

BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1887/2021

Hussain Ahmad S/O Muhammad R/O Shah Dara, Watkay, Mingora, District Swat.
.....Appellant

Versus

Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary
Education Peshawar & Others.
..... Respondents.

INDEX

S.No	Description of Documents	Annexures	Pages
1	Para-wise-comments	-	1-4
2	Affidavit	-	5
3	Authority Letter	-	6
4	Report Of Principal	"A"	7
5	Office order of enquiry	"B"	8
6	Enquiry Report	"C"	9
4	Show Cause Notice	"D"	10
5	Letter of respondent No. 2 to respondent No 3	"E"	11
6	Reply of respondent No. 3	"F"	12-13
4	Appeal rejection letter	"G"	14
5	Intimation letter	"H"	15


DISTRICT EDUCATION OFFICER (M)
SWAT AT GULKADA

(1)

BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7788/2021

Hussain Ahmad S/O Muhammad R/O Shah Dara, Watkay, Mingora, District Swat.
.....Appellant

Versus

Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary
Education Peshawar & Others.
..... Respondents.

Parawise Comments on Behalf of the Respondent No. 1 to 4.

Respectfully shewith

Preliminary objections

1. That the Appellant is not an aggrieved person within the meaning of Section 4 of the Service Tribunal Act, 1974.
2. That the Appellant has no cause of action / locus standi being appointed under contracted policy.
3. That the Appellant has not come to this Honorable Tribunal with clean hands.
4. That the Appellant has filed this instant Service Appeal just to pressurize the respondents.
5. The present Service Appeal is liable to be dismissed for non-joinder/misjoinder of necessary parties.
6. That the instant Service Appeal is against the prevailing law and rules.
7. That the Appellant has filed this instant Service Appeal on malafide motives.
8. That the instant Appeal is **badly time barred**.
9. That the instant Service Appeal is not maintainable in the present form, and above in the present circumstances of the issue.
10. That the Appellant is estopped by his own conduct.
11. That the Appellant has concealed the material facts from this honorable tribunal.

FACTS

1. That the Para No.1 pertains to record, hence, needs no comments.
2. That the Para No.2 is correct to the extent of taking over charge of the Appellant, the rest of the para is incorrect and denied. The Appellant has not obeyed the prescribed rules and policy. He left his duty only after four months of his appointment without any sanction leave or permission and went abroad. He was even in probation period and he was also not a regular appointee, therefore, he should have more careful and vigilant towards his duty but he failed and did not follow any rules and surface all the relevant rules and policy.
3. That the Para No.3 pertains to the M.Phil qualification of the Appellant and scholarship for Ph.D program and his admission in Chinese university, however, all these records are irrelevant to the service record of the Appellant. If the Appellant was interested in Ph.D and has already applied for admission in china then he should have not joined the

- department as CT or should have resigned when he got admission. How can he remain in service as well as regular student of Ph.D. It is settled law of the land that when someone joins the public offices then he should have to abide by the rules and regulations. The Appellant even did not bother to apply for leave Ex-Pakistan when he was leaving the country.
4. That the Para No.4 is absolutely irrelevant to the present dispute between the parties. The Appellant wants to mislead this Honorable Tribunal and narrates stories of his whims and wishes which are not tenable before this Honorable Tribunal. As stated in the above paras, if someone has to leave the country he should have informed his department in writing and moreover he should have applied for leave Ex-Pakistan which in case of the Appellant is lacking.
 5. That the Para No. 5 is incorrect and denied. No applications whatsoever has been submitted by the Appellant for his study leave. Moreover, as stated in para No.2 above, the Appellant has only four months service and has already availed some casual leaves, thus, he was not even entitled for more casual leaves. The Appellant was appointed on ad-hoc under the contract policy on temporary basis for a period of one year and it was categorically mentioned in his appointment order that if in case his performance is found unsatisfactory or in case of misconduct he shall be proceeded under the relevant rules and regulations. The Appellant went abroad without any sanctioned leave or any permission, which is gross negligence and misconduct on part of the Appellant.
 6. That the para No. 6 is again irrelevant to respondent department as it is about his admission in China and the visit of the Appellant to China. Detail reply of this para has already been given in the above paras.
 7. That the Para No. 7 is correct to the extent of letters issued by respondent No. 4, the rest of the para is incorrect and denied. The Appellant has properly been proceeded by the respondent department. When respondent No. 4 submitted absenteeism report regarding the Appellant to the office of respondent No. 3, the respondent No. 3 immediately nominated Mr. Inayat ur Rahman Principal GHSS Shamozaï Swat as enquiry officer to probe into the matter. The enquiry officer conducted detail enquiry and it was concluded that the Principal concerned/respondent No. 4 has processed the case in proper manner and well in time. He further concluded that the Appellant has violated the rules and regulations and remained absent from duty since 04.10.2017 and that there is no departmental permission/leave sanction to support the Appellant. On the basis of above conclusion, the enquiry office recommended that disciplinary action may be initiated against the Appellant. The respondent no. 3 issued showcause notice dated 19.12.2017 but the Appellant failed to resume his duty. Therefore, the respondent No. 3 being competent authority removed the Appellant from service under E& D rules 2011. **(Report of Principal, office order for enquiry, enquiry report & Show cause Notice annexed as annexures A, B, C & D)**
 8. That the Para No. 8 is incorrect and denied. When proceedings were initiated against the Appellant and Show Cause notice was issued to him, he should have joined his duty but he failed to do so. The Appellant has not told by anyone verbally that he should inquire his issue after winter vacations.

9. That the Para No. 9 is correct to the extent of notification dated 22.01.2018, however, the Appellant has not attended office of the respondents in this regard within time.
10. That the Para No. 10 is absolutely incorrect and denied. The Appellant wants to mislead this Honorable Tribunal by concealing the material facts. On one hand the Appellant states that he went abroad to China and on the other hand he states that he visited offices of the respondent department. On this score alone the instant Service Appeal of the Appellant is liable to be dismissed.
11. That the Para No. 11 is quite contradictory to the fore going paras and more importantly irrelevant to the issue in hand. Hence, needs no further comments.
12. That the Para No. 12 is incorrect and denied. The Appellant has not visited the offices of the official respondents. He has not annexed any proofs/applications with the instant Service Appeal. Therefore, this stance of the Appellant could not be accepted. As for as the illness of the Appellant is concerned, it is once again irrelevant to the present issue.
13. That the Para No. 13 pertains to record to the extent of appeal. However, the rest of the para is incorrect and denied. The Appellant has been informed through official letter. It is worth to mention here that respondent No. 2 being Appellate authority sought report from respondent No. 3 and respondent No. 3 submitted a detail report to respondent No. 2. Thus, on the basis of said report, the respondent no. 2 rejected his departmental appeal and resultantly respondent No. 3 intimated his rejection letter to the Appellant. **(Letter of respondent No. 2 to respondent No.3, detail reply of respondent No. 3, appeal rejection letter of respondent No. 2 & intimation letter to Appellant annexed as annexures E, F, G & H)**

Thus, the instant Service Appeal of the Appellant is bereft of any merit, hence, liable to be dismissed inter-alia following grounds.

GROUNDS

- i. That the Para No. i is incorrect and denied. The respondent department has acted in accordance with law, rules and policy.
- ii. That the Para No. ii is incorrect and denied. The detail reply has already been given in the foregoing paras.
- iii. That the Para No. iii is incorrect and denied. No discrimination has been made with the Appellant.
- iv. That the Para No. iv is again the repetition of above paras, hence, no comments.
- v. That Para No. v is incorrect and denied. The Appellant is estopped by his own conduct. The Appellant should have followed the legal procedure and should not have left the country without any permission.
- vi. That Para No. vi is incorrect and denied. The Appellant was not even entitled for casual leave and he went abroad without any sanctioned leave.
- vii. That Para No. vii incorrect and denied. The detail reply has already been given in the foregoing paras.

- viii. That the para No. viii is incorrect and denied. The Appellant is not entitled for re-instatement under the clear cut rules and policy. If the Appellant had any grievances then he should had submitted appeal within stipulate time.
- ix. That the para No. ix is again the repetition of above paras, hence, no comments.
- x. That the para No. x is incorrect and denied. The detail reply has already been given in the foregoing paras.
- xi. That para No. xi is again the repetition of above paras, hence, no comments.
- xii. That the respondents also seeks permission of this Honorable Tribunal to raise further grounds on the time of arguments.

It is, therefore, very humbly prayed that the instant Service Appeal of the Appellant may be dismissed with cost in favor of the respondents.


DISTRICT EDUCATION OFFICER (M)
SWAT AT GULAKADA
(On behalf of Respondent No. 3 & 4)


DIRECTOR,
ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA


SECRETARY,
ELEMENTARY AND SECONDARY
EDUCATION PESHAWAR

5

BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 188 /2021

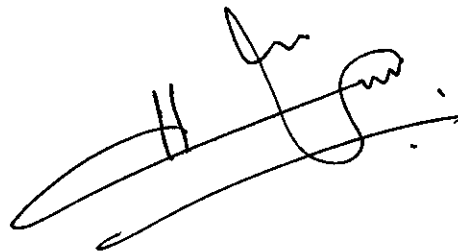
Hussain Ahmad S/O Muhammad R/O Shah Dara, Watkay, Mingora, District Swat.
.....Appellant

Versus

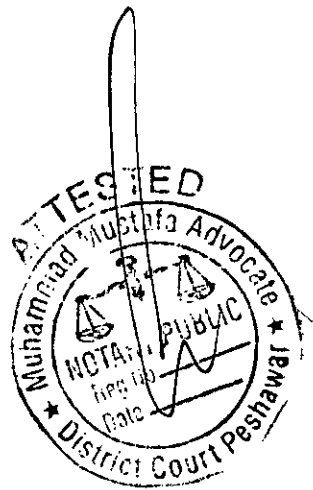
Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary
Education Peshawar & Others. Respondents.

AFFIDAVIT

I, Hussain Ali Legal Representative, do hereby solemnly affirm and declare on oath on the directions and on the behalf of the Respondents that the contents of the comments are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honorable Tribunal.



**HUSSAIN ALI LEGAL REPRESENTATIVE
O/O DEO (M) SWAT**



29 FEB 2023

8



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

AUTHORITY LETTER

It is certified that Hussain Ali, Legal Representative Office of District Education Officer (Male) Swat, Elementary & Secondary Education Department is hereby authorized to submit para-wise comments and attend the Service Tribunal, Camp Court Swat on behalf of Respondent NO. 01, 02, 03 & 04 in Service Appeal No. 7788/2021 Title Hussain Ahmad Vs Government of Khyber Pakhtunkhwa & Others on the eve of each hearing till the disposal of the instant case.

Secretary
Elementary & Secondary Education,
Department.

Annexure "A"

(28) (7)

OFFICE OF THE PRINCIPAL GOVT; HIGHER SECONDARY SCHOOL KABAL DISTRICT SWAT.

No _____ / Absent from duty / Dated 14/11 / 2017.

To

The District Education Officer (Male)
Saidu sharif at Gulkada District Swat.

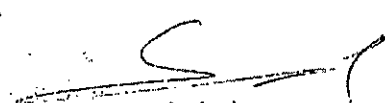
Subject:- ABSENCE FROM DUTY.

Memo:

Mr. Hussain Ahmad CT (NTS/Ad hoc) is continuously absent from his duty since 4.10.2017. The undersigned had called an explanation from him per registered letter and a copy was sent to your good office under This Office Letter No.257 dated 4.10.2017. But the said teacher with no compliance did not come to join his duty., as his Principal had directed him that the service of the civil servants is governed by rule and regulations and no authority can give you carte blanche. And that being Ad hoc employee having a total service of only four (4) months, your wilful absence from your duty will be tantamount to your dismissal from service.

But he took my directives as a far cry and is absent from his duty without any departmental sanction or permission. It is said that he has gone to China.

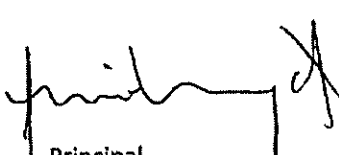
This factual position regarding Mr. Hussain Ahmad, CT GHSS: Kabal District Swat is brought to your kind notice for in time departmental action please.


Principal
Govt: Higher Secondary school Kabal
Distt:Swat.

Endst: No 291-951

Copy forwarded for information to:-

1. The Director of (E&SE) Khyber Pakhtun Khawa, Peshawer.
2. The District Education Officer (M) Swat.
3. PA to The District Education Officer (M) Distt:Swat.
4. Mr. Hussain Ahmad C.T.


Principal
Govt: Higher Secondary school Kabal
Distt:Swat.

Process n per rules and require the matter through principal GHSS Shamozi immediately
15/11/17



OFFICE ORDER.

OFFICE OF THE DISTRICT EDUCATION OFFICER
MALE SAIDU SHRIF SWAT.
Phone No.0946-9240228.

Annexure 'B'

8

The undersigned is pleased to nominate Mr. Inayatullah Rahman Principal GHSS Shamozaai Swat as enquiry Officer in to the complaint received from the Principal GHSS Kabal Swat vide No 291-951 dated 14/11/2017 against Mr. Hussain Ahmad CT GHS Kabal Swat vide photo copy attached and submit fact finding detail report to this office with in a week positively for further necessary action .

(NAWAB ALI)
District education officer (M)
Saidu Sharif Swat.

Endst No 2962-63 Dated 20/11 2017

Copy of the above is forwarded for information to

- 1) Mr Inayatullah Rahman Principal GHSS Shamozaai Swat
- 2) The Principal GHSS Kabal Swat
- 3) The Official concerned.
- 4) PA to DEO of local Office

Nawab Ali
District education officer (M)
Saidu Sharif Swat

20/11/17

Annexure 4 C 7

9

Put up immediately
11/12/17

OFFICE OF THE ENQUIRY OFFICER/PRINCIPAL GHSS SHAMOZAI SWAT.

The District Education Officer(M)
Swat

**Subject: ENQUIRY REPORT REGARDING ABSENCE FROM DUTY AGAINST
Mr. HUSSAIN AHMAD CT(NTS/ADHOC) GHSS KABAL SWAT.**

Date & Venue: 04/12/2017 at GHSS KABAL SWAT.

Caption of Enquiry:

To probe into the matter/Absence from duty of above mentioned official.

Findings/Facts:

To bring out that fact the following procedure was adopted.

- ✓ Attendance Register of the Staff was thoroughly checked recorded as Annexed-A.
- ✓ Correspondence letters i.e. explanation from official concerned bearing No.267 Dated:04/10/2017, Information to DEO(M) Swat bearing No:291 and 300 Dated:14/11/2017 and 28/11/2017 respectively were checked and recorded as Annexed.B, C, & D.
- ✓ Statements of Principal, Senior Clerk & few students were recorded as Annexed.E, F & G.
- ✓ The official concerned has been appointed as CT(NTS/ADHOC) Vide Order No:8463-70 Dated:29/05/2017 at S. No:04(on leftover Post) and he took over charge but also violated condition No:09 recorded as Annexed. H&I.
- ✓ The official concerned remained Absent from duty without permission/Sanction of leave.

Conclusion:

The undersigned reached to the following conclusions.

- 1) The Principal processed the case in proper manner well in time.
- 2) The Record clearly shows that the official violated rules and regulations and remained absent from duty since 04/10/2017.
- 3) The correspondence letters about the subject was also supported by staff members and students.
- 4) There is no Departmental permission/leave sanction to support the official concerned.

Recommendations:

The undersigned support the official letters of the principal GHSS Kabal Swat and recommend disciplinary action against Mr.Hussain Ahmad CT(NTS/ADHOC) GHSS Kabal Swat.

3894
11/12/17
Swat.
Process as per
recommendation
of the enquiry officer

[Signature]
Enquiry Officer/Principal
GHSS Shamozaï Swat
PRINCIPAL,
G.E.S.S, Shamozaï,
Dist: Swat



Annexure 'D'
OFFICE OF THE DISTRICT EDUCATION OFFICER
MALE SAIDUSHRIF SWAT.
Phone No.0946-9240228.

