


FORM OF ORDER SHEET

Court of _____

Appeal No. _____

1287/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/06/2023	<p>The appeal of Mr. Ihsan Sultan Tareen presented today by Mr. Ahmad Sultan Tareen Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

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

Service Appeal No. 1287 /2023

Ihsan ul HaqAPPELLANT

VERSUS

Secretary Education and othersRESPONDENTS

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Grounds of Appeal <i>with Affidavit</i>		<i>1-8</i>
<i>2</i>	The notification issued under Endorsement No. 7972-75/F.No.62/Vol-II/PST(M) Chitral dated 30.01.2019 by respondent No.2	A	<i>9-10</i>
<i>3</i>	Copy of the judgment	B	<i>11-15</i>
<i>4</i>	The copy of the order dated 09.02.2023 on Execution Petition No. 03/2023 and of the substituted / revised notification dated 30.01.2019	C & D	<i>16-19</i>
<i>5</i>	Copy of the departmental appeal and the date for personal hearing was rescheduled for 20.02.2023	E & F	<i>20-25</i>
<i>6</i>	Copy of the Attendance Certificate	G	<i>26</i>
<i>7</i>	Wakalat Nama		<i>27</i>

Through

Appellant


Ahmad Sultan Tareen
Advocate High Court

Dated: 07.062023

1

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

Service Appeal No. 1287 /2023

Ihsan ul Haq S/o Muhammad Aziz
R/o Drosh, District Chitral Lower.
Presently holding the post of CT (BPS-15)
Govt. Higher Secondary School, Drosh, District Chitral Lower.
.....APPELLANT

VERSUS

1. Secretary Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
 3. District Education Officer (DEO) (Male), District Chitral Lower.
-RESPONDENTS

**SERVICE APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT 1974,
AGAINST THE IMPUGNED NOTIFICATION DATED
30.01.2019, WHEREBY THE APPELLANT WAS
downgraded from the post of SCT (BPS-16) to CT
(BPS-15) WHEREBY NO ORDER OF APPELLATE
AUTHORITY OVER THE DEPARTMENTAL APPEAL OF**

2

**THE APPELLANT HAS BEEN PASSED, WITHIN
STATUTORY PERIOD OF NINETY (90) DAYS.**

PRAYER:

By accepting this Service Appeal, substituted/revised notification dated 30.01.2019 may graciously be set aside and the appellant having already been jeopardized twice by unfounded disciplinary action on the same grounds may be held as discharged from disciplinary proceedings in future and his position as SCT BPS-16 may be restored since inception of the disciplinary action in the year 2018 and he may be awarded all back benefits withheld due to impugned disciplinary action and all other benefits having become due after said action and not granted, may also be granted.

Any other relief not specifically asked for, may be granted as deemed appropriate in circumstances of the case.

Respectfully Sheweth:

✕ The appellant seeks to make the following submissions:

1. That appellant is presently holding the CT post in BPS-15 and while he was holding the post as Senior Certified Teacher (SCT) BPS-16 in Department of Elementary & Secondary Education, under the control of respondents was

purportedly proceeded against in the year 2018 through a so-called disciplinary action under KPK Govt. Servant (Efficiency & Disciplinary) Rules, 2011. Consequently, he was condemned with imposition of penalty as reduction into his rank from SCT (BPS-16) to CT (BPS-15). The notification issued under endorsement No. 7972-75/F.No.62/Vol-II/PST(M) dated 30.01.2019 by respondent No. 2 is **annex. "A"**.

2. That being aggrieved from the imposition of penalty vide Notification dated 30.01.2019, the appellant after exhausting the remedy of departmental appeal filed service appeal No. 748/2019 before the KP Service Tribunal, which was heard in due course of time and vide judgment dated 11.04.2022 passed in the said Service Appeal, the penalty imposed upon the appellant was set aside. The operative part of the said judgment is reproduced as under:

"As a sequel to the above, the impugned notification dated 30.01.2019 suffering from legal infirmity, is set aside. The appellant is entitled to be restored to his original post of SCT (BpS-16) with consequential benefits. The respondent department would however, be at liberty to conduct de-novo enquiry in the mode and manner under the law and rules, if they so desire. In case of de-novo enquiry, the issue of back benefits shall be subject to outcome of the de-novo enquiry. Costs shall follow the event. Consign."

