

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 7726/2021

Mr. Waqar Ahmad, Ex-Examiner (BPS-18).....Appellant.

VERSUS

Govt: of Khyber Pakhtunkhwa & others.....Respondents.

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Despondent

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal # 7726/2021

Mr. Waqar Ahmad, Ex-Examiner (BPS-18).....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa & others..... Respondents

AFFIDAVIT

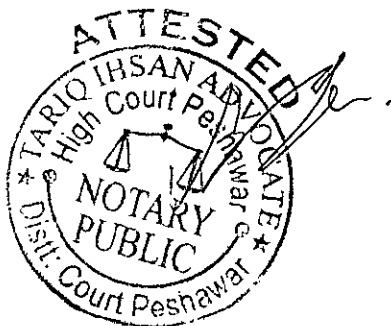
I, **Mr. Amjad Ali**, Section Officer (Litigation-II) Elementary & Secondary Education, Department do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments, submitted by the respondents, are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

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

DEPONENT



Mr. Amjad Ali
Section Officer (Lit-II)
E&SE Department Peshawar



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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

AUTHORITY LETTER

It is certified that **Mr. Fahim, Focal person (Litigation-II)** Elementary & Secondary Education Department is hereby authorized to submit parawise comments on behalf of Secretary Elementary & Secondary Education Department Peshawar in **Service Appeal No. 7726/2021 Case Titled Mr. Waqar Ahmad vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.**

Mr. Amjad Ali
Section Officer (Lit-II)
E&SE Department Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. 7726/2021

Mr. Waqar Ahmad.....Appellant.

VERSUS

Chief Secretary to Govt of KPK Peshawar..... Respondents.

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NOS. 01, 02 & 03

Respectfully Sheweth,

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 6939

Dated 09/08/23

Preliminary Objections:

1. The appellant has not come to this Court with clean hands.
2. The appellant is duty bound to perform her duties throughout the Province, wherever she might be given the task, therefore the new assigned task does not violates any vested rights of the appellant and she is not an aggrieved person.
3. The Respondents have acted as directions of this Honorable Tribunal, therefore nothing is against law & facts.
4. The appellant is estopped by her own conduct to file the present appellant u/s 12(2) CPC.
5. The present appeal is against the prevailing law and rules hence not maintainable in the eye of law.
6. The appellant is not entitled for any relief, she has sought from this Honorable Tribunal.
7. The present appellant is liable to be dismissed being devoid of any merits.
8. The appellant is just wasting the precious time of this Honorable Tribunal.
9. The Respondents are empowered u/s 10 of CSA, 1973 for placing the service of the applicant throughout the province in the best of public interest.

On Facts

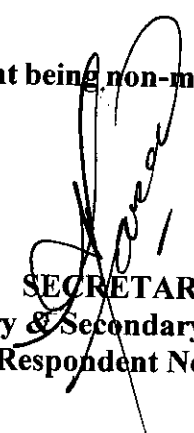
1. Correct.
2. Para 2 is also correct.
3. Correct.
4. Para 4 is correct to the extent of imposition of minor penalty on the appellant, however the rest of the para is incorrect. The responsibility was on the shoulders of the appellant to conduct smooth & fair examination of the mishap was happened due to the negligence of the appellant.
5. Para-5 is incorrect, because the notification No. SO (B&T)/E&SE/14 BISE. Kohat dated 14-04-2021 is in accordance with law.
6. The appellant was guilty of negligence that is why his appeal was not maintainable and was dismissed.

(2)

On Grounds:

- A. Incorrect, the penalty awarded to the appellant is in accordance with law and rules.
- B. Incorrect, the appellant is not an innocent person but was guilty being negligent therefore, the penalty was awarded to him as per law.
- C. Incorrect, the facts finding committee discussed each and everything and therefore the appellant was awarded penalty for withholding annual increment for one year.
- D. Incorrect mis-statement and hence denied. The appellant was guilty of negligence.
- E. Incorrect, the leaking of paper by itself is an evidence of negligence on the part of appellant which is not justifiable nor excusable by law.
- F. Incorrect, the detail reply is given in the above para's.
- G. Incorrect, the penalty on appellant is in accordance with law and nothing is illegal in it.

