

Service Appeal No.1885/2022 titled "Kashif Ullah -vs- The Government of Khyber Pakhtunkhwa through Secretary Higher Education Khyber Pakhtunkhwa and others"; declared on 06.06.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR, AT CAMP COURT, SWAT**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**MUHAMMAD AKBAR KHAN** ... **MEMBER (Judicial)**

*Service Appeal No.1885/2022*

Date of presentation of Appeal.....20.12.2022  
Date of Hearing.....06.06.2023  
Date of Decision.....06.06.2023

**Mr. Kashif Ullah** Lab Attendant Currently Chowkidar at Government Degree College Charbagh, District Swat.

.....*Appellant*

Versus

1. **The Secretary Higher Education**, Government Of Khyber Pakhtunkhwa, Peshawar.
2. **The Director Higher Education**, Khyber Pakhtunkhwa, Peshawar.
3. **The Cluster Coordinator/Principal** Government Post Graduate Jehanzeb College, Saidu Sharif, District Swat.
4. **The Principal**, Government Degree College, Khwazakhila, District Swat.

.....*(Respondents)*

Present:

Mr. Imdad Ullah, Advocate.....For the appellant

Mr. Muhammad Jan, District Attorney .....For respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER NO.360-363/KASHIF ULLAH/GDCKK/22 DATED 12.09.2022, WHEREBY THE CADRE OF THE APPELLANT WAS CHANGED FROM LAB ATTENDANT TO THAT OF CHOWKIDAR AND ALSO TRANSFERRED ON POLITICAL INFLUENCE AGAINST THE LAW AND RULES, FEELING AGGRIEVED THE APPELLANT PREFERRED A DEPARTMENTAL APPEAL, BUT THE SAME WAS NOT RESPONDED TO DESPITE THE LAPSE OF STATUTORY PERIOD OF TIME.**



## **JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case are that appellant was appointed as Chowkidar at the Government Girls Degree College, Khwazakhila. In the meanwhile, he was posted against the post of Lab Attendant but was again transferred and posted as Chowkidar at Government Degree College, Charbagh vide order dated 02.09.2022. Against the said order, he filed departmental appeal in response of which, his order for posting as Chowkidar was canceled/withdrawn vide order dated 07.09.2022. For provision of copies of documents, he filed departmental appeal which was not responded. All of a sudden, while waiting for response of his departmental appeal, the respondent/department again canceled the order of his posting as Lab Attendant dated 07.09.2022 on 15.12.2022. Feeling aggrieved, he filed the instant service appeal.

2. On receipt of the appeal and its admission to full hearing. The respondents were summoned and they were directed to submit comments but to no avail, therefore, their right to submit reply was struck off.

3. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

4. Learned counsel for appellant contended that the appellant was not dealt in accordance with law, rules and Constitution. He submitted that the appellant had duly appointed/adjusted against the vacant post of Lab Attendant and had taken the charge of the said post. Further submitted that the action taken by the respondents was the result of

political pressure. Lastly, he submitted that the appellant had been denied his vested and accrued rights and had been discriminated with. Therefore, he requested for acceptance of the instant service appeal.

5. As against that learned District Attorney argued that the respondents had rightly posted the appellant as Chowkidar because the original post of the appellant was Chowkidar and not Lab Attendant. Further submitted that due to some misunderstanding, he was mistakenly posted as Lab Attendant. Therefore, he requested for dismissal of the instant appeal.

6. The appellant has in this appeal prayed that both the impugned orders dated 12.09.2022 may be set aside i.e. the one regarding alleged change of cadre of the appellant from Lab Attendant to the post of Chowkidar, by allowing him to perform his duties as Lab Assistant against his original place of posting and secondly, that he should be allowed to continue duties as Lab Attendant at the College for where he was transferred.