Copy of the judgment is **annexed. "B"**.

purportedly proceeded against in the year 2018 through a so-called disciplinary action under KPK Govt. Servant (Efficiency & Disciplinary) Rules, 2011. Consequently, he was condemned with imposition of penalty as reduction into his rank from SCT (BPS-16) to CT (BPS-15). The notification issued under endorsement No. 7972-75/F.No.62/Vol-II/PST(M) dated 30.01.2019 by respondent No. 2 is **annex. "A"**.

2. That being aggrieved from the imposition of penalty vide Notification dated 30.01.2019, the appellant after exhausting the remedy of departmental appeal filed service appeal No. 748/2019 before the KP Service Tribunal, which was heard in due course of time and vide judgment dated 11.04.2022 passed in the said Service Appeal, the penalty imposed upon the appellant was set aside. The operative part of the said judgment is reproduced as under:

"As a sequel to the above, the impugned notification dated 30.01.2019 suffering from legal infirmity, is set aside. The appellant is entitled to be restored to his original post of SCT (BpS-16) with consequential benefits. The respondent department would however, be at liberty to conduct de-novo enquiry in the mode and manner under the law and rules, if they so desire. In case of de-novo enquiry, the issue of back benefits shall be subject to outcome of the de-novo enquiry. Costs shall follow the event. Consign."

Copy of the judgment is **annexed. "B"**.

3. That in view of the relief granted by the Tribunal as mentioned in the operative part referred to above, the appellant was pursuing before the KP Service Tribunal the Execution Petition No. 03/2023 when department on the date of hearing in the said Petition furnished substituted/ revised notification dated 30.01.2019 on 09/02/2023 and consequently the Execution Petition was consigned treating the same as satisfied. The copy of the said notification was handed over to an associate of the petitioner's lawyer/counsel. Having got the information about consignment of execution petition from the office of his counsel, the appellant came to Peshawar and got attested copy of the order dated 09.02.2023, through an application dated 13.02.2023. The copy of the substituted/ revised notification dated 30.01.2019 was received from office of the counsel. The copy of the order dated 09.02.2023 on Execution Petition No. 03/2023 and of the substituted / revised notification dated 30.01.2019 are **annexed as "C" & "D"**.

4. That on having received the notification of fresh penalty, appellant filed a departmental appeal before the respondent No. 1 on 15.02.2023. and the date for personal hearing was fixed for 20.02.2023. **(copy of departmental appeal and the letter of personal hearing are annexed "E" & "F")**.

5. That the appellant as called for personal hearing vide letter dated 16.02.2023 from the office of respondent No.1, attended the office of the Additional Secretary Establishment for personal hearing on 20.02.2023 i.e. the fixed date. **Copy of the Attendance Certificate is annexed as "G".**

6. That the statutory waiting period of 90 days has been expired but no decision on departmental appeal has been communicated so far, therefore, the appellant is impelled to invoke the jurisdiction of this Hon'ble Tribunal U/S 4 of KP Service Tribunal Act, 1974, inter-alia, on the grounds as follows:

GROUNDS

A. That the impugned notification is the result of respondents' personal grudge and is meant to serve their ulterior motives.

B. That the impugned substituted/revised notification suffers from legal and factual defects and is result of unjust, random and illegal exercise of authority.

C. That the disciplinary proceedings previously conducted against the appellant were set at naught by the Hon'ble Service Tribunal vide judgment dated 11.04.2022 (already annexed as "B"). Para-7 of the said judgment clearly depicts that those proceedings were initiated by

the respondent No. 3/District Education Officer (M) Chitral which were held as "Coram-non-Judice". The declaration of the previous proceedings as "Coram-non-Judice" means that those proceedings were never conducted and existed.

D. That after holding of the previous enquiry proceedings / disciplinary actions as "Coram-non-Judice" by the Service Tribunal, the respondent No. 2 if decided to conduct a de-novo enquiry in pursuance to the liberty given by the Service Tribunal, he was supposed to comply with essentials provided by Efficiency & Disciplinary Rules, 2011 for ensuring the fair trial and due process which he omitted. Thus, the appellant has been dealt with otherwise than due course of law in the matter of imposition of impugned penalty; and the penalty as imposed upon the appellant due to its suffering from illegality and wrong exercise of authority is not tenable under the facts and law.

E. That the impugned penalty as imposed without a proper enquiry is not tantamount to compliance of the judgment of Service Tribunal as mentioned above.

F. That the impugned action taken against the appellant and the penalty imposed in consequence of illegal action is highly arbitrary, perverse, perfunctory, erroneous, wrong, result of malafide and being against the facts and law, is liable to be set aside.

7

G. That the forgoing facts and grounds make a good case for the relief prayed for, and if need arises for further submissions during the arguments, the appellant may be allowed to raise additional grounds at the bar during arguments.

Prayer:

It is respectfully prayed that this Appeal may be accepted as per prayer in the heading above.

Through

Appellant


Ahmad Sultan Tareen
Advocate High Court

Dated: 07 .06.2023

8

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

Service Appeal No. _____/2023

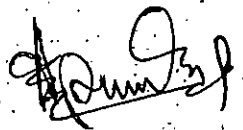
Ihsan ul HaqAPPELLANT

VERSUS

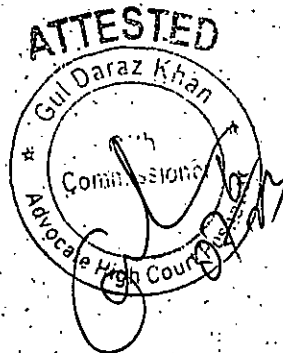
Secretary Education and othersRESPONDENTS

AFFIDAVIT

I on behalf of my client the above name appellant do hereby affirm that the contents of the accompanying appeal are true and correct to the best of my knowledge and belief as per information conveyed to me by my client and nothing has been concealed from this Hon'ble Tribunal.



Deponent



9

Annex "A"

Registered

DIRECTORATE OF ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA

NOTIFICATION

Consequent upon the approval of competent authority Mr. Ihsan-ul-Haq SCT GHSS Droesh, District Chitral is hereby downgraded from SCT (BPS-16) to CT (BPS-15) on account of his involvement mischievous act.

Necessary entry to this effect should be made in the relevant record.

DIRECTOR

Encl: No. 707-75 / F No. 62/Vol: II/PST (M) Chitral. Dated Peshawar the 30/11 / 2019.

Copy forwarded for information and necessary action to the:-

1. District Education Officer (M) Chitral w/r to his letter No.168 dated 02.01.2019.
2. District Accounts Officer Chitral.
3. Mr. Ihsan-ul-Haq SCT GHSS Droesh Chitral.
4. P.A to Director Elementary & Secondary Education Local Office.
5. Master Files.

[Signature]
Deputy Director (ES)
Elementary & Secondary Edu.
Khyber Pakhtunkhwa Peshawar.

1/11/19
20-2-2019
Received

Registered.

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

NOTIFICATION

Consequent upon the approval of competent authority Mr. Ihsan-ul-Haq SCT GHSS Brosh, District Chitral is hereby downgraded from SCT (BPS-16) to CT (BPS-15) on account of his involvement mischievous act.

Necessary entry to this effect should be made in the relevant record.

DIRECTOR.

Endst. No. 7972-75/F.No. 62/Vol:II/PST(M) Chitral

Dated Peshawar the 30/1/2019

Copy forwarded for information and necessary action to the:

1. District Education Officer (M) Chitral w/r to his letter No. 168 dated 02.01.2019.
2. District Accounts Officer Chitral
3. Mr. Ihsan-ul-Haq SCT GHSS Drosh Citral.
4. P.A to Director Elementary & Secondary Education Local Office.
5. Master File.

