$-15^{\rm th}$ Feb. 2023

Mr. Munfat Ali,, Advocate for appellant present. Mr. Muhammad Adcel Butt, Additional Advocate General alongwith Fazle Khaliq, ADEO (Litigation) for the respondents present. Arguments heard and record perused.

- Vide our detailed judgement consisting of 04 pages, the 2. appeal is allowed as prayed for. Parties are left to bear their own costs. Consign.
- Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15th day of February, 2023.

(FARLEHA PAUL)

Member (E)

(SALAH-UD DIN) Member (J)

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

#### Service Appeal No. 1198/2019

BEFORE: MR. SALAH-UD-DIN

MEMBER (J)

MISS FAREEHA PAUL

MEMBER (E)

#### Versus

- 1. The Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.
- 2. The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 3. The District Education Officer (Female) District Swabi.
- 4. The District Account Officer, District, Swabi. ...... (Respondents)

Mr. Munfat Ali,

Advocate

For appellant

Mr. Muhammad Adeel Butt,

For respondents

Additional Advocate General

Date of Institution	26.09.2019
Date of Hearing	15.02.2023
Date of Decision	15.02.2023

#### JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 27.03.2019, whereby minor penalty of stoppage of annual increment for three years has been imposed on the appellant as well as the absence period w.e.f. 03.03.2017 till reinstatement has been treated as extra-ordinary leave without pay. It has been prayed that on acceptance of instant appeal, the impugned order dated 27.03.2019 might be set aside to the extent of stoppage of annual increment and the appellant might be allowed

The way

back benefits of intervening period w.e.f. 03.03.2017 till reinstatement along with any other remedy which this Tribunal deems fit and appropriate.

- Brief facts of the case, as given in the memorandum of appeal, are that 2. the appellant while serving as Chowkidar at GGCMS Lahor Sharki, District Swabi was affected by serious illness of brain tumor and due to that reason he submitted an application for leave for a period of two months which was not sanctioned. The appellant started treatment of the said disease and in those circumstances he also performed his duty at night but the concerned Headmistress did not mark his presence in the relevant attendance register and he was marked absent from duty. The respondent department issued the impugned order dated 18.10.2018 whereby major penalty of dismissal from service was imposed on the appellant without conducting any inquiry in the matter. Feeling aggrieved, he preferred departmental appeal before the appellate authority on 22.10.2018, which was forwarded on 10.12.2018, who vide order dated 27.03.2019, took a lenient view and converted the major punishment of dismissal from service into minor penalty of stoppage of annual increment for three years and also treated the absence period as extra-ordinary leave without pay. The appellant feeling aggrieved from the impugned order dated 27.03.2019 preferred departmental appeal but no reply was received: hence the present appeal.
- 3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

(<sup>1</sup>)

- 4. Learned counsels for the appellant, after presenting the case in detail, contended that the impugned order dated 27.03.2019 was against the law, facts, norms of natural justice and material on the record. He further argued that the appellant had not been treated in accordance with law and rules on the subject. He further argued that no show cause notice was served on the appellant nor regular inquiry conducted and no chance of personal hearing was provided to him which were mandatory before passing the impugned order. He requested that the appeal might be accepted as prayed for.
- 5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant argued that the appellant had never submitted application for two months leave and that the one annexed with the appeal was unauthentic as it was undated, without signature of the appellant and also not properly forwarded by the Headmistress of the school concerned. According to him, proper inquiry had been conducted and after observing all the codal formalities the appellant was dismissed from service due to willful and unauthorized absence from duty. The learned AAG invited the attention to para-5 of the appeal, where the appellant had bluntly confessed that the appellate authority had taken a lenient view on the departmental appeal by converting the major penalty of dismissal from service into minor penalty. He requested that the appeal might be dismissed.
- 6. Arguments and record presented before us transpire that the appellant while serving as Chowkidar in Government Girls Community School, Lahor, District Swabi got ill and was diagnosed with tumour in his brain. A medical report attached with the appeal indicates that he had been operated for

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**(**3)

Olfactory Groove Maningiona at the Lady Reading Hospital, Peshawar on 25.05.2018. According to the appellant, he performed his duties despite the fact that he was suffering from the brain tumour and was under constant treatment. Moreover his leave for two months was also not sanctioned by his competent authority. The respondents, on the other hand, are denying all these facts and are placing their reliance on an inquiry report that has been annexed with their reply/comments. It is a two-page inquiry report, without any charge sheet and statement of allegations. It is not clear from the report whether the appellant had been given any opportunity of personal hearing and cross-examination during the inquiry. No documentary evidence has been provided either with the inquiry report or the reply of the respondents to ascertain the absence of the appellant which indicates that procedure under Rule 9 of Government Servants (Efficiency & Discipline) Rules, 2011 had not been followed by the department. On the other hand the medical report provided by the appellant is an ample proof of his illness.