It is therefore, most humbly requested that the applicant being non-maintainable may kindly be dismissed with cost.


SECRETARY
Elementary & Secondary Education,
Department (Respondent Nos. 01, 02 & 03)

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Annex A Annex A
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ORDERS OF INQUIRY

Orders of the Competent Authority to conduct formal inquiry, under Khyber Pakhtunkhwa Govt. Servant Efficiency and Discipline rules 2011 were communicated vide No.SO(B:T)/14-13/BISE Kohat (Annexure-A) comprising committee of the following members.

1. Mr. Imad Ali (PMS BPS-19) Additional Secretary Home Department Khyber Pakhtunkhwa.
2. Mr. Sharif Gul (BPS-19) Principal Govt. Shaheed Saqib Higher Secondary School No. 2, Peshawar Cantt.

INTRODUCTION

The Govt. of Khyber Pakhtunkhwa Elementary and Secondary Education, initiated a fact finding inquiry on the charges of leaking of English Paper Class 10th in SSC Annual Examination 2019 for BISE, Kohat. The Committee submitted its report and responsibility was fixed on two officers / officials of the Department i.e Mr. Waqar Ahmad (BPS-18) Ex-Controller of Examinations and Mst. Farzana SCT (BPS-16) GGHS Nari Panooos Karak.

The Competent Authority i.e Chief Secretary Khyber Pakhtunkhwa served Charge Sheet, to both the accused separately under Efficiency and Discipline Rules 2011 based on the fact finding inquiry.

Section Officer (Boards/Training)
Elementary & Secondary Education
Department, Khyber Pakhtunkhwa

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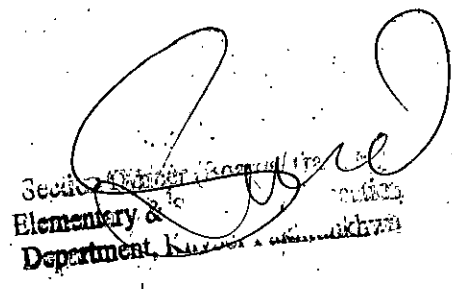
PROCEEDINGS

The accused officer / officials were informed through written letter No. HD/PA/AC(PER)/P/2019 dated Peshawar the 11th February 2020, to appear / report before the Inquiry Committee on 18-2-2020 at 11.00 AM. (Annexure-B)

Mr. Waqar Ahmad the Ex-Controller of Examinations appeared and the Charge sheet was placed before him. While Mst Farzana***SCT did not confirm her attendance. Mr. Waqar Ahmad was asked to submit his written reply which he did not do before. Another arrangement was made at BISE, Kohat for the connivance / facilitation of accused and provision of documents required for the inquiry proceedings. They were again informed through written letter vide No. 19/PA/BISE-B/2020 dated 19-2-2020 to appear before the Committee on 19-2-2020 at 10.00 AM. (Annexure-C)

Both the accused officers appeared before the committee in the office of the Chairman BSE, Kohat. Both of them also submitted their written defence. They were given ample time to plead the Charges leveled against them. All the replies were Cross -examined through questioning in the light of available fact and questionnaire served. (Annexure-D)

The following tables shows detail analysis of each Charge and replies submitted.

Section Officer (General) for
Elementary & Secondary Education
Department, Kohat

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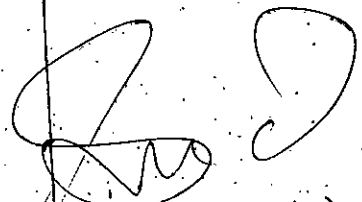
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occupy with printing of papers and many other issue regarding centres. In such a situation refusal of duties, which is mandatory and liable to disciplinary action, create a big problem.

Even if names are taken from shadow draw, they refuse duties one pretext or the other. In fact teachers do not want to go very far flung areas for duties. Their acceptance of duties is much more depends on like and dislike. It is a problem of all boards and especially on female side. It can be verified from other boards as well.