-sd-

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

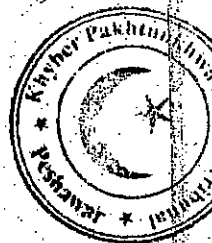
11

Annex B

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Service Appeal No. 748/2019

BEFORE: SALAH UD DIN --- MEMBER(F)
MIAN MUHAMMAD --- MEMBER(E)



Ihsan Ul Haq SCT Teacher, GHSS Drosh Chitral..... (Appellant)

VERSUS

1. Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
2. Secretary Education, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
3. District Education Officer (DEO) (Male) Chitral..... (Respondents)

Present:

NASIR MAHMOOD,
Advocate --- For Appellant.

SYED NASEER UD DIN SHAH,
Assistant Advocate General --- For official respondents.

Date of Institution.....19.09.2019
Date of Hearing.....11.04.2022
Date of Decision.....11.04.2022

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The service appeal has been instituted against the impugned notification dated 30.01.2019 whereby the appellant was downgraded from SCT (BS-16) to CT (BS-15) and his departmental appeal dated 20.02.2019 was not responded within the statutory period. Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 has therefore been invoked and the case is under scrutiny for adjudication before this Bench.

02. Brief facts, as per contents of the memorandum of appeal, are that the appellant while posted at GHSS Darosh was charge sheeted

ATTESTED

12

for submission of ACR for the year 2012 signed by another reporting officer and that of the year 2013 having fake signature of the reporting officer. An enquiry committee was constituted and in the light of findings of enquiry committee, the impugned notification imposing the penalty of downgrading the appellant from SCT (BS-16) to CT (BS-15) was issued on 30.01.2019. His departmental appeal submitted on 20.02.2019 against the impugned notification, was however, not responded within the statutory period where-after the service appeal was instituted in the Service Tribunal on 19.06.2019.

03. Notices were issued to the parties to submit reply/para wise comments alongwith connected documents. Respondents having failed to submit written replies/comments even during extended period, their right of defense was struck off vide order sheet dated 16.09.2021. We have heard learned counsel for the appellant as well as Assistant Advocate General and perused the case file with connected documents thoroughly.

04. Learned counsel for the appellant contended that respondent No.3 had personal grudges against the appellant. First, an explanation of appellant was sought on 03.09.2018 that he had submitted fake ACR for 2012 because at that time respondent No.3 was himself the Principal GHSS Darosh and the signature of reporting officer on ACR for the year 2013 was also fake. His reply dated 19.09.2018 was not considered and an Inquiry Committee was constituted on 29.09.2018 when charge sheet/statement of allegations was issued by respondent No.3. On the submission of enquiry report on 22.10.2018, the

ATTESTED
K. S. K. K. K.
K. S. K. K. K.
K. S. K. K. K.

impugned notification was issued by respondent No.1. It was further argued that Competent Authority in respect of the appellant was respondent No.1 as per "Job Description and Competencies (November, 2014)" whereas the enquiry was initiated against the appellant by respondent No.3 who had been declared Competent Authority for officials in BS-01 to 15 whereas the appellant was SCT in BS-16 and as such respondent No.3 was not Competent Authority for the appellant. Only the impugned notification was issued by respondent No.1 who was neither privy to the initiation of enquiry nor associated with the entire enquiry proceedings including appointment of the members of enquiry committee and issuance of charge sheet/statement of allegations. He relied on 2018 PLC (CS) 475.

05. It was vehemently argued that the penalty of downgrading from SCT (BS-16) to CT (BS-15) was imposed for indefinite period as there is no specific period mentioned in the impugned notification. To strengthen his arguments, learned counsel for appellant relied on 2017 PLC (C.S) Note-2. While concluding his arguments, learned counsel for appellant contended that the appellant has not been treated in accordance with law and the whole proceedings initiated against the appellant are illegal, unlawful and in violation of the rights guaranteed under Article-25 of the constitution. The impugned notification dated 30.01.2019 being arbitrary, malafide, discriminatory and whimsical is therefore liable to be set aside and the appellant be restored in original pay scale of SCT (BS-16).