- 7. In the light of above discussion, the appeal is allowed as prayed for.

  Parties are left to bear their own costs. Consign.
- 8. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15<sup>th</sup> day of February, 2023.

FAREEHA PAUL) Member (E)

(SALAH-UD-DIN) Member (J) 29.08.2022

Bench is incomplete, therefore, case is adjourned to 27.10.2022 for the same as before.

Reader

27.10.2022

Appellant alongwith his counsel present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment. on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments before the D.B on

28.11.2022

(Mian Muhammad)

Member (E)

(Salah-ud-Din) Member (J)

28<sup>th</sup> Nov. 2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl. Advocate General for respondents present.

Learned counsel for the appellant seeks adjournment in order to further prepare the brief. This being old case of 2019, last opportunity is granted to the appellant to argue the case, failing which the case will be decided on the basis of available record without the arguments. To come up for arguments on 15.02.2023 before the D.B.

Member (E)

(Kalim Arshad Khan) Chairman

08.06.2022

Appellant in person present. Mr. Fazle Khaliq, ADEO (Litigation) alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today due to strike of lawyers. Adjourned. To come up arguments on 29.08.2022 before the D.B.

(Fareeha Paul) Member (E)

(Salah-ud-Din) Member (J) 08.10.2021

Appellant in person present. Mr. Kabirullah Khattak, Addl. AG alongwith Fazle Khaliq, ADEO for the respondents present.

Former seeks adjournment due to engagement of his learned counsel before the Hon'ble High Court today. Request is accorded. To come up for arguments on 10.01.2022 before the D.B.

(Mian Muhammad) Member(Executive) Chairman

10.01.2022

Learned counsel for the appellant present. Mr. Muhammad Rashid, DDA alongwith Mr. Fazal Khaliq, ADEO for respondents present.

Due to non-availability of Hon'able Member (J), the case could not be heard. Adjourned. To come up for arguments on 26.04.2022 before D.B.

(MIAN MUHAMMAD) MEMBER (E)

26<sup>th</sup> April, 2022

Appellant in person present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Appellant requested for adjournment on the ground that his counsel not available today. Last opportunity is granted. To come up for arguments before the D.B on 08.06.2022.

(Fargeha Paul) Member (E)

Chairman

21.12.2020

Counsel for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Fazle Khaliq, ADEO, for the respondents are also present. Due to COVID-19, the case is adjourned to 12.03.2021 for the same.

12.3.21 OB is not available, Therefore The cost

B adjourned to 16-6-2021 for the Game.

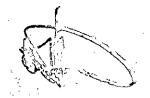
16.06.2021

Mr. Munfat Ali, Advocate, for the appellant present. Mr. Fazle Khalig, Litigation Officer alongwith Mr. Usman Ghani, District Attorney for the respondents present.

Learned counsel for the appellant requested adjournment on the ground that he has not meet the preparation of the appeal, therefore, an adjournment may be granted. Adjourned. To come up for arguments before the D.B on 08.10.2021.

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

(SALAH-UD-DIN) MEMBER (JUDICIAL)





09.06.2020

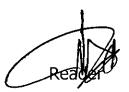
Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Fazle Khaliq, Litigation Officer for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 18.08.2020 for rejoinder, if any, and arguments before D.B.

(Mian Muhammad) Member (M. Amin Khan Kundi) Member

Due to summer vacations, the case is adjourned to 26.10.2020 for the same.

Reader

26.10.2020 Proper D.B is on Tour, therefore, the case is adjourned for the same on 21.12.2020 before D.B.



10.12.2019

Appellant in person and Addl. AG alongwith Ghausullah Jan, Senior Auditor for the respondents present.

Representative of respondents seeks time to furnish the requisite reply/comments. Adjourned to 21.01.2020 on which date reply/comments shall positively be furnished.

Chairman

21.01.2020

Junior to counsel for the appellant and Addl. AG alongwith Ghausullah Jan, Senior Auditor and Abdul Ghaffar, Superintendent for the respondents present.

Parawise comments on behalf of respondents No. 1 to 4 have been furnished. Placed on record. The matter is assigned to D.B for arguments on 31.03.2020. The appellant may furnish rejoinder within one month, if so advised.

Chairman

01.04.2020 Due to public holiday on account of COVID-19, the case is adjourned to 09.06.2020 for same as before.

Reader

Counsel for the appellant present.