7. As to the first claim of the appellant, the appointment order of the appellant is found placed on file, vide which the appellant was appointed as Chowkidar against Retired Son Quota on 15.03.2016. During his service, he was directed to perform the duties of Laboratory Attendant. The entries regarding the post of Lab Attendant also, somehow, were incorporated in the salary slip and service book of the appellant but fact remains the same that admittedly, the appellant was originally appointed as Chowkidar. Vide order dated 02.09.2022, the appellant, working against the leave vacancy at the

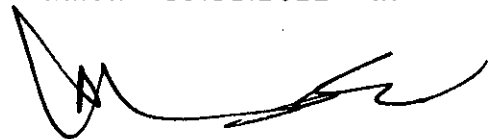


Government Degree College, Khwazakhila, Swat, was transferred and adjusted at the Government Girls Degree College Khwazakhila District Swat on his original post and BPS w.e.f 01.09.2022. On 07.09.2022, another order was passed, the same is reproduced:

*" The Designation of Mr. Kashifullah was reported by the Principal GDC Khwazakhela Swat vide his letter No.346/Kashifullah/GDC KK/22 dated 27.08.2022 is Chowkidar, who was transferred to GGDC Khwazakhela in the aforesaid cadre vide this office order Endst No.1301-02/J22 dated 02.09.2022. However, on his appeal and payroll was found that his post is that of the Lab Attendant (BPS-03) instead of Chowkidar (BPS-03), which proved that the Principal misled this office. Consequently, the transfer issued is hereby withdrawn/canceled."*

The above order of 07.09.2022 was cancelled vide order dated 15.12.2022 in the following manner:

*"Consequent upon the comprehensive report of the Principal Government Degree College Khwazakhela Swat communicated to the Director Higher Education Khyber Pakhtunkhwa Peshawar vide letter No.380/Kashif Ullah/GDCKK/22 dated 21.09.2022 and subsequently, the directives of the Director Higher Education issued to the undersigned vide letter No.22050/CA-VII/Esst:Branch/A-167/GDC Khwazakhela Swat dated 15.11.2022 in*



*connection with Mr. Kashifullah Chowkidar of GGDC Khwazakhela Swat.*

*As a result of the detailed analysis of the irrefutable and valid service record of the official, submitted by the Principal concerned, the Office order issued vide this office Endst No.1377-/I22 dated 07.09.2022 is hereby cancelled and the previous order issued vide this office Endst No. 1301-02/I22 dated 02.09.2022 is maintained which has already been complied with by the official and relinquished the charge. The official is directed to report for duty to the Principal Govt. Girls Degree College Khwazakhela Swat, if not reported earlier".*

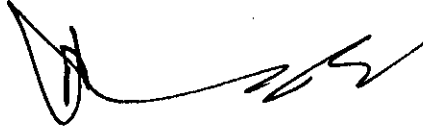
8. The order dated 15.12.2022 directed the appellant to report for duty to the Principal Government Girls Degree College, Khwazikhela, District Swat. In the meantime, an order dated 12.09.2022 was passed, whereby, the appellant was directed to report at his original post as Chowkidar at GGDC Khwazakhila, Swat. The claim of the appellant that he was Lab Attendant and his cadre was changed vide the impugned order dated 12.09.2022, is not well founded because the appellant was originally appointed as Chowkidar and not Lab Attendant and, as pointed out above, probably because of some misunderstanding or maneuvering, the appellant succeeded in getting entries recorded in salary slip as well as in the service book as those of Lab Attendant but there is no such order of any authority placed on file, whereas, the order of initial appointment very much



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clearly shows that the appellatant was originally Chowkidar and after setting the things right, the impugned order was passed and he was directed to perform his duty against the post of Chowkidar. This appeal is thus groundless and is dismissed with costs. Consign.

9. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 6<sup>th</sup> day of June, 2023.*



**KALIM ARSHAD KHAN**  
Chairman  
Camp Court, Swat



**MUHAMMAD AKBAR KHAN**  
Member (Judicial)  
Camp Court, Swat

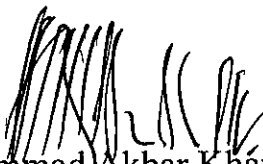
*\*Mutazem Shah\**

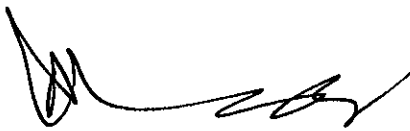
Service Appeal No.1885/2022

ORDER

6<sup>th</sup> June, 2023

1. Learned counsel for appellant present. Mr. Muhammad Jan, learned District Attorney for respondents present.
2. Vide our detailed judgment of today placed on file, this appeal is thus groundless and is dismissed with costs. Consign.
3. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 6<sup>th</sup> day of June, 2023.*

  
(Muhammad Akbar Khan)  
Member (E)  
Camp Court, Swat

  
(Kalim Arshad Khan)  
Chairman  
Camp Court, Swat

\*Kaleemullah\*