In such like situation, the Controller has to depute supervisory staff in vacant centre for the sake conduct of exam and to facilitate the kids in any way. Even the controller extends request to the teachers to perform duty in order to avoid any difficulty to the students.

submitted refusal: (Annexure-E). After contacting the reserved candidates, finally the available candidate was involved naming Farzana SCT BPS16. All these efforts show that the Controller Mr. Waqar Ahmad did what was humanely possible in such hurry. Mst Farzana SCT has been performing these duties earlier and that is why her name was picked after implementing (refusal) of the computerized draw. The efforts Mr. Waqar Ahmad Controller of Examinations did therefore worthwhile for consideration-for ensuring smooth conduct of examination. That is what came to surface during cross questioning and reply of the questionnaire by the Controller of Examinations.


 Section Officer (Boards/Training)
 Elementary & Secondary Education
 Department, Khyber Pakhtunkhwa

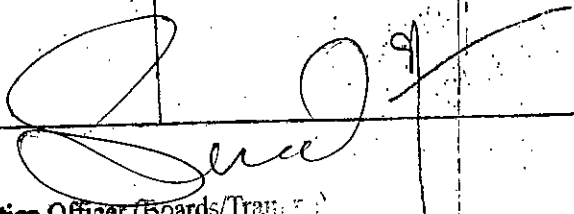
iii.	You deputed Mst: Farzana	The following reason in the context are enumerated that why Mst. Farzana SCT	The refusal of appointment from	The charge is partially proved
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<p>SCT as Superintendent to Centre No. 57 GGHS Nari Panos Karak although her name was neither available in computerized draw nor in the list of shadow draw. Her selection was not unsuitable, inappropriate and improper because she was repeatedly performing exam duties at this same centre. She was a junior scale teacher and appointed without any consultation with the concerned DEO/SDEO (Female).</p>	<p>(BPS-16) appointed at Centre No. 57, GGHS Nari Panos, Karak.</p> <p>i). BISE Kohat has vast remote and war-torn territorial jurisdiction right from District Parachinar sharing border with Afghanistan and District Karak sharing border with Punjab. Supervisory staff is general and female supervisory staff particular are not willing to perform duties in remote areas.</p> <p>ii). Consequent upon the refusal from exam duty by Mst Mehar Angaiz (SST Bio/Chemistry) GGHS Esak Chontria. The relevant officers /officials of the BISE, Kohat contacted the shadow draw superintendent. Some other senior female teachers were also contacted to perform duty but all in vain.</p> <p>Mst Farzana SCT (BPS-16) was appointed as superintendent one day before start of the examination in consultation with the approval of the Chairman, BISE, Kohat. She was appointed in the same way in which other refusal cases were addressed. The said Mst Farzana SCT has performed duties as superintendent at various centres in the past. Consultation with concerned HM, Principal, SDEO, DEO were not required as the draw was conducted from EMIS data provided by the E&SE Department to all the Boards.</p>	<p>computerized draw /shadow draw by Mehar Angaiz SST GGHS Essak Chontria Karak and Farida Khanum SST GGHS Jahangiri Karak (Annexure-I) shows that the Controller Mr. Waqar Ahmad followed the standing instructions to appoint someone from EMIS data available with the BISE, Kohat at the time of emergency. This shows that the Ex-Controller BISE Kohat did his best out of the available options. But the process of appointment of a single person repeatedly through direct means raised doubt on the credibility of the whole process without corrective planning. The whole system of</p>	<p>upto the extent of appointment of a repeater and always directly is never on appreciable practice has not been broken by any Controller for the last 15 years.</p>
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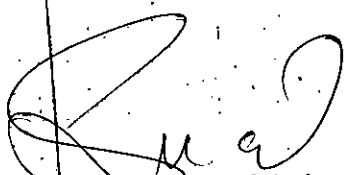


Section Officer (Boards/Trans) Elementary & Secondary Education Department, Khyber Pakhtunkhwa