Contends that the appellant was initially awarded major penalty of dismissal from service by the respondent No. 3 on 18.10.2018. Upon acceptance of the appeal the respondent No. 2 converted major penalty to that of minor penalty i.e. stoppage of annual increments for three years having non-accumulative effect through order dated 27.03.2019. The alleged absence period of appellant was, however, converted into extra-ordinary/leave without pay through the appellate order. In the said manner, the absence of appellant could not be made basis for taward of penalty, major or minor, it was added. Regarding the delay in submission of service appeal learned counsel relied on judgments reported as 1995-PLC(C.S)1026 and contended that the matter involved annual increments in salary of the appellant, therefore, the period of limitation was to be disregarded.

Subject to all just and exceptions regarding the delay in submission of instant appeal, it is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 10.12.2019 before the S.B.

Appellant Opposited
Process Fee

Chairman

## Form- A

# FORM OF ORDER SHEET

Court of	<u> </u>	<u> </u>	<del></del> .	· 
Case No	<u> </u>	1198/ <b>2019</b>	* <u>&amp;</u>	· .

S.No.	Date of order proceedings	Order or other proceedings with signature of	of judge
1	2 .	3	
1-	26/09/2019	The appeal of Mr. Abdur Rehæen p	ition Register and put up to the
·		Worthy Chairman for proper order please.	REGISTRAR
2-	01/10/19.	This case is entrusted to S. Bencl put up there on <u>aylılış</u> .	
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# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 1198 12019

ABDUR RAHEEM

V/S

**EDUCATION DEPTT:** 

**INDEX** 

S.NO.	DOCUMENTS	ANNEXURE	PAGE
	Memo of appeal		1- 3.
	Application	A	4.
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<del>-</del>	Order dated 18.10.2018	С	6.
	Departmental appeal	D .	7-10.
6	Forwarding letter	<u>E</u>	11.
	Impugned order	F	12.
8	Departmental appeal	G	13.
9	vakalatnama		14
			1

THROUGH:

MUNFAT ALI ADVOCATE

### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 198 /2019

Khyber Pakhtukhwa Service Tribunai

Diary No. 1310

Dated 260

Mr. Abdur Rahim, Chowkidar,

Govt: Girls Community School Lahore, District Swabi.

.APPELLANT

#### **VERSUS**

- The sectary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- The District Education Officer (Female), District Swabi.
- The District Account Officer, District Swabi.......RESPONDENTS

**UNDER** SECTION-4 **OF** THE PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST IMPUGNED ORDER DATED 27.03.2019 WHEREBY MINOR PENALTY OF STOPPAGE OF ANNUAL INCREMENT THREE YEARS HAS BEEN IMPOSED ON APPELLANT AS WELL AS THE ABSENCE PERIOD W.E.F 03.03.2017 TILL RE-INSTATEMENT IS HEREBY AS EXTRA **ÖRDINARY <u>LEAVE</u> WITHOUT** PAY AND AGAINST **ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE** APPELLANT WITHIN THE STATUTORY **NINETY DAYS.** 

## PRAYER:

Filedto day Registrar

That on acceptance of this appeal the impugned order dated 27.3.2019
may very kindly be set aside to the extant of stoppage of annual
increment and the appellant may be allowed for back benefits of
intervening period w.e.f. 03.03.2017 till re-instatement. Any other
remedy which this August Tribunal deems fit may also be awarded in
appellant favor.

# R/SHEWITH: ON FACTS:

Brief facts giving rise to the present appeal are as under:

- That Appelland is the employee of Respondent Department and is serving as Chowkidar at GPS Lahore Sharki, District Swabi, quite efficiently and up to the entire satisfaction of the superior.
- 2- That during service the Appellant was affected by serious illness of brain tumor and due to that reason the appellant submitted an application for leave for the period of two months which was not sanctioned to the appellant.

  Copy of the application and medical prescription are attached as annexure.

  A & B.

- 3- That after submitting the aforementioned application the appellant was started treatment of the said disease while in these circumstances the appellant was also performing his duty at night but the concerned Headmistress did not mark his presence in the relevant attendance register and the appellant marked absent from duty.
- 5- That feeling aggrieved from the order dated 18.10.2018 the appellant preferred departmental appeal before the appellate authority on 22.10.2018. That the departmental appeal of the appellant was properly forwarded on 10.12.2018 and the appellate authority has taken lenient view on the Departmental appeal of the appellant to convert the major punishment of dismissal from service into minor penalty of stoppage of increment for three years and also treated the absence period as extra ordinary leave without pay vide impugned order dated 27.03.2019. Copy of the departmental appeal, forwarding latter and impugned order are attached as annexure ...D, E & F.
- 6- That Appellant feeling aggrieved from the impugned order dated 27.03.2019 preferred Departmental appeal but no reply has been received so far. Hence the present appeal on the following grounds amongst the others. Copy of the departmental Appeal is attached as annexure.