ATTESTED

EXAMINER
Nepal Administrative
Service Tribunal
Kathmandu

14

06. Learned Asst. AG conversely argued that all codal formalities have been fulfilled before imposition of the impugned penalty. Notification has legal firmity as it has been issued after due process and recourse to the relevant law and rules. He therefore requested that the appeal may graciously be dismissed.

07. It transpires from record that respondent No.1 was the declared Competent Authority for the appellant whereas the inquiry proceedings were initiated by respondent No.3. The Inquiry Committee was constituted by respondent No.3 on 29.09.2018. Similarly, charge sheet/statement of allegations, was issued by respondent No.3. Only the final impugned order dated 30.01.2019 was issued by respondent No.1. The entire enquiry proceedings have been initiated, and conducted by "corum non iudice". Interestingly, on submission of the enquiry report, no show cause notice was issued to the appellant under Rule-14(4) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. Moreover, Rule-4(b)(i) of the Rules ibid puts a restriction of maximum 05 years in case the major penalty of reduction to a lower post or pay scale or a lower stage in a time scale, is imposed on a government servant, however, no such period is mentioned in the impugned order dated 30.01.2019. Imposing of such a penalty for indefinite period is also in violation and total disregard to the spirit and logic behind F.R-29:

08. As a sequel to the above, the impugned notification dated 30.01.2019 suffering from legal infirmity, is set aside. The appellant is

TESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

15

entitled to be restored to his original post of SCT (BS-16) with consequential benefits. The respondent -department would however be at liberty to conduct de-novo enquiry in the mode and manner under the law and rules, if they so desire. In case of de-novo enquiry, the issue of back benefits shall be subject to outcome of the de-novo enquiry. Costs shall follow the event. Consign.

09. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of April, 2022.*



(SALAH UD DIN)
MEMBER (J)

(MIAN MUHAMMAD)
MEMBER (E)

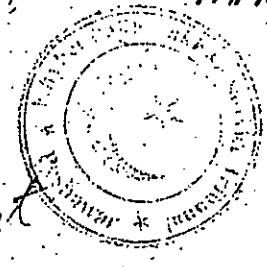
Certified to be true copy

SEAL
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 14-9-22
Number of Writs 2000
Copying Fee 22/-
Deposit 22/-
Taxes 22/-
Number of Copies 16/9/22
Date of Completion of Copy 16/9/22
Date of Delivery of Copy 16/9/22

16 Annex "C"

E.P. No. 3/2023.
Ihsan ul Haq vs Govt




09 Feb 2023

Mr. Saadul Hussian, Advocate, junior to learned counsel for the appellant present. Mr. Uzair Azam Khan, Addl. Advocate General alongwith Bahramiand Khan, Assistant Director for the respondents present.

Substituted/ revised notification dated 30.01.2019 has been submitted vide which the petitioner has been downgraded from SCTE(BPS-16) to CT (BPS-15) for a period of maximum five years, which is placed on file and a copy whereof handed over to junior to learned counsel for the petitioner, who is satisfied. The judgment of the Tribunal stands implemented and the petition in hand is consigned.

Pronounced in open Court at Peshawar and given under my hand and the seal of the Tribunal on this 09th day of February, 2023.


(FARZEHA PAUL)
Member(E)


Certified copy
Farzeha Paul
Member(E)

Date of Presentation of Application: 13/2/23
Number of Page: 2
Copying Fee: 10/-
Report: 5/-
15/-
Date of Judgment: 13/2/23
Date of Delivery of Copy: 13/2/23

BETTER COPY

17

09th Feb, 2013 Mr. Saadul Hassan, Advocate, Junior to learned counsel for the appellant present, Mr. Uzair Azam Khan, Addl. Advocate General along with Bahramand Khan, Assistant Director for the respondents present.

