

BEFORE THE KHYBER PAKTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 817/2023

Akhtar Sher Bacha Class-IV Government Primary School Ochar Matta Swat.

.....Appellant

Versus

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

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*Place of Heeny
Swat
Next date-3-07-23*

**DISTRICT EDUCATION OFFICER (M)
SWAT AT GULKADA**

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Khyber Pakhtunkhwa Service Tribunal

Diary No. 6203

Dated 26-06-23

Parawise Comments on Behalf of the Respondents:

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.
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 FIR No and sections therein, mentioned in the Service Appeal are not matching with the number and sections mentioned in the Judgment of the Special Judge Anti-Terrorism Court-1 Malakand Division at Swat.
9. That the instant Appeal is **badly time barred**.
10. That the instant Service Appeal is not maintainable in the present form, and above in the present circumstances of the issue.
11. That the Appellant has estopped by his own conduct.
12. That the Appellant has concealed the material facts from this honorable Tribunal.

FACTS

1. That the Para No. 1 is correct.
2. That the Para No. 2 is irrelevant to the present respondents as it is related to the arrest and release of the appellant by Pak Army.
3. That the Para No. 3 is irrelevant to the present respondents. However, it is worth to mention here that the Appellant annexed the order of the Honorable Anti-Terrorism Court-1 Malakand Division at Swat in Case No. 13/8 of 2019 dated 21-01-2019, FIR No. 547 dated 29-10-2007 under U/S 324, 353, 120-b, 124-A, 436, 427 PPC, 3/4 E.S.A 7-ATA P.S Kabal District Swat while the Appellant narrated in this Para FIR No. 454 U/C 342 etc which are itself contradictory and needs justification.

More over the stance of the appellant in this Para is subject to proofs on part of the Appellant that whether he was arrested by Pak Army on 16-02-2009 and was released on 16-10-2018 as the attached order of the Honorable Anti-Terrorism Court-1 Malakand Division at Swat was announced on 21-02-2019 then how the Appellant was released on 16-10-2018. Moreover, as per arrest card Police Station Shah Dherai Swat, the Appellant was arrested on 19-10-2018 and similarly as per report of SHO dated 19-10-2018, the Appellant was absconder and was brought by his brother to police station on 19-10-2018 for legal actions. So there is a lot of controversy in the statements of the Appellant and he is trying to misguide the department as well as this Honorable Tribunal. The Appellant should have clarified that whether the cases mentioned in this Para are related to one and the same case or otherwise. Moreover, if the Appellant was released by Pak Army and the charges were not proved against him then why he was not given clearance certificate by Pak Army? **(Arrest Card, SHO Report annexed as annexure A & B).**

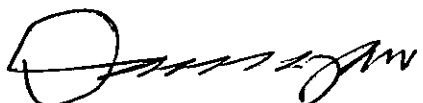
4. That the Para No.4 is correct to the extent of filing application for his adjustment and release of pay, however it worth mentioning that the Appellant submitted his application after more than six months of his release from custody. It means that he was not interested in service and willfully remained absent thereafter.
5. That the Para No. 5 is correct to the extent of Show Cause notice. However, the Appellant's reply was not satisfactory. It is also worth to mention here that the Appellant has submitted a statement to the enquiry committee wherein he categorically stated that he was released by Pak Army on 16-10-2018 and he submitted application for his adjustment on 06-05-2019 which clearly means that even after his release the Appellant was not willing to attend his duty immediately. He remained further absent from duty approximately seven months after his release. **(Statement of the Appellant annexed as annexure C)**
6. That the Para No. 6 is incorrect and denied. The Appellant has not been declared as innocent. The enquiry committee left the decision to the discretion of the department.
7. That the Para No.7 is irrelevant to the present respondents, hence no comments.
8. That the Para No.8 is correct.
9. That the Para No.9 is correct.
10. That the Para No.10 is correct.
11. That the Para No. 11 is incorrect and denied. The Appellant remained absent for a long time from his duty for more than nine years. The Appellant cannot be granted any Service benefits under the expressed provisions of the rules. According to the ESTA code, after five years of continues absence, Services of a civil servant shall automatically stand terminated under FR-18 and rule 12 of the NWFP civil servant revised leave rules 1981. In the light of rules 12 abid, a willful absence of more than five years shall not be converted into leave without pay. **(ESTA Code relevant pages attached as annexure D)**
12. That the Para No.12 is irrelevant to the present issue, hence no comments.