#### **GROUNDS:**

- A- That the impugned order dated 27.03.2019 is against the law, facts, norms of natural justice and materials on the record, hence not tenable and liable to be modified/rectified.
- B- That appellant has not been treated by the respondents in accordance with law and rules on the subject noted above and as such the respondents violated Article-4 and 25 of the constitution of Islamic Republic of Pakistan, 1973.
- C- That show cause notice has been served on the appellant before issuing the impugned order dated 27.03.2019.
- D- That no regular inquiry has been conducted in the matter before issuing the impugned order dated 27.03.2019.
- E- That no chance of personal hearing has been provided to the appellant before issuing the impugned order dated 27.03.2019.
- F- That the impugned order dated 27.03.2019 is violative of FR-29 hence not tenable and liable to be rectified.

- G-That the appellant was regularly performed his duty during the period mentioned in the impugned order dated 27.03.2019, therefore the appellant is entitle for back benefits w.e.f 03.03.2017 till re-instatement.
- H-That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 26.09.2019.

ABDUR RAHIM

THROUGH:

MUNFAT ALI ADVOCATE 118 ( ( ()) RIGOS (N) 5 100 1505 (NOTO Evel (NUS) / E-1/91) (1000 My Com SINP-COM, W; C) 90 Modera Moderate Cy Soul- Ciell is forth sold No See Colly 12 mis
No See Colly 12 mis (1) 100 VIVE L. COMININ HARDIN Of US OF My Can Johns a Good Johnson

# EDICATE PEACHENGENSTEEL Lady Reading Hospital, Peshawar Brain & Spine Surgery Assistant Professor Professor & Inchange. DroKhalid Khanzada Dr. Azmat Udlah Khabtak MBBS (CRS) (Neurosurgery) Assistant Professor Dr. Riaz Ur Rehman Dr. Ali Haider MBBS, MS, PhD. Fellowship: Neurovascular Surgery (USA) Assistant Professor Fellowship: Micro-Neurosungery (Japan) - Die Bilal Khan Fellowship: Skull Base Surgery (Germany) MBBS, FRES, FCPS (Neurosurgery Rellowships European Board Of Neurological Surgery Name: Abdur Rahim S/O: - Said Arab Khan Admis ion No: 840/291 Bed No. 07 Age: 500 ears Swabi Adu tess: 21 / 05 / 2018 D/Operation P'Admission: 1D/Dischauge: 264/2054/2018 Diagnosis: 102 Months Back OPERATION VOILES TREATMENT NO SPINATE Inf N/Saline | E'IV-BO-OD-Stop-Inj-Ceffral Egm#WBD-Inj-Buffiank 500 mg IV-BD, Inj Decadron, 2cc IV-OID-Stop, Inj Zantac IV BD: Inj Toradol IV BD Thi Cravinate IV BD Thi Grasil 500 mg IV BD Thi D=Bact 2 gm IV BD TREATMENTATALONIE Kay Dayline Tem Cap Mixel 400 n <u>1+1</u> Cap Eskem 20 mg Tab Levetram 500 ang Dr Name & Signature



#### NOTIFICATION.

- WHEREAS Mr, Abdur Raheem Chowkidar Govt: Girls Community School Lahor Tehsil Lahor and District Swabi was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules 2011 for the charges of having been willful un authorized absence from duty as reported by IMU.
- 2. AND WHEREAS inquiry committee was constituted comprising the following officers to conduct regular inquiry against the accused MR. Abdur Raheem for the charges leveled against him in accordance with the rules.
  - i. Laiq Zaman ADEO(M) establishment Primary.
  - ii. Muhammad Naeem H/M GHS Gohar Abad.
- 3. AND WHEREAS the inquiry committee after having examined the charges, evidence on record and explanation of the accused submitted the report. According to report/recommendation submitted by inquiry officer (1) The concerned chowkidar deserves major penalty under E&D rules, 2011 dismissal from service. (2) deductions be made from his dues as admissible under rules.
- 4. AND WHEREAS Mr. Abdur Raheem Chowkidar GGCMS Lahor has been served show cause notice vide No. 2765-G dated 13-06-2017 as he was again found absent as reported by IMU.
- 5. AND WHEREAS the final show cause notice published in the daily Mashriq Peshawar dated 25.12.2017 he failed to resume his duty and appeared before the undersigned but failed to justify allegation leveled against him.
- 6. NOW, THEREFORE, in exercise of the power conferred under section 4 Khyber Pakhtun khawa Govt. Servant (Efficiency and discipline) rules 2011, the District Education Officer (Female) Swabi in the capacity of competent authority is pleased to impose the major penalty of DISMISSAL FROM SERVICE upon the accused Mr, Abdur Raheem, Chowkidar, GGCMS Lahor Tehsil Lahor from Service with effect from 03-03-2017 may be treated as unauthorized absence.

(REHANA YASMIN) DISTRICT EDUCATION OFFICER (FEMALE)SWABI

Endst: No. 3725/F. No. DA-III/Comp: Ret: dated Swabi the: - R/10/2018.

Copy of the above is forwarded for information and n/action to the: -

Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.

District Accounts Officer, Swabi.

Deputy Commissioner Swabi.

District Monitoring Officer Swabi

Circle Officer Anti-Corruption District Swabi with the requested to recover the over payment of Rs: - 374036/- from Mr, Abdur Raheem Ex- Chowkidar GGCMS Lahor .

Sub-Divisional Education Officer (Female) Lahor

7. Mr Abdur Raheem , Chowkidar GGCMS Lahor .

DISTRICT EDUCATION OFFICER (FEMALE)SWABI

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8- 25 Helli anin liber d'habis of 18 Miss Ell sing for play sold bis light السر المرف ب سرائ فلاف القبقة ليرفلاف فاون 1) 2 6 W Com 12 10 (2) 2) 1/2 1/3/1/2 / (2) 1/2 / (2) ٩ بركر مبين اللوائرى سفلة جلا شرك فيران اللوائرى المر (2) 1/1/ 5 1/2 ( SUS B GO) (BDEO(F) JA Ma = why fit i UNI ME SU F (3) 1) 8 of 60 (15) 20 500 (10) [m/s] سر لفيات كرسلوis 4843-45/62 ablay 3, il 2 8 ft 10-10 Of DEC (M) الم برنامانرط و دائه ربيع كر بالم كادولادورانم ١١- ١٠ ما كا دُلُوكًا بوت رات بهوى عى جمع انگوامرى او إن رقت دن آگر انگواری کرتے رہے ان کا آمر در انگوار کی کا کا of the wife of which with the Allegho bond CCTV orlandin wis a by wings

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ABDUL KARIM TORDHER

# SPECIAL ASSISTANT TO CHIEF MINISTER ON INDUSTRIES AND COMMERCE, KHYBER PAKHTUNKHWA, PESHAWAR.

No. SA/Ind-Com/2018/\_

· ESE

Dated Peshawar the --

10-12-2018

Subject:-APPEAL FOR RESTORATION IN SERVICE

I would like to enclose herewith a copy of appeal submitted by Mr. Abdul Rahim S/O Syed Arab Khan, Chowkidar GGCMS Lahor Swabi, which is self-explanatory on the subject noted above. The appellant has been dismissed from service on the charges of his willful absence from duty. However he has denied his absence stating that he has performed his duty regularly which can be verified from the CCTV Cameras installed in the school.

In view of the above you are requested to kindly examine appeal of the appellant and ensure justice in the matter as the appellant is low paid servant/disable.

Director Elementary & Secondary Education, Khyber Paklitunkhwa,

Peshawar.

1st Floor, Minister Block, Civil Secretariat, Peshawar. Telephone No. 091-9213859 Fax: 091-9213853

Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar

NOTIFICATION.

WHEREAS, Mr. Abdur Rahim Chowkidar GGCMS Labor Swight was displayed for

WHEREAS, Mr. Abdur Rahim Chowkidar GGCMS Lahor Swabi was dismissal from service vide DEO (F) office order No. 3925-27 dated 18.10.2018 under E&D Rules-2011.

AND WHEREAS, the said aggrieved Chowkidar filed a departmental appeal received through Special Assistant to Chief Minister on Industries and Commerce Khyber Pakhtunkhwa Peshawar vide letter No. 2551 dated 19.12.2018 for redressal of his grievances/reinstatement in service.

AND WHEREAS, the appellate authority in pursuance of Section 17 read with sub rule (1) & (2) of the E&D Rules-2011 called for the record of the case and comments from the concerned DEO vide letter No. 10757 dated 31/10/2018 for consideration of the appeal.

AND WHEREAS, the DEO concerned provided the requisite record/comments accordingly vide his letter No. 65 dated 02/01/2018 merely describing the reason/circumstances under which the appellant was dismissed from service after fulfillment of codel formalities

AND WHEREAS, to know the factual position the Director E&SE (Appellate Authority) ordered an inquiry in the matter by appointing Mr. Muhammad Mukhtiar Principal GHSS Jehangira as Inquiry Officer vide Notification No. 8337-39 dated 30/01/2019.

AND WHEREAS, the concerned enquiry officer accordingly submitted enquiry report vide Endst No. 282 dated 28/02/2019 wherein the inquiry officer pointed out/recommended that major penalty of dismissal from service may be converted into minor penalty i.e stoppage of three annual increments. The period of absentee from 03-03-2017 onward may be converted in to earned leave / leave without pay keeping in view his leave account. He may be posted at male high or higher secondary school.