Substituted/revise^d notification dated 30.01.2019 has been submitted vide which the petitioner has been downgraded from SCT (BPS-16) to CT (BPS-15) for a period of maximum five years which is placed on file and a copy whereof handed over to junior to learned counsel for the petitioner, who is satisfied. The judgment of the Tribunal stands implemented and the petition in hand is consigned.

Pronounced in open Court at Peshawar and given under my hand and the seal of the Tribunal on this 09th day of February, 2023.

-sd-

(FAREEHA PAUL)

Member(E)

18

Annex "D"

Registered

STATE OF ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR

Submitted with serial No. & date

CLASSIFICATION

It is hereby notified upon the approval of the competent Authority
that the 100% of the HISS Doshi, District Chitral, hereby designated from
100% HISS to 100% HISS for a period of maximum five (05) years as
specified in sub-section (1) of F&D Rules, 2011, on account of the
involvement of the Doshi, etc.

This notification is issued under section 21, General Clauses
Act, 1952 & amended in 1956.


(2) Necessary steps to this effect should be made in the relevant record.

Dr. Haliz Muhammad Ibrahim
(DIRECTOR)
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Serial No. 227/2019 of H-PSI (MD) Chitral

Dated Peshawar the 30/01/2019

- 1. This copy of the notification is forwarded to the
- 2. Director, Elementary & Secondary Education, Malek Chitral via his office No. 103 dated 02-01-2019.
- 3. District Director, Elementary Education
- 4. Mr. Inayatullah, District Director, HISS Doshi Chitral
- 5. Mr. A. M. Khan, District Director, Elementary & Secondary Education Local Office
- 6. Mr. J. P. Khan, District Director, Office of Additional Director, (ESSE) Malek Chitral
- 7. Mr. J. P. Khan, District Director, Office of Additional Director, (ESSE) Malek Chitral
- 8. Mr. J. P. Khan, District Director, Office of Additional Director, (ESSE) Malek Chitral
- 9. Mr. J. P. Khan, District Director, Office of Additional Director, (ESSE) Malek Chitral
- 10. Mr. J. P. Khan, District Director, Office of Additional Director, (ESSE) Malek Chitral


Deputy Director (ESSE)
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

BETTER COPY

19

Registered.

DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA

Substituted with even No. & date

NOTIFICATION

Consequent upon the approval of competent authority Mr. Ihsan-ul-Haq SCT GHSS Brosh, District Chitral is hereby downgraded from SCT (BPS-16) to CT (BPS-15) "for a period of maximum five (05) years" as specified in Rule (4) (1) (b) (i) of E&D Rules, 2011, on account of his involvement in on account of his involvement mischievous act.

- (i) This ----service Notification is issued under section 21, General Clauses Act, 1897 further amended in 1956.
- (ii) Necessary entry to this effect should be made in the relevant record.

Dr. Hafiz Muhammad Ibrahim
(DIRECTOR)

Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar.

Endst. No. 7977-78/F.No. 62/Vol:II/PST(M) Chitral

Dated Peshawar the 30/1/2019

Copy of the above information is forwarded to the:

1. District Education Officer (M) Chitral w/r to his letter No. 168 dated 02.01.2019.
2. District Accounts Officer Chitral
3. Mr. Ihsan-ul-Haq SCT GHSS Drosh Citral.
4. P.A to Director Elementary & Secondary Education Local Office.
5. Focal Person Pakistan Citizen Portal, Officer of Additional Director (Estt) (Male) Director for necessary action, please.
6. Master File.

-sd-

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

Annex "E"

20

To,

The Secretary,
Elementary & Secondary Education,
Govt. of Khyber Pakhtunkhwa,
Peshawar.

Subject: Departmental Appeal against the Substituted/Revised Notification issued under endorsement No.7972-75/F.No.62/Vol-II/PST(M) Chitral, dated Peshawar the 30.01.2019, whereby the Appellant has been Penalized with Downgrading from SCT (BPS-16) to CT (BPS-15) for a period of maximum Five (05) years, on pretext of a so-called Disciplinary Action.

