, if allowed argue more at the time of hearing.

It is therefore, humbly prayed that on acceptance of the above submission, the instant Service appeal may very graciously be dismissed in favor of the answering respondents with cost.

SECRETARY, GOVT: KHYBER PUKHTOON KHWA

ELEMENTRY AND SECONDARY DEPARMENT

(Respondent No.1)

DIRECTOR

**ELEMENTRY & SECODARY** 

EDUCATION KHYBER PAKHTOON KHWA

(Respondent No.2) .

DISTRICT EDUCATION OFFICER (M)

DIR LOWER AT TIMERGARA

(Respondent No.3)

**Innovative** 



## KHYBER PAKHTUNKWA

#### SERVICE TRIBUNAL, PESHAWAR

No. 2002 15

Dated: 11 /10 /2021

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

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

То

The Director E&SE, Government of Khyber Pakhtunkhwa, Peshawar.

Subject:

JUDGMENT IN APPEAL NO. 1281/2020, MR. ASFANDYAR.

I am directed to forward herewith a certified copy of Judgement dated 16.09.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR