

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No: 224/2023

Duty No. _____

**Yousaf Shah S/O Mian Muhammad Shah Ex Teacher at GPS Mohbat Abad
R/O village Bakri Banda District Mardan.....Petitioner**

Versus

**The Secretary Elementary & Secondary Education Deptt, KPK Peshawar &
Others..... Respondents**

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Respondent


**District Education Officer
(Male) Mardan**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No: 224/2023

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R/O village Bakri Banda District Mardan.....Petitioner**

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Others..... Respondents**

Para Wise Comments on Behalf of Respondents No 1 to 3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
2. That the instant appeal is badly time barred.
3. That the appellant has not come to this Honorable Tribunal with clean hands, hence the appeal is liable to be dismissed.
4. That the appellant is estopped by his own conduct.
5. That the appellant has concealed the material facts from this Honorable Tribunal, hence the appeal is liable to be dismissed.
6. That the ASDEO Circle has sent absent report to the SDEO (M) Pry and the SDEO (M) Pry has sent absent report of the appellant to the respondent No 2 (DEO Male Mardan).

(Copies of Absent Reports are as Annexure "A & B)

7. That the respondent No 2 (DEO Male Mardan) has sent Absence Notice through registry home address of the appellant, vide letter No 612 dated 27-01-2014 to resume his duty and submit cogent reason of his absence.

(Copy of letter is as Annexure "C)

8. That after fulfillment of all codal formalities the appellant was **removed from service** vide order Endst No 199/G dated 09-01-2015 in accordance with law.

(Copy of Removal is as Annexure "D")

9. That the appellant has filed departmental appeal on 11-02-2015 and the departmental appeal has rejected vid No 425-27dated 3-12-

2015, while the Service appeal is filed 23-01-2023, after seven(07) years which is badly Time barred as per Limitation Act.

(Copies of D/Appeal, & Rejection Order are as Annexure "E" & F)

FACTS:

- 1. Para No 1 pertains to record, hence need no comments.
- 2. Para No 2 is **Incorrect, & Not admitted**, as the appellant is absence from duty so the appellant was removed from service.
- 3. Para No 3 pertains to record, however the appellant has not join his duty due to his absence, hence needs no comments.
- 4. Para No 4 is **Incorrect, & Not admitted**, as the appellant has suspended on 22-06-2013 and is allowed to draw his suspension allowances through a letter dated 24/7/2014. The respondent No 2 (DEO Male Mardan) has sent a letter to the SDEO on 16-06-2014 regarding re-instatement of the appellant, with remarks that leave w.e.f 10-04-2013 to 30-05-2013 is not re_submitted for sanction. Explain that whether the appellant has availed the leave or not. The reply of the absence notice issued to the appellant is still awaited.

(Copies of letter s are as Annexure "G, H & I)

- 5. Para No 5 Pertains to record, hence need no comments.
- 6. Para No 6 is **Incorrect, & Not admitted**, as the leave application of the appellant is forwarded by the SDEO Mardan to the respondent no 2 (Competent Authority), but the leave is not sanction and return with some objection. *(Copies of letter s are as Annexure "J, K & L)*

- 7. Para No 7 is **Incorrect, & Not admitted**, as the Show Cause Notice /absence notice has sent through registry, to the appellant and after fulfillment of all codal formalities the appellant was **Removed from Service** vide order Endst No 199/G dated 09-01-2015 in accordance with law. *(Copies of letter & Removal are as Annexure "C & D)*

8. Para No 8 pertains to record, however the Service appeal is filed 23-01-2023, after Seven(07) years which is badly Time barred as per Limitation Act.

(Copies of D/Appeal & Rejection Order are as Annexure "E" & F)

9. Para No 9 needs no comments.

GROUND:

A. Para A is incorrect baseless against facts & law, as the removal order issued by the answering respondent is not against the law and service rules, hence denied.

B. Para B is incorrect, baseless as proper notices for resuming of duty was served through registry but the appellant neither personally appeared before the answering respondent nor he submitted any written justification, hence denied.

C. Para C is incorrect, the Show Cause notice /absence notice has sent to the appellant and after fulfillment of all codal formalities the appellant was removed from service vide order Endst No 199/G dated 09-01-2015 in accordance with law.

D. Para D is incorrect, after fulfillment of all codal formalities the appellant was removed from service vide order Endst No 199/G dated 09-01-2015 in accordance with law.

E. Para E is incorrect, the appellant is acquitted dated 12/06/2015 on compromise based and the enmity of the appellant has settled through compromise, furthermore the appellant has filed service appeal 23/01/2023 after (07) Seven years which is Time Barred as per Limitation Act.

F. Para No F, is incorrect, needs no comments.


G. Para No G is incorrect, needs no comments.


H. Para No H is related to the power of the court, needs no comments.


I. Para I is incorrect, each and every case has his own merit and circumstances, needs no comments.

- J. Para J is incorrect, the appellant is acquitted dated 12/06/2015 on compromise based and the appellant has filed service appeal 23/01/2023 after (07) Seven years which is Time Barred as per Limitation Act.
- K. That the respondent seeks permission to raise additional grounds at the time of arguments.

Therefore, in view of the above made submissions, it is most humbly prayed that on the acceptance of this reply, the appeal in hand may kindly be dismissed in favor of the Respondent Department in the interest of justice.


SECRETARY
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 1)


DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 3)


District Education officer
(Male) Mardan
(Respondent No: 2)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No: 224/2023

Yousaf Shah S/O Mian Muhammad Shah Ex Teacher at GPS Mohbat Abad R/O village Bakri Banda District Mardan.....**Petitioner**

Versus


The Secretary Elementary & Secondary Education Deptt, KPK Peshawar & Others..... **Respondents**

Reply to Application for condonation of delay.

Respectfully Sheweth,

1. Para No 1 is needs no comments.
2. Para No 2 is **Incorrect, & Not admitted** as the application may not kindly be treated as part of the service appeal because the service appeal is **badly Time barred**, and the appellat is not explain each and every day as per the relevant law.
3. Pare No 3 is **Incorrect, & Not admitted**, as the appellat is acquitted dated 12/06/2015 on compromise based and the appellat has filed service appeal 23/01/2023 after **(07)Seven years** which is too late as per Limitation Act, hence denied.
4. Para No 4 is **Incorrect**, that each and every case has his own merit and circumstances, needs no comments. hence denied.
5. Pare No 5 is **Incorrect, & Not admitted**, as the order of the removal is valid and maintainable.
6. Pare No 6 is **Incorrect, & Not admitted** as the appellat is careless due to which the service appeal was delay.

Therefore it is humbly prayed that keeping in the above facts, the application may kindly be dismissed with cost.


**District Education Officer
(Male) Mardan**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No: 224/2023

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R/O village Bakri Banda District Mardan.....Petitioner**

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Others..... Respondents**

AFFIDAVIT

I, Mr. Sajid Khan Legal Representative Education Department Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted on behalf of respondents are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

It is further stated on oath that in this appeal, the answering respondents have neither being placed ex parte nor their defense has been struck off
Deponent



Sajid Khan
Sajid Khan
16101-6005318-5



8


OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) MARDAN

No. 2925/G

DATED 05/04/2023

AUTHORITY LETTER

I, District Education Officer (Male) Mardan do hereby authorize Mr. Sajid Khan Legal representatives of the District Education Officer (Male) Mardan to Deal with the issues regarding Litigation, Represent & to attend the Hon, ble Service Tribunal Regarding Litigation.


District Education Officer
(Male) Mardan

9

Annexure A

From A.S.D.E.O (M) Pory, Circle Mardan Class.

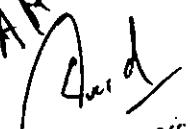
To

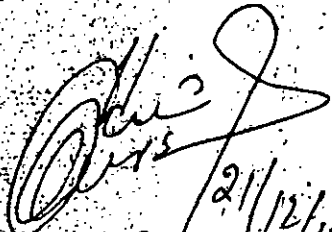
No ~~107e~~ Dated 21/12/13.

The Subdivisional Education Officer (M) Pory Mardan

Subject: Absent report

Reference your letter no 6053 dated 18.12.13. it is stated that Mr. Yousaf Shah SPSF Gps Mohabat Abad has not performed his duties during his suspension period. He has ~~you~~ had come to school only one day on 19/11/13 when his P.B.A. confirmed by the honourable Court Mardan. After that he is absent from duties i.e. from 20/11/13 till now i.e. dated 21/12/13. Report is submitted for disciplinary action under the rule.

Attested

 District Education Officer
 (Male) Mardan


 A.S.D.E.O
 21/12/13

No 11122
 Dated 27/12/13
 S.D.E.O (M)
 Mardan

Annexure B-10

Subje (Prj)

Office of the Sub Divisional Education
(Male) Primary Mardan.

NO 21 Dated 8/11/2014.

To ✓

The District Education Officer
(Male) Mardan.

Subj: ABSENT FROM DUTY.
Memo;

Reference your office Letter No. 11790 dated 07.12.2013.

Detail report against Mr. Yousaf Shah SPST GPS Mahabat Abad
duly submitted by ASDEO(M) Circle Mardan Khass is submitted herewith
for favour of further n/action pl.

Encl; AS Report attached pl.

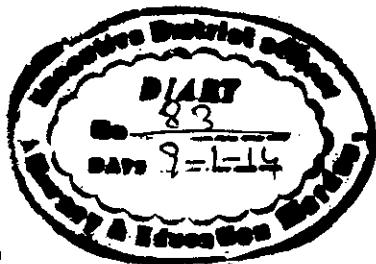
[Signature]
Sub Divisional Education Officer
(M) Primary Mardan.

Endst: NO

Copy to the:-

1. ASDEO(M) Circle Mardan Khass for information.
2. Head teacher GPS Mahabat Abad Mardan.

Sub Divisional Education Officer
(M) Pry: Mardan.



[Signature]
District Education Officer
(Male) Mardan

Registered

Annexure C (11)



DISTRICT EDUCATION OFFICER
(MALE) MARDAN

No: 612 Dated 27/01/2014

To,

Mr, Yousaf Shah,
S/O Mian Muhammad Shah
SPST, GPS, Mohabat Abad
Vill, Bakri Banda Nisata Road Mardan

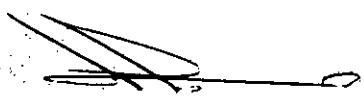
10

Subject: ABSENCE FROM DUTY.

Memo:

You Mr, Yousaf Shah SPST, GPS, Mohabat Abad ^{has} remained absent from your duty Wef: 20/11/2013 up to date without any information. The ASDEO Circal Mardan Khass also submitted your absence report.

Hence, you are directed to resume your duty within a week time after the issuing of this notice and submit cogent reason of your absence to the undersigned in written or in person. In case of failing you will be dealt under E&D rules 1973 (Revised in 2011) removed from service.


District Education Officer
(Male) Mardan

No. 598

For insurance Notices see reverse. Stamps affixed except in case of unmeasured letters of not more than the weight prescribed in the Post Office Guide, or on which acknowledgment is due.

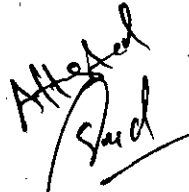
Received a registered* addressed to S/O Mian Muhammad Shah Date Stamp 27/01/14

Initials of Receiving Officer Muhammad *Write here "letter", "post" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) 1000 (in words) one thousand

Insurance fee Rs. 20 Ps. 00 Weight 100 Kilo 00 Grams 00

Name and address of sender S/O Mian Muhammad Shah


District Education Officer
(Male) Mardan



OFFICE OF THE DISTRICT EDUCATION OFFICER
(M) MARDAN

15

OFFICE ORDER

Whereas Mr. Yousaf Shah PST GPS Mohabat Abad Mardan remained absent from duty with effect from 01.11.2014 till to date without any permission/information.

Whereas the authorized officer sent an absence notice through registered cover on your home address for the resumption of your duty but came back un-delivered as you were not present.

Whereas for the sake of vide publication of show cause of absence the undersigned further published notices for your duty resumption in daily The MASHRIQ dated 19-12-2014 and daily The AAJ dated 20-12-2014, but you neither resumed your duty nor replied the show cause and not attended this office for personal hearing as well in the prescribed time.

Now, therefore, the undersigned being the competent authority in exercise of powers conferred in the Efficiency and Disciplinary Rules 1973 revised in 2011, has been pleased to impose the major penalty i.e. Removal from Service upon you Mr. Yousaf Shah PST GPS Mohabat Abad Mardan with effect from the date of your absence i.e 01.11.2014.

(HANIFULLAH FAROOQI)
DISTRICT EDUCATION OFFICER (MALE)
MARDAN.

Endst.No. 199/K / PF Sahib Zada PST.

Dated 9/1 /2015.

Copy forwarded to the t-

1. P.S. to Secreary E & S Education Khyber Pukhtoon Khwa Peshawar.
2. P.A. to Director E & S Education Khyber Pukhtoon Khwa Peshawar.
3. District Comptroller of Accounts Mardan.
4. Sub Divisional Education Officer (Male) Mardan with the remarks to submit his service book for removal from service entry.
5. Mr. Yousaf Shah PST C/O Head Teacher GPS Mohabat Abad Mardan.

DISTRICT EDUCATION OFFICER (MALE)
MARDAN

Attested
District Education Officer
(Male) Mardan

lt

To
The Director
Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar

Subject; Appeal for Re-instatement and Cancellation of Termination order of appellant Mr. Yousaf Shah S/o Mian Muhammad Shah PST GPS Muhabat Abad Mardan.

Respectfully sheweth;

1. That the appellant namely Mr. Yousaf Shah S/O Mian Muhammad Shah PST Teacher GPS Muhabat Abad Mardan from 19/04/1999.
2. That the appellant is punctual and honest to his profession.
3. That the appellant remained absent from his duty from 1.11.2014 due to severe domestic problem and his absentee is not deliberate but due to above mentioned cause.
4. That due to such absentee District Education officer (Male) Mardan issued show cause notice in daily "AAJ" dated 20/12/2014 and later on issued termination order dated 9/1/2015 (copy attached herewith)
5. That because of above mentioned problem appellant submitted his written reply with one day delay on 5/1/2015.
6. That the appellant is punctual, regular and efficient teacher and have clear past record.
7. That the appellant is the only supporter of his family and his termination order will suffer him heavy financial and mental lose.

So it is therefore humbly prayed that the appeal may kindly be admitted and termination order may kindly be cancelled.

309
11/2

[Handwritten signature]

Appellant
[Signature]
Yousaf Shah
PST
S/O Muhammad Shah
GPS Muhabat Abad Mardan.

[Signature]
District Education Officer
(Male) Mardan

DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA

ORDER

1. WHEREAS, Mr. Yousaf Shah SPST GPS Muhbat Abad Mardan was found absent from this duty w.e.f 01.11.2014 till date and he was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011 for the said charges.
2. AND WHEREAS, the above named PST teacher was charged in criminal case bearing FIR No.387 dated 12.06.2013 at Police Station Thana Sadaar Mardan.
3. AND WHEREAS, on finality of proceeding DEO (M) Mardan imposed the major penalty of converting the above period as un-authorized leave from duty and removed from service.
4. AND WHEREAS, consequently he made appeal to the appellant authority Director E&SE vide 973 dated 03.09.2015.
5. NOW THEREFORE, in exercise of powers conferred by the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. The appellant authority is pleased to reject the appeal of the above PST teacher.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst: No. U25-27 /F No.141/PST (M) Mardan

Dated Peshawar the 3/12 2015.

Copy forwarded for information and necessary action to the:-

1. District Education Officer (M) Mardan w/r to his No.6314 dated 19.09.2015.
2. Teacher concerned.
3. P/A to Director E&SE, Khyber Pakhtunkhwa, Peshawar.
4. Master File.

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

District Education Officer
(Male) Mardan

4

DISTRICT EDUCATION OFFICER (MALE) MARDAN.

Sub Division.

Consequent upon in the light of FIR filed against the following P.Ts GPS Bakri Banda Mardan under section 467-F dated, 12.5.2013, the following P.Ts are hereby suspended from the Govt; service w.e.f the date of FIR filed against them for the period of three months.

Note.

Necessary entry to this effect should be made in their S/Books.

S.No. Name of P.T with School.

- 1. Saleem Shah P.T GPS Bakri Banda.
- 2. Younis Shah P.T GPS Bakri Banda.

(NOOR ZADA KHANJANI)
DISTRICT EDUCATION OFFICER
(M) MARDAN.

67741-43

Endst. NO. 67741-43 / Saleem Shah. Dated. 22/6/13.

Copy forwarded to the:-

- 1. ASDEO (M) Primary Mardan with the remarks to stopped the pay of the concerned teachers.
- 2. DAO Mardan.
- 3. H.T concerned.

No. 2480
Date 24/6/13

ASDEO (M)
Mardan
22/6/13

DISTRICT EDUCATION OFFICER
(M) MARDAN.

Handwritten signature and date 21/6/13

OFFICE OF THE SUB DIVISIONAL EDUCATION OFFICER (MALE) MARDAN

Endst; No 1718-G / Suspension - Pst File Dated. 23/5/2013
Copy to the:-

- 1 ASDEO (M) Circle Mardan Khass to made entry of Suspension in his S/Book immediately.
- 2, Head teacher GPS Bakri Banda Mardan

SUB DIVISIONAL EDUCATION OFFICER (MALE) MARDAN

Handwritten signature

Handwritten signature and date

Signature H-16

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN.
OFFICE ORDER.

A. The suspension order issued vide this office under Endst: No.6741-43 Dated 22-06-2013 is hereby extended till 31-07-2014 in r/o Mr, Yousaf Shah PST GPS, Muhabat Abad Mardan.

However, he is allowed to draw his suspension allowances as admissible to him under the rules w.e.f 05-06-2013 i.e the date of joining his duty.

B. The absence period w.e.f 10-04-2013 to 30-05-2013 (51 days) treated as leave without pay and the absconder period w.e.f 01-06-2013 to 04-06-2014 (310 days) treated as leave without pay.

(HANIF ULLAH FAROOQI)
DISTRICT EDUCATION OFFICER
(MALE) MARDAN.

Endst: No 7972-73

Dated 24/7 /2014.

Copy forwarded to the:-

1. Sub-Divisional Education officer (M) Piry: Mardan along with Service Book.
2. District Comptroller Accounts Mardan.
3. Official Concerned.

DISTRICT EDUCATION OFFICER
o/c (MALE) MARDAN

Handwritten signature
District Education Officer
(Male) Mardan

Annexure I-①

DISTRICT EDUCATION OFFICER
(MALE) MARDAN.

No. 7095 / Dated 16/6 /2014.

The Sub-Divisional Education Officer (M) Prc:
Mardan.

Subject:- RE-INSTATEMENT.
Memo:-

Reference your letter No.1000 Dated 09-06-2014 on the subject cited
above

The Service Book in r/o Yousaf Shah PST GPS. Muhabat Abad is
returned with the following remarks:

1. The leave w.e.f 10-04-2013 to 30-05-2013 is not re-submitted for sanction
Explain that whether the concerned teacher has availed the leave or not.
 2. Whether the concerned teacher has performed his duty the suspension period or
not.
- The report of the absence notice issued to the above teacher is still awaited.

*es. returned the teacher
select for next duties at
during the suspension
period*

[Signature]
19/6/14

DISTRICT EDUCATION OFFICER
(MALE) MARDAN

OFFICE OF THE SUB-DIVISIONAL EDUCATION OFFICER (MALE) MARDAN

NO 1047/5 / Personal File 19-6 / 2014.