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			examination may not be vulnerable to the hands of only one person.	
<p>iv. The question papers were packed in very loose paper stuff and were sealed through scotch tape which was too vulnerable and prone to such occurrence.</p>	<p>All the question papers have been properly sealed and packed. All the standard safety measures have been taken to ensure safety of the question papers. These include:</p> <ul style="list-style-type: none"> i. Packing of question papers in black plastic bags and stapled. ii. Packing of black plastic bags in brown envelopes packs and sealing of brown envelopes with gum (serash). iii. Sealing with scotch tape having security features. <p>Putting signatures at different parts of envelopes over the S/T that RA, Deputy Superintendent could confirm seals before opening the packet.</p> <p>I have no information about the outcome of the preliminary inquiry.</p>		<p>Packing of the paper is a very loose stuff was another question in the charge sheet. The BISE Kohat was visited and envelopes in which the Question Papers were sealed were checked by the committee in the presence of sitting Chairman. The Chairman Mr. Shaukat Hayat having plenty of experience as Controller and Chairman BISE Mardan. He was asked about using the same stuff even after the incidence of leakage of paper in SSC Examination 2019 (Annual). But he shown satisfaction and no willingness for replacement of this stuff. Moreover the stuff was also used before Mr. Waqar Ahmad Ex-Controller BISE Kohat and nor</p>	<p>The Ex-Controller Mr. Waqar Ahmad cannot be held responsible upto the extent of using loose paper stuff. The charge therefore carries no weight.</p>


Section Officer (Boards/Training)
Elementary & Secondary Education
Department, Khyber Pakhtunkhwa

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		any issue was raised from any quarter in the system.	
v. An inquiry was conducted against you held you responsible for same.		Keeping in view the above facts the charges 1-4 leveled against Ex-Controller of Examinations BISE, Kohat carries no weight and nothing has been found as negligence, in-efficiency or malpractices. The inquiry conducted has found nothing solid and concrete for fixing the responsibility except the appointment of Superintendent directly in the time of emergency.	The Ex-Controller BISE Kohat Mr. Waqar Ahmad may not be held responsible.

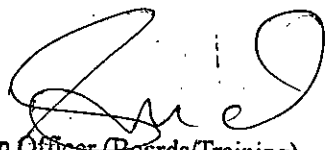
[Signature]
 Section Officer (Heads/Training)
 Elementary & Secondary Education
 Department, Khyber Pakhtunkhwa

14 359

iv.	An inquiry was conducted into the issue which held you responsible for same.	<p>مست فزانہ کی ایک سالہ سہ ماہی کی تقریری کی طرف سے جاندارانہ ہے۔ شہید ملی زبان کے تحت لے کے بیان کی بنیاد پر جسے مسودہ اور قرارداد کیا جائے یوں لکھے قرانی کا کرمانے کی کوشش کی گئی ہے۔ تقریری سبکی اصل حقیقت دریافت کرنے میں ناکام رہی۔</p>	<p>Mst Farzana only one plea of being woman and tries to mask all that is happened behind it has not been convincing for exoneration of charges leveled against her. But the role of BISE, Kohat is also losing credibility as she has been successful in obtaining examination duties through direct means not caring for draw/shadow draw for more than fifteen years, out of which she performed three duties in GGHS Nari Panoos Karak (Annexure-0) out of past five year not only under controller Mr. Waqar Ahmad but his predecessor as well.</p>	<p>The charge is true keeping in view the findings of charge No 1 and 2.</p>
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CONCLUSION.

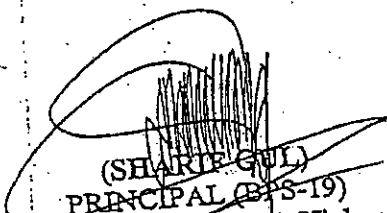
Two main issues surfaced during this whole inquiry proceedings. One is related to appointment of Mst Farzana SCT BPS-16 as Superintendent GGHS Nari Panoos Karak. This issue is confronted by all the Boards of Intermediate and Secondary Education in hard and backward areas in Khyber Pakhtunkhwa especially in female supervisory staff and all the Boards go out of turn and violate the draw and shadow draw as well as Govt instruction time to time. The Education Department is equally responsible for not taking disciplinary action and creating space to these teachers/Heads who are appointed through draw/shadow draw and refuse to perform duties at Eleventh hour. The BISE therefore taking all possible options to conduct the examination. The Controller of Examinations may not be maligned for any appointment which can ensure the smooth conduct of examination.