- 13. That the Para No. 13 is correct to the extent of re-instatement order, the rest of the Para is incorrect and denied. The Appellant has not performed any duty in all those absent years and as per rules, he was automatically terminated. Thus he was re-instated into service with immediate effect and the absent/intervening period was converted into leave without pay as this Honourable Tribunal has never directed the respondents to grant him back benefits etc. Moreover as per judgments of the apex court, "no work no pay", the appellant also not entitled for any back benefits.
- 14. That the Para No.14 is irrelevant, hence no comments.
- 15. That the Para No.15 is correct to the extent of departmental appeal, however being devoid of any merit, the appeal of the appellant was not accepted. Thus, the instant Service Appeal is bereft of any merit, hence, liable to be dismissed inter-alia following grounds.

GROUND

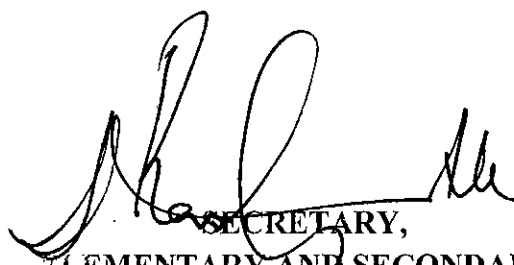
- 1. That the Para No.1 is incorrect and not admitted. The Appellant is not entitled for benefits of such period where he has not performed any duty.
- 2. That the Para No. 2 is incorrect and denied. The Appellant is not entitled for any Service benefits after such a long absence.
- 3. That detail reply of this para has been given in the above Paras.
- 4. That the Para No.4 is incorrect and denied. The Appellant is not entitled for any benefits of the service which he has not performed actually. Even after his release from custody, he also remained absent for a long time without any plausible reasons.
- 5. That the Para No.5 is incorrect and not admitted. The Appellant has been treated in accordance with law, rules and policy.
- 6. That Para No. 6 is repetition of above paras, hence, no comments.
- 7. That the respondents also seek permission to advance further grounds at 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.



**DIRECTOR,
ELEMENTARY AND SECONDARY
EDUCATION KHYBER PAKHTUNKHWA**


**DISTRICT EDUCATION OFFICER (M)
SWAT AT GULKADA**


**SECRETARY,
ELEMENTARY AND SECONDARY
EDUCATION PESHAWAR**

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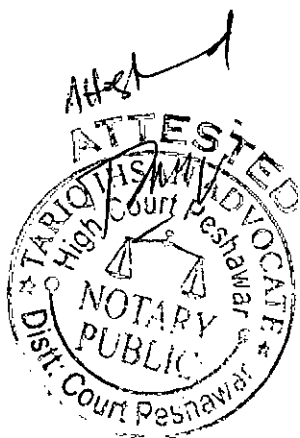
Respondents.

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 Court.

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

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



صندق سوار

کتابخانه قدیمی گمارد در ستاری
در روز 26 اردیبهشت

جوام در روز 547
29-10-07
324.35.3.1208
427-353.3/47ATA
436.

اسم افند ^{بلحا} اوله اسیر با ^{افزار} نام از دیوان
صندقی عالی ^{فندی} عنوان ^{صبر} ^{باید} ^{باید} ^{باید}

بعوتت ^{12:10}
19-10-18

پشت کور و کور ^{صندقی}

گمارد در ستاری ^{المدری}

E/A

صلیة و سلم ذیل

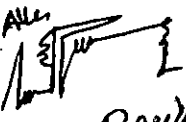
SHD PSD

19/10/18

گندی رفت در صیانه بین انتر نیو فشن بال

داڑھی دھوں ہوں یہ نقلیہ ہے اندر

مادری زبان پرستوں تہ 6, 5


SHABIR BANO
Secret

تفصیلات دیکھیں

علم ہوائی

نقلہ: 15، 11، 10، 18 (19)