Now therefore, the Director E&SE Khyber Pakhtunkhwa Peshawar, the Appellant Authority, under section-17 read with rules 2(b) of E&D Rules-2011 has decided to convert the major penalty imposed by the DEO (F) Swabi vide Notification No. 3925-27 dated 18.10.2018 into minor penalty stoppage of annual increment for three years on non accumulative effect and reinstate Mr. Abdur Rahim Chowkidar, GGCMS, Lahor District Swabi in service w.e.f 03.03.2017. The absence period from 3.03.2017 onward is hereby converted in to Extra-ordinary / leave without pay.

Elementary & Secondary Education

Khyber Pakhtunkhwa, Peshawar

Endst: No. \_\_\_\_\_\_ /F.No. /A-20/C-IV/Appeal/Swabi/Abdur Rahim- Dated Peshawar the

Copy of the above is forwarded for information and n/action to the:-

1- District Education Officer (Female) Swabi.2- District Accounts Officer Swabi.

3- Appellant concerned.

4- PA to the Director E&SE Khyber Pakhtunkhwa Peshawar.

Assistant Director (Admn)

E&SE, Khyber Pakhtunkhwa, Peshawar

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VAINALIA			
Before the KP	Corrice Tribunal Pestiano		
	OF 2019		
_ Abdur Rahin	(APPELLANT) (PLAINTIFF) (PETITIONER)		
<u>V</u> E	RSUS		

(RESPONDENT) (DEFENDANT)

Education Deft.

I/We Aboles Rahim

Do hereby appoint and constitute MUNFAT ALI, Advocate, Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 26 / 9 /2019

MUNFAT ALI **ADVOCATE** 

16202-3021334-3 BC-14-4634

OFFICE:

Room No.32, 5<sup>th</sup> floor, Bilour Plaza, Peshawar Cantt: Mobile No.0344-9213367

## BEFORE THE SERVICE TRIBUNAL K.P.K, PESHAWAR

Service Appeal No. 1198/2019

Abdur Rahum . Ex-Chowkidar GGCS Lahor Sharqi Swabi

Appellant

#### **VERSUS**

- Government of Khyber Pakhtunkhwa through Secretary Elementary& 1. Secondary Education Department, Civil Secretariat Peshawar.
- Director Elementary & Secondary Education, Khyber Pakhtunkhwa, 2. Peshawar.
- District Education Officer (Female) Swabi... 3.

Respondents

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3 ·	Inguing Report	A	06
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DISTRICT EDU (FEMALE)SWABI

# BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 1198/2019

Abdur Raheem Chowkidar ,GGCMS Lahor Sharqi Distric Swabi

### Appellant

#### VERSUS

- 1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar.
- 2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3. The District Education Officer (Female) Swab
- 4. The District Account Officer District Swabi.

Respondents

#### PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS No.1 to 4.

#### Respectfully Sheweth,

Preliminary Objections;

- 1. That, there is no departmental appeal filed against the impugned order, hence not maintainable.
- 2. That the departmental appeal is not availed, hence not maintainable.
- 3. That the instant appeal is badly time barred and hit by the principal of laches, hence not maintainable.
- 4. That, the appellant has no locus standi or cause of action to file the instant appeal.
- 5. That, the appellant has not come to the tribunal with clear hands, hence not maintainable.
- 6. That the appellant is estopped by his own conduct to file the instant appeal.
- 7. That, the instant appeal is against the prevailing laws and rules.
- 8. That the appeal is bad for misjoinder and non joinder of necessary party.

9. That the appellant concealed the material facts from the honorable tribunal, hence not maintainable.

#### **Facts**

- 1. That the appellant is the employee of respondent department and it is obligatory for each and every servant to discharge his duties upto the entire satisfaction of his superiors and upto the best of his capabilities, because he is paid for his job, failing which is liabelled to be treated under E&SE rules,2011. He was dismissed from service due to willful unauthorized absence from duty on report of Independent Monitoring unit, which is annexed as C with the appeal.
- 2. Incorrect, hence denied, he did not submit anyapplication for the period of two months. The application he annexed as A is without date, signature of the appellant and without forwarding signature of the headmistress concerned. This application is not an authentic documents. His stance is conjectural and ludicrous. This application is strongly denied, hence having no legal effect.
- 3. Incorrect, hence strongly denied, his stance is conjectural and ludicrous further no medical prescription annexed which would substantiate the place of the appellant. He is talking argy bargy and pressing the respondents to lead them by nose which is not acceptable and immoral too. He did not perform duty and was rightly dismissed from service.
- 4. Incorrect, hence denied proper inquiry has already been conducted. The dismissal order dated 18-10-2018 is self explanatory in this regard. After observing all the codel formalities he was dismissed from service (copy of inquiry Report is attached).
- 5. That in this para the appellant bluntly confessed that the appellant authority has taken lenient view on the departmental appeal and converted the major penalty of

(3)

dismissal from service into minor penalty of stoppage of increment for three years and also treated the absence period as extra ordinary leave without pay vide impugned order dated 27-03-2019 when the appellant himself admits that the appellant authority has taken lenient view on the departmental appeal, He is not an aggrieved person at all.