 Section Officer (Boards/Training)
 Elementary & Secondary Education
 Department, Khyber Pakhtunkhwa

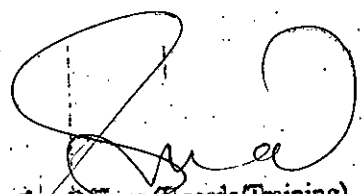
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Second major issue is the reliance of all BISEs on National and Commercial banks, the institutions who are shouldered a responsibility without direct hold on them. This system needs a structural change / transformation so that any breach of system have a built in mechanism for discouraging all these male practices.

Keeping in view these issues it is concluded that an illwill at the part of a single member i.e Superintendent Mst Farzana in the system will bear the cost of another institution i.e Habib Bank Limited Nar Panoos Karak Branch which is equally responsible but not under the control of BISE Kohat or Elementary and Secondary Education.


(SHARIF GUL)
PRINCIPAL (BPS-19)
Govt. Shaheed Saqib Higher
Secondary School No. 2, Peshawar


(IMAD ALI)
Additional Secretary (PMS BPS-19)
Home Department Khyber
Pakhtunkhwa.


Section Officer (Boards/Training)
Elementary & Secondary Education
Department, Khyber Pakhtunkhwa



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar the, 14.04.2021.

Impugned
22/2/21
(16) Ahmad
Ahmad 13/3

NOTIFICATION.

No.SO(B&T)E&SE/14-3/BISE Kohat/Vol-I. WHEREAS Mr. Waqar Ahmad (BS-18), Ex-Controller BISE Kohat, now SS (Physics) GHSS Kheshti Payan, Nowshera was proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for not properly conducting the SSC examination 2019, particularly Centre No.57 GHS Nari Panooos Karak.

2. AND WHEREAS Mr. Imad Ali, (PMS BS-19), Additional Secretary Home Department and Mr. Sharif Gul, Principal (BS-19), Govt Shaheed Saqib HSS No. 2, Peshawar Cantt conducted formal inquiry against the accused.

3. AND WHEREAS the inquiry committee after having examined the charges, evidence on record and explanation of the accused, submitted the report.

4. AND WHEREAS minor penalty of "Withholding Of One Annual Increment For One Year" was tentatively imposed upon the accused by the Competent Authority (Chief Minister, Khyber Pakhtunkhwa).

5. AND WHEREAS Secretary Agriculture, Livestock & Cooperative Department afforded personal hearing to the accused on behalf of the Competent Authority on 26.11.2020 who endorsed the proposals of the Administrative Department.

6. NOW, THEREFORE, in exercise of the powers conferred upon him under Rule 4 (1) (a) (ii) of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) after considering the findings and recommendations of the formal inquiry report and personal hearing granted to the accused is pleased to impose minor penalty of "Withholding Of One Annual Increment For One Year" upon Mr. Waqar Ahmad (BS-18), Ex-Controller BISE Kohat, now SS (Physics) GHSS Kheshti Payan, Nowshera with immediate effect.

SECRETARY

Endst: of even No. & Date.
Copy is forwarded to:-

(Signature)
Secretary
Elementary & Secondary Education
Department, Khyber Pakhtunkhwa

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. Chairman, BISE Kohat.
4. District Education Officer (Male), Nowshera.
5. District Account Officer, Nowshera.
6. Mr. Waqar Ahmad (BS-18), Ex-Controller BISE Kohat, now SS (Physics) GHSS Kheshti Payan, Nowshera.
7. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
8. PS to Secretary E&SE Department, Peshawar.
9. Office order file.

(FAZLI WADOOD SAFI)
SECTION OFFICER (BOARDS & TRG)