Respected Sir,

The appellant seeks to submit the departmental appeal against the penalty mentioned in the subject above with submission as follow:-

1. That the appellant was a serving Senior Certified Teacher (SCT) BPS-16 in the Department of Elementary & Secondary Education, under the control of the Director as well as District Education Officer (M), Chitral, as Senior CT (BPS-16).
2. That it was in the year 2018 that a so-called disciplinary action under Khyber Pakhtunkhwa Efficiency & Disciplinary Rules, 2011 was commenced against the appellant, which was culminated into imposition of penalty upon the appellant as reduction into his rank from SCT (BPS-16) to CT (BPS-15). The notification issued under endorsement No.7972-75/F.No.62/Vol-II/PST(M) Chitral, dated Peshawar the 30.01.2019, issued by the Director Elementary & Secondary Education is annexed as "A".

Soc P
please put
main file in
not find
complete
the appeal

79-18-5-23

3. That being aggrieved from the imposition of penalty vide notification dated 30.01.2019. The appellant after exhausting the remedy of departmental appeal filed service appeal No.748/2019, before the Khyber Pakhtunkhwa Service Tribunal, which was heard in due course of time and vide judgment dated 11.04.2022 passed in the said Service Appeal. The penalty imposed upon the appellant was set aside. The operative part of the said judgment is reproduced as under:-

"As a sequel to the above, the impugned notification dated 30.01.2019 suffering from legal infirmity, is set aside. The appellant is entitled to be restored to his original post of SCT (BPS-16) with consequential benefits. The respondent department would however, be at liberty to conduct de-novo enquiry in the mode and manner under the law and rules, if they so desire. In case of de-novo enquiry, the issue of back benefits shall be subject to outcome of the de-novo enquiry. Costs shall follow the event. Consign."

(Copy of the judgment is annexed as "B").

4. That in view of the relief granted by the Tribunal as mentioned in the operative part referred to above, the appellant was before the Khyber Pakhtunkhwa Service Tribunal with Execution Petition No.03/2023, when the department on the date of hearing in the Execution Petition on 9th February, 2023 furnished substituted/revised notification dated 30.01.2019 and consequently the Execution Petition was consigned treating the same as satisfied. The copy of the said notification was handed over to an associate of the petitioner's

lawyer/counsel. Having got the information about consignment of execution petition from the office of his counsel the appellant came to Peshawar and got attested copy of the order dated 09.02.2023, through an application dated 13.02.2023. The copy of the substituted/revise notification dated 30.01.2019 was received from office of the counsel. The copy of order dated 09.02.2023 on Execution Petition No.03/2023 and of the substituted/revise notification dated 30.01.2019 are annexed as "C" & "D".

5. That the appellant is reasonably aggrieved from the substituted/revise notification and seeks to challenge the same through departmental appeal, inter alia, on the grounds as follow:-

GROUNDS:

- A. That the impugned substituted/revise notification suffers from legal and factual defects and is result of unjust, random and illegal exercise of authority.
- B. **That the disciplinary proceedings previously conducted against the appellant were set at naught by the Hon'ble Service Tribunal**, vide judgment dated 11.04.2022 (already annexed as "B"). Para-7 of the said judgment clearly depicts that those proceedings were initiated by the respondent No.3/District Education Officer (M) Chitral, which were held as "*corum-non-judice*". The declaration of the previous proceedings as "*corum-*

non-judice" means, that those proceedings were never conducted and existed.

- C. That after holding of the previous enquiry proceedings/disciplinary actions as "*corum-non-judice*" by the Service Tribunal, the Director if decided to conduct a de-novo enquiry in pursuance to the liberty given by the Service Tribunal; he was posed to comply the essentials provided by Efficiency & Disciplinary Rules, 2011 for ensuring the fair trial and due process which he omitted. Thus the appellant has been dealt with otherwise than due course of law in the matter of imposition of impugned penalty; and as such the penalty as imposed upon the appellant due to suffering from illegality and wrong exercise of authority is not tenable under the facts and law.
- D. That the impugned penalty as imposed without a proper enquiry is not tantamount to compliance of the judgment of Service Tribunal as mentioned above.
- E. That the impugned action taken against the appellant and the penalty imposed in consequence of illegal action is highly arbitrary, perverse, perfunctory, erroneous, wrong, result of malafide and being against the facts and law, is liable to be set aside.
- F. That the impugned notification was not departmentally communicated to the appellant and he got the knowledge of said notification on

24

13.02.2023; when he received its copy from the office of his counsel which was handed over to him from the Service Tribunal, after its presentation there on behalf of the department, thus the appeal is within time from the knowledge of the appellant.