(10)

SHOW CAUSE NOTICE

I Nawab Ali District Education officer (M) Swat under the Khyber Pakhtunkhwa, Government servant (efficiency & Disciplinary) Rules, 2011 do hereby serve upon you Mr Hussain Ahmad CT GHSS Kabal District Swat as show cause notice follows:-

- (1) That as per report of the principal GHSS Kabal Swat vide his letter No 300 dated 28/11/2017 you are not attending the school regularly and often remained absent from duty w.e.f. 04/10/2017 uptill now.
- (2) That you are adhoc & School based appointee through NTS but you do not perform your duty honestly.
- (3) According to the recommendation of enquiry/hearing committee you have habitually absent from duty w.e.f. 04/10/2017 till now no departmental prior permission.
- (4) In exercise of the powers conferred on me under sub section 4 of section 5 of Khyber Pakhtunkhwa removal from service under efficiency and discipline Rules, 2011 the undersigned in the capacity of competent authority, is hereby pleased to dispense with the conduct of formal enquiry already conducted and serve you with the instant show cause notice with the direction to submit your defense in writing within 15 (fifteen) days of the receipt of this notice as to why a proper penalty should not be imposed upon you.
- 5) If you reply to this office is received within 15 days of its delivery, it shall be presumed that you have no defense to put in and in that case Ex-parte action shall be taken against you.

(NAWAB ALI)
COMPETENT AUTHORITY
DISTRICT EDUCATION OFFICER (M) SWAT

Dated: 19/12/2017

Endst: No 6738-40

Copy for information and necessary action to: -

1. The Director Elem & Secondary Edu;KPK Peshawar.
2. The DDEO (M) Swat.
3. The Principal GHSS Kabal Swat.
4. The Official concerned.
5. The PA to local Office.

NAWAB
DISTRICT EDUCATION OFFICER (M)
SWAT

18/12/17



Annexure 'E'

17

**DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION KHYBER
PAKHTUNKHWA PESHAWAR.**

No. 483 /F. No. 162/Vol:13/Appeal of
PST(M)General.
Dated Peshawar the 02/02/2018.

To,

The District Education Officer (M)
Swat.

Subject: - **DEPARTMENTAL APPEAL.**

I am directed to refer to the subject noted above and to enclose herewith a copy of appeal in respect of Mr. Hussain Ahmad CT GHSS Kabul Swat and to ask you to submit detail report/comments to this office within a week time.

M/S 11/2/18
Assistant Director (Estab :)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.

Endst: No. _____/

Copy forwarded to the:-

1. P.A to Director Elementary and Secondary Education local office.

Assistant Director (Estab :)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.

4906
10/2/18



Annexure 'F' (12)

OFFICE OF THE DISTRICT EDUCATION OFFICER
MALE SAIDUSHRIF SWAT.
Phone No.0946-9240228.

No. 900

Dated: 18/12/2018

To:-

The Director,
Elem & Secondary Education KPK Peshawar.

Subject:- DEPARTMENTAL APPEAL.

Memo:-

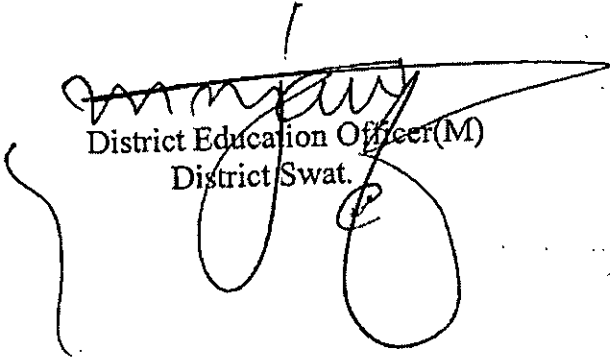
Reference vide your office memo No;-483/F.No 162/Vol:13 dated 02/02/2018 on the subject captioned above.

It is stated for your kind information that detail report in respect of Mr.Hussain Ahmad CT GHSS Kabal Swat are as under.