مد: 15 آگہ گرفتاری - PO - SHO حورج (19) 10 وقت 10:15 بج در

بیکہ مسی علی سیر با چاہ ولد میر باز سکنہ تاران دیوبلی حکام تھانہ

سہارا آئی جیم اشتہاری آفٹر سیر ولد میر باز خان فوڈز حوالہ مقدم

نمبر 324.353.ATA تھانہ آئی جیم 75 پھارا لاکھ عمر ضافونی کارروائی

SHO کو حوالہ کر کے جیم اشتہاری صاحب ضابطہ گرفتاری کرنا حکم مسی علی سیر

کو بائیکاٹ طور پر تھانہ سے رخصت کیا گیا جیم اشتہاری کا کارڈ گرفتاری

سربت ہو کر ملحق کو رخصت کر کے تھانہ سے تھانہ سے تھانہ سے تھانہ سے

Handwritten signature and scribbles



19-10-18

Handwritten signature: Ali, SDO, Swat

جوابی بیان صفائی از اختہ شہر باج سائیکہ خاکروب گھس تاران سوات
تاریخ 28/6/2019



1- میں اس سکول میں 22/11/2003 سے بحیثیت خاکروب تعینات رہا۔

2- ٹیک آرڈر نے مجھے 16/9/2009 کو گرفتار کیا بعد میں ان کیساتھ 16/10/2018 تک رہا۔

3- دوران گرفتاری میں نے کوئی تنخواہ وصول نہیں کی۔ اور بلکل ثبوت میں

4- اکاؤنٹ آفیس سے Payslips اور بینک سے Statement پیش کر دیا۔

ٹیک آرڈر نے مجھے طالبان کیساتھ روایا رکھنے پر جسٹس کے بنام
پر گرفتار کیا۔ اور چونکہ مجھ پر کوئی حرم وغیرہ ثابت نہ
ہو سکا۔ لہذا میری رہائی محل میں لائی گئی۔

5- چونکہ رہائی کے بعد میری مصروفیات زیادہ ہو گئی کبھی دفتروں کا
چکر لگاتا رہا کبھی تمغانوں وغیرہ سے صفائی میں مصروف تھا۔ لہذا
میں نے سکول میں فوراً رپورٹ نہیں کی۔

6- اس کے بعد میں نے باقاعدہ طور پر دوبارہ تعیناتی کے لئے 05/07/2019
کو DEO آفیس میں رپورٹ/درخواست جمع کی۔ ثبوت موجود ہے۔

7- چونکہ ٹیک آرڈر نے مجھے باقاعدہ طور پر صفائی کا رٹیفیکیشن نہیں دیا جس
اکٹوں نے دو عدد رٹیفیکیشن اور پولیس کے clearance certificate
باتی وجہ ترمیم نہ ہو سکے۔

Attested

Head Master
G.H.S. Taran, Swat
Code No: 36971

Seen & attested


PRINCIPAL
G.H.S. Mudast Khan Shahrest Govt. High School Kollai Swat.
Kabal, Swat.

Rahmat Ali
Head Master
Govt. High School Kollai Swat.
EMIS Code: 33390

الستور لیر بابا
احتراماً شہرہ امیر باغیان
EX-Sweeper
GHS Taran Swat

Awi

S/O Banihab
Swat

(9) 
Annexure "D"

Withdrawals of Resignation.

Acceptance of resignation and willful absence for more than five (5) years.

Under the existing practice, even a temporary Government servant is required to sign an undertaking containing inter alia the following provisions:-

- (a) I understand that my employment under Government is temporary and that my services may be terminated by Government at any time, without assigning any reasons, by giving a notice for a period not less than 14 days or payment, in lieu of the notice, of a sum equivalent to my pay for 14 days or for the period by which the notice falls short of 14 days;
- (b) I agree that I wish to terminate my services under Government at any time, I shall resign in writing and shall thereafter continue to serve Government until my resignation is accepted.
- (c) I also understand that if I absent myself from duty without resigning in writing or before the acceptance by Government of my resignation, I shall be liable to disciplinary action, which may involve disqualification from future employment under Government.