Copy to the:-

1. ASDEO(M) Circle Mardan Khass alongwith S/Book to submit detail report against the
Shah Pst GPS Mahabat Abad as directed by worthy DEO(M) Mardan on 16.06/14 to the
assigned positively.
2. Head teacher GPS Mahabat Abad Mardan
3. DEO(M) Mardan w/r to above.
4. Teacher concerned:

SUB DIVISIONAL EDUCATION OFFICER
OFFICER(MALE) PRC. MARDAN

[Signature]
District Education Officer
(Male) Mardan

19/6

بھارت خانبے الین۔ دیلی۔ ای۔ او (پیل) مسدین

عنواں: درخواست مراد استحقاقی رخصت
(Earned leave)

خانبے عالی

خودمانہ گزارش ہے کہ قومی گھریلو مسائل کی وجہ سے

بے سکول میں اپنے فرائض منصبی ادا کرنے سے قاصر ہے

لہذا گزارش ہے کہ قومی کو حورجہ 10-4-2013

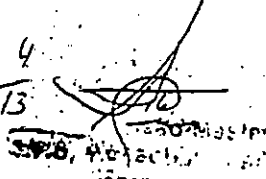
سے 30-5-2013 تک رخصت استحقاقی

عنایت و ناسا کی مستورد عملوں کی صورت میں
عین کو از سر نو


قومی اوسف شاہ (PST)
سی پی ایس خدیج آباد مسدین
تاریخ: 10-4-2013

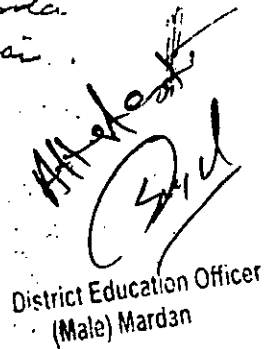
Endorsement No: 1943

dated: 16/4/13


District Education Officer
(Male) Mardan

Note: Forwarded to DDO (Male) Primary Mardan
for necessary action.


11/4/13


District Education Officer
(Male) Mardan

Annexure K ①

SUB DIVISIONAL EDUCATION
OFFICER (MALE) MARDAN.

No 1535 / Leave file

Dated 7/6 /2013.

To ✓

The District Education Officer
(Male) Mardan.

Subject:- APPLICATION FOR LEAVE W.E.F.10.4.13 TO 30.5.13(51 DAYS
LEAVE OF F/PAY

Enclosed please find herewith the original application along with
original Service Book of Mr. Yousaf Shah PST GPS Mahabat Abad Mardan for
favour of further n/action

Encl As attached,

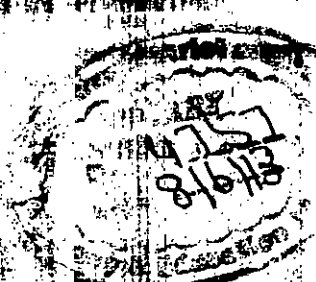
1. Application
2. S/Book & L/A Form etc


SUB DIVISIONAL EDUCATION
OFFICER (MALE) MARDAN.

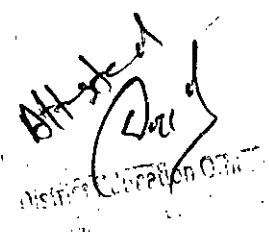
Endst: _____

Copy to the:-

1. ASDEO (M) Circle Mardan Khass.,
2. DAO Mardan to stopped the pay under P.No.00123716



SUB DIVISIONAL EDUCATION
OFFICER (MALE) MARDAN


District Education Officer

NO. 6479 / I. Shah PBT. Dated. 17/6 /13.

From:

District Education Officer.
(M) Mardan.

To:

The SDEO(M)
Primary Mardan.

SUBJECT:

APPLICATION FOR LEAVE

Memo.

Reference your letter NO. 1535 dated, 7.6.13, the S/Book in r/o Mr. Fouzaf Shah PBT QPS Mahabat Mardan is returned in original herewith the following remarks.

1. Correction made in the B/O/Birth in the S/Book without any countersigned of the competent authority is need clarification.
2. S/Book on Page NO.7,8,11 is not signed by the concerned SDEO.

Encl: S/Book.

6

Handwritten signature

DISTRICT EDUCATION OFFICER
(M) MARDAN.

Handwritten signature
District Education Officer
Mardan