6. Incorrect, hence denied the appellant is not an aggrieved person at all, because he himself admitted that appellant authority has taken lenient view and issued the order dated 27-03-2019. Thus the appellant has no cause of action to file the instant appeal and the appeal in hand is liable to be dismissed inter alia the following grounds.

#### Grounds.

- A. Incorrect, hence Strongly denied, the appellant himself nagates his statement, the appellate authority has taken lenient view and issued the order dated 27-03-2019. Thus order dated 27-03-2019 is in accordance with law, facts, norms of natural justice and materials on the record, hence tenable and laible to be maintained.
- B. Incorrect, hence strongly denied, the appellant has been treated by the respondents in accordance with law and rules. The violation of article 4 and article 25 of the constitution Islamic Republic of Pakistan 1973, at any stage, is out of question.
- C. That the respondents acted upon the laid down procedure and provided full opportunity of defense to the appellant, before issuing the impugned order dated 27-03-2019.
- D. Incorrect, hence strongly denied, the appellant, himself admitted the appellate authority has taken lenient view and issued the order dated 27-03-2019. His dismissal from

service was converted into minor penalty stoppage increment.

- E. Incorrect, hence strongly denied, the dismissal from service was converted into minor penalty stoppage of increment.
- Incorrect, hence strongly denied, the impugned order dated 27-03-2019 is not violative of FR-29, hence tenable and liable to be maintained. The stance of the appellant is conjectural and ludicrous, because the major penalty of dismissal from service was converted into minor penalty stoppage of increment. If the appellant is not wiling and aggrieved of impugned order dated 27-03-2019 then this honorable tribunal is requested to convert back the impugned order dated 27-03-2019 into order dated 18-10-2018 issued by the respondents.
- G. Incorrect, hence strongly denied, the appellant did not perform duty but remained willful unauthorized absent. Therefore the appellant is not entitled for back benefits. The stance of the appellant is conjectural and ludicrous.
- H. That the respondents seek permission to raise/ argue other points at the time of hearing this case.

In view of the above stated submissions it is earnestly requested that the appeal may very graciously be dismissed with cost in favor of the respondents.

DISTRICT EDUGAÇION OFFICER

FEMALE SWABI

EDUCATION DEPARTMENT CIVIL SECRETARIAT

KHYBER PAKHTUN KHUWA PESHAWAR

DISTRICT ACCOUNT OFFICER

SWABI TACCOUNTS OFFICE SVIAB.

ELEMENTARY AND SECONDARY EDUCATION KHYBER PAKHTUN KHUWA PESHAWAR

# (3)

#### BEFORE THE SERVICE TRIBUNAL K.P.K, PESHAWAR

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#### **VERSUS**

- 1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat Peshawar.
- 2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3. District Education Officer (Female) Swabi...

Respondents

AFFIDAFVIT

We do hereby solemnly affirm and declare on oath that the contents of the comments are true and correct to the best of our knowledge and belief, nothing has been concealed from this Honourable Tribunal.

DISTRICT EDUCATION OFFICER (FEMALE) SWABI

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Title: Abdur Raheem Chowkidar at GGCMS Lahor Reported as Habitual Absent

#### Reference:

Vide DEO (F) Swabi No. 4779/EMIS/IMU/ST 2017 Dated 01-11-2017, the undersigned committee was constituted to conduct impartial inquiry and to submit comprehensive report to DEC (F) Swabi to proceed further.

The two members committee visited GGCMS Lahor in the presence of ASDEO Local office on October 27, 2017 at 10:00am to price information to all concerned. Due to unknown reasons, the reported Chowkidar could not present himself for his version before the inquiry team, though he was contacted on his cell by his colleague, Abdul Mastan class-IV but in vain.