PRAYER:-

In view of the foregoing facts and grounds it is respectfully prayed that the substituted/ revised notification dated 30.01.2019 may graciously be set aside and the judgment of the Service Tribunal for restoration of the post of appellant as SCT (BPS-16) may be implemented in its letter and spirit with grant of back benefits.

Appellant

Ihsan ul Haq
15-2-23
Ihsan ul Haq
SCT (BPS-16)
GHSS Drosh
District Chitral Lower
Cell: 0342-9032466

Dated: 15.02.2023



2

Annex 'F'

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(PHONE NO. 091-9223587)

No.SO(Primary-Male)/E&SED/5-19/Re-Instatement/2023
Dated Peshawar the 16 .02.2023

To

Mr. Ihsan Ul Haq,
SCT, GHSS Drosh,
District Chitral Lower.

Subject: - **PERSONAL HEARING REGARDING DEPARTMENTAL APPEAL AGAINST THE SUBSTITUTED/REVISED NOTIFICATION ISSUED UNDER ENDORSEMENT NO. 7972-75/F/NO.62/VOL-II/PST (M) CHITRAL, DATED PESHAWAR TE 30.01.2019, WHEREBY THE APPELLANT HAS BEEN PENALIZED 30.01.2019, WHEREBY THE APPELLANT HAS BEEN PENALIZED WITH DOWNGRADING FROM SCT (BPS-16) TO CT (BPS-15) FOR A PERIOD OF MAXIMUM FIVE (05) YEARS, ON PRETEXT OF A SO-CALLED DISCIPLINARY ACTION.**

I am directed to refer to this department letter, No. & dated even on the subject noted above and to state that your personal hearing is re-scheduled to be held on 20.02.2023 at 11:00 AM with Additional Secretary (Estt.), Elementary & Secondary Education Department Khyber Pakhtunkhwa in his office.

2. You are, therefore, directed to appear before Additional Secretary (Estt.) Elementary & Secondary Education Department Khyber Pakhtunkhwa for a personal hearing along with complete documents, on the date, time and venue mentioned above.


(MUHAMMAD ISHTIAQ)
SECTION OFFICER (PRIMARY-MALE)

Endst: No & date even
Copy forwarded to the :-

1. Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar, with the request to depute a well conversant representative to attend the personal hearing as mentioned above, along with complete record pertaining to the case.
2. District Education Officer (M) Chitral Lower, with the direction to attend the aforementioned personal hearing along with all relevant documents on the date, time and venue mentioned above.
3. PS to Secretary E&SE Department Khyber Pakhtunkhwa.
4. PA to Additional Secretary (Establishment) Elementary & Secondary Education Department Khyber Pakhtunkhwa.
5. Master File.


SECTION OFFICER (PRIMARY-MALE)
16/2/23.

بعدالت

عیدہ پھول خول سروس ڈسٹری بیوٹل ایشیا اور

احسان الہی بنام حکومت کے لیے

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر یا نکتہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی وکل کارروائی متعلقہ
آج مقام ایشیا اور کیلئے احسان سلطان تشریح

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو رضی نامہ کرنے و تقرر ثالث ہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بہ صورت ڈگری کر کے اجراء اور وصولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائرہ کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حدیث سے باہر ہو تو وکیل صاحب پابند ہوں گے کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ مندر ہے۔

الترقوم 07 ماہ جون 2023

واہ العی کے لئے منظور ہے۔

Attested & accepted
[Signature]