2. It has however, come to notice that in certain cases Government servants have tendered resignations and without waiting for acceptance have left their jobs unauthorisedly and kept themselves absent for years. The departments on their part failed to initiate any action against such employees in time with the result that they subsequently reported for duty after the passage of long periods on one excuse or the other.

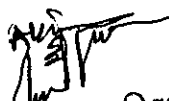
3. It has also been noticed that liberal relaxations are being granted under FR.18 in cases of willful absence from duty for more than 5 years without cogent/convincing reasons whereas according to the rules *ibid* a Government servant remains no more a Government employee after willful absence for five years.

4. The matter has been considered and it has been decided that:-

- (a) After tendering resignation, a Government Servant shall not leave his job until the acceptance of his resignation by the Competent Authority nor shall he be granted any leave. In case one leaves his job without acceptance of his resignation he shall be treated as absconder and disciplinary action should invariably be initiated against him.
- (b) Resignation tendered by a Government servant shall either be accepted or rejected by the Competent Authority within the stipulated period of not more than 30 days of its submission and acceptance/rejection thereof be communicated to the Government servant concerned accordingly.
- (c) After 5 years of continuous absence, services of a Civil Servant shall automatically stand terminated under FR:18 and Rule 12 of the NWFP Civil

C.T.C.




S.D.O. Bunkot
Swat

(10)

~~10~~

Servants Revised Leave Rules, 1981. In the light of Rule 12 *ibid*, a willful absence of more than five years shall not be converted into leave without pay.

5. It is therefore, requested that the above instructions may be brought to the notice of all concerned for strict compliance in future.

(Authority: S&GAD's letter No.SORII(S&GAD)6(37)/89, dated 3rd Oct., 1989).

Determination of seniority of officials who are allowed to withdraw their resignation

A question has arisen whether a Government servant who resigned and has subsequently been allowed to withdraw his resignation should be assigned seniority and given other benefits which would have accrued to him had he not resigned.

2. When a resignation tendered by a Government servant has been accepted and the acceptance has been communicated to him, it becomes final. There can be no question of allowing him to 'withdraw' the resignation.

3. Where a Government servant who has tendered resignation withdraws it before it is accepted by the competent authority, or where, after the acceptance but before the acceptance is communicated to him, he is allowed to withdraw the resignation, he continues in the post held by him without a break and the question of re-fixation of his seniority, etc. does not arise.

4. Where an appellate authority finds that the resignation was not tendered voluntarily or that it is otherwise null and void, the appellate authority may re-instate the Government servant concerned. On re-instatement the Government servant shall be regarded as having continued in service throughout.

5. If a Government servant, whose resignation has been accepted and communicated to him, is appointed to Government service thereafter, such appointment shall be regarded as a fresh appointment. The seniority, pension, leave, etc. of such a Government servant shall be fixed in accordance with the rules applicable to him as if this appointment was his first appointment to Government service.

6. There may, however, be cases in which it may not be fair to treat such a re-employed Government servant as a new recruit and it is proposed to give him any benefit in relaxation of the rules, the orders of the Government should invariably be obtained.

(Authority S&GAD letter No.SOXII/2-96/59, dated 24.12.59)

Preparation/issuance of seniority list of Government Servants

I am directed to say that sub-section (1) of Section 8 of the NWFP Civil Servants Act, 1973, *inter alia* provides that for proper administration of service, cadre or post, the appointing authority shall cause to prepare a seniority list of the members for the time being of such service, cadre or post. Similarly, the note below clause(c) of sub-rule(2) of the rule 6 of the NWFP Service Tribunals Rules, 1974, enjoins upon the appointing authority or any other authority which has been delegated the powers to make decision regarding seniority of

CTC

MS

SECRETARY

S&GAD

SECRET



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 Nos. 01, 02 & 03 in Service Appeal No. 817/2023** Case Title Akhtar Sher vs Government of Khyber Pakhtunkhwa & Others.

Section Officer (Lit-II)
Elementary & Secondary Education,
Department.