### Methodology

Questionnaires, statements, school record checking, and confirmation through our cwn

#### **Facts**

Facts related to the issue are:

- 1. Reported Cnowkidar Abdur Raheem CNIC No. 16201-2774130-9 r/o Lahor, entered into Govt. service on 01-03-2003 as Chowkidar. His current posting is w.e.f 01-03-2011. He has middle level education.
- 2. He is reluctant in discharging his duty as Chowkidar. He always shirks his cuty on one pretext or the other. He has signed his duty schedule communicated to him vide no. 263 dated 22-03-2017 but badly failed to comply with duty assigned from 1.25pm to 7.30am
- 3. According to staff attendance register, he is continuously absent from duty. The same has been reported by Head Mistress, IMU, and concerned circle officer but nothing could shake him from his unlawful position.
- 4. The Head Mistress is absolute a dissatisfied with the performance of the reported Chowkidar and does not hope any better change in his attitude in future.
- 5. The Chowkidar is quite cunning and talkative, he claims only 05 hours duty on differen grounds and presses everybody that talks to h m, the Headmistress disclosed.
  - 6. Pay of the reported Chowkidar has been stopped w.e.f. July 2017 but the headmistres does not remember exactly.
  - 7. There are incidents of minor the fts at the school only due to the reported Chowkidar, th headmistress said bluntly.
  - B. Show-cause notice issued to the reported Chowk.dar has been replied by him without giving a concrete reason for his absence from the duty.

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- 9. The headmistress concerned reported everything about the reported Chowkidar convenient manner and on time.
- 10. The reported Chowkidar has to in the pages of attendance register bearing notes again him duly reported by the Headmistress which shows his misconduct.

#### Conclusion

- 1. Will-full absence from his duty, defying his high-ups, not presenting himself before incommittee shows his disinterest in Government service.
- 2. He is consistently committing disobedience and in-efficiency.

#### Recommendations

- 1. Under E & D rules, 2011, he deserves major penalty i.e. dismissal from the service.
- 2. Absentees reported is correct and deduction be made from his pay admissible unules.

MLHAMMAD NAEEM

**HEADMASTER** 

GHS GOHAR ABAD ISMAILA (SWABI)

LAIQ ZAMAN

ADEO (PRIMARY)

DISTRICT EDUCATION OFFICER

(MALE) SWABI

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### DISTRICT EDUCATION OFFICE (FEMALE) SWABI

(Office phone & Fax No 0938280339, emisfswabi@yahoo.com)

### **NOTIFICATION.**

The Appellate Authority, Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar under section 17 read with rules 2 (b) of E & D Rules, 2011 converted major penalty dismissal from service imposed by District Education Officer (Female) Swabi vide notification No.3925-27 dated 18/10/2018 into minor penalty stoppage of Annual Increment for three (03) years on non accumulative effect and reinstated Mr.Abdur Rahim Chowkidar, GGCMS Lahor District Swabi in service w.e.f. 03/03/2017. The absence period form 03/03/2017 onward converted into Extra Ordinary Leave (EOL) with out pay vide Director E&SE, Khyber Pakhtunkhwa, Peshawar No. 8068-71 dated 27/03/2019 conveyed vide DEO (F) Swabi No.1968-71 dated 11/04/2019.

The Competent Authority, Sofia Tabassum, DEO(F) Swabi is pleased to restore the Annual Increment after completion the period of three (03) years in the best of public service.

(SOFIA TABASSUM)

DISTRICT EDUCATION OFFICER

(FEMALE) SWABI

Endst:No. 3544-4 (

/C-IV/ Re-instatement/Dated Swabi the 19 //2/2022

Copy forwarded for information and n/action to the:-

1. Director E&SE, Khyber Pakhtunkhwa, Peshawar.

2. District Accounts Officer, Swabi.

3. Sub-Divisional Education Officer (Female), Lahor with the direction to make necessary entry in his Service Book.

4. Official concerned.

DISTRICT EDUCATION OFFICER

35

Title: Abdur Raheem Chowkidar at GGCMS Lahor Reported as Habitual Absent

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<u>Vide DEO (F) Swabi No. 4779/EMIS/IMU/ST 2017 Dated 01-11-2017</u>, the undersigned committee was constituted to conduct impartial inquiry and to submit comprehensive report to DEO (F) Swabi to proceed further.

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- 1. Under E & D rules, 2011, he deserves major penalty i.e. dismissal from the service.
- 2. Absentees reported is correct and deduction be made from his pay admissible under rules.

**MUHAMMAD NAEEM** 

**HEADMASTER** .

GHS GOHAR ABAD ISMAILA (SWABI)

**LAIQ ZAMAN** 

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ADEO (PRIMARY)

**DISTRICT EDUCATION OFFICER** 

(MALE) SWABI

کر بین میں کو میں میامی کردگر کر گرار کردگر کردگ DEO PUISO 2009/1000/14/1005 معر جس فرن اوبر فرنائ بن فان می بست وبرا مادی بین از مادر میران افزیمی ماوری ایران افزیمی میران میران میران میران می کرد. میران می عنن فرار ول معول 8/10/20 /3/11