- 1) Mr. Hussain Ahmad has been appointed as CT GHSS Kabal Swat through NTS on ad hoc school based vide this office order No 8463-70/CT/Appointment/Ad hoc /NTS/2017 dated 29/05/2017 at S.No 105(Annexure (A) .
- 2) The official concerned took over the charge in the present School on 30/05/2017 (Annexure (B).
- 3) Complaint against the accused person has been received from the Principal GHSS Kabal Swat regarding habitually absence from duty wef 04/10/2017 vide his No 300 dated 28/11/2017 (Annexure (C) .
- 4) In the light of the complaint the undersigned has nominated Mr Inayatpur Rahman Principal GHSS Shamoza Swat as enquiry officer against the accused person vide (Annexure (D)
- 5) The undersigned issued a show cause notice to the accused person vide this office No 6738-40 dated 19/12/2017 (Annexure (F)), but no reply has been received in his defense with in the stipulated time .Moreover the accused person were previously warned to be careful in future ,but he did not changed his behavior. Mean which he

visited china for further education. According to the accused he also completed the 1st semester of his studies

6) The enquiry officer in his findings proved his absence and the DEO in being the competent authority removed him from service after observing of codal formalities. The complete history of the case is being submitted for your kind perusal and further necessary action please.


District Education Officer(M)
District Swat.



Annexure "G" (14)

**DIRECTORATE OF ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA.**

No. 260 /F.No.162/Vol:13/Appeal of
PST(M)General.
Dated Peshawar the 11/3 /2018.

To,

The District Education Officer (M)
Swat.

Subject:- **DEPARTMENTAL APPEAL.**

Memo:-

I am directed to refer to your letter No.9170 dated 19.02.2018 on the subject cited above and to state that the appeal of Mr. Hussain Ahmad CT GHSS Kabal Swat in light of DEO(M)Swat report is hereby rejected.

I am further directed to ask you to inform the teacher concerned accordingly.

P-55
19/3/18
19/3/18
Deputy Director (Estab)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.

Endst: No. _____/

1. P.A to Director Elementary and Secondary Education local office.

Deputy Director (Estab :)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar.

Shob
10/3/18

Ameem "H"

15

OFFICE OF THE DISTRICT EDUCATION OFFICER(M) SAIDUSHARIF SWAT.

No 10598

Dated 19/3/2018

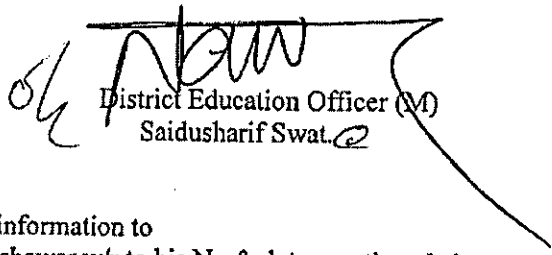
To,

Mr. Hussain Ahmad,
Ex-CT GHSS Kabal Swat..

Subject:- DEPARTMENTAL APPEAL.

Memo:-

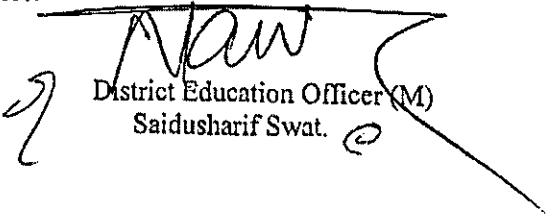
You are directed to inform you that, your departmental appeal has been rejected by the Director Elem & Secondary Education Khyber Pakhtunkhwa Peshawar vide his memo No 260/F.No 162/ Vol;13/Appeal of PST(M) General Dated .01/3/2018. Hence you are informed accordingly.


District Education Officer (M)
Saidusharif Swat.

No _____

Copy of the above is forwarded for information to

- 1) The Director E&SE KPK Peshawar w/r to his No & date mentioned above.
- 2) The Principal GHSS Kabal Swat.
- 3) PA to DEO Male of local office.


District Education Officer (M)
Saidusharif Swat.